

If you would like to address City Council, please place your name on the sign-up sheet located at the back of the City Council Chambers. You will be recognized to speak during the "audience participation" portion of the agenda

AGENDA

City Council Regular Meeting

July 07, 2020 - 7:00 PM

Please click this URL to join virtually: <https://us02web.zoom.us/j/87890606742>

Or join by phone: 1-669-900-9128

Webinar ID: 878 9060 6742

An informational packet containing all agenda material is available for public inspection on our website at www.evanscolorado.gov The agenda is posted on the bulletin board adjacent to the Council Chambers.

1. CALL TO ORDER

2. PLEDGE

3. ROLL CALL

Mayor:	Brian Rudy
Mayor Pro-Tem:	Mark Clark
Council:	Laura Speer
	Alicia Johnson
	Fred Neal
	Amanda Castle
	Tammy Mortenson

4. AUDIENCE PARTICIPATION

The City Council welcomes you here and thanks you for your time and concerns. If you wish to address the City Council, this is the time set on the agenda for you to do so. When you are recognized, please step to the podium, state your name and address then address City Council. Depending on the number of speakers on any given topic, your comments may be limited to two (2) minutes. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and your questions may be directed to the appropriate staff person for follow-up. Thank you!

5. APPROVAL OF AGENDA

6. CONSENT AGENDA

The consent agenda is reserved for matters which are considered to be routine and uncontroversial. Any item may be removed from the consent agenda and placed on the regular agenda at the request of the Mayor or a City Council member.

- [A.](#) Approval of the June 16, 2020 City Council Meeting Minutes
- [B.](#) Consideration of Ordinance No. 717-20 Approving the Ziggi's Coffee Shop Minor Replat (2nd Reading)
- [C.](#) Consideration of Ordinance 720-20 An Ordinance Amending Titles 3, 5 and 18 of the Evans Municipal Code to Allow Mobile Food Vending in the City of Evans (2nd Reading)

7. NEW BUSINESS

- [A.](#) Consideration of Resolution No. 18-2020 to Make Factual Findings Determining Annexation Eligibility for Annexation of Certain Real Property Owned by MountainTRAX Intermodal, LLC.
- [B.](#) Public Hearing: Consideration of Ordinance No: 722-20 Annexing and Zoning Certain Lands Concurrently in Connection with the MountainTRAX Intermodal LLC Petition for Annexation (1st Reading)
- [C.](#) Public Hearing: Consideration of Ordinance No. 721-20 and Resolution No. 17-2020 Approving a Change of Zone from I-2 to I-3 for MountainTRAX, an Industrial Park located at 7300 47th Avenue (1st Reading)
- [D.](#) Consideration of Approval of the Site Improvements Agreement for Ziggi's Coffee Shop
- [E.](#) Consideration of Planning Commission Member Appointments
- [F.](#) Consideration of an Intergovernmental Agreement (IGA) with Weld County for the 23rd Avenue Arterial Construction Project
- [G.](#) Consideration of IGA with Weld County for Funding of the Widening of 37th Street between 35th Avenue and 47th Avenue
- [H.](#) Consideration of IGA with Weld County for the Transportation Master Plan
- [I.](#) Consideration of Resolution No. 19-2020 Approving an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) Regarding Funding for the Update to the City of Evans' Multimodal Transportation Master Plan
- [J.](#) Public Hearing: Consideration of Ordinance Number 725-20 An Ordinance Amending the 2020 Budget (1st Reading)
- [K.](#) Public Hearing: Consideration of Ordinance No. 726-20 an Ordinance Amending Chapter 13.24 to Protect the Public Water System from Contaminants or Pollutants that Could Enter the Distribution System by Backflow (1st Reading)

8. REPORTS

- A. City Manager
- B. City Attorney

9. AUDIENCE PARTICIPATION (general comments)

Please review the Audience Participation section listed at the beginning of the agenda for procedures on addressing City Council.

10. EXECUTIVE SESSION

- A. To Receive Legal Advice from the City Attorney and to Provide Direction to Negotiators in Connection with a Recent Letter of Map Revision Received by the City, Pursuant to Section 24-6-402(4)(b) and (e), C.R.S.

11. ADJOURNMENT

CITY OF EVANS – MISSION STATEMENT

“To deliver sustainable, citizen-driven services for the health, safety, and welfare of the community.”

It is the policy of the City of Evans that all programs and activities shall be accessible to, and usable by, persons with disabilities. Persons needing assistance shall contact the Safety & Risk Management Manager at the City of Evans. Please provide three to five business day's advance notice so we can adequately meet your needs.

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 6.A
SUBJECT: Approval of the June 16, 2020 City Council Meeting Minutes
PRESENTED BY: Karen Frawley, City Clerk

AGENDA ITEM DESCRIPTION:

Approval of minutes

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

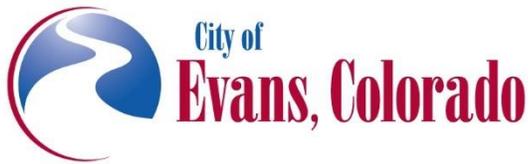
N/A

SUGGESTED MOTIONS:

“I move to approve the minutes as presented.”

ATTACHMENTS:

- June 16, 2020 City Council Meeting Minutes



MINUTES

City Council Regular Meeting
June 16, 2020 - 7:00 PM

1. CALL TO ORDER

Mayor Rudy called the meeting to order at 6:58 p.m.

2. PLEDGE

3. ROLL CALL

Mayor: Brian Rudy
Mayor Pro-Tem: Mark Clark – attended virtually
Council: Laura Speer
Alicia Johnson
Fred Neal
Amanda Castle
Tammy Mortenson

4. AUDIENCE PARTICIPATION

There was no audience participation

5. APPROVAL OF AGENDA

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to approve the agenda as presented. The motion passed with all voting in favor thereof.

6. CONSENT AGENDA

A. Approval of the June 2, 2020 City Council Meeting Minutes

B. Consideration of Ordinance Number 718-20 Regarding the Varra Right-of-Way Vacation (2nd Reading)

Mayor Pro-Tem Clark made the motion, seconded by Council Member Neal to approve the consent agenda as presented. The motion passed with all voting in favor thereof.

7. OLD BUSINESS

A. Public Hearing: Consideration of Ordinance Number 720-20 An Ordinance Amending Titles 3, 5, and 18 of the Evans Municipal Code to Allow Mobile Food Vending in the City of Evans.

Mayor Rudy reopened the Public Hearing at 7:00 p.m.

Mr. Becklenberg informed the Council that at the May 19th Work Session, Council gave direction to staff to prepare an ordinance that would line up the code with the desire to allow food trucks. Several sections of the code will be amended with this ordinance and staff is recommending approval of this ordinance. As a process note, the City Attorney provided some feedback that resulted in some, but no substantive changes to the ordinance. The effective changes generally are to clarify the ordinance to minimize the chance for errors when the company we use takes adopted ordinances and makes them part of the code.

Anne Best Johnson, Community Development Director provided Council with a summary of the ordinance.

Mayor Rudy asked if there was anyone in the audience who wished to speak for this item; no one came forward.

Mayor Rudy asked if there was anyone in the audience who wished to speak opposing this item; no one came forward.

Mayor Rudy closed the public hearing at 7:08 p.m.

Council Member Speer asked in section B number 5 it says there cannot be any signage except for what's on the vehicle and is wondering why they can't have a sandwich board or something similar set up with a menu or directions or something like that. Anne Best Johnson stated that staff could add that in but what the thought was to minimize the visual confusion and didn't want to have anything causing potential traffic concerns, however if Council would like to see the ability to have something like sandwich board signs, staff would be happy to add it in for the second reading. Council Member Speer stated she would like the ability for the business to place a sign out that is temporary and easily removable that could be a little more visible if they are in an area away from a main road.

Mayor Pro-Tem Clark stated that he agrees with Council Member Speer on the sign and thinks that having some sort of sign they can put up near their food truck would be good and a way to draw people to them.

Council Member Johnson made the motion, seconded by Mayor Pro-Tem Clark to approve Ordinance Number 720-20 as amended and to allow for signage on the property it will be on. The motion passed with all others voting in favor thereof.

8. NEW BUSINESS

- A. Public Hearing: Consideration of Resolution No. 14-2020 Approving the Special Use Permit for Quality Lube, a Repair Shop in the Commercial, C-1 Zone District

Mayor Rudy opened the Public Hearing at 7:17 p.m.

Mr. Becklenberg informed the Council that this is an item that if approved will allow one of Evan's current businesses, Quality Lube to expand. As a note, should Council approve on first reading, this should be the other item that is approved as amended

for the non-substantive changes made, staff has provided copies of the amendments at the dais.

Anne Best Johnson, Community Development Director provided Council with a summary of the Special Use Permit.

Kelsey Bruxvoort, applicant with AgPro stated that Quality Lube is an existing site. Quality Lube recently purchased a vacant lot to expand the parking area.

Mayor Rudy asked if there was anyone in the audience who wished to speak for this item; no one came forward.

Mayor Rudy asked if there was anyone in the audience who wished to speak opposing this item; no one came forward.

Council Member Speer asked the applicant for clarification if this was an expansion of Quality Lube to where they can do more vehicles? Kelsey stated that it will be an oil change business and the purpose is to take the additional lot and allow for additional parking and better traffic flow. With the increase efficiency, they are looking at adding a few more employees and expect a little more business.

Mayor Rudy closed the public hearing at 7:27 p.m.

Mayor Pro-Tem stated he is in favor and glad to see a business in Evans expanding and looks forward to approving it.

Council Member Johnson stated that she is also in favor and likes the additions that will be made.

Mayor Rudy stated that he is also in favor and thanked the applicant for choosing to do business in Evans and stay in Evans and expand the business.

Council Member Speer made the motion, seconded by Council Member Neal to approve Resolution Number 14-2020 as amended and with the conditions of approval and development standards. The motion passed with all others voting in favor thereof.

B. Consideration of Approval of the Ziggi's Coffee Shop Minor Replat

Mr. Becklenberg informed the Council that this item is one step in the process that could potentially facilitate the location of a Ziggi's Coffee Shop in Evans that will be located in the parcel adjacent and East of Walgreens on 37th Street.

Lauren Richardson, City Planner presented a summary of the project to Council.

Nick Brewka, Representative for Ziggi's addressed Council about the specifics of the project.

Council Member Johnson stated that it is exciting to have a coffee shop in that area

as there are none around and it will be an asset to that area.

Council Member Speer asked about the access and stated her concerns about people cutting through the Walgreens parking lot and not wanting to negatively affect the business. Nick responded that the area Council Member Speer was referring to is a reserved area to access the lot.

Council Member Neal asked if Ziggi's owns the entire parcel, if they plan on eventually selling the other parcel, Nick responded no.

Mayor Pro-Tem Clark made the motion, seconded by Council Member Castle to approve Ordinance Number 717-20 on first reading as proposed with the conditions of approval and development standards. The motion passed with all others voting in favor thereof.

Council Member Johnson made the motion, seconded by Council Member Mortenson to approve Resolution Number 13-2020 on first reading as proposed with the conditions of approval and development standards. The motion passed with all others voting in favor thereof.

C. Consideration of Agreement with Weld County Regarding 2020 Cares Act Funding Opt-In and Allocation

Mr. Becklenberg informed the Council that this is an item that has come about in the last few weeks following the Executive Order from Governor Polis administering Federal CARES Act funding. The CARES Act funding will make about \$27.8 million available to Weld County for a couple of purposes. First, is to cover direct cost incurred since March 1st in response to the COVID-19 virus and the second purpose would be to support business affected by the COVID-19 virus. There are a couple of different levels of discussion, first is what Council is taking tonight where in order of the County to opt into the program, there has to be an agreement between each City and the County for how the money will be allocated. The second step will be how to support businesses with the money. The second step discussion will come at a later date. The City of Evans per the proposed allocation will be \$974,312, however the limits on the funding has to first of all be reimbursing direct city costs for responding to COVID and for Evans, the projections through the rest of the year will be \$161,000. The agreement before Council would agree with opting into the program with the Department of Local Affairs, which is the same agreement all of the municipalities are considering, and that Evans allocation would be \$974,312. Staff is recommending approval of the agreement opting into the program.

Mayor Pro-Tem stated that this is really good for the City and the amount will help the budget constraints that we have so far and he also hopes that any additional amount left will be utilized towards Evans' small businesses that have been impacted.

Council Member Johnson stated that she was also in favor of it and believes that the City should take on the task of distributing the remaining funds to Evans' local businesses.

Council Member Johnson made the motion, seconded by Council Member Neal to approve the Collaborative Agreement Related to Distribution of CARES Act Funding. The motion passed with all others voting in favor thereof.

- D. Consideration of Emergency Ordinance No. 716-20 To Implement Ballot Measure 2A approving a 1% Increase in Sales and Use Tax Upon Motor Vehicle Sales

Mr. Becklenberg informed the Council that a couple of meetings ago, Council approved an ordinance implementing measure 2A that would put into place the new sales tax to support roads. In preparation, staff has been communicating with businesses and doing other work required to start receiving that revenue. Staff realized that one section of our code to which the tax would apply, the sales tax on motor vehicles had not been included in that original ordinance. The ordinance before Council would correct that oversight and make the new tax apply to motor vehicles as was fully intended in the ballot measure and doing it by emergency ordinance would enable the tax to be uniformly applied starting July 1.

Council Member Neal stated that he was glad that staff located the oversight and corrected it.

Council Member Mortenson made the motion, seconded by Council Member Castle to adopt Ordinance Number 716-20. The motion passed with all others voting in favor thereof.

- E. Consideration of IGA with Weld County for the Overlay of 37th Street between 17th Avenue and UPRR Railroad

Mr. Becklenberg informed the Council that when this project was approved for the overlay project on 37th Street, the City not only received a grant from CDOT and federal funding, but also received funding and a commitment from Weld County for \$100,000 to make this project work. The agreement before Council approves the agreement with Weld County to receive funding that will help to get the project done.

Council Member Johnson made the motion, seconded by Council Member Mortenson to approve the Intergovernmental Agreement with Weld County (IGA) for the 37th Street Overlay Project and authorize the Mayor's signature on the Grant Agreement. The motion passed with all others voting in favor thereof.

9. REPORTS

- A. City Manager

Mr. Becklenberg informed the Council that the 2020 concrete replacement program has already been completed. The asphalt patching program that will be done in several areas around town that will also include the larger patches later in the summer for 37th Street and other areas. The surface treatment project will be going out to bid this week.

B. City Attorney

Mr. Scott Krob informed the Council that Senate Bill 217 has passed the legislature and is headed to the Governor's desk for signature and will have substantial impacts on the Police Department. There is now a new protect our neighbor's program on the COVID front that the Governor plans to roll out this week that should make obtaining variances easier to obtain. As far as the safer at home program, there should be some guidance coming out tomorrow on the reopening process.

10. AUDIENCE PARTICIPATION (general comments)

There was no audience participation

11. ADJOURNMENT

The meeting was adjourned at 7:54 p.m.

DRAFT

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

AGENDA ITEM: 6.B

SUBJECT: Consideration of Ordinance No. 717-20 Approving the Ziggi's Coffee Shop Minor Replat (2nd Reading)

PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best-Johnson, Community Development Director
Lauren Richardson, City Planner

AGENDA ITEM DESCRIPTION:

This agenda item represents the second reading of Ordinance 717-20 for a Minor Replat to subdivide one lot into two, with one of the lots to be occupied by a new Ziggi's coffee shop structure. The resulting parcel sizes will be 0.724 for Lot 2A (western lot) and 1.421 for Lot 2B (eastern lot). A Minor Replat application was presented to Planning Commission on June 4, 2020. Planning Commission voted unanimously to forward their recommendation of approval to City Council. City Council approved the Minor Replat on first reading on June 16, 2020.

New lot 2A will be for Ziggi's Coffee Shop. The land use application was processed through the Site Plan Review process which is an administrative land use review process. The applicant does not need more than the resulting acreage provided for the coffee shop land use on Lot 2A. Lot 2B is similar in size to neighboring commercial lots north of 37th Street and the two east of Lot 2B, and can be used for a future commercial enterprise.

For reference, Section 18.07.120.C of the Evans Municipal Code identifies the process and procedures, that an applicant must follow in seeking approval of a Minor Replat. Staff and referral agencies found the application meets the intent of the Minor Replat process. The applicant addressed staff's comments prior to bringing the application to both the Planning Commission and City Council. The Minor Replat process follows the Final Plat process. A resolution is needed for a Minor Replat and an Ordinance is needed for the Final Plat.

The Land Use Code does not contain Criteria for Approval for Replats however, the Land Use Code does direct certain Minor Replat applications to be processed through the Final Plat process (Section 18.07.120.D.1.a). Criteria for Approval found in the Final Plat Section of the Municipal Code, Section 18.07.090, states, "Criteria for Final Plat. The only basis for rejection of a Final Plat shall be its nonconformance to adopted rules, regulations and ordinances currently in force and affecting the land and its development in the City, its lack of conformance with the approved preliminary plan, and changes required in the public interest." The Minor Replat review process includes thorough staff review, referral agency comments and review, Design Review Team meetings and one round of Staff Comments. The final step of the approval process includes City Council's review and approval of the Minor Replat, and the associated Resolution and Ordinance.

The site is located south of and adjacent to 37th Avenue just east of Walgreens (3700 37th Street). There are two existing accesses, one from 37th Street and a second off 35th Avenue to the east. The proposed Minor Replat can be found as Attachment 5. Access to Lot 2B will not be restricted. See the map below illustrating the location of the Minor Replat.



FINANCIAL SUMMARY:

The City has no financial obligations as a result of the Minor Replat. The new coffee shop will provide additional sales tax revenue.

RECOMMENDATION:

At its June 4, 2020 Planning Commission recommended approval of Resolution 13-2020 and Ordinance 717-20 along with the recommended conditions of approval and development standards. At its June 16, 2020 meeting, City Council approved Resolution 13-2020 and approved Ordinance 717-20 on first reading along with the recommended conditions of approval and development standards.

SUGGESTED MOTIONS:

“I move to approve Ordinance No. 717-20 on second reading as proposed with the conditions of approval and development standards.”

“I move to deny Ordinance No. 717-20 on second reading as proposed for the reasons stated.”

ATTACHMENTS:

- Attachment 1: Ordinance No. 717-20
- Attachment 2: Planning Commission Minutes from June 4, 2020
- Attachment 3: Application Narrative
- Attachment 4: Plat

CITY OF EVANS, COLORADO

ORDINANCE NO. 717-20

A ORDINANCE APPROVING A MINOR REPLAT FOR PROPERTY GENERALLY REFERRED TO AS EVS HRC L2 HUNTERS RESERVE CENTER

WHEREAS, the City Council of the City of Evans, Colorado, (the "City Council") pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado (the "City"); and

WHEREAS, DLR Property Holdings, LLC., ("the Property Owner" and "Applicant") a Colorado Limited Liability Company, is the owner of certain property located within the City of Evans and more specifically described on Exhibit A, attached ("the Property"); and

WHEREAS, the Applicant has filed an application with the City asking for approval of a Minor Replat to subdivide one parcel into two separate parcels; and

WHEREAS, staff has reviewed the Application and deemed it to be complete; and

WHEREAS, staff has reviewed the Application and deemed it to satisfy all requirements for a Minor Replat under the Evans City Code, including but not limited to Section 18.07.120.C; and

WHEREAS, the matter has been submitted to the required referral agencies for comment and staff has determined that the Applicant has adequately addressed concerns raised by the referral agencies; and

WHEREAS, the posting and notification requirements found in Section 18.10.10 have been followed; and

WHEREAS, following proper notice, the City Council considered the Application at its regular meeting on June 16, 2020 and July 7, 2020; and

WHEREAS, based on the Application, referral comments, staff report, representations by the Applicant, and public comment, the City Council considered the criteria set forth above and made motion on the application set forth above and made motion subject to the conditions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. This Minor Replat is hereby approved.
2. The Council's approval is subject to the following conditions, all of which shall be satisfied prior to recording the Replat.
 - a. All utilities shall be illustrated in an easement on the Replat. This includes all utilities that may be currently on lots 2A and 2B. Please coordinate with the City Engineering Department.
3. Upon completion of the Conditions of Approval listed above, the applicant shall re-submit one electronic copy of the Replat along with supporting documents for review by the City of Evans Planning Department. The mylar for the Minor Replat shall be submitted for recording within thirty (30) days of the City Council hearing.

4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this resolution and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

5. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance

PASSED AND ADOPTED AT FIRST READING AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 16th DAY OF JUNE, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

Brian Rudy, Mayor

PASSED AND ADOPTED AT SECOND READING AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 7th DAY OF JULY, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

Brian Rudy, Mayor



AGENDA

Planning Commission Special Meeting

Thursday, June 4, 2020, 6:00 pm

This meeting will be held via Zoom due to COVID-19 safety precautions

Directions to join the meeting:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join. <https://us02web.zoom.us/j/82305753497>

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656
or +1 301 715 8592

Webinar ID: 823 0575 3497

International numbers available: <https://us02web.zoom.us/j/kd6gHQs8wD>

REGULAR MEETING

1. **CALL TO ORDER: 06:02 pm**

2. **ROLL CALL: 06:02 pm**

Chairman: Deborah Linn – present
Vice-Chairman: Billy Castillo – present
Commissioners: Lyle Achziger – present
Steve Bernardo – not present
Dan Usery – present

3. **APPROVAL OF THE AGENDA: 06:02 pm**

****Motion/Vote: Motion/Second. Passes unanimously.**

4. **APPROVAL OF THE MINUTES: 06:04 pm**

****Motion/Vote (01/28/2020): Motion/Second. Passes unanimously.**

****Motion/Vote (05/26/2020): Motion/Second. Passes unanimously.**

5. **LAND USE HEARINGS:**

A. 19-USR-03: Quality Lube Special Use Permit

Kelsey Bruxvoort, AGPRO

Tim Naylor, AGPRO

Trey Beard, Owner

06:06 pm

Anne Best Johnson for City:

Goes through City PPT presentation re: Quality Lube. Describes project, location, type of land use case and current zoning. Current application is an expansion of existing business. Stormwater improvements will be included. Drought tolerant plants will be planted in a bio-swale at the southwest corner of the lot. Water consumption has been approved.

Reviews SUP process and standards and how they apply to this property. Surrounding property owners were noticed in December of the application via mail, and in May of the public hearing via publication, posting on the property, and certified mail. All notice requirements in the Code were satisfied.

Reviews criteria for approval in Municipal Code. All Public Works departments as well as Fire Department were involved in approval process.

City Council meeting when this will be addressed will be June 16.

06:14 pm

Kelsey Bruxvoort for Applicant:

Reviews exiting site with aerial view and illustration. Drive aisles and circulation will be improved by expansion. Stormwater and raingarden drainage swale will capture and utilize runoff from new site before directing extra to inlet.

Reviews details of how application meets Municipal Code criteria for special use permit. Respectfully requests recommendation of approval.

Question: The future building site – is that just an option or are there actual plans?

Answer: No planned date of building. Need to evaluate potential future use. Will most likely be additional service bays or retail area.

No members of the public in attendance.

06:20 pm

****Motion to recommend application for approval by City Council/Second. Passes unanimously.**

B. 20-AP-02: Ziggi's Replat:

Lisa Dell, Owner

Nick Brewka, MAH Architectural Group

06:23 pm

Lauren Richardson for City:

Describes project; one parcel being replatted into two. No change in zoning. Ziggi's will be built on smaller of two lots. Site improvement agreement is going to City Council on June 16 since Site Plan has been administratively approved.

Reviews process for minor replat cases. Surrounding property owners were given notice of application in February. All notice requirements in the Code were satisfied.

Application has met the requirements for a replat under the Municipal Code.

Question: What will happen to the second half of the lot? Is it similar in size to the way this one is being divided? Is it detrimental to the area? Good to see something going in there, but will it make it harder for someone else to come in the develop? What can go in there?

Answer: No, Ziggi's is taking the smaller of the two lots. Larger of the two is 1.4 acres, which is plenty of room for a number of commercial uses.

Follow-up Question: At what point in splitting a lot does it get so small that it becomes unusable?

Answer: Staff does not have those numbers. After replat, there will be four commercial lots on the south side of 37th street, the smallest of which will be occupied by Ziggi's.

Lisa Dell: Ziggi's Coffee is drive-thru only, no sit down. That's why we go with smaller lot sizes. To do drive-thru *and* café, we look for about an acre—maybe a little less. Same with fast food—about an acre.

06:35 pm

Nick Brewka for Applicant:

Introduces himself and project. Replat has no impact on traffic. Will maintain efficient on and off-site traffic. Design meets easement requirements and architectural standards of the City.

No members of the public present.

No discussion from Planning Commissioners

06:37 pm

****Motion to recommend replat for approval by City Council/Second. Passes unanimously.**

6. **ADJOURNMENT: 06:38 pm**

****Motion/Vote: Motion to adjourn/Second. Passes unanimously.**



January 28, 2020

Project Name: Ziggi's Coffee-Evans

Please find this letter to serve as the **Project Description** for the above referenced project.

The proposed development is the construction of Type V-B, wood framed commercial drive-thru coffee kiosk called Ziggi's Coffee. It is a 624 square foot, single story building serving only as a drive-thru and walk-up coffee shop. There is no dining room or indoor areas meant for customers to consume their beverages.

Along with the construction of the building will be the development of the site, which as it currently sits is a completely undeveloped parcel of land comfortably placed between a Walgreens pharmacy and some residential neighborhoods. The proposed site development will consist of the modification of existing curbs to tie into existing transportation infrastructure and the creation of new drive-thru lanes, parking areas, sidewalks, landscaping and a patio for walk-up orders. Access to the developed site will come from the shared access road serving the Walgreens off of 37th Street as well as the access road from 35th Avenue. Existing easements were taken into consideration during the design of the site to ensure all requirements have been followed.

The parcel is classified in the City of Evans 2019 Official Zoning Map as C-3 Commercial High Intensity District. Ziggi's Drive-Thru Coffee is a commercial use and is therefore appropriate for the lot in question.

Please let me know if there are any questions.

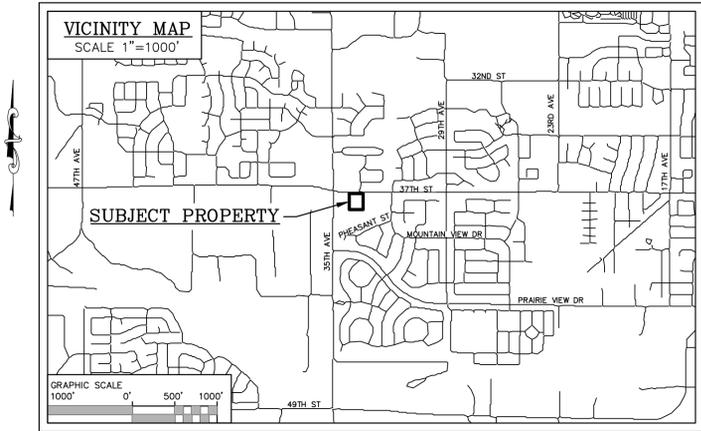
Respectfully,

A handwritten signature in black ink that reads "Nick Brewka". The signature is fluid and cursive, with the first name being more prominent than the last.

Nick Brewka
MAH Architectural Group

HUNTER'S RESERVE CENTER FILING NO. 2 MINOR SUBDIVISION

A REPLAT OF LOT 2, HUNTER'S RESERVE CENTER, SITUATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO



CERTIFICATE OF DEDICATION AND OWNERSHIP

KNOW ALL MEN BY THESE PRESENTS THAT _____, BEING THE OWNER(S), MORTGAGE OR LIENHOLDER OF CERTAIN LAND IN EVANS, COLORADO, DESCRIBED AS FOLLOWS:

LOT 2, HUNTER'S RESERVE CENTER, CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO

CONTAINING 93,413 SQUARE FEET OR 2.144 ACRES MORE OR LESS

HAVE BY THESE PRESENTS LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO LOTS AND BLOCKS, AS SHOWN ON THIS PLAT, UNDER THE NAME AND STYLE OF, AND DO HEREBY DEDICATE TO THE PUBLIC ALL WAYS AND OTHER PUBLIC RIGHTS-OF-WAY AND EASEMENTS FOR PURPOSES SHOWN HEREON.

EXECUTED THIS ___ DAY OF _____, A.D. 20____

OWNER(S), MORTGAGES OR LIENHOLDER

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME THIS ____ DAY OF _____, A.D., 20____. MY COMMISSION EXPIRES _____
WITNESS MY HAND AND SEAL _____

NOTARY PUBLIC

SURVEYING CERTIFICATE

I, JEFFREY J. MACKENNA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED BY THIS PLAT WAS MADE UNDER MY SUPERVISION AND THE MONUMENTS SHOWN HEREIN ACTUALLY EXIST AND THIS PLAT ACCURATELY REPRESENTS SAID SURVEY.

BY: _____
REGISTERED LAND SURVEYOR

PLANNING COMMISSION CERTIFICATE

THIS PLAT REVIEWED BY THE CITY OF EVANS PLANNING COMMISSION THIS ____ DAY OF _____, A.D. 20____

BY: _____
CHAIRMAN

CERTIFICATE OF APPROVAL BY THE CITY COUNCIL

APPROVED BY THE CITY COUNCIL OF EVANS, COLORADO, THIS ____ DAY OF _____, A.D. 20____

BY: _____
MAYOR
ATTEST: _____
CITY CLERK

RECORDER'S CERTIFICATE

THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF WELD COUNTY AT ON THE ____ DAY OF _____, A.D. 20__ IN BOOK _____, PAGE _____, MAP _____, AT RECEPTION # _____

ATTEST: _____
COUNTY CLERK AND RECORDER

BY: _____
DEPUTY

DEDICATION STATEMENT

THE UNDERSIGNED, BEING ALL THE OWNERS, MORTGAGEES, BENEFICIARIES OF DEEDS OF TRUST AND HOLDERS OF OTHER INTERESTS OF THE LANDS DESCRIBED HEREIN, HAVE LAID OUT, SUBDIVIDED AND PLATTED SAID LANDS INTO LOTS, TRACTS, BLOCKS, STREETS AND EASEMENTS AS SHOWN HEREON UNDER THE NAME AND SUBDIVISION OF HUNTER'S RESERVE CENTER FILING NO.2 MINOR SUBDIVISION. THE UTILITY EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED FOR PUBLIC UTILITIES AND CABLE COMMUNICATION SYSTEMS AND OTHER PURPOSES AS SHOWN HEREON. THE ENTITIES ARE RESPONSIBLE FOR PROVIDING THE UTILITY SERVICES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR INSTALLATION, MAINTENANCE AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES. THE OWNERS OF THE LANDS DESCRIBED HEREIN ARE RESPONSIBLE FOR THE MAINTENANCE AND OPERATION OF DRAINAGE EASEMENTS SHOWN HEREON AND RELATED FACILITIES. THE UNDERSIGNED GRANTS THE CITY OF EVANS A PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTY TO MAINTAIN, OPERATE AND RECONSTRUCT THE DRAINAGE EASEMENTS AND RELATED FACILITIES AND TO MAINTAIN, OPERATE AND RECONSTRUCT THE DRAINAGE EASEMENTS AND RELATED FACILITIES WHEN THE OWNER(S) FAIL TO ADEQUATELY MAINTAIN SUCH DRAINAGE EASEMENTS AND RELATED FACILITIES, WHICH MAINTENANCE, OPERATION AND RECONSTRUCTION SHALL BE AT THE COST OF THE OWNER(S). ALL PUBLIC STREETS AND RIGHTS-OF-WAY SHOWN HEREON ARE DEDICATED AND CONVEYED TO THE CITY OF EVANS, COLORADO, IN FEE SIMPLE ABSOLUTE, FOR PUBLIC USES AND PURPOSES. DRAINAGE AND DETENTION EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE CITY. THE CITY IS HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO THE ADJACENT PROPERTIES FOR CONSTRUCTION, REPAIR, MAINTENANCE, OPERATION AND REPLACEMENT OF STORM SEWERS AND DRAINAGE FACILITIES. THE UNDERSIGNED GRANTS TO THE CITY A SIGHT EASEMENT(S) AS SHOWN HEREON WITHIN THE SUBDIVISION TO MAINTAIN ADEQUATE SIGHT DISTANCE AT ALL ROADWAY INTERSECTIONS AS PROVIDED BY THE CITY OF EVANS' REGULATIONS AND STANDARDS, AS AMENDED. THE CITY IS HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS ACROSS ALL LOTS AND TRACTS WITHIN THE SUBDIVISION TO REMOVE ANY OBSTRUCTION TO THE PROPER SITE DISTANCE, INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURE, FENCE, UTILITY BOX, RAISED MEDIAN AND LANDSCAPING, AT THE SOLE COST AND EXPENSE OF THE OWNER OF THE LOT AND/OR TRACT UPON WHICH SUCH OBSTRUCTION IS SITUATED. THE OWNERS OR ADJACENT PROPERTY OWNERS OF THE LANDS ARE RESPONSIBLE FOR THE MAINTENANCE AND OPERATION OF SIGHT EASEMENTS SHOWN HEREON. WHEN THE OWNER(S) OR ADJACENT OWNERS FAIL TO ADEQUATELY MAINTAIN SUCH SIGHT EASEMENTS, THE MAINTENANCE, OPERATION AND RECONSTRUCTION SHALL BE AT THE COST OF THE OWNER(S).

(OWNERS/MORTGAGEE)

BY: _____
TITLE: _____

ATTEST: _____
SECRETARY

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 20____, BY* (NAME PRINTED).
WITNESS MY HAND AND OFFICIAL SEAL _____

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

NOTES

- NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.
- FALCON SURVEYING, INC. RECOMMENDS ALL INTERESTED PARTIES RETAIN THE SERVICES OF A COMPETENT INDIVIDUAL TO CONSULT PERTINENT DOCUMENTS FOR SPECIFIC DEVELOPMENT RESTRICTIONS AND CRITERIA WHICH MIGHT APPLY TO SUBJECT PARCEL. FALCON SURVEYING, INC. AND THE SURVEYOR OF RECORD ASSUME NO RESPONSIBILITY FOR THE ZONING RESTRICTIONS UPON THE SUBJECT PROPERTY.
- BURIED UTILITIES AND/OR PIPE LINES ARE SHOWN PER VISIBLE SURFACE EVIDENCE AND UTILITY PLANS. ADDITIONAL UTILITIES, IN USE OR ABANDONED, MIGHT EXIST ON, NEAR OR CROSSING THE SUBJECT PROPERTY. LACKING EXCAVATION, THE EXACT LOCATION OF UNDERGROUND FEATURES CANNOT BE ACCURATELY, COMPLETELY AND RELIABLY DEPICTED. WHERE ADDITIONAL OR MORE DETAILED INFORMATION IS REQUIRED, THE CLIENT IS ADVISED THAT EXCAVATION MAY BE NECESSARY, WITHOUT EXPRESSING A LEGAL OPINION AS TO THE OWNERSHIP OR NATURE OF THE POTENTIAL OVERHANGS. THE DIMENSIONS OF ALL UTILITY POLE CROSS-MEMBERS AND/OR OVERHANGS SHOWN HEREON ARE LOCATED TO THE BEST OF OUR ABILITY AND ARE APPROXIMATE. FALCON SURVEYING, INC. AND THE SURVEYOR OF RECORD SHALL NOT BE LIABLE FOR THE LOCATION OF OR THE FAILURE TO NOTE THE LOCATION OF NON-VISIBLE UTILITIES.
- FALCON SURVEYING, INC. DOES NOT HAVE THE EXPERTISE TO ADDRESS THE MINERAL RIGHTS. FALCON SURVEYING, INC. RECOMMENDS ALL INTERESTED PARTIES RETAIN A MINERAL RIGHTS EXPERT TO ADDRESS THESE MATTERS. FALCON SURVEYING, INC. AND THE SURVEYOR OF RECORD ASSUME NO RESPONSIBILITY FOR THE MINERAL RIGHTS UPON THIS TRACT OF LAND.
- SUBJECT PROPERTY LIES IN "ZONE X", (AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD) AS DESIGNATED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS PER FLOOD INSURANCE RATE MAP PANEL NO. 08123C1540E. EFFECTIVE DATE:1/20/2016
- ALL DISTANCES USED ARE IN U.S. SURVEY FEET
- ZONING: SUBJECT PROPERTY ZONED C-3, PER CITY OF EVANS ZONING MAP ACCESSED ON DECEMBER 11, 2019. REPORT OR LETTER TO BE SUPPLIED BY CLIENT.
- BENCHMARK: FOUND 2.5" ALUMINUM CAP BEING THE NORTH 1/4 CORNER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN AS OBSERVED VIA "VRS NETWORK" NAVD88 ELEVATION= 4758.27
- BASIS OF BEARINGS: THE GPS DERIVED EAST LINE OF THE NORTHWEST 1/4 SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN AS EVIDENCED BY A FOUND 2.5" ALUMINUM CAP "TAIT, PLS 30126" BEING THE NORTH 1/4 CORNER OF SAID SECTION 25 FROM WHENCE A FOUND 3.25" ALUMINUM CAP "KING SURVEYORS INC, PLS 34990" BEING THE CENTER 1/4 CORNER OF SAID SECTION 25 BEARS SOUTH 00°18'35" EAST, A DISTANCE OF 2620.65 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO.

LEGAL DESCRIPTION - METES AND BOUNDS

OVERALL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 2, HUNTER'S RESERVE CENTER, CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 2.5" ALUMINUM CAP "PLS 30126" FROM WHENCE THE CENTER QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 3.25" ALUMINUM CAP "PLS 34990" BEARS SOUTH 00°18'35" EAST, A DISTANCE OF 2620.65 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO;
THENCE SOUTH 87°49'21" WEST, A DISTANCE OF 2040.83 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 00°46'25" EAST ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 291.87 FEET;
THENCE SOUTH 89°13'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 320.05 FEET;
THENCE NORTH 00°46'25" WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 291.87 FEET;
THENCE NORTH 89°13'35" EAST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 320.05 FEET TO THE POINT OF BEGINNING.

CONTAINING: 93,413 SQUARE FEET OR 2.145 ACRES MORE OR LESS.

LOT 2A DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 2.5" ALUMINUM CAP "PLS 30126" FROM WHENCE THE CENTER QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 3.25" ALUMINUM CAP "PLS 34990" BEARS SOUTH 00°18'35" EAST, A DISTANCE OF 2620.65 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO;
THENCE SOUTH 87°49'21" WEST, A DISTANCE OF 2040.83 FEET;
THENCE SOUTH 89°13'35" WEST ALONG THE NORTH LINE OF LOT 2, HUNTER'S RESERVE CENTER, A DISTANCE OF 210.05 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 291.90 FEET;
THENCE SOUTH 89°13'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 106.06 FEET;
THENCE NORTH 00°46'25" WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 291.87 FEET;
THENCE NORTH 89°13'35" EAST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 31,530 SQUARE FEET OR 0.724 ACRES MORE OR LESS.

LOT 2B DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 2.5" ALUMINUM CAP "PLS 30126" FROM WHENCE THE CENTER QUARTER OF SAID SECTION 25 AS EVIDENCED BY A FOUND 3.25" ALUMINUM CAP "PLS 34990" BEARS SOUTH 00°18'35" EAST, A DISTANCE OF 2620.65 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO;
THENCE SOUTH 87°49'21" WEST, A DISTANCE OF 2040.83 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 00°46'25" EAST ALONG THE EAST LINE OF LOT 2, HUNTER'S RESERVE CENTER, A DISTANCE OF 291.87 FEET;
THENCE SOUTH 89°13'35" WEST ALONG THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 213.99 FEET;
THENCE NORTH 00°00'00" EAST, A DISTANCE OF 291.90;
THENCE NORTH 89°13'35" EAST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 210.05 FEET TO THE POINT OF BEGINNING.

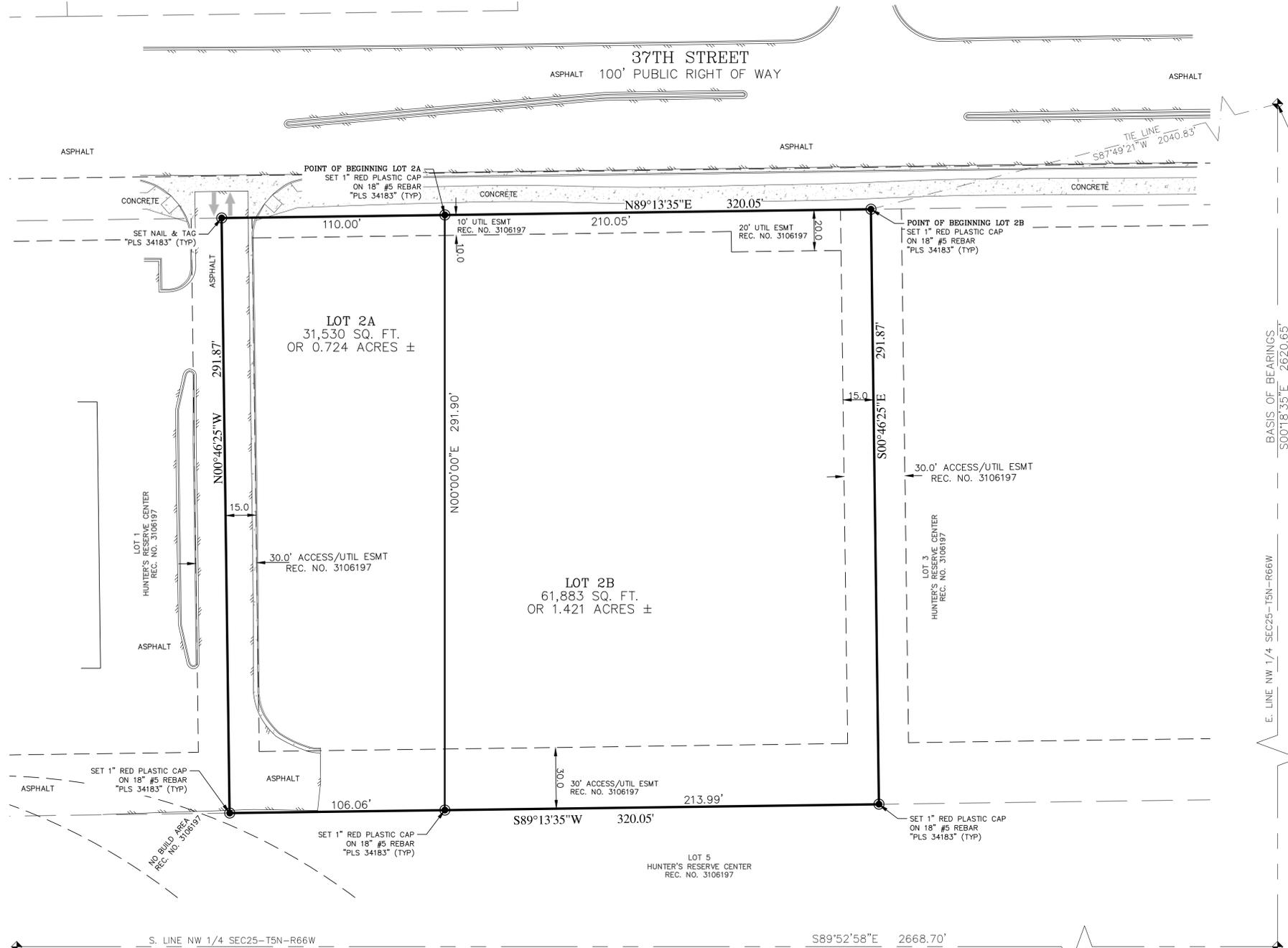
CONTAINING: 61,883 SQUARE FEET OR 1.421 ACRES MORE OR LESS

SHEET 1 OF 2

	9940 WEST 25TH AVENUE LAKEWOOD, CO 80215 303-202-1560 WWW.FALCONSURVEYING.COM	
	DATE: 02/04/20	REVA:
DRAWN BY: CAC	CHK'D BY: JJM	JOB NO. 191109
DATE OF FIELD SURVEY: 12/24/19	191109_ALTA_TOPO.DWG	

HUNTER'S RESERVE CENTER FILING NO. 2 MINOR SUBDIVISION

A REPLAT OF LOT 2, HUNTER'S RESERVE CENTER, SITUATED IN THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 5 NORTH, RANGE 66 WEST OF THE 6TH P.M., CITY OF EVANS, COUNTY OF WELD, STATE OF COLORADO

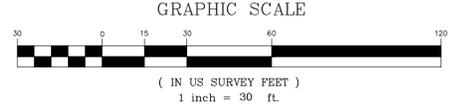


NORTH 1/4 SEC25-T5N-R66W
POINT OF COMMENCEMENT
FOUND 2.5" ALUMINUM CAP
0.6' B.G. IN RANGE BOX
"TAIT, PLS 30126"
~SITE BENCHMARK~
NAVD88=4758.27'

BASIS OF BEARINGS
S00°18'35"E 2620.65'
E. LINE NW 1/4 SEC25-T5N-R66W

LEGEND	
	INDICATES SUBDIVISION BOUNDARY AS SHOWN
	INDICATES LOT LINES AS SHOWN
	INDICATES ADJACENT BOUNDARY
	INDICATES EASEMENTS AS SHOWN
	INDICATES TIE LINE FROM PDC TO PDB
	INDICATES FOUND SURVEY MONUMENT AS STATED
	INDICATES SECTION CORNER AS SHOWN
	INDICATES SET PIN AND CAP ON NO.5 REBAR 18" LONG PLS 34183
	MEASURED
	RECORDED

S. LINE NW 1/4 SEC25-T5N-R66W
WEST 1/4 SEC25-T5N-R66W
FOUND 3.25" ALUMINUM CAP
0.3' B.G. IN RANGE BOX
"KING SURVEYORS INC, PLS 22098"
S89°13'35"W 320.05'
S89°52'58"E 2668.70'
CENTER 1/4 SEC25-T5N-R66W
FOUND 3.25" ALUMINUM CAP
0.3' B.G. IN RANGE BOX
"KING SURVEYORS INC, PLS 34990"



S:\JOBS\2019\191109\DWG\191109_MSP_V0.dwg

SHEET 2 OF 2

9940 WEST 25TH AVENUE
LAKEWOOD, CO 80215
303-202-1560
WWW.FALCONSURVEYING.COM

DATE: 02/04/20	REVA:
DRAWN BY: CAC	CHK'D BY: JJM
DATE OF FIELD SURVEY: 12/24/19	191109_ALTA_TOPO.DWG

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 6.C
SUBJECT: Consideration of Ordinance 720-20 An Ordinance Amending Titles 3, 5 and 18 of the Evans Municipal Code to Allow Mobile Food Vending in the City of Evans (2nd Reading)
PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best Johnson, Community Development Director
Lauren Richardson, City Planner

AGENDA ITEM DESCRIPTION:

At the June 16, 2020 Regular Meeting, City Council voted to approve the proposed Municipal Code Amendments to allow mobile food trucks at first reading. At that time City Council directed staff to include additional language to the ordinance regarding signage. Staff has amended proposed Section 18.05.030.D.5 as found below to include the allowance of one sandwich board sign at each location of a Mobile Food Vendor. A menu printed on the exterior of the food truck or trailer will also be allowed.

The underlined text below represents the new language added to section 7D of the ordinance after first reading. All other Code proposals have remained the same. This change is also reflected in the attached ordinance.

The proposed temporary use must be compatible with surrounding land uses and have a positive impact on the community. Prospective impacts to be considered before a temporary use permit will be issued include aesthetics, site design, architectural compatibility, lighting, noise, odors, nuisance conditions, and the absence of negative traffic and access impacts. No signs are allowed for Mobile Food Vendors other than logos and menus on vehicles and one sandwich board sign not exceeding twenty-four square feet in total surface area located within fifty feet of the vehicle. The signs permitted by this Section are authorized despite the provisions of Section 18.09.050.N regarding Sandwich Board Signs due to the unique nature of Mobile Food Vendors.

Staff also clarified the term of use by adding the following tenancy language to Section 18.05.030.D.10 Temporary Mobile Food Vendors are not allowed to occupy a single property for a duration greater than 10 days per month. The application for a Temporary Mobile Food Vendor shall include the dates of tenancy on each property in Evans.

FINANCIAL SUMMARY:

Additional sales tax revenue will be realized due to the allowance of Mobile Food Vendors in the City of Evans. However, some permanent restaurants may view Mobile Food Vendors as

competition.

RECOMMENDATION:

City Council recommended approval of Ordinance 720-20 on first reading on June 16, 2020. At Council's request, staff drafted the language adjustment above and staff recommends approval of the Ordinance as amended at second reading.

SUGGESTED MOTIONS:

"I move to approve Ordinance 720-20 as amended on second reading"; or

"I move not to approve Ordinance 720-20 on second reading."

ATTACHMENTS:

- Attachment 1: Ordinance Number 720-20
- Attachment 2: Notice for Public Hearing

CITY OF EVANS, COLORADO

ORDINANCE NO. 720-20

AN ORDINANCE AMENDING TITLES 3, 5 AND 18 OF THE EVANS MUNICIPAL CODE TO ALLOW MOBILE FOOD VENDING IN THE CITY OF EVANS

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, Title 3 of the Evans Municipal Code addresses Revenue and Finance and in particular Section 3.04.030 defines uses; and

WHEREAS, Title 5 of the Evans Municipal Code addresses Business Taxes, Licenses and Regulations; and

WHEREAS, Title 18 of the Evans Municipal Code addresses Land Development and in particular, Section 18.05.030 addresses Temporary Uses; and

WHEREAS, the City Council has determined that in order to ensure the ability to allow Mobile Food Vendors in the City, amendments to the Municipal Code Titles 3, 5 and 18 are necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. Sections 3.04.030 and 5.12.010 of the Evans Municipal Code is hereby amended to include a definition of Mobile Food Vending to read as follows:

3.04.030 – Definitions

Mobile Food Vending: The use of a legal motorized wheeled vehicle, legal towed wheeled vehicle, or pushcart, or other temporary operation designed and equipped to prepare and or serve food and or non-alcoholic beverages. A Mobile Food Vendor is required to obtain a Temporary Use Permit and License through the City of Evans. For additional information please refer to Chapter 18.

2. Section 5.12.080.A of the Evans Municipal Code is hereby amended to increase the amount of time needed to process Temporary Use Permits from one (1) to five (5) business days.

5.12.080.A - Application for license fee.

An application for a license under this Chapter shall be submitted to the City Clerk no less than ~~one (1)~~ **five (5)** working day prior to the first day of proposed operation. The application shall be accompanied by a non-refundable application fee. Such fee is established by City Council by resolution.

3. Section 5.12.040.G of the Evans Municipal Code is hereby amended to define application materials consistent with actual needs.

5.12.040.G License Application requirements

Two recent and duplicated photographs of the applicant which picture shall be approximately two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguished manner;

4. 5.12.060 - Bond. This section is an obsolete provision and is proposed to be deleted.

~~Every applicant not a resident of the County, or who being such resident, represents a firm whose principal place of business is located outside of the State, shall file with the City Clerk a surety bond running to the City in the amount of one thousand dollars (\$1,000.00), with surety acceptable to and approved by the Council conditioned that the applicant shall comply fully with all the provisions of this Code and state statutes regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants or itinerant vendors, as the case may be, guaranteeing to any citizen of the City that all money paid as a down payment will be accounted for and applied according to the representations of the licensee and further guaranteeing to any citizen of the City doing business with said solicitor, that the property purchased will be delivered according to the representations of the solicitor. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the full amount of the bond to the clerk of the court in which suit is commenced, be relieved without costs of all further liability.~~

6. Section 18.03.010 of the Evans Municipal Code is hereby amended to include the following definitions.

Food: Shall mean a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended to be used or for sale in whole or in part for human consumption.

Mobile Food Vending: The use of a legal motorized wheeled vehicle, legal towed wheeled vehicle, or pushcart, or other temporary operation designed and equipped to prepare and or serve food and or non-alcoholic beverages. A Mobile Food Vendor is required to obtain a Temporary Use Permit and License through the City of Evans.

Mobile Food Vending Rally: A temporary or periodic special event, operating under a Temporary Use Permit and License through the City of Evans, when more than two outdoor vendors (such as food trucks and carts) are present, held on improved private property with permission of the owner thereof, and only serving pedestrians.

Motor Vehicle means a vehicle required to be registered under C.R.S., Title 42.

Trailer shall mean an object with wheels but without an engine and designed to be towed by a vehicle, including but not limited to travel trailers, trailer homes, boat trailers, utility trailers, horse trailers and trailers for hauling snowmobiles, motorcycles, etc.

7. Section 18.05.030.D of the Evans Municipal Code lists uses the City of Evans would contemplate approving for Temporary Uses. This Section is hereby amended to include Mobile Food Vendors. Section 18.05.030.D. of the Evans Municipal Code shall be amended to allow for Mobile Food Vendors with conditions.

D. Temporary Uses. The intended purpose of a temporary use is for selling a product, food, or to provide a temporary service which is for a short duration or seasonal in nature.

1.h. Mobile Food Vendor

2. Temporary uses are subject to a temporary use permit. The proposed temporary use shall only be in operation for the duration described in this Section below during any calendar year. All temporary use permits expire December 31 of the year in which a temporary use permit is issued. The applicant will be allowed seven (7) days to set up before the effective date of the permit and to remove seven (7) days after the expiration of the permit. This provision does not apply to Mobile Food Vendors who will be required to set up and vacate the premises the day of their tenure on the property. In the event of a multi-day event, Mobile Food Vendors shall be allowed to stay on site for the event duration.

3. The property where the proposed temporary use is to be located, and/or the property owner of record, shall not have any outstanding land use, nuisance code and/or building code violations; or outstanding obligations to the City.

5. The proposed temporary use must be compatible with surrounding uses and have a positive impact on the community, which includes, but is not limited to, aesthetics, site design, architectural compatibility, lighting, noise, odors, nuisance conditions, and the absence of negative traffic and access impacts. No signs are allowed for Mobile Food Vendors other than logos and menus on vehicles and one sandwich board sign not exceeding twenty-four square feet in total surface area located within fifty feet of the vehicle. The signs permitted by this Section are authorized despite the provisions of Section 18.09.050.N regarding Sandwich Board Signs due to the unique nature of Mobile Food Vendors.

6. Location of Temporary Uses. For temporary uses proposed to be located on private property, written permission must be obtained from the property owner(s) and included in the application packet submitted to the City. If the use is proposed to be located on City rights-of-way or City-owned property, a community event permit and license agreement must be approved by the City. Mobile Food Vendors are not permitted to be located in City rights-of-way but may be permitted with permission on City owned property.

7. Temporary structures, such as tents, sheds and trailers, may be utilized with a temporary use, so long as such temporary structures comply with the regulations and permitting requirements of the City and other referral **and regulatory** agencies, including all electrical and generator connections, **State and County licenses/permits**, and the requirements of this Section. Operable vehicles, such as RVs or semi-trucks, may also be used with a temporary use, subject to the requirements of this Section. **Mobile Food Vendors must be located on improved surfaces such as a paved parking lot.** At the termination of the temporary use, the temporary structures and vehicles must be removed within the seven-day removal time. **Mobile Food Vendors must vacate the premises immediately following the event or the approved single-day use.**

10. Temporary Mobile Food Vendors are not allowed to occupy a single property for a duration greater than 10 days per month. The application for a Temporary Mobile Food Vendor shall include the dates of tenancy on each property in Evans.

11. The Community Development Director, or their designee, shall determine if the proposed temporary use conforms to the requirements of the Land Use Code as applied to any specified location. If the Community Development Director determines the proposed use is not in compliance with the requirements of the Land Use Code, the proposed use shall not be approved.

8. Section 18.05.030.G of the Evans Municipal Code is hereby amended as described below.

G. The table following Section G shall be amended to include the following:

Temporary Use	Duration	Extension
Mobile Food Vendors	Either at the end of the special event or at the end of business on the day permitted for use as specified in the Temporary Use Permit	No

9. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

10. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any

ordinance hereby repealed prior to the effective date of this ordinance.

**INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF EVANS ON THIS _____ DAY OF JUNE, 2020.**

ATTEST: CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

BY: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS _____ DAY OF JULY, 2020.

ATTEST: CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

BY: _____
Brian Rudy, Mayor

CITY OF EVANS

NOTICE OF PUBLIC HEARING

NOTICE is hereby given, that the Evans City Council will hold a Public Hearing on Tuesday, June 2, 2020 starting at 7:00 P.M. at the Evans Community Complex, Council Chambers, 1100 37th Street, Evans, CO, to receive input and comments on code amendments regarding food trucks.

All persons interested in this matter may be present and may be heard. Any interested person may also file any objections to the proposed revision at any time prior to final adoption of the revision.

Additional information may be obtained from the Community Development Director, Anne Best Johnson, abjohnson@evanscolorado.gov, 1100 37th Street, Evans, Colorado, between the hours of 8:00 am and 5:00 pm, Monday through Friday. The full packet and agenda information will be available for review at: www.evanscolorado.gov

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.A
SUBJECT: Overview of the MountainTRAX Land Use Applications and Consideration of Resolution No. 18-2020 Determining Annexation Eligibility
NAME & TITLE: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best-Johnson, Community Development Director

AGENDA ITEM DESCRIPTION:

MountainTRAX has submitted an Annexation/Zoning request and a Zoning request for parcels of land in the southern portion of the Evans Urban Growth Boundary. Due to statutory requirements and requirements in the Evans Municipal Code, Staff is presenting an overview of the agenda discussion.

The Project locations are found on the map below.

- The parcel outlined in red/yellow is in unincorporated Weld County. The address for this 3.84 +/- acre parcel is 22744 WCR 33. The City of Evans has entered into a Cooperative Planning Agreement with Weld County which states Urban Scale Development should occur in municipalities and that the County will direct all applications for Urban Scale Development to the City.
- The 221 +/- acre property outlined in blue is located at 7300 47th Avenue and is currently in Evans.



The properties are located in an area designated as Industrial and Industrial/Green Energy on the City's Future Land Use Map. The property located at 7300 47th Avenue is currently zoned I-2.

City Council accepted the Petition for Annexation on May 19, 2020. The Annexation and Change of Zone application have been processed according to Colorado Revised Statutes and Municipal Code processes.

The agenda for the regular meeting will follow statutory requirements as well as the process outlined in the City of Evans Municipal Code listed below:

1. Annexation and Resolution of Eligibility for 22744 WCR 33
2. Determination of Annexation and Change of Zone Ordinance for 22477 WCR 33
3. Annexation Agreement for 22477 WCR 33
4. Change of Zone Ordinance for 7300 47th Avenue

The act of Changing the Zone does not permit specific land uses. Future uses contemplated on the properties will be required to submit a Subdivision, Special Use Permit and/or Site Plan applications. A Development Agreement will also be required. The City will have further opportunities to review specific impacts as they relate to the overall development and individual site-specific issues with future land uses.

FINANCIAL SUMMARY:

There are no financial implications resulting in providing an overview of the process and agenda progression for this evenings' Regular Agenda.

RECOMMENDATION:

There is no request being made by Staff of City Council. The information provided is an overview of the land use application processes to be heard.

SUGGESTED MOTIONS:

There is no request being made by Staff of City Council as a result of the overview presentation.

ATTACHMENTS:

There are no attachments.

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

AGENDA ITEM: 7.A.1

SUBJECT: Consideration of Resolution No. 18-2020 to Make Factual Findings Determining Annexation Eligibility for Annexation of Certain Real Property Owned by MountainTRAX Intermodal, LLC.

PRESENTED BY: James L. Becklenberg, City Manager
Anne Best Johnson, Community Development Director
Drew Lyman, Assistant City Attorney

AGENDA ITEM DESCRIPTION:

On May 11, 2020, MountainTRAX Intermodal, LLC, filed a Petition for Annexation of 3.86 acres of real property with the Evans City Clerk. On May 19, 2020, the matter was referred to City Council pursuant to the Evans Municipal Code Section 18-06-030 and set for public hearing on July 7, 2020.

The purpose of this resolution is for City Council is to make factual findings regarding the Property's legal eligibility for annexation.

Pursuant to the Evans Municipal Code and C.R.S. Section 31-12-108, the purpose of this hearing is to determine whether the proposed annexation complies with section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 or such provisions thereof as may be required to establish eligibility under C.R.S. Section 31-12-108(1).

Staff has reviewed the submissions by the petitioner and concluded that the City's code and the State's statutory requirements have been satisfied, including: one sixth of the of the property boundary is contiguous to the City's boundary; the area is urban or will be urbanized in the near future; the area is integrated with or is capable of being integrated with the City; no land held in identical ownership will be divided into separate parts; the property is less than 20 acres in size; no annexation proceedings have been commenced by another municipality; annexation of the property will not result in detachment of the property from any school district; and annexing the property will not result in extending the City's boundaries by more than three miles.

Following consideration and adoption of this resolution, City Council will consider the ordinance to annex and zone the property under the process provided by Evans Municipal Code Section 18.06.030. The ordinance to annex the 3.86-acre property is the same ordinance to zone the property I-3, with certain restrictions on special uses.

The proposed use of the Property is considered urban development according to the Cooperative

Planning Agreement (CPA) between the City of Evans and Weld County. Under the Evans-Weld CPA, any proposal for urban development is encouraged to occur in the City of Evans.

The Property is designated as future industrial and green industrial on the future land use map found in the City's 2010 Comprehensive Plan. The proposed zoning complies with the land use forecast provided for in the Comprehensive Plan.

The specific territory to be annexed is commonly known as 22744 Weld County Road 33 and is more particularly described on Exhibit A.

FINANCIAL SUMMARY:

There is no financial responsibility of the City other than staff's time involved in processing this Application.

RECOMMENDATION:

Staff recommends that City Council adopt the proposed Resolution 18-2020 determining that the property is eligible to be annexed to the City.

SUGGESTED MOTIONS:

"I move to approve Resolution No. 18-2020 as proposed."

"I move to deny Resolution No. 18-2020 as proposed for the reasons stated."

ATTACHMENTS:

- Attachment 1: Resolution No. 18-2020

CITY OF EVANS, COLORADO

RESOLUTION NO. 18-2020

A RESOLUTION OF THE EVANS CITY COUNCIL MAKING FINDINGS OF FACT AND CONCLUSIONS RELATIVE TO THE ELIGIBILITY FOR ANNEXATION TO THE CITY OF CERTAIN LANDS IN CONNECTION WITH THE MOUNTAINTRAX INTERMODAL LLC PETITION FOR ANNEXATION

WHEREAS, pursuant to the laws of the State of Colorado, a public hearing is scheduled for July 7, 2020 and July 21, 2020, as required by law, on the Petition for Annexation filed with the City of Evans, Colorado, for the property described on the attached Exhibit A; and

WHEREAS, the City Clerk has published notice of public notice of such public hearing as required by C.R.S. Section 31-12-108(2); and

WHEREAS, the City Council has completed a public hearing to determine if the proposed annexation complies with Article II, Section 30 of the Colorado Constitution and C.R.S. Sections 31-12-104 and 105, to establish eligibility for annexation; and

WHEREAS, pursuant to C.R.S. Section 31-12-110 the City Council of the City of Evans, Colorado, is required to set forth its findings of fact and its conclusions as to the eligibility of the property described on the attached Exhibit A for annexation to the City of Evans, Colorado.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

That the City Council hereby sets forth its findings of fact and conclusions based on the public hearing with respect to the annexation of the property described on Exhibit A, attached hereto, and incorporated herein by reference:

FINDINGS OF FACT

1. Not less than one-sixth of the perimeter of the area proposed to be annexed as described on the attached Exhibit A is contiguous with the existing boundaries of the City of Evans, Colorado as required by law.

2. A community of interest exists between the area proposed to be annexed as described on the attached Exhibit A and the City of Evans, Colorado and the area proposed to be annexed is urban or will be urbanized in the near future.
3. The area proposed to be annexed as described on the attached Exhibit A is integrated or is capable of being integrated with the City of Evans, Colorado.
4. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts of real estate, is divided into separate tracts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way.
5. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty (20) acres or more which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the year next preceding the annexation, has been included without the written consent of the landowners.
6. No annexation proceedings have been commenced for the annexation to another municipality of part or all that territory proposed to be annexed as described on the attached Exhibit A.
7. The proposed annexation of the real estate described on the attached Exhibit A will not result in the detachment of area from any school district and the attachment of the same to another school district.
8. The petition for annexation of the real estate described on the attached Exhibit A meets the requirements of law and is in proper order for annexation for the property proposed to be annexed as described on the attached Exhibit A.
9. The proposed annexation will not have the effect of extending a municipal boundary more than three (3) miles in any direction from any point of the City boundary in any one year, or to the extent the proposed annexation extends beyond such three (3) mile limit, confining the annexation to such three (3) mile limit would have the effect of dividing a parcel of property held in identical ownership and at least fifty (50%) percent of the said property is within the three (3) mile limit.
10. The entire width of any public street or alley to be annexed is included within the

proposed annexation.

11. The proposed annexation would not result in denial of reasonable access to landowners, owners of easements, or owners of franchises to use the City's public ways.
12. The petition was signed by owners of 100% of the property to be annexed exclusive of streets and alleys.

CONCLUSIONS

- A. The property described in the attached Exhibit A is eligible for annexation to the City of Evans, Colorado and all requirements of law have been met to make such property eligible for annexation, including the requirements of C.R.S. Sections 31-12-104 and 31-12-105, as amended.
- B. No election is required pursuant to C.R.S. Section 31-12-107(2) or any other law of the State of Colorado.

MOVED, SECONDED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO THIS 7th DAY OF JULY 2020.

Votes Approving _____
Votes Opposed: _____
Absent: _____
Abstained: _____

S E A L

THE CITY OF EVANS

By: _____
Karen Frawley, City Clerk

By: _____
Brian Rudy, Mayor

EXHIBIT A
Legal Description:

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;

Thence South 30°44'21" East, 25.59 feet;

Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning. County of Weld, State of Colorado.

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

AGENDA ITEM: 7.B

SUBJECT: Public Hearing: Consideration of Ordinance No: 722-20
Annexing and Zoning Certain Lands Concurrently in Connection
with the MountainTRAX Intermodal LLC Petition for Annexation
(1st Reading)

PRESENTED BY: James L. Becklenberg, City Manager
Anne Best Johnson, Community Development Director
Drew Lyman, Assistant City Attorney

AGENDA ITEM DESCRIPTION:

On May 11, 2020, MountainTRAX Intermodal, LLC, filed a Petition for Annexation of 3.86 acres of real property with the Evans City Clerk. On May 19, 2020, the matter was referred to City Council pursuant to the Evans Municipal Code Section 18-06-030 and set for this public hearing.

Pursuant to the Evans Municipal Code and C.R.S. Section 31-12-108, the purpose of this hearing is to determine whether the proposed annexation complies with section 30 of article II of the state constitution and sections 31-12-104 and 31-12-105 or such provisions thereof as may be required to establish eligibility under C.R.S. Section 31-12-108(1).

Under Evans Municipal Code Section 18.06.030, annexation and zoning applications are considered concurrently. Thus, the ordinance to annex the 3.86-acre property is the same ordinance to zone the property I-3, with certain restrictions on special uses.

The City of Evans and Weld County have entered into a Cooperative Planning Agreement (CPA). According to the CPA, any proposal for urban development is encouraged to occur in the City of Evans. The proposed use of the property located at 22744 Weld County Road 33 is considered urban development and according to our agreement, should be annexed and developed within the City of Evans.

The property under consideration for concurrent annexation and zoning is designated as future industrial and green industrial on the future land use map found in the City's 2010 Comprehensive Plan. The proposed zoning complies with the land use forecast provided for in the Comprehensive Plan.

The specific territory to be annexed is commonly known as 22744 Weld County Road 33 and is more particularly described in Exhibit A.

FINANCIAL SUMMARY:

There is no financial responsibility of the City other than staff's time involved in processing this Application.

RECOMMENDATION:

Staff recommends that City Council adopt the proposed Ordinance 722-20 to annex the property into the City of Evans and concurrently zone the property in accordance with the recommendations of the Evans planning commission.

SUGGESTED MOTIONS:

"I move to adopt Ordinance No. 722-20 as proposed to annex certain territory comprised of 3.86 acres into the City of Evans to concurrently zone the property I-3, with restrictions on certain uses."

"I move to deny Ordinance No. 722-20 as proposed for the reasons stated."

ATTACHMENTS:

- Attachment 1: Ordinance 722-20

CITY OF EVANS, COLORADO

ORDINANCE NO. 722-20

AN ORDINANCE CONCURRENTLY ANNEXING AND ZONING CERTAIN LANDS IN CONNECTION WITH THE MOUNTAINTRAX INTERMODAL LLC PETITION FOR ANNEXATION

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, MountainTRAX Intermodal LLC, a Delaware limited liability company (“the Petitioner”) filed with the City Clerk a Petition for Annexation dated May 11, 2020 requesting that the property commonly known as 22744 Weld County Road 33 and more particularly described in the attached Exhibit A (“the Property”), be annexed to the City of Evans, Colorado; and

WHEREAS, the City Council reviewed the Petition at its meeting on May 19, 2020 and adopted Resolution No. 15-2020 setting the matter for public hearing on July 7, 2020 and July 21, 2020 to determine whether the Property is eligible for annexation and hear from the public; and

WHEREAS, the City Council has determined that the Property is eligible for annexation pursuant to C.R.S. Section 31-12-101, et seq.; and

WHEREAS, the City of Evans and Weld County have entered into a Cooperative Planning Agreement (CPA). According to the CPA, any proposal for urban development is encouraged to occur in the City of Evans. The proposed use of the Property is considered urban development and according to the CPA, should be annexed and developed within the City of Evans; and

WHEREAS, the Property under consideration for concurrent annexation and zoning is designated as future industrial and green industrial on the future land use map found in the City’s 2010 Comprehensive Plan. The proposed zoning complies with the land use forecast provided for in the Comprehensive Plan; and

WHEREAS, pursuant to the provisions of the Evans City Code, including Sections 18.06.030 and 18.06.040, the matter was referred to the Planning Commission to obtain a recommendation as to the appropriate zoning of the Property if it is annexed to the City; and

WHEREAS, the criteria to be considered by the Planning Commission and the City Council in zoning property, as set forth in Section 18.06.040D of the Evans City Code are:

1. A need exists for the proposed uses,
2. The parcel of ground is indeed the correct site for the proposed development,
3. There has been an error in the assigned zoning or
4. There have been significant changes in the area to warrant a zone change,
5. Adequate circulation exists and traffic movement would not be impeded by the development,
6. Additional municipal service costs will not be incurred which the City is not

- prepared to meet,
7. There are minimal environmental impacts or impacts can be mitigated,
 8. The proposal is consistent with the Evans Comprehensive Plan, maps, goals and polices and
 9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land use.

WHEREAS, at its meeting on June 23, 2020, the Planning Commission considered the appropriate zoning of the Property; and

WHEREAS, based on the criteria set forth above, the materials included in the Application, the matters presented to the Commission by the Petitioner, and the comments of staff and the public, the Commission adopted staff recommendations that the Property be zoned I-3, to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts; and

WHEREAS, following proper notice, the matter has been presented to the City Council at its regular meeting on July 7, 2020 and will remain open for public comment on July 21, 2020; and

WHEREAS, based on the matters presented to it, including the Application, comments from staff and the public, and all applicable criteria and requirements, the City Council concludes that it is in the best interest of the City to annex the Property to the City of Evans; and

WHEREAS, based on the recommendation of the Planning Commission, as well as the Application, comments from staff and the public, and applying the criteria set forth above, the City Council concludes that the Property should be zoned I-3 to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. The Property described in Exhibit A, attached hereto, and incorporated by reference herein, shall be and hereby is annexed to, incorporated in, and made a part of the City of Evans, Colorado. In support of this determination to annex the Property, City Council incorporates by reference Resolution 18-2020.
2. The annexation of the Property to the City of Evans shall be complete and effective on the effective date of this ordinance, except for purposes of General Property Taxes, and shall be effective as to General Property Taxes on and after the first day of January 2021.
3. The Property shall be zoned I-3 except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts. The zoning map for the City of Evans shall be amended to reflect such zoning.
4. The Annexation Agreement executed by MountainTRAX Intermodal, LLC in connection with the Property described in Exhibit A is hereby approved.

5. The City Clerk is hereby directed to record this Ordinance with the Weld County Clerk and Recorder.

6. Although the annexation is hereby approved and the Property is hereby annexed to the City, no permits will be issued in connection with this development until all the following conditions have been fulfilled:

- A. The Applicant shall provide all responses to the Conditions of Approval and the Change of Zone maps to the City for recording with the Weld County Clerk and Recorder within 30 days following the final City Council Change of Zone hearing.
- B. A Master Development Plan inclusive of a Subdivision Plan shall be submitted within 45 days from July 21, 2020. The applicant may propose a combined Preliminary Plan and Final Plat.
- C. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of approved Site Plans or Special Use Permits are not allowed.
 - 1. The storage of the port-a-lets is not an approved use and these need to be removed.
 - 2. A Site Plan for the existing office located at 22744 Weld County Road 33 shall be submitted with the Master Development Plan within 45 days after the final Change of Zone hearing.
- D. A Development Agreement is required for any on-site or off-site improvements, both private and public. Until the Development Agreement is effective, the Second Amendment to the Annexation Agreement approved through Ordinance 625-15 remains in full effect. However, Section 10 of the Second Amendment to the Annexation Agreement shall be extended for 180 days from July 21, 2020. The Development Agreement required by this Paragraph D must be presented to City Council for consideration at a Public Hearing to occur within 180 days from July 21, 2020. The Development Agreement required by this Paragraph D will address at minimum the following subjects:
 - 1. Petitioner's obligation to pave Weld County Road 33;
 - 2. Petitioner's obligation to connect to a potable water supply;
 - 3. Site Access;
 - 4. Intended traffic haul route;
 - 5. Landscaping.
- E. Architectural, Landscaping and Site Design Standards for Industrial development found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed with all future and existing development on site. Architectural review shall occur at the time that an application for a building permit is filed.
- F. The following Development Standards shall be placed as notes on the Change of Zone plat map.
 - 1. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
 - 2. The property is Zoned Industrial, I-3 with exceptions. The use of the property for a Junkyard or a Livestock Trailer Washout are prohibited.
 - 3. Any land use changes not specifically addressed by this ordinance may necessitate an amendment to the land use permit subject to approval by the City.

4. Access to the Property shall be through the property located at 7300 47th Avenue. The existing Access Easement recorded at Reception 4129886 will either be abandoned for use by the Property or restricted to emergency access only. This shall be finalized through the Development Agreement.
5. The property owner shall connect to the City's water, non-potable water, and sanitary sewer systems once City facilities become available to serve the property. At the time of connection, the applicant shall abandon any private well and/or septic system and provide evidence to the City each have been abandoned in accordance with the appropriate jurisdiction's guidelines.
6. Building Permits may be required for structures and buildings to bring them into compliance with a commercial structure. Coordination with the City of Evans' Building Department is required.
 - i. Fire Protection District review and approval is required. The applicant shall coordinate all inspections through the Fire Protection District. Petitioner shall adhere to the International Fire Code as adopted in the Evans Municipal Code.
7. All signs require permits. Coordination with the City of Evans Building Department is required.
8. All property owners and tenants of the property shall use quiet back-up alarms on site and in the public right-of-way.
9. Property owners and tenants are prohibited from using Jake Breaks in the public rights-of-way.
10. A Grading Permit issued by the City of Evans is required prior to construction. On-site lighting shall be shielded to not shine onto adjacent properties.

G. Prior to construction:

1. Petitioner shall obtain applicable land use permits.
2. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
3. Grading Permits and Access Permits are required.

6. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

7. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

**INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF EVANS ON THIS 7th DAY OF JULY 2020.**

ATTEST:

CITY OF EVANS, COLORADO

BY: _____ BY: _____
Karen Frawley, City Clerk Bryan Rudy, Mayor

**PASSED AND ADOPTED ON A SECOND READING THIS ___ DAY OF _____,
2020.**

ATTEST:

CITY OF EVANS, COLORADO

BY: _____ BY: _____
Karen Frawley, City Clerk Bryan Rudy, Mayor

EXHIBIT A:

Legal Description:

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;

Thence South 30°44'21" East, 25.59 feet;

Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning. County of Weld, State of Colorado.







**ANNEXATION AGREEMENT
MountainTRAX Intermodal LLC**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **MountainTRAX Intermodal LLC** a Delaware limited liability company (successor in interest to ARB Niobrara Connector LLC, a Delaware limited liability company) hereinafter and collectively referred to as “Owner,” and the **CITY OF EVANS**, a Colorado municipality hereinafter referred to as “Evans” or “City.”

RECITALS

WHEREAS, Owner desires to annex to Evans the property more particularly described on **Exhibit A**, which is attached hereto, incorporated herein, and made a part hereof (hereafter referred to as “the Property”); and

WHEREAS, Owner has executed a petition to annex the Property, dated May 11, 2020, a copy of which is on file with the City Clerk; and

WHEREAS, Owner has prepared an Annexation Statement and Conceptual Development Plan identifying and illustrating requested zoning, proposed land use and intended development of the Property more particularly described on **Exhibit B**, which is attached hereto, incorporated herein and made a part hereof; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement regarding annexation of the Property to the City and other matters as set forth herein; and

WHEREAS, Owner acknowledges that upon annexation, the Property will be subject to all ordinances, resolutions, and other regulations of the City of Evans, as they may be amended from time to time; and

WHEREAS, Owner acknowledges the need for conveyances and dedication of certain property, including but not limited to property for rights-of-ways and easements, to Evans as contemplated in this Agreement, which are directly related to and generated by development intended to occur within the Property.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Information of Recitals. The parties confirm and incorporate the foregoing recitals into this Agreement.
2. Purpose. The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the City. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning annexation contained in the Evans Municipal Code, Development Regulations and Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 et seq.
3. Further Acts. Owner agrees to execute promptly upon request of Evans all surveys and other documents necessary to effect the annexation of the Property and the other provisions of this Agreement. Owner agrees not to sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of Evans.
4. Annexation Documents. Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps and reports determined by Evans to be necessary to accomplish the annexation.



5. **Zoning and Land Use.** The parties recognize that it is the intent and desire of Owner to develop the Property in a manner generally consistent with the zoning and land uses presented in paragraph 15 below, and that the granting of such zoning by the City of Evans is a material consideration of the Owner's agreement to annex the Property to the City. Owner shall take all action necessary to permit zoning by Evans of the annexed Property within the time prescribed by state statute. In the event the City does not zone the land in accordance with the uses further described in paragraph 15, then the City agrees not to oppose any disconnection by the Owner, subject to the requirements of state law.
6. **Public Use Land Dedication.** Owner agrees to dedicate, by General Warranty Deed or other appropriate instrument of conveyance acceptable to the City, or, at the request of the City, for a homeowner's association to be created, all of Owner's right, title and interest (subject to exceptions of record permitted by the City), in and to the applicable Property a portion of the territory to be annexed for public open space or other public purposes as directed by the City, in addition to easements and rights-of-way for streets and other public ways and of other public purposes, all as required by City ordinances and resolutions in effect at the time of the dedication. Owner shall have no obligation to dedicate any land for development of public improvements for the following: public school, sewer/water treatment facilities or related facility, power generation plant, library, police station or fire station.
7. **Water and Wastewater Utilities.** Owner shall provide evidence the Central Weld County Water District will serve Owner's property with water within 120 days of approval of this Amended Agreement. Owner shall connect to the City's water and / or wastewater treatment network at Owner's expense, at such time as City facilities become available to serve the Property in accordance with the requirements of the Evans Municipal Code. At the time of connecting to the City's sewer system, Owner shall be required to cease use of and abandon any septic tank, cesspool, or similar private sewer disposal facility in accordance with all lawful requirements. Construction and maintenance of such facilities and connecting to the public sewer system shall all be in accordance with the rules and regulations and requirements of the City as outlined in the Evans Municipal Code, as they exist at the time of such connection, as well as all other applicable regulations.
8. **Water Rights Dedication.** Owner shall dedicate water rights as required by Title 13.08 of the Evans Municipal Code.
9. **Non-potable Irrigation.** Owner may install and City may require Owner to install a non-potable water system to provide irrigation water to all areas described within Exhibit A. The non-potable water system will become an extension of the Evans water utility enterprise and will be owned, operated, and maintained by the City after acceptance by the City. In consideration of the reduced potable water demand that will be realized by the installation of a non-potable irrigation system, the amount of raw water to be dedicated to the City shall be reduced by an amount as determined by an engineering analysis performed by the City at the expense of Owner, or by City policy.
10. **Municipal Services.** Evans agrees to make available to the Property all the usual municipal services provided by the City, in accordance with the ordinances and policies of the City. The services provided by the City may include, but are not limited to, police protection, fire protection, water, wastewater, and storm water services. Owner acknowledges that City services do not include, as of the date of the execution of this Agreement, emergency medical services.
11. **Public Improvements.** Required public improvements shall be designed and constructed to City



standards by Owner at Owner's expense. Owner further agrees to provide financial guarantees for construction of all required improvements as set forth in each phase of the development, and to dedicate to the City any or all the improvements as required by City ordinances. The public improvements and financial guarantee shall be set forth in the Development Agreement between the City and Owner.

12. **Streets and Arterial Roads.** On-site and required off-site streets shall be dedicated, designed, and constructed to City standards by Owner at Owner's expense. Upon approval of the City, Owner shall dedicate all public right-of-way improvements under warranty with at least a two-year guarantee for maintenance to the City of Evans. A traffic study for the proposed development shall be completed by the Owner in accordance with City requirements. The Traffic Engineer shall consider future signalization and a signal progression analysis. Owner shall be responsible for payment of a portion of the cost related to the design and construction of such future signalization when it is determined that such infrastructure is warranted.

13. **Drainage.** Owner shall provide at Owner's expense a drainage study of the entire annexation territory. Improvements recommended by such study shall be completed at the time of completion of each phase of development. Facilities necessary to address drainage from outside the Property shall be designed for quantities more than those amounts historically discharged from the site. Such facilities shall be developed in conformance with the Comprehensive Drainage Study and other City regulations and ordinances.

14. **Reimbursements.** To the extent water, sewer, storm drainage facilities or other public utilities are oversized or extended onto property by Owner or to the extent public improvements are built off-site of the Property by Owner, by any District or by the City (for which Owner/Developer pays), for benefit accruing to other parties, said improvements may be eligible for reimbursement. Per Title 13.28 of the Evans Municipal Code, City agrees to use its best efforts to maximize the opportunity for, and amounts of reimbursement payable to Owner in connection with the development of any other property tapping onto or otherwise making use of any such improvements. The City agrees to coordinate the execution and delivery of necessary reimbursement agreements among the City, the Owner and the owner/developer of any other such property in order to obtain such reimbursements for Owner.

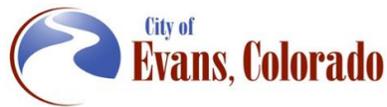
15. **Zoning and Land Use.**
 - (A) **Conceptual Plan.** Owner and City shall mutually agree upon a conceptual land use plan that is in accordance with the City's Comprehensive Plan. It is Owner's intent to develop and request zoning for the Property in accordance with the conceptual land use plan as shown in Exhibit B. The conceptual plan consists of (add description).

 - (B) Owner agrees that the design, improvement, construction, and development of the Property described herein shall be in conformance with the City of Evans Design Guidelines, as those requirements exist at the time of site plan application.

 - (C) **Rezoning Process.** Upon submittal of required materials, Owner's rezoning request shall be processed concurrently with the petition for annexation. This provision does not waive the authority of the Owner or the City of Evans to initiate rezoning of the land in accordance with the Charter and ordinances of the City of Evans. Land use is subject to the police power and legislative authority of the City of Evans.



16. Agricultural Use. The City agrees that Owner may continue the agricultural uses that are presently being conducted on the Property in the same manner as they have historically been performed until the development of the Property. The Owner understands and agrees that upon issuance of the first non-agricultural building permit for the Property, such agricultural activities shall cease, and any livestock, barbed wire, and/or electric fences shall be removed from the Property. The Owner understands that discharge of firearms is strictly prohibited in the City of Evans.
17. Limitation on Fee Impositions by the City. The City agrees that the Property shall be subject to typical development fees similar to those that are imposed on other developments in the City pursuant to the City's regulations and ordinances unless otherwise mutually agreed upon by the Owner and the City.
18. Development Agreement. In a form provided by the City, Owner and the City shall enter into a development agreement. The final form of the development agreement shall be subject to mutual agreement of the parties on the terms and conditions of the same. The development agreement shall be signed prior to or upon approval of the final plat.
19. Conformity with Laws. Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all City ordinances, resolutions and regulations including without limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to City streets, and flood control.
20. Disconnection. No right or remedy of disconnection of the Property from the City shall accrue from this Agreement. In the event the Property or any portion thereof is disconnected, Evans shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.
21. Owner's Association. Owner shall organize a unit owner's association or associations if appropriate for given parcels and/or unit types with the development of the Property. Owner shall form the association(s) pursuant to the Colorado Common Interest Ownership Act ("Act"). C.R.S. §38-33.3-101, et seq. The Owner shall also execute and record covenants and instruments of conveyance which comply with the Act and which adequately provide for continuous ownership, operation, maintenance, repair and replacement of common elements of the development, including but not limited to any private roads, private common areas and private facilities. At least thirty (30) days prior to recording any covenants or instruments of conveyance to the association(s), Owner shall provide such documents to the City Attorney for review and comment.
22. Fire Protection District Exclusion. Prior to commencement of development at the site, Owner shall provide written confirmation from the Evans Fire Protection District that adequate fire protection and emergency medical services can be provided to the Property and indicating how such services will be provided. To the extent fire protection and or emergency medical services are provided by the LaSalle Fire Protection District, Owner agrees to sign and execute any and all petitions or documents that will be necessary and appropriate to exclude the Property from the LaSalle Fire Protection District, and include it in the Evans Fire Protection District, within 180 days of notice having been provided by the Evans Fire Protection District that it desires to include the Property into the District.
23. Water Conservancy Municipal Subdistrict Inclusion. Pursuant to CRS 37-45-136(3.6), Owner consents



to inclusion of the property into the Municipal Subdistrict, Northern Colorado Water Conservancy District, when the annexation becomes effective.

24. Future Cooperation. The parties agree they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
25. No Joint Venture or Partnership/No Assumption of Liability. Nothing contained in this Agreement is intended to create a partnership or joint venture between the City and Owner or between the City and any one or more of the individual owners listed above, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function, or service, nor does it create a joint enterprise, nor does it constitute any party hereto as any agent of another party hereto for any purpose whatsoever. Except as specifically otherwise provided in this agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.
26. Amendment. This Agreement may be amended only by mutual agreement of the City and Owner. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property and/or Water Rights subject to the amendment unless otherwise specified in the amendment.
27. Agreement. This Agreement embodies the entire agreement of the parties as to the real property described on Exhibit A. This Agreement is not intended to modify, amend, replace or resolve any previous annexation agreement between the parties or predecessors in interest. Specifically, this agreement does not modify any obligations arising from the Second Amended Annexation Agreement between the City and ARB Niobrara Connector, LLC, a Delaware limited liability company entered on or about June 26, 2015.
28. Owner. As used in the Agreement, the term "Owner" shall include any of the heirs, transferees, successors, or assigns of Owner, and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms of this Agreement, as if they were the original parties thereto. In the event of a transfer of all or any portion of the Property, provided the City approves such transfer, such approval not to be unreasonably withheld, the transferring Owner shall be relieved of any and all obligations under this Agreement that arise after the date of such transfer with respect to the transferred Property.
29. Amendments to Law. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, regulation, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, regulation, or policy, and the parties agree such amendments or revisions shall be binding upon Owner.
30. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any



court of competent jurisdiction.

31. Failure to Annex. This Agreement shall be null and void if the City fails to approve the annexation of the Property.

32. Breach of Agreement.

(A) Breach by Developer; City's Remedies. In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Agreement, the City may take action, as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the City from hardship. The City's remedies include:

- (1) The refusal to issue to the Owner any development permit, building permit, or certificate of occupancy. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers (i.e. purchasers of individual lots by persons unrelated to Owner);
- (2) A demand that the security given for the completion of the public improvements be paid or honored;
- (3) The refusal to consider further development plans within the Property; and /or
- (4) Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the City or City residents, the City shall provide the Owner ten (10) days written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action the City.

(B) Breach by City. Parties agree that in the event of a breach by the City, Owner's remedies are limited to specific performance of the terms of this agreement. Owner is not entitled to monetary damages or attorneys' fees from City related to any claim arising from or related to this agreement.

33. General Provisions. City shall:

- (A) Cause its staff to timely and promptly approve or disapprove written submittal by Owner of any plans, specifications, drawings, details or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage or other utility serving the Property or any improvements within any dedicated right-of-way on the Property. Any disapproval shall set forth the items disapproved together with the reasons for such disapproval.
- (B) Use its best efforts securing, at Owner's expense, construction and maintenance agreements from governmental or private entities in order to allow Owner to fulfill its obligations under this Agreement and to proceed with development of the Property.
- (C) Cooperate with Owner with any filings, applications, approvals, or other administrative procedures with governmental entities other than the City, which is necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner.
- (D) Provide police and other municipal services to the Property to the same extent as those services are provided by City throughout the balance of the City, pursuant to the City's uniform applied policies.
- (E) Not unreasonably withhold its consent or approval when any consent or approval is required.

Owner shall notify the City of assignments and the name of the assignee(s) upon the sale or other



transfer of any portion of the Property. The transferor of such portion shall be released from all liability and obligation under this Agreement relating to such portion and all such liabilities and obligations shall be assumed by the transferee (unless transferee is a member of the home buying public or governmental entity).

Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the City's legislative, governmental or police powers to promote and protect the health, safety, and general welfare of the City or its inhabitants; nor shall this agreement prohibit the enactment by the City of any fee which is of uniform or general application.

It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is by a court determined to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term, or provision held to be invalid. This Agreement may be enforced in any court of competent jurisdiction.

34. Notice. All notices required under this Agreement shall be in writing and shall be hand delivered, sent by facsimile transmission, or sent via registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt, provided a hard copy is mailed the same date. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party, by notice so given, may change the address to which future notices shall be sent.

Notice to City: City of Evans
Attn: City Manager
1100 37th Street
Evans, CO 80620

With copy to: Scott Krob, City Attorney
Krob Law Office, LLC
8400 E. Prentice Ave., Penthouse
Greenwood Village, CO 80111

Notice to Owner: MountainTRAX Intermodal, LLC
ATTN: C T Corporation System, Agent for Service
7700 E Arapahoe Rd Ste 220
Centennial, CO 80112-1268

35. Election. Owner agrees that he/she/it is voluntarily entering into this Agreement. Owner represents and submits that to the extent an election would be required pursuant to C.R.S. §31-12-112, as amended, to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns 100 percent of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the annexation and the terms and conditions.

36. Legislative Discretion. The Owner acknowledges that the annexation and zoning of the Property are subject to the legislative discretion of the City Council of the City of Evans. No assurances of annexation, zoning, or special use permit approval have been made or relied upon by the Owner. In the



event that, in the exercise of its legislative discretion, any action with respect to the annexation, zoning or special use approval for the Property, as contemplated herein and in the proposed Conceptual Development Plan for the Property, is not taken or if once taken and Owner is in full compliance with such annexation, zoning or special use approvals is not maintained, then the Owner may withdraw the petition for annexation and seek disconnection from the City in accordance with state law, as may be appropriate and City agrees not to oppose.

37. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.
38. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.
39. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.
40. No Warranties by the City. The City is entering into this Agreement in good faith and with the present intention, on the part of the present City Council, that this Agreement will be complied with. However, because some of the provisions of this Agreement may involve areas of legal uncertainty, the City makes no representation as to the validity or enforceability of this Agreement and that no such warranty is made on the part of the City.
41. Cost Reimbursement to City. Developer shall reimburse City for outside professional consultants such as engineers, testing companies, and attorneys necessitated by processing and completion of this development.
42. Fee Impositions by the City. Owner agrees to pay, and that the Property shall be subject to the fees and obligations set forth in this Amended Agreement, as well as all development fees and other charges provided for in the City's rules, regulations and ordinances.
43. Improvements Agreement. Prior to construction of any public improvements, including, but not limited to, water, sewer, drainage, sidewalks, or roadways, Owner and the City shall enter into one or more public improvements agreements in a form provided by the City. Each public improvement agreement shall include guarantees or security in the form of a bond or letter of credit or such other form as may be acceptable to the City, to ensure completion of the public improvements. In addition, the Owner shall enter into one or more improvement agreements for non-public improvements resulting from site plan review processes as provided by the City of Evans Code. The public and non-public improvement agreements shall be signed prior to commencement of each phase of site development and upon approval of a site plan for such phase of development.
44. Conformity with Laws. Except as otherwise agreed herein or as otherwise provided in conjunction with approval of site plan for the development, Owner agrees that the design, improvement, construction, development and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all City ordinances, resolutions and regulations including without limitation, ordinances, resolutions, and regulations pertaining to subdivision, zoning, storm drainage, utilities, access to City streets and flood control.



45. No Repeal of Laws. Nothing contained in this Amended Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this Amended Agreement prohibit the enactment or increase by the City of any tax or fee.
46. Severability. The parties agree that if any part, term, portion, or provision of this Amended Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Amended Agreement did not contain the particular part, term, portion, or provision held to be invalid.
47. Inspection of dwelling. The dwelling located at 22744 Weld County Road 33 shall be inspected by the City's Building Official for compliance as use as an office.
48. Septic system. The septic system connected to the property located at 22744 Weld County Road 33 shall be permitted for commercial use supporting the office through the Weld County Public Health and Environment Department. Evidence of conversion to a commercial permit, or evidence this is not needed shall be provided to the City of Evans Planning Department. The Change of Zone plat shall include the location of the septic tank and leech field(s).
49. Residential well permit. The residential exempt well permit connected to the property at 22744 Weld County Road 33 (Well Permit #47606) shall be permitted for commercial use supporting the office through the State of Colorado. Evidence of either a conversion to a non-exempt commercial well or status as an exempt commercial well shall be provided to the City of Evans Planning Department. An alternative water source is connection to the Central Weld County Water District. If this is selected, provide evidence of connection to the City of Evans Planning Department. The Change of Zone plat shall include the location of the well and supporting infrastructure.

ATTEST:

CITY OF EVANS, COLORADO
A Municipal Corporation

By: _____
Brian Rudy, Mayor

By: _____
Karen Frawley, City Clerk



LANDOWNER

By: _____
Signature Title Date

STATE OF COLORADO)
) ss.
_____ COUNTY)

SUBSCRIBED AND SWORN to before me this _____, day of _____, 20_____, by
_____.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for the State of Colorado.

My commission expires: _____



EXHIBIT A:

Legal Description:

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;

Thence South 30°44'21" East, 25.59 feet;

Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning. County of Weld, State of Colorado.

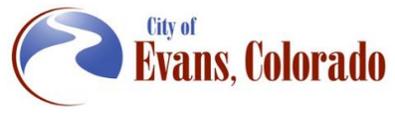
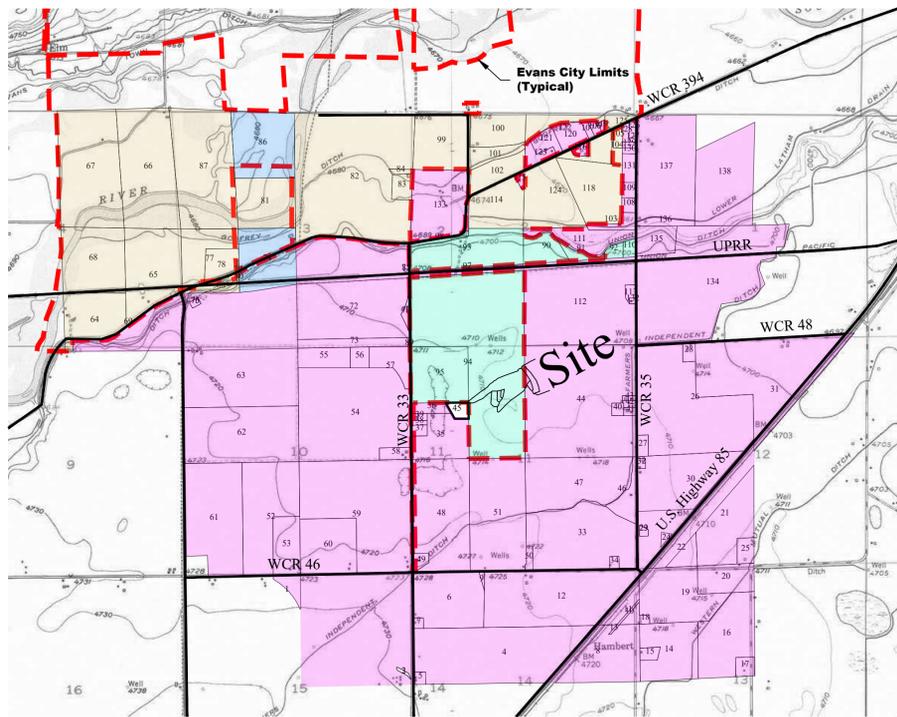


EXHIBIT B:

MountainTRAX Annexation To The City of Evans

A Portion of the southwest quarter of the northwest quarter of Section 11,
Township 4 North, Range 66 West of the Sixth Principal Meridian
Weld County, State of Colorado



Vicinity Map
1"=2000'



Parcels Within One Mile of Parcel Being Annexed

Key	Parcel No.	Owner Name
1	105715200044	JONES FRANK
2	105715000033	PETROCCO FAMILY LTD PRTNESH LLLP (77%)
3	105715000032	PETROCCO FAMILY LTD PRTNESH LLLP (77%)
4	105714200066	ECKHARDT FARMS INC
5	105714200065	GOERGEN JERRY M
6	105714000064	EWING LLOYD L FAMILY TRUST
7	105714000063	HUBBARD MICHAEL R
8	105714000055	DINNER PECKHAM JUNCTION FARM LLC
9	105714000050	EWING MARDELLE L
10	105714000038	DINNER PECKHAM JUNCTION FARM LLC
11	105714000037	DINNER WILLIAM M
12	105714000036	EWING ROBERT T TRUST
13	105714000033	DINNER PECKHAM JUNCTION FARM LLC
14	105713200002	HUNGENBERG DAVID L
15	105713200001	HUNGENBERG DAVID L
16	105713000064	WUJAIN TIMOTHY W
17	105713000063	PIONEER HI-BRED INTERNATIONAL
18	105713000047	BOKELMAN KAY A
19	105713000046	DINNER/BROWN FARM LLC
20	105713000040	RAY PATRICIA A TRUST
21	105712300010	WERTZ DELBERT E
22	105712300009	SANDBERG GEORGE L IRREVOCABLE TRUST
23	105712300008	SANDBERG GEORGE L IRREVOCABLE TRUST
24	105712300007	DAVIS DOROTHY J
25	105712300001	WERTZ DELBERT E
26	105712200087	RIVER ROAD HOLDINGS LP
27	105712200086	LANDIN JERRY J
28	105712200085	RECK JEFFERY J
29	105712000082	DAVIS DOROTHY J (50% INT)
30	105712000081	DAVIS DOROTHY J (50% INT)
31	105712000022	ADVANTA USA INC
32	105712000004	RUSSELL PAUL D
33	105711400002	WESTERN EQUIPMENT & TRUCK INC
34	105711400001	EWING HARVEY GL LIVING TRUST
35	105711200018	COOK TIMOTHY G
36	105711200017	BEAMER WILLIAM MARK
37	105711200003	COOK TIMOTHY G
38	105711200002	EWING WILLIAM H III
39	105711200001	EWING WILLIAM H III
40	105711100085	REEVE ROBIN R
41	105711100084	CALLOW ANTHONY J
42	105711100083	MARQUEZFUENTES JOSE RAMON
43	105711100082	PARKER THOMAS R
44	105711100081	PETROCCO FAMILY LTD PRTNESH LLLP (77%)
45	105711000067	ARB NIOBRARA CONNECTOR LLC
46	105711000062	LOVE JOHN R
47	105711000061	PETROCCO FAMILY LTD PRTNESH LLLP (77%)
48	105711000016	GROUNDWATER MANAGEMENT SUBDISTRICT OF
49	105711000015	CLEMENT GLENN A (LE)
50	105711000012	PITCHER JAKE
51	105711000012	EWING ROBERT T TRUST
52	105710300006	LUNDVALL ENERGY PARK LLC
53	105710300005	LUNDVALL ENERGY PARK LLC
54	105710100024	DCP OPERATING COMPANY LP
55	105710100023	ACKERMAN ROBERT DEAN
56	105710100022	BADLEY DAVID BRUCE
57	105710100020	ACKERMAN ROBERT DEAN
58	105710000016	JD RENTALS LLC
59	105710000013	EWING LLOYD L FAMILY TRUST
60	105710000012	EWING JAMES L
61	105710000010	FIVE RIVERS RANCH CATTLE FEEDING LLC
62	105710000009	FIVE RIVERS RANCH CATTLE FEEDING LLC
63	105710000008	FIVE RIVERS RANCH CATTLE FEEDING LLC
64	105704400002	SORIN NATURAL RESOURCE PARTNERS LLC
65	105704400001	SORIN NATURAL RESOURCE PARTNERS LLC
66	105704000025	VARRA COMPANIES INC
67	105704000024	VARRA COMPANIES INC
68	105704000023	SORIN NATURAL RESOURCE PARTNERS LLC
69	105704000021	FIVE RIVERS RANCH CATTLE FEEDING LLC
70	105703400039	OSIEK PATRICK R
71	105703400037	TWINS EAGLE SAND LOGISTICS LLC
72	105703400002	WETCO FARMS INC
73	105703400001	WETCO FARMS INC
74	105703300007	JBS FIVE RIVERS CATTLE FEEDING LLC
75	105703300006	JBS FIVE RIVERS CATTLE FEEDING LLC
76	105703300005	PUBLIC SERVICE CO OF COLORADO
77	105703300004	SORIN NATURAL RESOURCE PARTNERS LLC
78	105703300001	SORIN NATURAL RESOURCE PARTNERS LLC
79	105703300002	SORIN NATURAL RESOURCE PARTNERS LLC
80	105703300001	SORIN NATURAL RESOURCE PARTNERS LLC
81	105703000041	LEMON ROBERT L
82	105703100045	DIXIE WATER LLC
83	105703100044	WERNING GLENN J
84	105703100043	WERNING GLENN J
85	105703000030	PUBLIC SERVICE CO OF COLO
86	105703000027	VARRA COMPANIES INC
87	105703000026	VARRA COMPANIES INC
88	105703000020	FIVE RIVERS RANCH CATTLE FEEDING LLC
89	105703000016	PUBLIC SERVICE CO OF COLO
90	105702402002	ENVIRO TECH SERVICES INC
91	105702401002	TURLEY FAMILY TRUST
92	105702400002	MCBRIDE LANCE
93	105702302001	ENVIRO TECH SERVICES INC
94	105702301002	ARB NIOBRARA CONNECTOR LLC
95	105702301001	ARB NIOBRARA CONNECTOR LLC
96	105702300005	ANADARKO LAND CORP
97	105702300004	ENVIRO TECH SERVICES INC
98	105702300001	ENVIRO TECH SERVICES INC
99	105702200013	DIXIE WATER LLC
100	105702200012	DIXIE WATER LLC
101	105702200011	WERNING GLENN J
102	105702200010	DIXIE WATER LLC
103	105702100105	2353 BARDEN TRUST
104	105702100104	HENDRICKSON STEVEN R
105	105702100103	MESTAS ORLANDO R
106	105702100102	GARDNER KATHLENE M
107	105702100101	JURGENSEN KENNETH W
108	105702100092	KEEVER JEREMY S
109	105702100091	ROTH JAMES LLOYD
110	105702000097	WOODS WILLIAM K
111	105702000093	LUSE GREG
112	105702000087	PETROCCO FAMILY LTD PRTNESH LLLP (73%)
113	105702000086	STANLEY CLAYTON C
114	105702000085	DIXIE WATER LLC
115	105702000084	WALTER JACK ALLEN
116	105702000073	HARRIS RUTH E
117	105702000072	SORIN NATURAL RESOURCE PARTNERS LLC
118	105702000069	SORIN NATURAL RESOURCE PARTNERS LLC
119	105702000066	ROEMMICH DONITA K
120	105702000058	MARTINEZ MARIO A
121	105702000054	REKO BENJAMIN J
122	105702000056	SORIN NATURAL RESOURCE PARTNERS LLC
123	105702000054	HART ELIZABETH
124	105702000053	DIXIE WATER LLC
125	105702000051	FOLLEY WILLIAM ERIC
126	105702000050	COOK DENISE M
127	105702000049	HODSON KYLE
128	105702000048	BUSH ALBERT E
129	105702000047	GEROLD ADOLPH C
130	105702000046	BALADEZ SETH
131	105702000045	DEISLEY GALE
132	105702000030	RIVER ROAD HOLDINGS LP
133	105702000003	BLEDSOE THOMAS B
134	105701300004	RIVER ROAD HOLDINGS LP
135	105701300003	MILLER JAMES E
136	105701000042	FRANKLIN CYNTHIA A
137	105701000041	LOEFFLER JERRY L
138	105701000039	VIRGINIA LEE

N 1/2 NW 1/4 Section 11,
T4N, R66W 6th PM

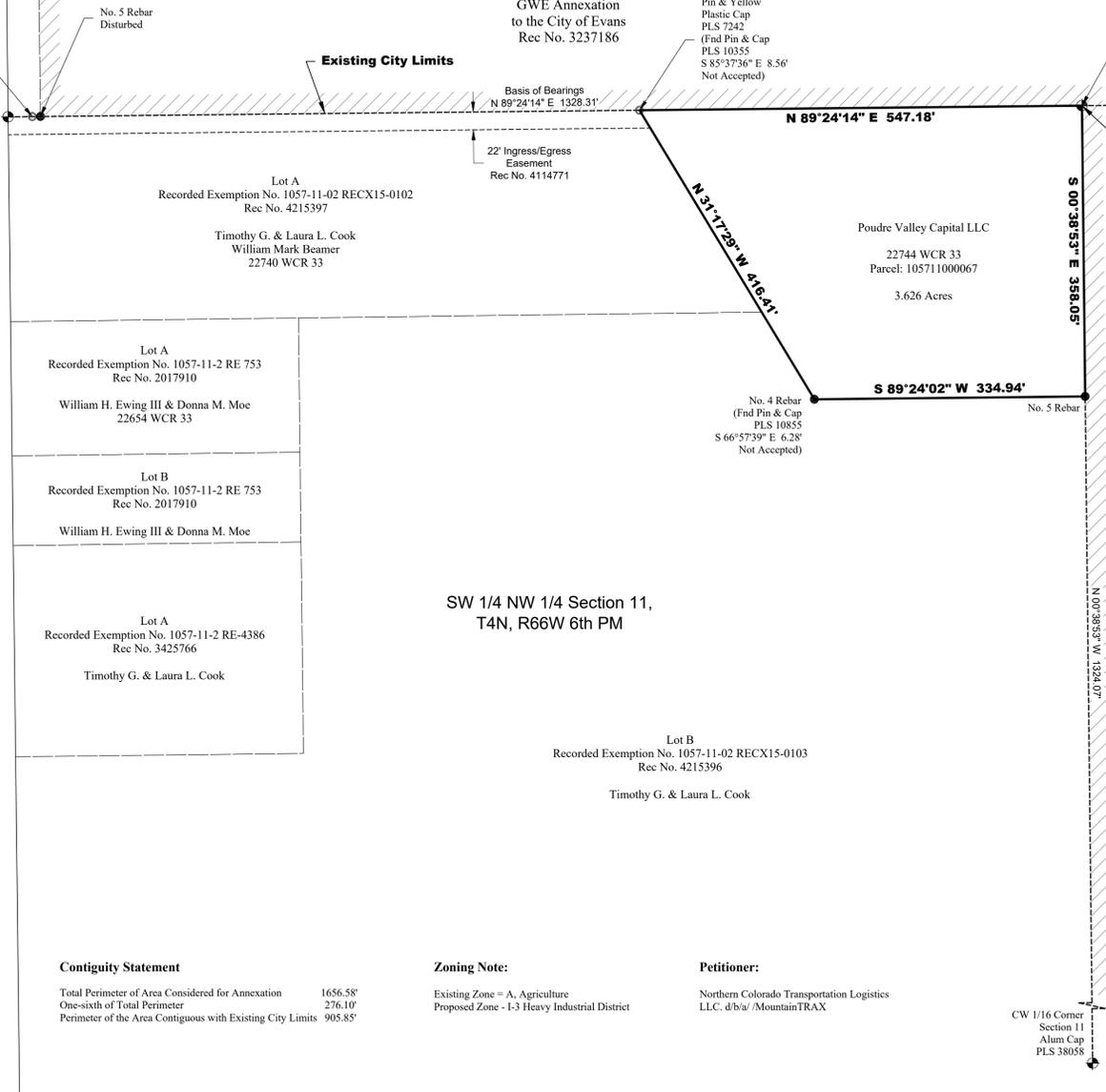
Lot 1, ARB Nicon Subdivision
Poudre Valley Capital LLC

GWE Annexation
to the City of Evans
Rec No. 3237186

Pin & Yellow
Plastic Cap
PLS 10355
S 85°37'36" E 8.56'
Not Accepted

NW 1/16 Corner
Section 11
Alum Cap
PLS 7242
(Fnd Alum Cap
PLS 10855
S 82°41'06" E 4.31'
Not Accepted)

Pin & Orange
Plastic Cap
PLS 38058
N 1/16 Corner
Sec 10/Sec 11
Alum Cap
PLS 7242
(Fnd Alum Cap
PLS 10855
S 84°59'57" E 8.61'
Not Accepted)



SW 1/4 NW 1/4 Section 11,
T4N, R66W 6th PM

Lot B
Recorded Exemption No. 1057-11-02 RECX15-0103
Rec No. 4215396

Timothy G. & Laura L. Cook

SE 1/4 NW 1/4 Section 11,
T4N, R66W 6th PM

Lot 1, ARB Nicon Subdivision
Poudre Valley Capital LLC

GWE Annexation
to the City of Evans
Rec No. 3237186

Parcel Description:

All of that Weld County parcel 105711000067 conveyed to ARB Niobrara Connector, LLC filed June 10, 2015 at Reception Number 4114771 in Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, Weld County, Colorado, described as follows:

- Note:
- The Basis of Bearings is the north line of the southwest quarter of the northwest quarter of Section 11, T4N, R66W 6th P.M. as monumented with an aluminum cap PLS 7242 at each end with a grid bearing of N 89°24'14" E 1328.31'.
 - All directions, distances and dimensions are based on modified coordinates from the Colorado coordinate system of 1983 north zone (C.R.S. 38-52-102). CSF=1.000264631 origin 0.0.

Commencing at the northeast corner of the southwest quarter of the northwest quarter of said Section 11 an aluminum cap PLS 7242;

Thence S 00°38'53" E, along the east line of said southwest quarter of the northwest quarter, a distance of 358.05 feet to a number 5 rebar;

Thence S 89°24'02" W a distance of 334.94 feet to a number 4 rebar;

Thence N 31°17'29" W a distance of 416.41 feet, more or less, to a pin and plastic cap PLS 7242 on the north line of said southwest quarter of the northwest quarter;

Thence N 89°24'14" E, along said north line, a distance of 547.18 feet to the POINT OF BEGINNING.

Containing 3.626 acres more or less.

Property Owner's Certificate:

Know all persons by these presents that the undersigned being the owners of the above described land, have caused said land to be annexed under the name of MountainTRAX Annexation.

Poudre Valley Capital LLC

Christopher P. Dietzler, Managing Member.

State of _____ SS

County of _____

The foregoing certification was acknowledged before me this _____ day of _____, 20____ by Christopher P. Dietzler as Managing Member of Poudre Valley Capital LLC.

Notary

Surveyor's Statement:

I, David C. Costner, a Professional Land Surveyor licensed in the State of Colorado, do hereby certify that this map is a true and accurate representation of the area to be annexed to the City of Evans.

The land described hereon is contiguous to the City of Evans and meets the requirements set forth in Colorado Revised Statutes 1973, 31-12-104-(1)(A) that one-sixth or more of the perimeter to be annexed is contiguous with the annexing municipality.

David C. Costner
PLS 25936

Preliminary

Contiguity Statement

Total Perimeter of Area Considered for Annexation	1656.58'
One-sixth of Total Perimeter	276.10'
Perimeter of the Area Contiguous with Existing City Limits	905.85'

Zoning Note:

Existing Zone = A, Agriculture
Proposed Zone - I-3 Heavy Industrial District

Petitioner:

Northern Colorado Transportation Logistics
LLC. d/b/a/ MountainTRAX

Planning Commission Approval:

This is to certify that the Annexation Map of the above described property was recommended to the City Council of Evans by Resolution No. _____

Recommended this _____ day of _____, 20____

Chairperson, Evans Planning Commission

Mayor's Certificate:

This is to certify that the annexation map of the above described property was approved by Ordinance No. _____ of the City of Evans.

Passed and adopted on the _____ day of _____, 20____ and that the Mayor and the City of Evans, as authorized by said Ordinance on behalf of the City of Evans, hereby acknowledges and adopts the Annexation Map upon which this certificate is endorsed for all purposes indicated thereon.

Mayor

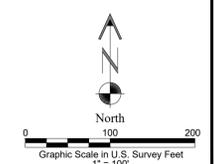
Attest: City Clerk

Notes:

- According to Colorado Law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.
- Any person who knowingly removes, alters or defaces any public land survey monument or land boundary monument or accessory commits a Class Two (2) Misdemeanor pursuant to State Statute 18-4-508, C.R.S.
- Parcel, Ownership, City Limits and Zoning data, shown hereon, were provided by Weld County Property Portal and the City of Evans Zoning Map. (<https://www.weld.co.us/apps/1/propertyportal/>) (https://gis.hub.weldgov.com/datasets/173b42762284079c39a3b7d78f8ee8_0) (<https://www.evanscolorado.gov/maps/property-maps>).

April 24, 2020

Date of Survey	4/21/2020
Control File	Ground
Job Number	34485



CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

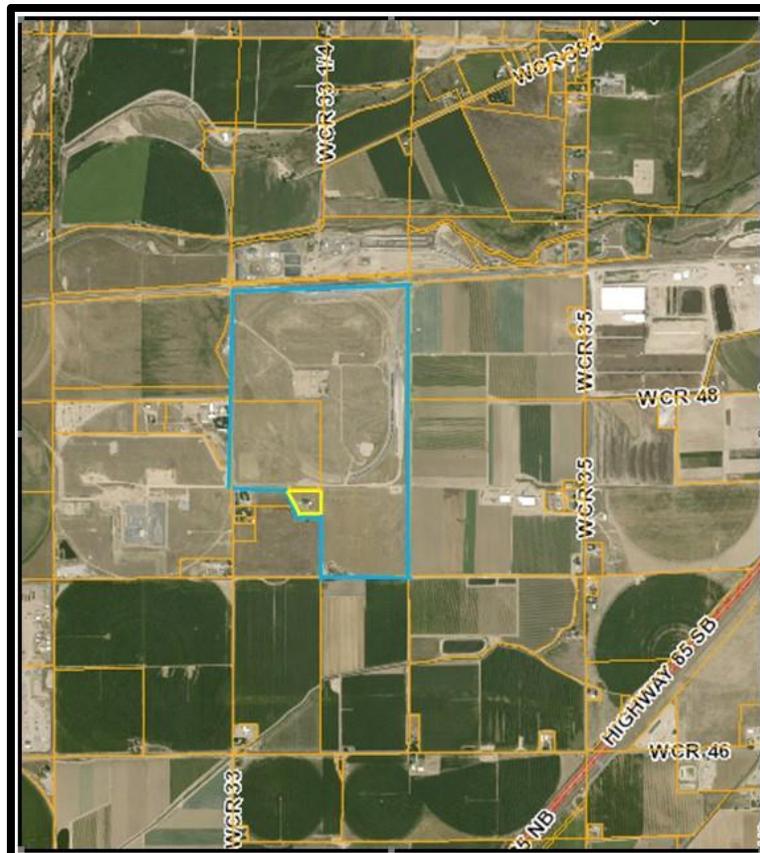
AGENDA ITEM: 7.C

SUBJECT: Public Hearing: Consideration of Ordinance No. 721-20 and Resolution No. 17-2020 Approving a Change of Zone from I-2 to I-3 for MountainTRAX, an Industrial Park located at 7300 47th Avenue (1st Reading)

PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best Johnson, Community Development Director

AGENDA ITEM DESCRIPTION:

The applicant seeks approval of a zoning amendment to rezone the properties located east of Weld County Road 33 and approximately ¾ mile north of Weld County Road 46. The 3.84-acre parcel outlined in yellow is not yet annexed to the City however, the Planning Commission can hear the application for consideration and forward a recommendation onto the City Council.



The parcel outlined in yellow on the map found on page 1 is not yet annexed into the City of Evans. The applicant is requesting a zoning classification of I-3. The parcel address is 22744 Weld County Road 33.

The approximately 221+/- -acre parcel outlined in blue on the map found on page 1, less the yellow outlined parcel, was annexed and zoned I-2 through the Great Western Ethanol Annexation in 2004. The site address is 7300 47th Avenue (Parcels 1057-02-301001 and 1057-02-301002).

The applicant is requesting a zoning classification of I-3 on all three parcels. A Change of Zone from I-2 to I-3 is requested to allow greater flexibility for land use in this Industrial Park. The differences and similarities to the Zone Districts and uses contemplated for each District are listed below. Differences between the two Zoned Districts are listed in blue font. Uses with a “P” are those requiring a Site Plan and those with a “S” require a Special Use Permit. Junkyards and Livestock Trailer Washout are uses contemplated through the Special Use Permit Process in the I-3 Zone District but are being excluded at the applicant’s request.

Land Use	Zone I-2	Zone I-3
Accessory Use	P	P
Adult Business	P	P
Confined Animals	S	S
Auction Yard		S
Car Wash	S	S
Cemetery	S	S
Commercial Residence	P	
Crematoriums	P	P
Flammable Liquids Storage	P	P
Flea Market	P	P
Industrial Uses Facility	P	P
Kennel	P	P
Manufacturing/Assembly Plant	P	P
Mini Storage Units	P	P
Natural Resource Extraction & Treatment		P
Office and Financial uses	P	P
Parking lot off-street	P	P
Personal Service Establishments	P	P
Public Service Facilities	P	P
Recreational Facilities, indoor	S	S
Recreational Facilities, intensive & outdoor extensive	P	P
Recreational Vehicle Storage	P	P
Recreational Vehicle Park/Campground	S	S
Recycling Center		S
Repair Shops	P	P
Research Laboratory	P	P
Retail uses extensive and intensive	P	P
Security Residences	S	S
Treatment of humans, restrained	S	S
Vocational School	S	S
Warehouse	P	P

Upon review of the comparison table above, there will be three additional uses to be contemplated in this Industrial Park and at 22744 Weld County Road 33, if the Change of Zone is approved. The additional uses include an Auction Yard, Natural Resources Extraction and Treatment, and Recycling Centers. Inclusion of these three additional land uses will enable the applicant to maximize land uses that may be able to maximize location on a rail spur to bring materials to the site, and haul materials off site via rail. These three additional uses are not detrimental to the surrounding properties and when any land use on site is proposed, site-specific review through either a Site Plan or a Special Use Permit will be needed inclusive of Development Standards and Conditions of Approval to ensure adherence to the City's Design and Development Standards.

At this time, neither Planning Commission or City Council is approving the uses referenced in the table on page 2. Planning Commission and City Council will evaluate if the zoning change request is appropriate. Future land uses within the development will be processed according to either the Site Plan or the Special Use Permit processes.

Application, Processing and Review Procedures

Title 18.06.040.B of the Evans Municipal Code identifies the application requirements for a Change of Zone. Application requirements were met by the applicant.

Title 18.06.030.C provides a clear outline of the procedures to be followed when processing an application for a Change of Zone. Staff followed these procedures and also included internal Design/Development Review Team meetings and a review of referral agency responses. Staff has followed the review criteria as well as the publication, posting and notification criteria found in Sections 18.10.10 and 18.10.20.

- The land use hearings were published in the Greeley Tribune on June 12 and will be published for four weeks leading up to the July 7 hearing before City Council.
- Notice was sent to all property owners within a 500' radius of the project on June 10, 2020. Notice was sent via Certified and First Class mail in accordance with the City Code Sections 18.10.010 and 18.10.020.
- Two signs were posted along Weld County Road 33. The first sign was posted at the southern entrance to the existing NiCon facility. The second sign was posted north of this location by approximately 1,000 just east of a windbreak to protect the sign from high winds.

Sign Posting, June 9, 2020 at the southern NiCon Terminal entrance:



Sign Posting, June 9, 2020 approximately 1000' north of the southern NiCon Terminal entrance:



Criteria for a Change of Zone

Title 18.06.030.D provides a clear outline of nine Criteria to be met for the Planning Commission and City Council to approve an application request for a Change of Zone. These Criteria are listed below along with narrative detailing how staff has found each criteria to be met or can be met with the attached Conditions of Approval.

1. That a need exists for the proposal

Since the property was first zoned, the market has changed. Allowing the three additional uses, an Auction Yard, Natural Resources Extraction and Treatment, and a Recycle Center provide the property owner with three additional markets to occupy the property.

2. The particular parcel is indeed the correct site for the proposed development

The project site is an existing Industrial Park in the City of Evans. The request is to change the zone of the property to allow three additional uses. The property located at 22744 is the corporate headquarters for the overall Industrial Park and Weld County has directed the applicant to annex into the City of Evans. The corporate office should be zoned the same as the residual property.

3. There has been an error in the original zoning OR

4. There have been significant changes in the area to warrant a change of zone

The original focus of the NiCon Terminal was for rail fed oil and gas support and services. The recent market change and the change of property ownership has resulted in the new property owner's request to have a more diversified Industrial Park. The differences in the allowed uses between Industrial 2 and 3 are minimal in nature.

5. Adequate circulation exists and traffic movement would not be impeded by development

The applicants have provided an updated Traffic Impact Study which has been reviewed by City Staff. A future Development Agreement will address when paving of Weld County Road 33 will be warranted.

6. Additional municipal service costs will not be incurred which the City cannot meet

The applicant has indicated there is an 8" water line in Weld County Road 33 from Central Weld County Water District. The timing of connection, if not already connected, shall be identified in the Development Agreement and is addressed in the Conditions of Approval.

The septic system associated with 22744 Weld County Road 33 shall be converted to a commercial system through Weld County. If this conversion is not needed, evidence shall be provided to the City from Weld County Public Health and Environment. The applicant shall provide information to the City regarding any septic systems on site. The timing of connection to City sanitary sewer shall be discussed in the Development Agreement and is addressed in the Conditions of Approval.

7. There are minimal environmental impacts or impacts can be mitigated

The act of changing the zone of these parcels does not create environmental impacts. Future site-specific plans such as a Site Plan or a Special Use Permit will be required to discuss how proposed development may impact the environment and include any mitigation measures.

8. *The proposal is consistent with the Evans Comprehensive Plan maps, goals and policies*
The Future Land Use Map dated 2014 found in the Comprehensive Plan identifies Industrial, Commercial and Clean Energy uses are appropriate for these parcels of land. Further, on page 3-3 of the Comprehensive Plan, the City specified that balancing the land use mix to include commercial, residential, industrial and open spaces uses does contribute to the identify of Evans and provides revenues to the City. The greater NiCon Terminal was annexed, zoned and uses were allowed through the City's land development process. The rezonig request will allow a more broad base of industry that can come into the City. The restrictions on the uses proposed for the site will reduce conflicts with surrounding uses.

9. *There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses.*

The Development Agreement will address timing and triggering events which will necessitate connection to water, sewer, non-potable water system and paving of City roads. Uses are existing and the Second Amendment to the Annexation Agreement defines terms for development however, the Development Agreement to be entered into will provide specific terms and triggering events for infrastructure development.

Conditions of Approval

The applicant shall provide written responses to the City Planning Department regarding how the Applicant intends to meet the Conditions of Approval and include supporting documentation such as revised plans, agreements and amended documents. The Change of Zone plat maps shall be provided to the City Planning Department for approval along with all items needed to satisfy the following Conditions of Approval. Upon approval, the applicant shall return the final Change of Zone maps to the City electronically with necessary signatures and stamps.

1. The Applicant shall provide all responses to the Conditions of Approval and the Change of Zone maps to the City for recording with the Weld County Clerk and Recorder within 30 days following the final City Council Change of Zone hearing.
2. A Master Development Plan inclusive of a Subdivision Plan shall be submitted within 45 days from July 21, 2020. The applicant may propose a combined Preliminary Plan and Final Plat.
3. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.
 - a. The storage of the port-a-lets is not an approved use and these need to be removed.
 - b. A Site Plan for the existing office located at 22744 shall be submitted with the Master Development Plan within 45 days after the final Change of Zone hearing.
4. A Development Agreement is required for any on-site or off-site improvements, both public and private. Until the Development Agreement is effective, the Second Amendment to the Annexation Agreement approved through Ordinance 625-15 remains in full effect however, Section 10 of the Second Amendment of the Annexation Agreement shall be extended for 180 days from July 21, 2020. The Development Agreement required by this Paragraph D must be presented to City Council for

consideration at a Public Hearing to occur within 180 days from July 21, 2020. The Development Agreement required by this Paragraph D will address at minimum the following subjects: 1) Petitioner's obligation to pave Weld County Road 33; 2) Petitioner's obligation to connect to a potable water supply; 3) Site access; 4) Intended traffic haul route; and 5) Landscaping.

5. Architectural, Landscaping and Site Design Standards for Industrial development found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed with all future and existing development on site. Architectural review shall occur at the time that an application for a building permit is filed.
6. The following Development Standards shall be placed as notes on the Change of Zone plat map.
 - a. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
 - b. The property is Zoned Industrial, I-3 with exceptions. The use of the property for a Junkyard or a Livestock Trailer Washout are prohibited.
 - c. Any land use changes not specifically addressed by this Ordinance may necessitate an amendment to the land use permit subject to approval by the City.
 - d. Access to the property located at 22744 Weld County Road 33 shall be through the property located at 7300 47th Avenue. The existing Access Easement recorded at Reception 4129886 will either be abandoned for use by the property at 22744 Weld County Road 33 or restricted to emergency access only. This shall be finalized through the Development Agreement.
 - e. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.
 - i. The Amended Smart Chem Site Plan was approved by the City of Evans on October 12, 2018 through File #17-SP-07.
 - ii. The Variance to allow crude oil storage tanks at a height not to exceed 83', a Vapor Combustion Unit tower to not exceed 50' in height, and the height of Frac Sand Storage Silos to not reach more than 179' in height, was approved by the Board of Zoning Appeals through File #15-VAR-01 on April 8, 2015 and by City Council on April 15, 2015 by Resolution 12-2015.
 - iii. The ARB Nikon Subdivision recorded at Reception 4276822 on February 8, 2017 with the Weld County Clerk and Recorder.
 - iv. The Second Amendment to the Annexation Agreement dated June 26, 2020 is still in full effect, including adherence to the Master Site Development Plan and the Landscaping Plan.
 - f. The property owner shall connect to the City's water, non-potable water and sanitary sewer systems once City facilities become available to serve the property. At the time of connection, the applicant shall abandon any private well and/or septic system and provide evidence to the City each have been abandoned in accordance with the appropriate jurisdiction's guidelines.
 - g. Building Permits may be required for structures and buildings to bring them into compliance with a commercial structure. Coordination with the City of Evans' Building Department is required.

- i. The Evans Fire Protection District review and approval is required. The applicant shall coordinate all inspections through the Fire Protection District. Petitioner shall adhere to the International Fire Code as adopted in the Evans Municipal Code.
 - h. All signs require permits. Coordination with the City of Evans Building Department is required.
 - i. All property owners and tenants of the property shall use quiet back-up alarms on site and in the public right-of-way.
 - j. Property owners and tenants of the property are prohibited from using Jake Breaks in the public rights-of-way.
 - k. A Grading Permit issued by the City of Evans is required prior to construction.
 - l. On-site lighting shall be shielded to not shine onto adjacent properties.
7. Prior to construction:
 - a. Petitioner shall obtain applicable land use permits.
 - b. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
 - c. Grading Permit(s) and Access Permit(s) are required.

FINANCIAL SUMMARY:

There are no financial implications of this proposed Change of Zone to the City. Additional special district and impact fees will be paid at the time of building permit. Land Use application fees have been paid.

RECOMMENDATION:

Planning Commission recommends City Council approve Ordinance No. 721-20 and Resolution No. 17-2020 with the recommended Conditions of Approval and Development Standards for the MountainTRAX Change of Zone. Planning Commission Minutes can be found in Attachment 4. Staff concurs and recommends approval of both Ordinance No. 721-20 and Resolution No. 17-2020.

SUGGESTED MOTIONS:

Section 18.06.040.C.12 states City Council shall make an action on the Rezoning by Resolution (Attachment 2) and in Section 18.06.040.C.13 states City Council shall adopt an Ordinance (Attachment 3) rezoning the property. Sample motions are included below.

“I move to approve Ordinance No. 721-20 as proposed with the Conditions of Approval and Development Standards.”

“I move to deny Ordinance No. 721-20 as proposed for the reasons as stated.”

“I move to approve Resolution No. 17-2020 as proposed with the Conditions of Approval and Development Standards.”

“I move to deny Resolution No. 17-2020 as proposed for the reasons as stated.”

ATTACHMENTS:

- Attachment 1: Staff Report
- Attachment 2: Ordinance 721-20
- Attachment 3: Resolution 17-2020
- Attachment 4: Planning Commission Minutes
- Attachment 5: Application Materials
- Attachment 6: Ordinance 625-15 with Attachments

CITY OF EVANS, COLORADO

ORDINANCE NO. 721-20

**AN ORDINANCE REZONING CERTAIN PROPERTY REFERRED
GENERALLY AS MOUNTAINTRAX INDUSTRIAL PARK LOCATED AT 7300
47th AVENUE FROM INDUSTRIAL (1-2) TO INDUSTRIAL (1-3)**

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, MountainTRAX Intermodal, LLC, a Delaware limited liability company (“the Applicant”), are the owners of certain property located within the City of Evans and more specifically described on Exhibit A, attached (“the Property”); and

WHEREAS, the Property is currently zoned Industrial (I-2); and

WHEREAS, the Applicant has filed an application with the City asking, in part, to rezone the Property to Industrial (I-3) with restrictions including Livestock Trailer Wash-Out and Junkyards; and

WHEREAS, staff has reviewed the Application and deemed it to be complete; and

WHEREAS, staff has reviewed the Application and deemed it to satisfy all requirements for a Change of Zone under the Evans City Code, including but not limited to Title 18.06.040.B, and 18.06.040.C; and

WHEREAS, the matter has been submitted to the required referral agencies for comment and staff has determined that the Applicant has adequately addressed concerns raised by the referral agencies; and

WHEREAS, the adjacent landowners have been notified per Evans City Code Sections 18.10.010 and 18.10.020; and

WHEREAS, pursuant to the provisions of the Evans City Code, including but not limited to Section 18.06.040, the matter was referred to the Planning Commission to obtain a recommendation as to the appropriate zoning of the Property; and

WHEREAS, the criteria considered by the Planning Commission and the City Council in determining whether to approve an application to rezone a parcel of land to PUD are set forth in Title 18.06.040.D of the Evans City Code. Those criteria include:

1. A need exists for the proposal;
2. The particular parcel of ground is indeed the correct site for the proposed development;
3. There has been an error in the original zoning; or
4. There have been significant changes in the area to warrant a zone change;

5. Adequate circulation exists, and traffic movement would not be impeded by development;
6. Additional municipal service costs will not be incurred which the City is not prepared to meet;
7. There are minimal environmental impacts or impacts can be mitigated;
8. The proposal is consistent with the Evans Comprehensive Plan maps, goals and policies; and
9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses; and

WHEREAS, at its meeting on June 23, 2020, the Planning Commission considered the appropriate zoning of the Property; and

WHEREAS, based on the criteria set forth above, the materials included in the Application, the matters presented to the Commission by the Applicant, and the comments of staff and the public, the Commission adopted staff recommendations that the Property be zoned I-3, to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts; and

WHEREAS, following proper notice, the matter was presented to the City Council at its regular meeting on July 7, 2020; and

WHEREAS, based on the matters presented to it, including the Application, comments from staff and the public, and all applicable criteria and requirements, the City Council concludes that it is in the best interest of the City to annex the Property to the City of Evans; and

WHEREAS, based on the recommendation of the Planning Commission, as well as the Application, comments from staff and the public, and applying the criteria set forth above, the Council concludes that, the Property should be zoned I-3 to allow for all I-3 uses except that the following special uses are prohibited: 1. junkyards and 2. livestock trailer washouts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. The Property described in Exhibit A is hereby rezoned from Industrial (I-2) to Industrial (I-3) excluding Livestock Trailer Wash-out and Junkyard uses as defined in the City Land Use Code, and the City Clerk is hereby directed to amend and revise the City's zoning map to reflect this change.

2. A development plan is forthcoming and shall be submitted for review by the City within 45 days following the July 21, 2020 City Council meeting.

3. The Council's approval is subject to the following conditions, all of which shall be satisfied before any permits will be issued in connection with this development:

- A. The Applicant shall provide all responses to the Conditions of Approval and the Change of Zone maps to the City for recording with the Weld County Clerk and Recorder within 30 days following the final City Council Change of Zone hearing.
- B. A Master Development Plan inclusive of a Subdivision Plan shall be submitted within 45 days from July 21, 2020. The applicant may propose a combined Preliminary Plan and Final Plat.
- C. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.
 - a. The storage of the port-a-lets is not an approved use and these need to be removed.
 - b. A Site Plan for the existing office located at 22744 shall be submitted with the Master Development Plan within 45 days after the final Change of Zone hearing.
- D. A Development Agreement is required for any on-site or off-site improvements, both public and private. Until the Development Agreement is effective, the Second Amendment to the Annexation Agreement approved through Ordinance 625-15 remains in full effect however, Section 10 of the Second Amendment of the Annexation Agreement shall be extended for 180 days from July 21, 2020. The Development Agreement required by this Paragraph D must be presented to City Council for consideration at a Public Hearing to occur within 180 days from July 21, 2020. The Development Agreement required by this Paragraph D will address at minimum the following subjects: 1) Petitioner's obligation to pave Weld County Road 33; 2) Petitioner's obligation to connect to a potable water supply; 3) Site access; 4) Intended traffic haul route; and 5) Landscaping.
- E. Architectural, Landscaping and Site Design Standards for Industrial development found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed with all future and existing development on site. Architectural review shall occur at the time that an application for a building permit is filed.
- F. The following Development Standards shall be placed as notes on the Change of Zone plat map.
 - a. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
 - b. The property is Zoned Industrial, I-3 with exceptions. The use of the property for a Junkyard or a Livestock Trailer Washout are prohibited.
 - c. Any land use changes not specifically addressed by this Ordinance may necessitate an amendment to the land use permit subject to approval by the City.
 - d. Access to the property located at 22744 Weld County Road 33 shall be through the property located at 7300 47th Avenue. The existing Access Easement recorded at Reception 4129886 will either be abandoned for use by the property at 22744 Weld County Road 33 or restricted to emergency access only. This shall be finalized through the Development Agreement.
 - e. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.

- i. The Amended Smart Chem Site Plan was approved by the City of Evans on October 12, 2018 through File #17-SP-07.
 - ii. The Variance to allow crude oil storage tanks at a height not to exceed 83', a Vapor Combustion Unit tower to not exceed 50' in height, and the height of Frac Sand Storage Silos to not reach more than 179' in height, was approved by the Board of Zoning Appeals through File #15-VAR-01 on April 8, 2015 and by City Council on April 15, 2015 by Resolution 12-2015.
 - iii. The ARB Nikon Subdivision recorded at Reception 4276822 on February 8, 2017 with the Weld County Clerk and Recorder.
 - iv. The Second Amendment to the Annexation Agreement dated June 26, 2020 is still in full effect, including adherence to the Master Site Development Plan and the Landscaping Plan.
- f. The property owner shall connect to the City's water, non-potable water and sanitary sewer systems once City facilities become available to serve the property. At the time of connection, the applicant shall abandon any private well and/or septic system and provide evidence to the City each have been abandoned in accordance with the appropriate jurisdiction's guidelines.
 - g. Building Permits may be required for structures and buildings to bring them into compliance with a commercial structure. Coordination with the City of Evans' Building Department is required.
 - i. The Evans Fire Protection District review and approval is required. The applicant shall coordinate all inspections through the Fire Protection District. Petitioner shall adhere to the International Fire Code as adopted in the Evans Municipal Code.
 - h. All signs require permits. Coordination with the City of Evans Building Department is required.
 - i. All property owners and tenants of the property shall use quiet back-up alarms on site and in the public right-of-way.
 - j. Property owners and tenants of the property are prohibited from using Jake Breaks in the public rights-of-way.
 - k. A Grading Permit issued by the City of Evans is required prior to construction.
 - l. On-site lighting shall be shielded to not shine onto adjacent properties.
- G. Prior to construction:
- 1. Petitioner shall obtain applicable land use permits.
 - 2. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
 - 3. Grading Permit(s) and Access Permit(s) are required.

4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

5. Repeal. Existing ordinances or parts of ordinances covering the same matters

embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS _____ DAY OF JULY, 2020.

ATTEST: CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

BY: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS ____ DAY OF JULY, 2020.

ATTEST: CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

BY: _____
Brian Rudy, Mayor

EXHIBIT A: LEGAL DESCRIPTION

- (1) PT Lot 1 NW4NW4 ARB NICON
- (2) PT Lot 1 EXC NW4NW4 ARB NICON

Full Parcel Description(s):

- (1) Lot 1, ARB Nicon Subdivision, County of Weld, State of Colorado.
- (2) A perpetual, exclusive easement and right of way for access, on the Easement Parcel and the location, construction, reconstruction, maintenance, operation and repair of a railroad spur and related switches as more particularly set forth in Amended and Restated Perpetual Exclusive Easement Agreement recorded February 2, 2015 at Reception No. 4080154.

Detailed Parcel Description(s):

Provided by Fidelity National Title Insurance Company, File No. 100-N0025592-030-TH, Amendment No. 11:

Parcel One:

Lot 1, ARB Nicon Subdivision, County of Weld, State of Colorado.

Parcel Two:

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;

Thence South 30°44'21" East, 25.59 feet;

Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning. County of Weld, State of Colorado.

The above fee parcels also described as follows: (surveyed parcel description)

Note:

- 1. The Basis of Bearings is the east line of the northeast quarter of the northwest quarter of Section 11, T4N, R66W 6th P.M., as monumented with an aluminum cap PLS 38307 at the north end and an aluminum cap PLS 7242 at the south end with a grid bearing of S 00°37'48" E.*
- 2. All directions, distances and dimensions are based on coordinates from the Colorado coordinate system of 1983 north zone (C.R.S. 38-52-102).*

Lot 1, ARB Nikon Subdivision filed February 8, 2017 at Reception Number 4276822, in the southwest quarter of Section 2 and the north half of the northwest quarter and the southeast quarter of the northwest quarter of Section 11, all in Township 4 North, Range 66 West of the Sixth Principal Meridian, City of Evans, Weld County, Colorado:

Together with:

Parcel A as conveyed by Warranty Deed filed June 10, 2015 at Reception Number 4114771 in the southwest quarter of the northwest quarter of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, Weld County, Colorado.

Said Lot 1 and Parcel A described as follows:

Beginning at the north quarter corner of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, an aluminum cap PLS 38307;

Thence S 00°37'48" E, along the east line of the northeast quarter of the northwest quarter of said Section 11, a distance of 1322.24 feet, more or less, to an aluminum cap PLS 7242 at the northeast corner of the southeast quarter of the northwest quarter of said Section 11;

Thence S 00°38'20" E, along the east line of said southeast quarter of the northwest quarter, a distance of 1322.19 feet, more or less, to an aluminum cap PLS 7242 at the southeast corner of said southeast quarter of the northwest quarter;

Thence S 89°18'51" W, along the south line of said southeast quarter of the northwest quarter, a distance of 1328.01 feet, more or less, to an aluminum cap PLS 38058 at the southwest corner of said southeast quarter of the northwest quarter;
Thence N 00°38'53" W, along the west line of said southeast quarter of the northwest quarter, a distance of 966.01 feet, more or less, to a number 5 rebar;

Thence S 89°24'02" W, departing said west line, a distance of 334.94 feet, more or less, to a number 4 rebar;

Thence N 31°17'29" W a distance of 416.41 feet, more or less, to a pin and yellow plastic cap PLS 7242 on south line of the north half of the northwest quarter of said Section 11;

Thence S 89°24'14" W, along said south line, a distance of 741.13 feet, more or less, to a number 5 rebar, said point being 40 feet easterly of the west line of said north half of the northwest quarter;

Thence N 00°41'31" W, parallel with and 40 feet distant from said west line, a distance of 1326.37 feet, more or less, to a pin and orange plastic cap PLS 38058 on the south line of the southwest quarter of Section 2, Township 4 North, Range 66 West of the Sixth Principal Meridian;

Thence N 00°31'18" W, parallel with and 40 feet distant from the west line of said southwest quarter, a distance of 1615.93 feet, more or less, to a pin and orange plastic cap PLS 38058 on the southerly right of way line of the Union Pacific Railroad;

Thence N 86°16'18" E, along said southerly right of way line, a distance of 2652.70 feet, more or less, to a point on the east line of the southwest quarter of said Section 2;

Thence S 00°28'16" W, along said east line, a distance of 1765.11 feet to the POINT OF BEGINNING.

Containing 225.699 acres more or less.

CITY OF EVANS, COLORADO

RESOLUTION NO. 17-2020

**A RESOLUTION APPROVING A ZONING AMENDMENT WITH CONDITIONS
FOR PROPERTY REFERRED TO GENERALLY AS
MOUNTAIN TRAX INDUSTRIAL PARK, 7300 47th AVENUE**

WHEREAS, the City Council of the City of Evans, Colorado, (the “City Council”) pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado (the “City”); and

WHEREAS, MountainTRAX, LLC (“the Owner”) is the owner of certain property described on the attached Exhibit A (“the Property”) located in the City; and

WHEREAS, the Property is currently zoned Industrial (I-2); and

WHEREAS, the Applicant has submitted an application to the City seeking approval of a Zoning Amendment for the entire Property to rezone from Industrial (I-2) to Industrial (I-3); and

WHEREAS, City of Evans staff has reviewed the application and deemed it to be complete; and

WHEREAS, staff has reviewed the Application and deemed it to satisfy all requirements for a Change of Zone under the Evans City Code, including but not limited to Title 18.06.040.B, and 18.06.040.C; and

WHEREAS, the matter has been submitted to the required referral agencies for comment and staff has determined that the Applicant has adequately addressed all concerns raised by the referral agencies; and

WHEREAS, the Applicant has notified adjacent landowners and homeowners associations concerning the Application; and

WHEREAS, the criteria considered by the Planning Commission and the City Council in determining whether to approve an application to rezone a parcel of land to PUD are set forth in Title 18.06.030.D of the Evans City Code. Those criteria include:

1. A need exists for the proposal;
2. The particular parcel of ground is indeed the correct site for the proposed development;
3. There has been an error in the original zoning; or
4. There have been significant changes in the area to warrant a zone change;

5. Adequate circulation exists, and traffic movement would not be impeded by development;
6. Additional municipal service costs will not be incurred which the City is not prepared to meet;
7. There are minimal environmental impacts or impacts can be mitigated;
8. The proposal is consistent with the Evans Comprehensive Plan maps, goals and policies; and
9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses; and

WHEREAS, the criteria considered by the Planning Commission and the City Council in determining whether to approve an application to rezone a parcel of land to PUD are set forth in Title 18.06.030.D of the Evans City Code. Those criteria include:

1. A need exists for the proposal;
2. The particular parcel of ground is indeed the correct site for the proposed development;
3. There has been an error in the original zoning; or
4. There have been significant changes in the area to warrant a zone change;
5. Adequate circulation exists, and traffic movement would not be impeded by development;
6. Additional municipal service costs will not be incurred which the City is not prepared to meet;
7. There are minimal environmental impacts or impacts can be mitigated;
8. The proposal is consistent with the Evans Comprehensive Plan maps, goals and policies; and
9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses; and

WHEREAS, based on the Application, referral comments, staff report, representations by the Applicant, public comment, and the recommendation of the Planning Commission, the City Council has considered the criteria set forth above and concludes that the criteria have been satisfied, as indicated, provided that the conditions set forth below are satisfied, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO, AS FOLLOWS:

1. The Zoning Amendment is hereby approved subject to the conditions set forth below.
 - A. The Applicant shall provide all responses to the Conditions of Approval and the Change of Zone maps to the City for recording with the Weld County Clerk and Recorder within 30 days following the final City Council Change of Zone hearing.
 - B. A Master Development Plan inclusive of a Subdivision Plan shall be submitted within 45 days from July 21, 2020. The applicant may propose a combined Preliminary Plan and Final Plat.
 - C. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.
 1. The storage of the port-a-lets is not an approved use and these need to be removed.
 2. A Site Plan for the existing office located at 22744 shall be submitted with the Master Development Plan within 45 days after the final Change of Zone hearing.
 - D. A Development Agreement is required for any on-site or off-site improvements, both public and private. Until the Development Agreement is effective, the Second Amendment to the Annexation Agreement approved through Ordinance 625-15 remains in full effect however, Section 10 of the Second Amendment of the Annexation Agreement shall be extended for 180 days from July 21, 2020. The Development Agreement required by this Paragraph D must be presented to City Council for consideration at a Public Hearing to occur within 180 days from July 21, 2020. The Development Agreement required by this Paragraph D will address at minimum the following subjects: 1) Petitioner's obligation to pave Weld County Road 33; 2) Petitioner's obligation to connect to a potable water supply; 3) Site access; 4) Intended traffic haul route; and 5) Landscaping.
 - E. Architectural, Landscaping and Site Design Standards for Industrial development found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed with all future and existing development on site. Architectural review shall occur at the time that an application for a building permit is filed.
 - F. The following Development Standards shall be placed as notes on the Change of Zone plat map.
 1. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
 2. The property is Zoned Industrial, I-3 with exceptions. The use of the property for a Junkyard or a Livestock Trailer Washout are prohibited.
 3. Any land use changes not specifically addressed by this Ordinance may necessitate an amendment to the land use permit subject to approval by the City.
 4. Access to the property located at 22744 Weld County Road 33 shall be through the property located at 7300 47th Avenue. The existing Access Easement recorded at Reception 4129886 will either be abandoned for use by the property at 22744 Weld County Road 33 or restricted to emergency access only. This shall be finalized through the Development Agreement.
 5. All land use activities occurring on the property are required to have a site-specific development plan such as a Site Plan or a Special Use Permit. Any uses outside of an approved Site Plans or Special Use Permits are not allowed.
 - i. The Amended Smart Chem Site Plan was approved by the City of Evans on October 12, 2018 through File #17-SP-07.

- ii. The Variance to allow crude oil storage tanks at a height not to exceed 83', a Vapor Combustion Unit tower to not exceed 50' in height, and the height of Frac Sand Storage Silos to not reach more than 179' in height, was approved by the Board of Zoning Appeals through File #15-VAR-01 on April 8, 2015 and by City Council on April 15, 2015 by Resolution 12-2015.
 - iii. The ARB Nicon Subdivision recorded at Reception 4276822 on February 8, 2017 with the Weld County Clerk and Recorder.
 - iv. The Second Amendment to the Annexation Agreement dated June 26, 2020 is still in full effect, including adherence to the Master Site Development Plan and the Landscaping Plan.
6. The property owner shall connect to the City's water, non-potable water and sanitary sewer systems once City facilities become available to serve the property. At the time of connection, the applicant shall abandon any private well and/or septic system and provide evidence to the City each have been abandoned in accordance with the appropriate jurisdiction's guidelines.
 7. Building Permits may be required for structures and buildings to bring them into compliance with a commercial structure. Coordination with the City of Evans' Building Department is required.
 - i. The Evans Fire Protection District review and approval is required. The applicant shall coordinate all inspections through the Fire Protection District. Petitioner shall adhere to the International Fire Code as adopted in the Evans Municipal Code.
 8. All signs require permits. Coordination with the City of Evans Building Department is required.
 9. All property owners and tenants of the property shall use quiet back-up alarms on site and in the public right-of-way.
 10. Property owners and tenants of the property are prohibited from using Jake Breaks in the public rights-of-way.
 11. A Grading Permit issued by the City of Evans is required prior to construction.
 12. On-site lighting shall be shielded to not shine onto adjacent properties.
- G. Prior to construction:
- a. Petitioner shall obtain applicable land use permits.
 - b. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
 - c. Grading Permit(s) and Access Permit(s) are required.

2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Resolution is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Resolution. The City Council hereby declares that it would have passed this resolution and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS ____TH DAY OF JULY, 2020.

ATTEST:

CITY OF EVANS, COLORADO

BY: _____ BY: _____

Karen Frawley, City Clerk

Brian Rudy, Mayor

EXHIBIT A: LEGAL DESCRIPTION

- (1) PT Lot 1 NW4NW4 ARB NICON
- (2) PT Lot 1 EXC NW4NW4 ARB NICON

Full Parcel Description(s):

- (1) Lot 1, ARB Nicon Subdivision, County of Weld, State of Colorado.
- (2) A perpetual, exclusive easement and right of way for access, on the Easement Parcel and the location, construction, reconstruction, maintenance, operation and repair of a railroad spur and related switches as more particularly set forth in Amended and Restated Perpetual Exclusive Easement Agreement recorded February 2, 2015 at Reception No. 4080154.

Detailed Parcel Description(s):

Provided by Fidelity National Title Insurance Company, File No. 100-N0025592-030-TH, Amendment No. 11:

Parcel One:

Lot 1, ARB Nicon Subdivision, County of Weld, State of Colorado.

Parcel Two:

(A) A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:

Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;

Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;

Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;

Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;

Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

(B) An easement for ingress and egress on the following described property:

That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:

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Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;

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The above fee parcels also described as follows: (surveyed parcel description)

Note:

1. The Basis of Bearings is the east line of the northeast quarter of the northwest quarter of Section 11, T4N, R66W 6th P.M., as monumented with an aluminum cap PLS 38307 at the north end and an aluminum cap PLS 7242 at the south end with a grid bearing of S 00°37'48" E.

2. All directions, distances and dimensions are based on coordinates from the Colorado coordinate system of 1983 north zone (C.R.S. 38-52-102).

Lot 1, ARB Nicon Subdivision filed February 8, 2017 at Reception Number 4276822, in the southwest quarter of Section 2 and the north half of the northwest quarter and the southeast quarter of the northwest quarter of Section 11, all in Township 4 North, Range 66 West of the Sixth Principal Meridian, City of Evans, Weld County, Colorado:

Together with:

Parcel A as conveyed by Warranty Deed filed June 10, 2015 at Reception Number 4114771 in the southwest quarter of the northwest quarter of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, Weld County, Colorado.

Said Lot 1 and Parcel A described as follows:

Beginning at the north quarter corner of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, an aluminum cap PLS 38307;

Thence S 00°37'48" E, along the east line of the northeast quarter of the northwest quarter of said Section 11, a distance of 1322.24 feet, more or less, to an aluminum cap PLS 7242 at the northeast corner of the southeast quarter of the northwest quarter of said Section 11;

Thence S 00°38'20" E, along the east line of said southeast quarter of the northwest quarter, a distance of 1322.19 feet, more or less, to an aluminum cap PLS 7242 at the southeast corner of said southeast quarter of the northwest quarter;

Thence S 89°18'51" W, along the south line of said southeast quarter of the northwest quarter, a distance of 1328.01 feet, more or less, to an aluminum cap PLS 38058 at the southwest corner of said southeast quarter of the northwest quarter;

Thence N 00°38'53" W, along the west line of said southeast quarter of the northwest quarter, a distance of 966.01 feet, more or less, to a number 5 rebar;

Thence S 89°24'02" W, departing said west line, a distance of 334.94 feet, more or less, to a number 4 rebar;

Thence N 31°17'29" W a distance of 416.41 feet, more or less, to a pin and yellow plastic cap PLS 7242 on south line of the north half of the northwest quarter of said Section 11;

Thence S 89°24'14" W, along said south line, a distance of 741.13 feet, more or less, to a number 5 rebar, said point being 40 feet easterly of the west line of said north half of the northwest quarter;

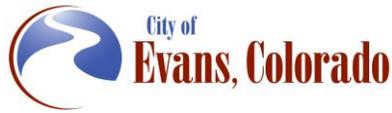
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Thence N 00°31'18" W, parallel with and 40 feet distant from the west line of said southwest quarter, a distance of 1615.93 feet, more or less, to a pin and orange plastic cap PLS 38058 on the southerly right of way line of the Union Pacific Railroad;

Thence N 86°16'18" E, along said southerly right of way line, a distance of 2652.70 feet, more or less, to a point on the east line of the southwest quarter of said Section 2;

Thence S 00°28'16" W, along said east line, a distance of 1765.11 feet to the POINT OF BEGINNING.

Containing 225.699 acres more or less.



AGENDA

Planning Commission Regular Meeting

Tuesday, June 23, 2020, 6:00 pm

Evans Community Complex, City Council Chambers, 1100 37th Street

REGULAR MEETING

1. **CALL TO ORDER: 06:02 pm**

2. **ROLL CALL: 06:02 pm**

Chairman: Billy Castillo
Vice-Chairman:
Commissioners: Lyle Achziger
Dan Usery

3. **APPROVAL OF THE AGENDA: 06:03 pm**

****Motion/Vote: Motion to approve/Second. Passes unanimously.**

4. **APPROVAL OF THE MINUTES: 06:03 pm**

06/04/2020 ****Motion to approve/Vote: Motion/Second. Passes unanimously**

5. **PUBLIC HEARING: 06:03 pm**

5.A MountainTRAX Change of Zone

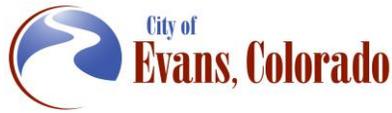
Tamara Such, Hunter Hoshiko, and Trevin Hogg for Applicant
Anne Best Johnson for City of Evans

06:03 pm: Staff Planner Anne Best Johnson goes over City .pptx presentation. Surrounding property and annexation status, procedure for annexation and change of zone. Acceptable to process an incoming parcel's zoning and a current parcel rezone simultaneously. Both processes are happening here as both types of parcels are part of this application.

Reviews procedure for annexation zoning and change of zone and identifies how these parcels were processed correctly: application, publishing, posting, mailings. City Council meetings that will follow this one are July 7 and 21.

7300 47th Avenue is already annexed and zoned I-2. COZ is a request to change to I-3. Parcel was annexed in with 2004 GWE annexation. 22477 WCR 33 is the parcel that is being annexed in and petitioned to be zoned I-3. Identifies the different uses possible between I-2 and I-3.

Reviews access points to the properties. Anticipated traffic was set forth in traffic impact study. Market has changed since original zoning, therefore new property owner has applied for expanded zoning appropriately. Traffic impact is appropriate. There is a Central Weld waterline in WCR 33, and there is a well and septic system on the property. If the City ever extends sewer lines and those lines are within 400 feet of property when applicant's septic fails, applicant will be required to hook into City services. Application is consistent with City's Comprehensive Plan, which indicates that this area is designated for industrial use.



Adequate City resources are available to the property; this will cause no undue strain on City resources.

Question: What is the definition of natural resource extraction?

Answer: Reads definition from Municipal Code.

Question: How big are these parcels?

Answer: Large parcel is 224 acres. Smaller one is just under 4 acres.

Question: Do the restrictions we impose in this property go with the property if it is sold?

Answer: Yes, land use approvals stay with the property.

Question: Have any objections to this application been filed?

Answer: No objections were filed on paper but staff have had conversations with several surrounding properties. Previous owner was required to pave WCR 33. That obligation stayed with this property when it was purchased. The road will have to be paved per that agreement unless applicant works out a different agreement with the City. Rather than amend the annexation agreement later, we are going to do a Development Agreement.

Question: How much land does Evans have on the south side of the river?

Answer: A lot. Most of it is zoned PUD with industrial uses within them. Water, oil and gas, gravel, etc.

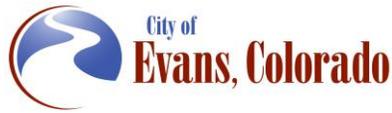
06:31 pm: Hunter Hoshiko for Applicant. MountainTRAX. Purchased ARB Midstream at the end of March. We are a locally owned company, we are not from Denver or from out of State. We want to seek this zoning change in order to diversify. Our predecessor failed to diversify; crude by rail was their operation and it failed. There's quite a history with this property that came with a lot of promises.

Shows MountainTRAX in relation to the City—quite a way south. GWE came into the City in 2004, never came to fruition. In 2014, ARB came along and tried crude by rail. Never came to fruition. Now here we are, saying the same thing. We intend to open up a multi-commodity industrial park. Rail is available, and so is industrial land. We want the I-3 classification just for those couple extra industrial uses that might make our facility interesting to customers.

Shows intended ARB buildout. Shows current state of land. MountainTRAX has been discussing 6-acre lots – shows preliminary concept. Reviews comparative traffic analysis. Actual truck counts in 2020 has been 5-8 trucks per day. Neighbors have expressed concern about speed enforcement. The terminal tries to do everything in our power to ensure our drivers are driving the speed limit and not using jake brakes. Without tracking each truck vs. surrounding business traffic, it's hard to tell who is offending. City police are not staffed to monitor that road. A couple of incidents have caused issues with neighbors. We are learning as we go what is allowed.

Question: What information have you gotten when you asked about storage of different things on lots?

Answer: The answer we got was because we haven't had a site plan review yet.



Staff Answer: In industrial uses, you either have to have a site plan or a use by special review. Storage, for example, would require a site plan and we would have to look at screening and design standards.

Applicant question: As a business owner, what triggers that?

Answer: A lot of it is magnitude. We can talk about it before we go to City Council.

Applicant Clarification: The porta-potties, incidentally, were stored on property that is now in Weld County.

Question: Is it 20% storage that's allowed in industrial?

Answer: Yes, for outside storage. But we have to have screening.

Question: When was the ordinance enacted?

Answer: Do not know when the current site plan code was codified.

Discussion of criteria of site plan. Storage percentages vs. what can be stored.

Public Hearing:

Dean Ackerman, 22935 CR 33, LaSalle.

Been there almost 25 years. This is the third time we've come in here on this property for zoning. Each previous applicant has promised a lot. I feel sorry for Hunter if they inherited a problem. There are quite a few issues. I didn't call about the porta-potties. 8-inch line in the road fed with a 3-inch line will be a problem. They want this to be a 220-acre industrial park, but no one is addressing water infrastructure coming to the property. ARB wined and dined the neighbors and had meetings, then High Crush took over and said how many trucks they would be sending through.

If neighbors complain about the road, we get told to call ARB, they are supposed to do maintenance. More than 24 trucks a day are digging that hole, guaranteed. I feel sorry for these applicants. This is a good idea, but the property hasn't been managed well, and I'm not happy with ARB at all. I still wonder if ARB is involved in this. High Crush isn't there, but they paid for the tracks and the scale—that was theirs. We need an industrial park, we really do. But someone better start addressing the infrastructure. Neighbors were told crude oil, then frac sand, now there's combustible gas parked next to my house with no fire hydrant.

Evans annexes all this property, but there's no way to get down there; you can't get across the river. And you're not taking care of your own traffic flow with a restricted bridge like you have it. All the traffic gets shoved south and I'm pretty upset about that. We were sold a bill of goods before. We don't want that again. EnviroTech showed up with no warning and they're the culprits on the road who have ruined it. Tonight, as I was driving in, EnviroTech was emptying a truck right out onto the road.

We need maintenance on the road. GWE was supposed to do the road, ARB was supposed to do the road, now these guys are supposed to do the road. GWE was going to build a firehouse there because they were dealing with ethanol. We called about ARB and were told there were chemicals there. If you're going to put compressed gas on property, put it on the back of the

property. Why put it next to the road? Next to the houses? There are lots of issues here. I feel sorry for applicants. What are you going to do about the bridge? What are you doing to do to get across the river? What are you doing to do about water? This has been hanging out there undone since 2004 and the City of Evans has done no planning. They want to divide into 6-acre tracts. You don't have the water for that. A little gravel on the road would go a long way. A little maintenance would go a long way.

Pat Osieski, 23151 WCR 33, LaSalle: Don't have a problem with what MountainTRAX wants to do, it's just the bill of goods that we've been sold. I moved here just after ARB was approved so we got the wool pulled over our eyes. Found out later what had happened. The promises that were made at the time need to be enforced. They bought the property with the restriction on it to pave the road. Especially with 6-acre lots, a 3-inch water line won't give anybody enough water. We don't get sewer from the City, we get water from the water district, and we're all on septic. I live just out of the City, you own the road right out of my house. If I call in about the road, Scott would have someone come out and grade it. ARB isn't the big problem there, it's EnviroTech. If we call the Evans police, the police won't do anything. They say, *I'm not wasting my time sending officers out there.*

They promised us the road being paved. With all the traffic running up and down there at 50 mph, it should be paved. The chemical companies moving in was bad. I called the City Planner who told me there weren't any hazardous chemicals. I had to have the fire dept come out and look at it. The fire department had them build a building for containment.

This is just a new issue with a property across the street. I can't even see any of this from my house.

Public Hearing closed: **07:12 pm**

07: 12 pm: Trevin Hogg for Applicant. I am the ARB employee that came over with this new group. We have 60,000 gallons of protection water on site, which was approved by the fire chief. We paid for a 4-inch water line and worked with fire marshal. The primary fire district is LaSalle, Evans is secondary. When SmartChem built the warehouse, the fire marshal came out and inspected everything they built and the even the trucks in the middle of the field about every other week for safety and containment.

I've spoken to all the neighbors. The road has been bad in the past, but working with Scott at the City, we were able to change grading companies. The new grading company is coming out and repairing the damage done by the old one incrementally. We're working to get the road better and maintained. Thank goodness for Scott being willing to consider a new company.

Question: The State mandates that we have to fix the road? Answer: Yes. City contracts the grading company and we reimburse the City via an escrow account. By the end of 2019, I was mostly working with Scott. The road is improved now, minus EnviroTech washing their trucks out and going 90 to nothing on that road.

Anytime Mark called me about speeding, I would speak to High Crush. There was some damage to Mark's property and the owner came down from North Dakota and got it fixed.

That will continue – if I can fix something I will. I can't fix Envirotech, obviously, but any driver who comes into my facility will be strictly maintained.

Question: What is EnvironTech pumping out onto the road/

Answer: diluted mag/chloride. It makes a muddy paste on the road. They say, *Oh the neighbors will be so grateful*, but it made a mud hole in front of his place instead.

Question: So you work for MountainTRAX now?

Answer: Yes.

Question: So you're trying to solve these problems?

Answer: I've been trying to solve them for years, the road is the worst.

Question: So when we hear a person complain about a two foot hole in the road, what is that about?

Answer: Most of that was actually on our property. I just had a contractor out there to fix it.

Comment: Regarding the fire department – I agree that LaSalle will cover this area. We've looked at building a bridge across the river, but it would be tremendously expensive.

Response: Whenever I've talked to the police, it's always a manpower issue. *We only have four guys on shift, we can't send someone.* I just wanted them to drive the road once in a while during certain hours. UPS trucks will go 60 mph down that road. No signs for speed, for jake brakes. With no posted signs, it falls under "reasonable and prudent."

Question: Does the restricted bridge change your traffic?

Answer: No, all of our trucks always went to the south because that's where business is.

Tamara Such: We are not ARB. We do things above-board. We want to develop and improve the area. We intend to pave that road. Going forward we want to keep communication going. We appreciate all the comments and questions because we want to work with you. We are not our predecessors, and we are hoping people will give us a chance. I get why you're pissed off and it's really frustrating to hear that. We are going to fix this going forward.

Staff (ABJ): The purpose of the hearing tonight is not for a site-specific development plan. It is for the two motions that are in your packet: a change of zone from I2 to I3 for the parcel that is already in the City. And a change of zone on the incoming lot to I3. We appreciate surrounding property owners contacting staff. Review of the comments expressed by surrounding property owners will be made and follow up through MountainTRAX and staff will be completed.

A site plan requires notice to surrounding property owners. That process is a good opportunity to work out some of these details and how they are they going be resolved. Once MountainTRAX submits a master development plan we can talk about the road, triggering events for paving, screening, and other details.

Comment: This is my second of the three of the proposals for use of this property. Planning Commission appreciates the neighbor's comments. It's got to be frustrating for you. As far as planning, planning is exactly what we do. When we hear an applicant come in and talk about

what they want to do with their property, that's what we expect to happen. GWE – we went with it. All these promises are made, but it's a *plan*, it's not a *guarantee*. It's not a magic wand. A plan still requires follow through. Especially in a case of a company that goes bankrupt, they don't have the means to follow through on their promises. There's a not a whole lot the City can do in a situation like that. Somebody else comes along and buys the property and says, *This is what we're going to do*. The City says, *That sounds good*, and approves their plan. Or we can let the land sit empty and undeveloped. Again, these are promises. It's a plan, not a guarantee.

Now here's MountainTRAX with their own plan. I can't see how it helps at all to try to make them abide by the previous guys' plans. The City has a real interest in looking at this plan and if it has a chance of being successful, the City will want to go with it. .

It's easy to say the City should get out there and pave the road, but it's the developer who has supposed to pave the road. The developers build those roads, and then the city maintains them. That can get expensive and the City is struggling with the economy how it is to do that maintenance.

Staff Comment: Once we see the applicant's master concept plan, we can decide what will be the triggering points to fix the road, to bring in water. That type of thing.

Hopefully you gentlemen will take your concerns to the City and push them and get them addressed. I'd like to see this property do well. I'd like to see this plan succeed. I hope the third time is a charm. That's the only way everyone will be happy.

****Motion: I move to forward a recommendation of approval of the Rezoning request of 22744 WCR 33 as proposed with Conditions of Approval and Development Standards to City Council. Second. Passes unanimously.**

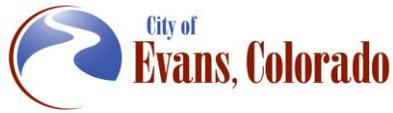
****Motion: I move to forward a recommendation of approval of the Rezoning request of the entire NiCon Terminal located at 7300 47th Avenue as proposed with Conditions of Approval and Development Standards to City Council. Second. Passes unanimously.**

6. OTHER ITEMS:

6.A Staff Report: 07:37 pm

07.28.2020 Agenda:

1. Planning Commission Appointment Process
2. 5-7 pm: Work Session – Planning Commission/Master Plan Steering Committee
Looking at historic land use patterns. PC can come back in August from 5-7 for part two of that discussion.
3. 7 pm: Regular Meeting -- ****Note: Different Time**
 - a. Arrowhead Change of Zone and Special Use Permit
to Outdoor Recreation Use Extensive
 - b. Minor Replat Code: In the fall of 2019, Staff showed Planning
Commission a spreadsheet of current land use code and pointed out
processes that need to be cleaned up. The first code to be amended is
Minor Replat. We will present that.



General update on Transportation master Plan. Ready to hire a consultant as soon as CDOT agreement is approved.

Received \$80k from DOLA to update Master/Comprehensive plan.

Have received five (5) applications for the open Planning Commission positions. One (1) alternate and two (2) Planning Commissioners will be appointed on July 7. July 28th will be their first hearing. They will have had an orientation with Staff before that.

DOLA may come back in August or September to do refresher.

Question: Regarding Arrowhead, do we have use of the lake?

Answer: No. We'll be building a split rail fence that will be marked with no trespassing.

Question: What happens to the park impact fees?

Answer: They go into buying and maintaining parks.

7. **ADJOURNMENT: 07:46 pm**
****Motion/Vote: Motion to adjourn/Second. Passes unanimously.**

DRAFT



Northern Colorado Transportation Logistics LLC
d/b/a MountainTRAX
Mailing Address: P.O. Box 2067, Fort Collins, CO 80522
Physical address: 22744 CR 33, La Salle, CO 80645

May 4, 2020

Ms. Anne Best Johnson
Community Development Director

Ms. Lauren Richardson
City Planner

City of Evans
Planning and Community Development
1100 37th Street
Evans, CO 80620-2036

Dear Ms. Johnson & Ms. Richardson:

This application for annexation and concurrent zoning is in reference to a parcel of land located at 22744 CR 33, La Salle, CO 80645 that sits adjacent to, and serves as a component of, a larger industrial rail park previously incorporated into the City of Evans.

On February 29, 2020, Northern Colorado Transportation Logistics LLC d/b/a MountainTRAX acquired the industrial rail park, formerly known as ARB Niobrara Connection, LLC ("NiCon"). The purchase included the adjoining residential lot that is being utilized as office space by the operators of the main terminal facility.

Per the Amended Annexation Agreement with the City of Evans, Ordinance No. 625, effective June 26, 2015, the NiCon terminal was originally being developed as a crude oil transloading terminal to serve producers and market participants in the greater DJ Basin-Niobrara shale play located in northeastern Colorado and southeastern Wyoming. Subsequent to that agreement, the 3.8409-acre adjacent residential lot (105711000067) and affixed 2,616 square-foot building was purchased and assembled together with the larger industrial park. To date, the lot was neither rezoned according to its commercial use nor annexed into the City of Evans, despite it functioning as an integral part of the main terminal. Now under new ownership, we are requesting to have this adjacent lot incorporated into the City of Evans, consistent with the rest of the terminal, and concurrently rezoned as commercial.

Further, while the facility will continue to operate an industrial rail park in the City of Evans, the new ownership is underway in plans to diversify the crude-by-rail terminal into new multi-commodity markets, such as agriculture, aggregates, manufactured goods, etc. We are actively recruiting businesses from different industries and market sectors who are attracted by the opportunity of establishing a regional hub in a strategic location that is zoned industrial and offers direct rail access and storage as needed. As a result of these efforts, the City of Evans will realize near and long-term economic growth across the commercial and industrial sectors, translating into an increase in local jobs in different vocations as well as a steady stream of differentiated revenues coming into the City. With the help of the Economic Development Corporation, it is our goal to make Evans home to one of the region's premier industrial parks.

Likewise, expanding into a multi-commodity industrial rail park will necessitate an amendment to the former development and site plans as well as a rezoning of the premise in its entirety (inclusive of this newly proposed annexed parcel), from an Industrial Zone-2, to an Industrial Zone-3.





Proposed uses of land prompting this concurrent rezoning are listed as follows:

- Natural resource extraction and treatment (I-3) (P)
- Rail car/tanker washout facilities (I-3) (S)
- Flammable liquids storage (I-2; I-3) (P)
- Industrial uses facility (I-2; I-3) (P)
- Manufacturing/assembly plant (I-2; I-3) (P)
- Mini-storage units (I-2; I-3) (P)
- Office and financial uses (I-2; I-3) (P)
- Recycling center (I-3) (S)
- Warehouse (I-2; I-3) (P)

(I-2) = industrial zone 3 (I-3) = industrial zone 3
(P) = permit/site plan (S) = special use permit

While the abovementioned list is not exhaustive, we would like to explicitly acknowledge that no portion of this property shall be used as a junkyard or livestock washout area.

As a separate matter, it is also our intention as the new owners to resolve any outstanding matters with the City that may have been assumed pursuant to the acquisition of the NiCon terminal. First and foremost, there is the matter of the WCR 33 road improvements plan laid out under the former development plans that never came into fruition. This issue initially came to our attention in the course of our due diligence, at which time, we approached the City of Evans directly in order to remain transparent and better our understanding of the outstanding obligations.

Since taking ownership of the property, we would like to ask the City for an extension on these previously prescribed road improvements until Spring 2021 (when conditions are more suitable) in order to allow us the appropriate amount of time to amend our development and site plans as well as conduct a thorough third-party traffic study. This additional time allowance will enable us to prepare an accurate forecast for future road use/access that are consistent with our newly amended development and site plans. In the meantime, we will be furnishing a present-day traffic count to demonstrate that actual volumes fall well below any thresholds that would otherwise trigger a need for road improvements. Further exacerbating these depressed levels is the slowdown in the oil and gas industry, which has resulted, for one, in the indefinite ceasing of operations of one of our main tenants and a primary user of the surrounding county roads.

In close, we would like to thank you in advance for your time and consideration of this broader request. MountainTRAX is proud to call Evans home to its multiuse industrial rail park, and we look forward to the opportunities and growth that lie ahead with the support and collaboration of the City.

Sincerely yours,

Mr. Trevin Hogg
General Manager
NCTL/MountainTRAX

Mr. Hunter Hoshiko
Business Development Manager
NCTL/MountainTRAX





Northern Colorado Transportation Logistics LLC
d/b/a MountainTRAX
Mailing Address: P.O. Box 2067, Fort Collins, CO 80522
Physical address: 22744 CR 33, La Salle, CO 80645

Project Narrative:

On February 29, 2020, Northern Colorado Transportation Logistics LLC d/b/a MountainTRAX acquired the industrial rail park, formerly known as ARB Niobrara Connection, LLC (“NiCon”). The purchase included an adjoining residential lot, located at 22744 CR 33, La Salle, CO 80645, being utilized as office space in operating the adjacent industrial rail park, incorporated in the City of Evans.

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- Warehouse (I-2; I-3) (P)

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Account No(s):

(1) R8948397

Parcel No(s):

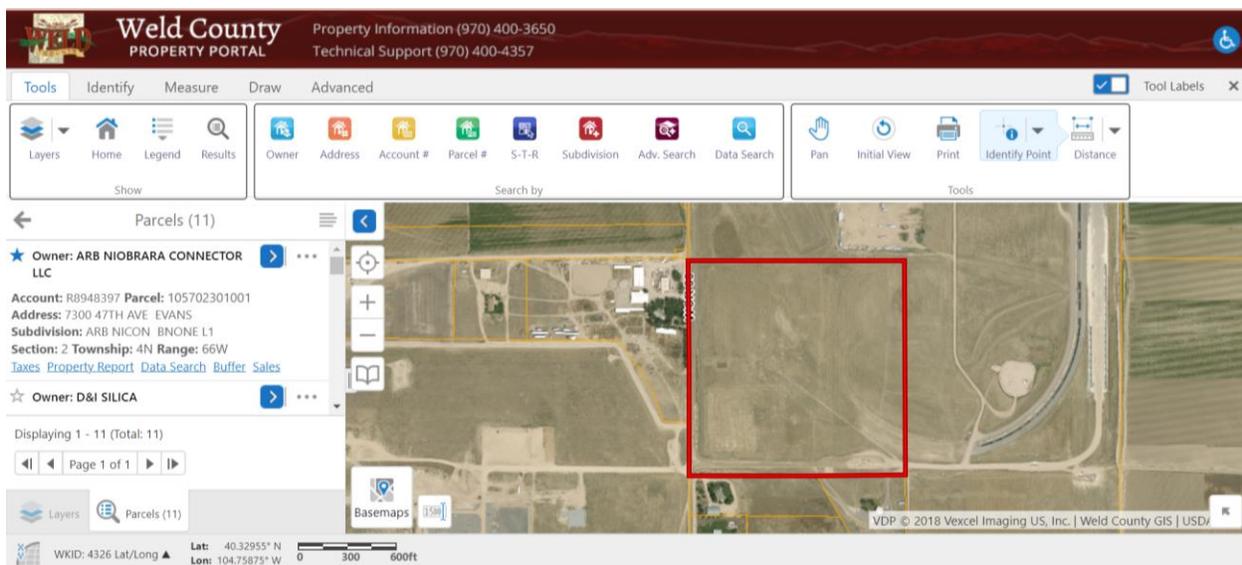
(1) 105702301001

Site Address(es):

(1) 7300 47th Ave, Evans

Section(s) / Township(s) / Range(s):

(1) S02 / T04N / R66W





Account	Parcel	Space	Account Type	Tax Year	Buildings	Actual Value	Assessed Value
R8948397	105702301001		Industrial	2020	1	146,842	42,590

Legal
PT Lot 1 NW4NW4 ARB NICON

Subdivision	Block	Lot	Land Economic Area
ARB NICON		1	GREELEY RURAL

Property Address	Property City	Zip	Section	Township	Range
7300 47TH AVE	EVANS		02	04	66

Account No(s):
(2) R8949236

Parcel No(s):
(2) 105702301002

Site Address(es):
(2) ---

Section(s) / Township(s) / Range(s):
(2) S11 / T04N / R66W

Weld County PROPERTY PORTAL
Property Information (970) 400-3650
Technical Support (970) 400-4357

Tools: Identify, Measure, Draw, Advanced

Search by: Owner, Address, Account #, Parcel #, S-T-R, Subdivision, Adv. Search, Data Search

Tools: Pan, Initial View, Print, Identify Point, Distance

Parcels (2)

★ Owner: ARB NIOBRARA CONNECTOR LLC
Account: R8949236 Parcel: 105702301002
Address:
Subdivision: ARB NICON BNONE L1
Section: 2 Township: 4N Range: 66W
[Taxes](#) [Property Report](#) [Data Search](#) [Buffer](#) [Sales](#)

☆ Owner: SMART CHEMICAL SERVICES

Displaying 1 - 2 (Total: 2)
Page 1 of 1

WKID: 4326 Lat/Long ▲ Lat: 40.32253° N Lon: 104.74913° W 0 0.2 0.4mi

VDP © 2018 Vexcel Imaging US, Inc. | Weld County GIS | USD





Account	Parcel	Space	Account Type	Tax Year	Buildings	Actual Value	Assessed Value
R8949236	105702301002		Industrial	2020	2	2,367,186	686,480

Legal
PT Lot 1 EXC NW4NW4 ARB NICON

Subdivision	Block	Lot	Land Economic Area
ARB NICON		1	GREELEY RURAL

Property Address	Property City	Zip	Section	Township	Range
			02	04	66

Account No(s):

(3) R4393986

Parcel No(s):

(3) 105711000067

Site Address(es):

(3) 22744 CR 33, Weld County

Section(s) / Township(s) / Range(s):

(3) S11 / T04N / R66W

The screenshot displays the Weld County Property Portal interface. At the top, it shows the 'Weld County PROPERTY PORTAL' logo and contact information: 'Property Information (970) 400-3650' and 'Technical Support (970) 400-4357'. Below the header is a navigation menu with 'Tools', 'Identify', 'Measure', 'Draw', and 'Advanced'. A toolbar contains various icons for 'Layers', 'Home', 'Legend', 'Results', 'Owner', 'Address', 'Account #', 'Parcel #', 'S-T-R', 'Subdivision', 'Adv. Search', 'Data Search', 'Pan', 'Initial View', 'Print', 'Identify Point', and 'Distance'. The main content area shows a search result for a parcel with the following details: 'Owner: ARB NIOBRARA CONNECTOR LLC', 'Account: R4393986 Parcel: 105711000067', 'Address: 22744 COUNTY ROAD 33 WELD', 'Subdivision: ARB NICON', and 'Section: 11 Township: 4N Range: 66W'. Below the details are links for 'Taxes', 'Property Report', 'Data Search', 'Buffer', and 'Sales'. The map shows an aerial view of the property with a red outline. The map includes a scale bar (0 to 200ft) and coordinates: 'WKID: 4326 Lat/Long', 'Lat: 40.33022° N', and 'Lon: 104.74705° W'. The footer of the map area reads 'VDP © 2018 Vexcel Imaging US, Inc. | Weld County GIS | Micro'.





Account	Parcel	Space	Account Type	Tax Year	Buildings	Actual Value	Assessed Value
R4393986	105711000067		Industrial	2020	2	345,843	100,290

Legal
17060-B PT SW4NW4 11 4 66 BEG N89D58'E 781.20' FROM NW COR SW4NW4 N89D58'E 547.03' TO NE COR SW4NW4 S0D05'E 358.05' S89D58'W 334.70' N30D44'W 416.45' TO BEG

Subdivision	Block	Lot	Land Economic Area
			GREELEY RURAL

Property Address	Property City	Zip	Section	Township	Range
22744 COUNTY ROAD 33	WELD		11	04	66

Project Description:

» Building(s) Use:

This property represents a 2,616 square-foot building which is used as an office space for generally two (2) onsite employees and/or contractors operating the MountainTRAX terminal. Employees currently use one office for data entry of terminal business. Building is located at 22744 CR 33, LaSalle, CO 80645.

Surface lot and square footage includes a 0.18-acre gravel parking lot, 0.24-acre landscaped area, 3.00-acre of natural grass, and a 600-ft detached garage. Garage is currently used to store tools and various terminal equipment; no vehicles are stored within this space. Additionally, there is a 18' x 31' x 10' Metal Carport with Side Walls on the west side of garage.

Current hours of operations are Monday thru Friday, from 8:00 a.m. Mountain Time to 5:00 p.m. Mountain Time. Third-party security personnel are hired to monitor the premises during non-operating hours.

» Public Works:

Vehicles on the premise include passenger cars and trucks making roughly eight (8) roundtrips on/offsite per day.

Traffic enters through the terminal gates on WCR 33 and travels down the main entrance road towards the parking lot that sits at the southside of the terminal entrance road and directly adjacent to the building office.

Terminal trucks travel in and around the industrial rail park throughout the day performing daily operations and returning to office to process paperwork.





All passenger vehicles enter the terminal from the north and south on WCR 33. Terminal operators generally travel to/from Greeley, Longmont and Windsor in the mornings and evenings, and vary their routes based on overall traffic, construction, etc., within the county.

The building is situated on a hill with surrounding stormwater ponds located throughout the terminal as part of MountainTRAX's government-approved stormwater plan.

» Environmental Health:

The site currently has potable water sourced by a state approved well (Permit #47606). This well is used for irrigation purposes only.

Building water is serviced thru Central Weld County Water District.

On-site gas line is serviced thru Atmos

On-site Electrical is serviced thru Excel Energy.

There is currently an approved commercial septic system built on site and permitted by the Weld County Environmental Health Department under SP-1100105.

» Building Department:

Account No(s):

(1) R8948397

Parcel No(s):

(1) 105702301001

Site Address(es):

(1) 7300 47th Ave, Evans

Section(s) / Township(s) / Range(s):

(1) S02 / T04N / R66W



Building 1

AccountNo	Building ID	Occupancy
R8948397	1	Outdoor Storage *Code

ID	Type	NBHD	Occupancy	% Complete	Bedrooms	Baths	Rooms
1	Commercial	6921	Outdoor Storage *Code	100		0	

ID	Exterior	Roof Cover	Interior	HVAC	Perimeter	Units	Unit Type	Make
1						0		

ID	Square Ft	Condo SF	Total Basement SF	Finished Basement SF	Garage SF	Carpport SF	Balcony SF	Porch SF
1	1	0	0	0	0	0	0	0

Built As Details for Building 1

ID	Built As	Square Ft	Year Built	Stories	Length	Width
1.00	Fenced Lot *Code	1	2015	1	0	0

Additional Details for Building 1

ID	Detail Type	Description	Units
1	Add On	Truck Scale 70 Tons	1
1	Add On	Wood Fence	1,500



Building 1 - Photo



Account No(s):

(2) R8949236

Parcel No(s):

(2) 105702301002

Site Address(es):

(2) ---

Section(s) / Township(s) / Range(s):

(2) S11 / T04N / R66W

Building 1

AccountNo	Building ID	Occupancy
R8949236	1	Outdoor Storage *Code

ID	Type	NBHD	Occupancy	% Complete	Bedrooms	Baths	Rooms
1	Commercial	6921	Outdoor Storage *Code	100		0	

ID	Exterior	Roof Cover	Interior	HVAC	Perimeter	Units	Unit Type	Make
1						0		

ID	Square Ft	Condo SF	Total Basement SF	Finished Basement SF	Garage SF	Carport SF	Balcony SF	Porch SF
1	1	0	0	0	0	0	0	0

Built As Details for Building 1

ID	Built As	Square Ft	Year Built	Stories	Length	Width
1.00	Fenced Lot *Code	1	2015	1	0	0

Additional Details for Building 1

ID	Detail Type	Description	Units
1	Add On	Railroad Spur 80#L.F.	16,330



Building 2

AccountNo	Building ID	Occupancy
R8949236	2	Warehouse

ID	Type	NBHD	Occupancy	% Complete	Bedrooms	Baths	Rooms
2	Commercial	6921	Warehouse	100		0	

ID	Exterior	Roof Cover	Interior	HVAC	Perimeter	Units	Unit Type	Make
2					540	0		

ID	Square Ft	Condo SF	Total Basement SF	Finished Basement SF	Garage SF	Carport SF	Balcony SF	Porch SF
2	15,200	0	0	0	0	0	0	0

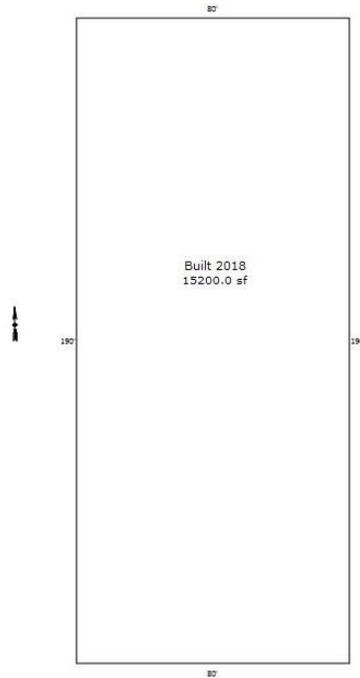
Built As Details for Building 2

ID	Built As	Square Ft	Year Built	Stories	Length	Width
2.00	Equipment Building-Commercial	15,200	2018	1	0	0

No Additional Details for Building 2



Building 1- Photo



Building 2 - Sketch



Building 2 - Photo

Account No(s):
(3) R4393986

Parcel No(s):
(3) 105711000067

Site Address(es):
(3) 22744 CR 33, Weld County



Section(s) / Township(s) / Range(s):

(3) S11 / T04N / R66W

Office Building
Building 1

AccountNo	Building ID	Occupancy
R4393986	1	Office Building

ID	Type	NBHD	Occupancy	% Complete	Bedrooms	Baths	Rooms
1	Commercial	6921	Office Building	100	4	3	0

ID	Exterior	Roof Cover	Interior	HVAC	Perimeter	Units	Unit Type	Make
1	Frame Hardboard		Drywall	Central Air to Air	256	0		

ID	Square Ft	Condo SF	Total Basement SF	Finished Basement SF	Garage SF	Carport SF	Balcony SF	Porch SF
1	1,716	0	900	900	600	0	436	256

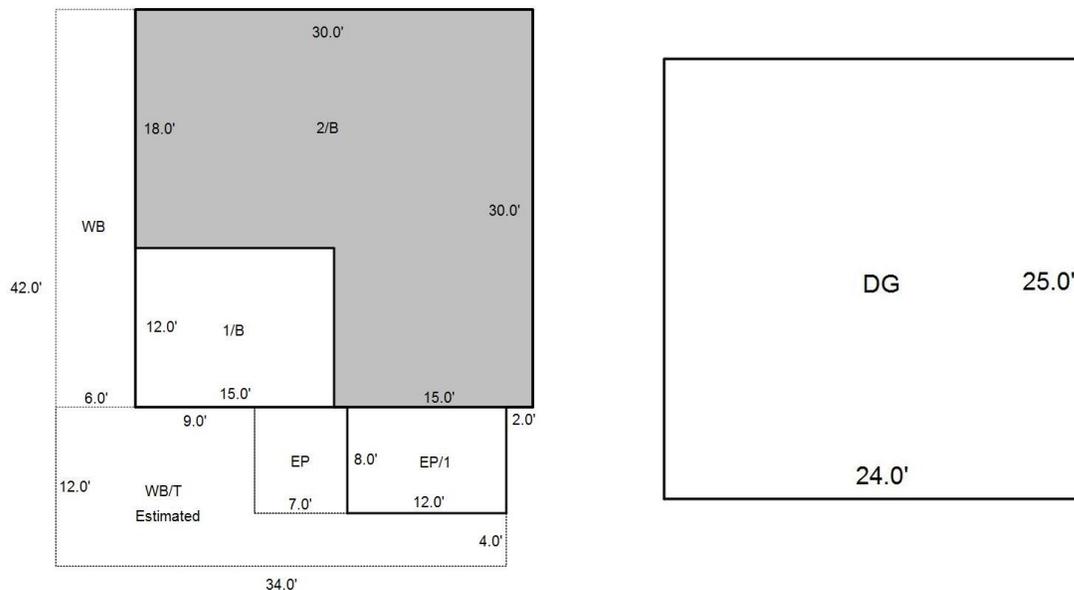


Built As Details for Building 1

ID	Built As	Square Ft	Year Built	Stories	Length	Width
1.00	2 Story	1,716	1971	2	0	0

Additional Details for Building 1

ID	Detail Type	Description	Units
1	Add On	Fireplace Wood	1
1	Appliance	Allowance	1
1	Balcony	Wood Wood Fin	436
1	Basement	Bsmnt Conc 8 ft	900
1	Basement	Finished	900
1	Basement	Walkout	1
1	Fixture	Allowance	1
1	Fixture	Bath 3	3
1	Fixture	Wet Bar	1
1	Garage	Detached	600
1	Porch	Encl Solid Wall	96
1	Porch	Encl Solid Wall	56
1	Porch	Open Slab	256



Building 1 - Sketch



Building 1 - Photo

Utility Storage
Building 2

AccountNo	Building ID	Occupancy
R4393986	2	Comm Shed - Utility

ID	Type	NBHD	Occupancy	% Complete	Bedrooms	Baths	Rooms
2	Commercial	6921	Comm Shed - Utility	100	0	0	0

ID	Exterior	Roof Cover	Interior	HVAC	Perimeter	Units	Unit Type	Make
2				None	0	0		

ID	Square Ft	Condo SF	Total Basement SF	Finished Basement SF	Garage SF	Carport SF	Balcony SF	Porch SF
2	420	0	0	0	0	0	0	0

Built As Details for Building 2

ID	Built As	Square Ft	Year Built	Stories	Length	Width
2.00	Comm Shed - Utility	420	1980	1	35	12

No Additional Details for Building 2

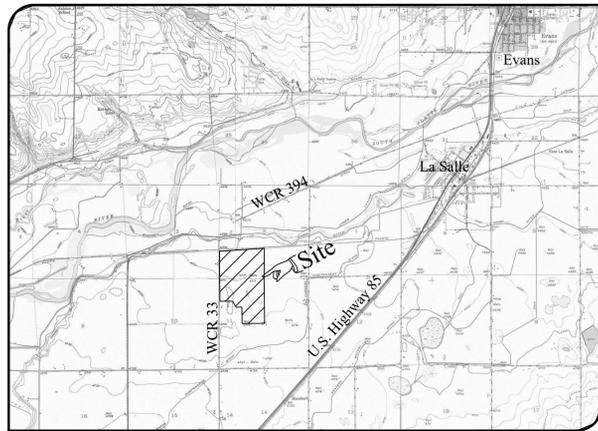


Building 2 - Photo

ALTA/NSPS LAND TITLE SURVEY

ARB Niobrara Connector Parcels

A Portion of the SW 1/4 Section 2
& A Portion of the NW 1/4 Section 11
Township 4 North, Range 66 West, 6th P.M.
Weld County, Colorado



Vicinity Map
1"=5000'

Parcel Description:

Provided by Fidelity National Title Insurance Company, File No. 100-N0025592-030-TH, Amendment No. 11:

Parcel One:
Lot 1, ARB Nicom Subdivision, County of Weld, State of Colorado.

Parcel Two:
Parcel A:
A tract of land located in the Southwest 1/4 of the Northwest 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., and being more particularly described as follows:
Commencing at the Northwest Corner of the Southwest 1/4 of the Northwest 1/4 of said Section 11 and considering the West line of said Section 11 to bear North 00°06'47" West and with all other bearing contained herein being relative thereto;
Thence North 89°58'30" East along the North line of the Southwest 1/4 Northwest 1/4 of said Section 11, 781.20 feet to the True Point of Beginning;
Thence continuing North 89°58'30" East along said North line 547.03 feet to the Northeast Corner of the Southwest 1/4 Northwest 1/4 of said Section 11;
Thence South 00°05'06" East along the East line of the Southwest 1/4 Northwest 1/4 of said Section 11, 358.05 feet;
Thence South 89°58'30" West, 334.70 feet; thence North 30°44'21" West, 416.45 feet to the True Point of Beginning, County of Weld, State of Colorado.

Parcel B:
An easement for ingress and egress on the following described property:
That portion of Lot A, Recorded Exemption No. 1057-11-2-RE-2688, located in the SW 1/4 of the NW 1/4 of Section 11, Township 4 North, Range 66 West of the 6th P.M., Weld County, Colorado and being more particularly described follows:
Beginning at the Northwest corner of the SW 1/4 NW 1/4 of said Section 11, and considering the West line Section 11 to bear North 00°06'47" West and with all other bearings contained herein being relative thereto;
Thence North 89°58'30" East along the North line of the SW 1/4 NW 1/4 of said Section 11, 781.20 feet;
Thence South 30°44'21" East, 25.59 feet;
Thence South 89°58'30" West, 794.23 feet to the West line of said Section 11;
Thence North 00°06'47" West along the West line of said Section 11, 22.00 feet to the Point of Beginning, County of Weld, State of Colorado.

The above fee parcels also described as follows: (surveyed parcel description)

- Note:
- The Basis of Bearings is the east line of the northeast quarter of the northwest quarter of Section 11, T4N, R66W 6th P.M., as monumented with an aluminum cap PLS 38307 at the north end and an aluminum cap PLS 7242 at the south end with a grid bearing of S 00°37'48" E.
 - All directions, distances and dimensions are based on coordinates from the Colorado coordinate system of 1983 north zone (C.R.S. 83-52-102).

Lot 1, ARB Nicom Subdivision filed February 8, 2017 at Reception Number 4276822, in the southwest quarter of Section 2 and the north half of the northwest quarter and the southeast quarter of the northwest quarter of Section 11, all in Township 4 North, Range 66 West of the Sixth Principal Meridian, City of Evans, Weld County, Colorado:

Together with:
Parcel A as conveyed by Warranty Deed filed June 10, 2015 at Reception Number 4114771 in the southwest quarter of the northwest quarter of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, Weld County, Colorado.

Said Lot 1 and Parcel A described as follows:

Beginning at the north quarter corner of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, an aluminum cap PLS 38307;
Thence S 00°37'48" E, along the east line of the northeast quarter of the northwest quarter of said Section 11, a distance of 1322.24 feet, more or less, to an aluminum cap PLS 7242 at the northeast corner of the southeast quarter of the northwest quarter of said Section 11;
Thence S 00°38'20" E, along the east line of said southeast quarter of the northwest quarter, a distance of 1322.19 feet, more or less, to an aluminum cap PLS 7242 at the southeast corner of said southeast quarter of the northwest quarter;
Thence S 89°18'51" W, along the south line of said southeast quarter of the northwest quarter, a distance of 1328.01 feet, more or less, to an aluminum cap PLS 38058 at the southwest corner of said southeast quarter of the northwest quarter;
Thence N 00°38'53" W, along the west line of said southeast quarter of the northwest quarter, a distance of 966.01 feet, more or less, to a number 5 rebar;
Thence S 89°24'02" W, departing said west line, a distance of 334.94 feet, more or less, to a number 4 rebar;
Thence N 31°17'29" W a distance of 416.41 feet, more or less, to a pin and yellow plastic cap PLS 7242 on south line of the north half of the northwest quarter of said Section 11;
Thence S 89°24'14" W, along said south line, a distance of 741.13 feet, more or less, to a number 5 rebar, said point being 40 feet easterly of the west line of said north half of the northwest quarter;
Thence N 00°41'31" W, parallel with and 40 feet distant from said west line, a distance of 1326.37 feet, more or less, to a pin and orange plastic cap PLS 38058 on the south line of the southwest quarter of Section 2, Township 4 North, Range 66 West of the Sixth Principal Meridian;
Thence N 00°31'18" W, parallel with and 40 feet distant from the west line of said southwest quarter, a distance of 1615.93 feet, more or less, to a pin and orange plastic cap PLS 38058 on the southerly right of way line of the Union Pacific Railroad;
Thence N 86°16'18" E, along said southerly right of way line, a distance of 2652.70 feet, more or less, to a point on the east line of the southwest quarter of said Section 2;
Thence S 00°28'16" W, along said east line, a distance of 1765.11 feet to the POINT OF BEGINNING.

Containing 225.699 acres more or less.

Parcel Three:
A perpetual, exclusive easement and right of way for access, on the Easement Parcel and the location, construction, reconstruction, maintenance, operation and repair of a railroad spur and related switches as more particularly set forth in Amended and Restated Perpetual Exclusive Easement Agreement recorded February 2, 2015 at Reception No. 4080154.

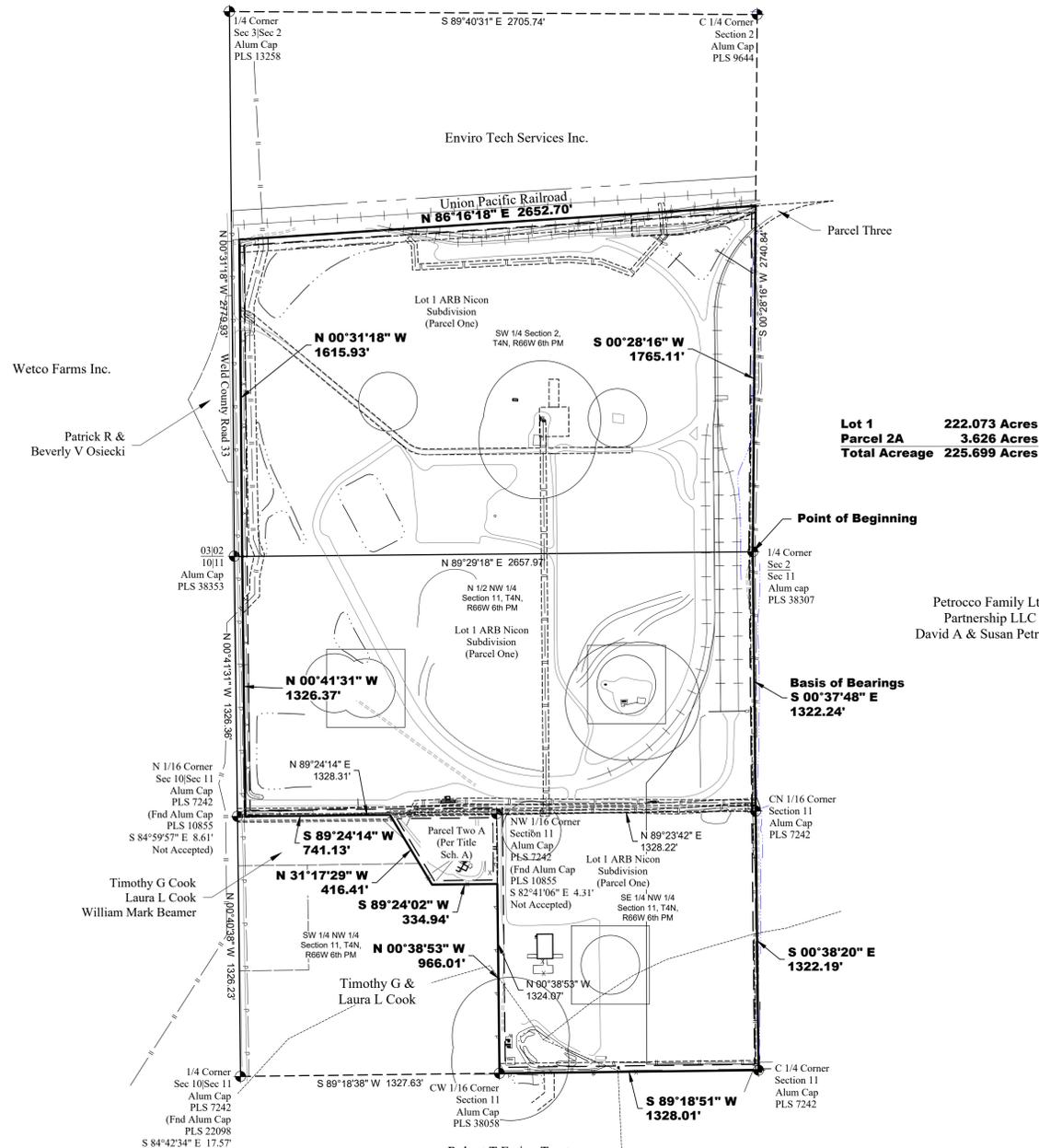
Surveyors Certificate:

To, and only to: ARB Niobrara Connector, LLC, a Delaware limited liability company; Mountain TRAX Intermodal, LLC, a Delaware limited liability company; Northern Colorado Transportation Logistics, LLC, a Colorado limited liability company; Happy State Bank, a Texas banking association, its successors and assigns; Fidelity National Title, National Commercial Services;

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 2, 3, 4, 6a, 7, 8, 9, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The field work was completed on January 29, 2020.

Pursuant to Colorado State Board of Licensure for Professional Land Surveyors Rule 6.2.2 the undersigned further certifies that this map was prepared by me or under my responsible charge, is accurate to the best of my knowledge, information and belief, is in accordance with applicable standards of practice and is not a guaranty or warranty, either expressed or implied.

David C. Costner
PLS 25936
For and on behalf of Topographic Land Surveyors.



Title Exceptions:

Topographic Land Surveyors relied on Fidelity National Title Insurance Company, National Commercial Services, File Number 100-N0025592-030-TH, Amendment No. 11 dated February 26, 2020 for the preparation of this survey. This survey does not constitute a title search by this surveyor of the property shown and described hereon to determine:

- ownership of the tract of land.
- compatibility of this description with those of adjacent tracts of land.
- rights of way, easements and encumbrances of record affecting this tract of land.

These premises are subject to any and all easements, rights of way, variances and or agreements as of record may appear. The following are the listed exceptions 1-86 of said commitment:

- Exceptions 1-8. *Standard Exceptions.*
- Exception 9 - Any interest which may have been acquired by the public in the 30 feet of subject property by reason of resolution of Board of County Commissioners (affects Parcels 1 and 2B) Recording Date: October 14, 1889 Recording No.: Book 86 Page 273 - which provides for public roads 30 feet on each side of section lines on the public domain.
Note: An Ordinance Vacating the Right-of-Way along a portion of Section line between Sections 2 and 11, Township 4 North, Range 66 West of the 6th P.M., City of Evans, County of Weld, State of Colorado as described in Ordinance No. 321-05 passed, approved and adopted on second reading the 5th day of April, 2005: Recording Date: April 22, 2005 Recording No.: Reception No. 3280070
Note: The above resolution by the Board of County Commissioners: Recording Date: October 14, 1889 Recording No.: Book 86 Page 273 - which provides for public roads 30 feet on each side of section lines on the public domain still affects all property located to the West of the subject property located in Sections 2 and 11. *Affects Section 2. Section 11 was a RR parcel. County web page shows WCR was petitioned, 40' wide.*
- Exception 10 - Right of way, for the Great Bend Reservoir No. 6 and Outlet Ditch as evidenced by Map and Statement filed: (affects Parcel 1) Recording Date: October 8, 1898 Recording No.: Reception No. 68526 filed in the Weld County Clerk & Recorder's Office, insofar as the same may affect subject property. *Affects this parcel, the map shows Reservoir No. 6 to encumber portions of the south half of the northwest quarter of Section 11, but no evidence in the field shows the reservoir was constructed.*
- Exception 11 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Colorado Telephone Company - Purpose: Telephone Lines and Fixtures - Recording Date: April 1, 1905 - Recording No.: Book 202 Page 63 - Does not affect this parcel: *per Reception No. 99946; M. E. Norris (Grantor) owned parcels north of UPRR tracks: Intentionally omitted.*
- Exception 12 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: The Union Ditch Company - Purpose: Right of Way - Recording Date: July 3, 1909 - Recording No.: Book 307 Page 407 - Does not affect this parcel. *The ditch is north of UPRR tracks: Intentionally omitted.*
- Exception 13 - Right of way, for the Beverly Manning Well No. 1 as evidenced by Map and Statement: (affects Parcel 1) Recording Date: October 14, 1954 Recording No.: Reception No. 1194913 filed in the Weld County Clerk & Recorder's Office, insofar as the same may affect subject property. *Affects this parcel, shown hereon, no evidence of a well was found in the field at the location shown in document.*
- Exception 14 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects all parcels) Granted to: Colorado-Wyoming Gas Company - Purpose: Right of Way - Recording Date: February 25, 1949 Recording No.: Book 1242 Page 498. *Affects this parcel, location shown hereon per ARB Nicom Subdivision Plat.*
- Exception 15 - Oil and gas lease between Union Pacific Railroad Company and Pan American Petroleum Corp.: (affects all parcels) Recording Date: August 14, 1970 Recording No.: Reception No. 1553082. *Affects this parcel (Section 11), not a matter of survey.*
- Exception 16 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcel 1) Granted to: Panhandle Eastern Pipe Line Company - Purpose: Right(s) of Way - Recording Date: March 14, 1977 Recording No.: Reception No. 1713459. *Affects this parcel, shown hereon.*
- Exception 17 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects all parcels) Granted to: Associated Natural Gas, Inc., Purpose: Right(s) of Way - Recording Date: September 21, 1983 Recording No.: Reception No. 1941176. *Affects this parcel, right of way is not defined in document.*
- Exception 18 - Oil and gas lease between Union Pacific Resources Company and Sunshine Valley Petroleum Corporation: (affects all parcels) Recording Date: February 28, 1988 Recording No.: Reception No. 2132289. *Affects this parcel, not a matter of survey.*
- Exception 19 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcel 1) Granted to: Associated Natural Gas, Inc., Purpose: Right(s) of Way - Recording Date: January 3, 1992 Recording No.: Reception No. 2274064. *Affects this parcel, shown hereon.*
- Exception 20 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcels 1 and 2B) Granted to: Associated Natural Gas, Inc., Purpose: Right(s) of Way - Recording Date: April 16, 1993 Recording No.: Reception No. 2329275. *Affects this parcel, shown hereon.*
- Exception 21 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcel 1) Granted to: Associated Natural Gas, Inc., Purpose: Right(s) of Way - Recording Date: July 15, 1993 Recording No.: Reception No. 2341173. *Affects this parcel, location shown hereon is approximate based on Exhibit A of document. Not field located.*
- Exception 22 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcels 1 and 2B) Granted to: Greeley Gas Company a division of Atmos Energy Corporation - Purpose: Right(s) of Way - Recording Date: July 14, 1995 Recording No.: Reception No. 2446612. *Affects this parcel, location shown hereon is based on the location shown in Detail A, ARB Nicom Subdivision.*
- Exception 23 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcel 1) Granted to: Soco Wattenberg Corporation - Purpose: Right(s) of Way - Recording Date: August 15, 1996 Recording No.: Reception No. 2506630. *Affects this parcel, location shown hereon is approximate based on Exhibit A of document. Not field located.*
- Exception 24 - Reservations of (1) right of proprietor of any penetrating vein or lode to extract his ore; and (2) right of way for any ditches or canals constructed by authority of the United States, in U.S. Patent: (affects Parcels 1 and 2B) Recording Date: August 27, 1896 Recording No.: Book 34, Page 399. *Affects this parcel, not a matter of survey.*
- Exception 25 - Reservations by the Union Pacific Railroad Company of (1) all oil, coal and other minerals underlying subject property, (2) the exclusive right to prospect for, mine and remove oil, coal and other minerals, and (3) the right of ingress and egress and regress to prospect for, mine and remove oil, coal and other minerals, all as contained in Deed: (affects Parcels 1 and 2B) Recording Date: July 22, 1909 Recording No.: Book 233, Page 233.
Note: Request for Notification of Surface Development - Recording Date: May 28, 2002 Recording No.: Reception No. 2955105. *Affects this parcel, not a matter of survey.*
- Exception 26 - Oil and gas lease between Victor R. Hill and Charlotte T. Hill and F & C Energy Resources Incorporated: (affects Parcels 1 and 2B) Recording Date: July 6, 1983 Recording No.: Reception No. 1932482.
Note: Extension of the above lease as claimed by affidavit of production, pursuant to C.R.S. 38-42-106: Recording Date: August 20, 1984 Recording No.: Reception No. 1978175.
Note: Amendment to the Affidavit of Lease Extension by Production: Recording Date: August 23, 1984 Recording No.: Reception No. 1978777. *Affects this parcel, not a matter of survey.*
- Exception 27 - Reservations made by Victor R. Hill and Charlotte T. Hill, as described in deed: (affects all parcels) Recording Date: April 27, 1984 Recording No.: Reception No. 1964729. *Affects this parcel, not a matter of survey.*
- Exception 28 - Terms, conditions, provisions, agreements and obligations contained in the Surface Owner's Agreement as set forth below: (affects all parcels) Recording Date: February 25, 1988 Recording No.: Reception No. 2131940. *Affects this parcel, not a matter of survey.*
- Exception 29 - Terms, conditions, provisions, agreements and obligations contained in the Irrigation Well Agreement as set forth below: (affects all parcels) Recording Date: April 27, 1984 Recording No.: Reception No. 1964731. *Affects this parcel, not a matter of survey.*
- Exception 30 - Terms, conditions, provisions, agreements and obligations contained in the Valve Site Contract as set forth below: (affects Parcel 1) Recording Date: May 26, 1988 Recording No.: Reception No. 2142476. *Affects this parcel, shown hereon.*
- Exception 31 - Oil and gas lease between Union Pacific Resources Company and United States Exploration, Inc.: (affects all parcels) Recording Date: May 22, 1998 Recording No.: Reception No. 2614671. *Affects this parcel, not a matter of survey.*
- Exception 32 - Terms, conditions, provisions, agreements and obligations contained in the Amended Grant of Easement and Right of Way as set forth below: Recording Date: November 19, 2004 Recording No.: Reception No.: 3237183 and Recording No.: Reception No.: 3237186. *Affects this parcel; not a matter of survey: Intentionally omitted, combined with exception 71.*
- Exception 33 - Terms, conditions, provisions, agreements and obligations contained in the Water Supply Agreement as set forth below: (affects all parcels) Recording Date: December 18, 2006 Recording No.: Reception No. 2824675 (Boulder County). *Affects this parcel, not a matter of survey.*
- Exception 34 - Request for Notification of Pending Surface Development recorded by K.P. Kaufman Company, Inc. (KPK): (affects all parcels) Recording Date: August 6, 2007 Recording No.: Reception No. 3495293. *Affects this parcel, not a matter of survey.*
- Exception 35 - Request for Notification of Pending Surface Development recorded by Merit Management Partners L.L.P.: et al: Recording Date: August 24, 2007 Recording No.: Reception No.: 3499549 - Does not affect this parcel: Intentionally omitted.
- Exception 36 - Request for Notification (Mineral Estate Owner) recorded by Kerr-McGee Oil & Gas Onshore LP: (affects all parcels) Recording Date: December 21, 2007 Recording No.: Reception No. 3523268. *Affects this parcel, not a matter of survey.*
- Exception 37 - Request for Notification of Pending Surface Development recorded by Noble Energy, Inc.: (affects all parcels) Recording Date: October 15, 2007 Recording No.: Reception No. 3511023. *Affects this parcel, not a matter of survey.*
- Exception 38 - Terms, conditions, provisions, agreements and obligations contained in the Surface Use Agreement as set forth below: (affects all parcels) Recording Date: June 26, 2008 Recording No.: Reception No. 3563205. *Affects this parcel.*
- Exception 39 - Terms, conditions, provisions, agreements and obligations contained in the Grant of Easement and Right of Way as set forth below: Recording Date: February 28, 2012 Recording No.: Reception No.: 3828032 - Amended Grant of Easement and Right of Way - Recording Date: March 21, 2012 Recording No.: Reception No.: 3833393 - Affects this parcel - Location of easement shown hereon is approximate - The location is not defined in document: Intentionally omitted, (except with exception 55).
- Exception 40 - Terms, conditions, provisions, agreements and obligations contained in the Restrictive Dry-Up Covenant: Grant to Easement; Warranty of First Right to Dry-Up Credit and Agreement to Assist as set forth below: (affects all parcels) Recording Date: February 13, 2015 Recording No.: Reception No. 4083281 Assignment of Restrictive Dry-Up Covenant; Grant of Easement; Warranty of First Right to Dry-Up Credit; and Agreement to Assist: Recording Date: May 8, 2019 Recording No.: Reception No. 4487754 Assignment of the Assignment of Restrictive Dry-Up Covenant; Grant of Easement; Warranty of First Right to Dry-Up Credit; and Agreement to Assist: Recording Date: October 09, 2019 Recording No.: Reception No. 4530823. *Affects this parcel, not a matter of survey.*

Continued on Sheet 2 of 3

Revised: February 27, 2020

Date of Survey	2/4/2020
Control File	Ground
Job Number	132814



ALTA/NSPS LAND TITLE SURVEY

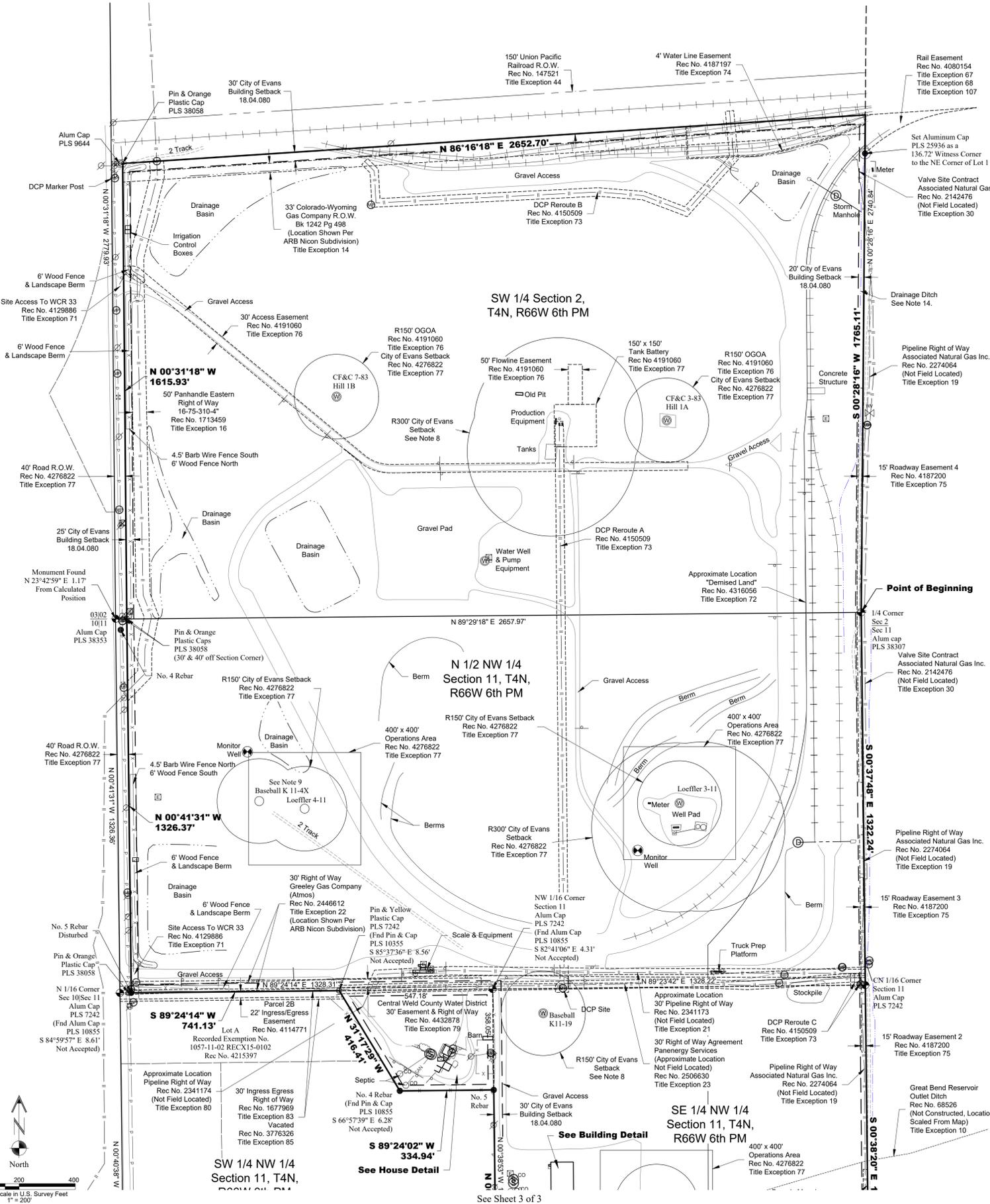
ARB Niobrara Connector Parcels

A Portion of the SW 1/4 Section 2
& A Portion of the NW 1/4 Section 11
Township 4 North, Range 66 West, 6th P.M.
Weld County, Colorado

Title Exceptions:

Continued From Sheet 1 of 3

- Exception 41 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: The Lower Latham Ditch Company - Purpose: Right(s) of Way - Recording Date: July 21, 1891 - Recording No.: Reception No. 37323 - Does not affect this parcel - Intentionally omitted.
- Exception 42 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: McMillan Seep and Drainage - Purpose: Right(s) of Way - Recording Date: January 26, 1910 - Recording No.: Reception No. 150665 - Does not affect this parcel - Intentionally omitted.
- Exception 43 - The Neres Canal and right-of-way therefor, as evidenced by map: Recording Date: January 21, 1910 - Recording No.: Reception No. 150437 - Does not affect this parcel - Intentionally omitted.
- Exception 44 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as evidenced by Final Order and Decrees: (affects Parcel 1) Granted to: Union Pacific Railroad - Purpose: Right(s) of Access, if any over and across the land based on the property abutting said railroad - Recording Date: November 22, 1909 - Recording No.: Reception No. 147521 - Affects this parcel, shown hereon.
- Exception 45 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Colorado-Wyoming Gas Company - Purpose: Right(s) of way - Recording Date: February 25, 1949 - Recording No.: Reception No. 1052542 - Does not affect this parcel - Intentionally omitted.
- Exception 46 - Oil and gas lease between Miller Feed Lots, Inc. and T.S. Pace - Recording Date: March 26, 1970 - Recording No.: Reception No. 1544404 - Does not affect this parcel - Intentionally omitted.
- Exception 47 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Panhandle Eastern Pipeline Company - Purpose: Right(s) of Way - Recording Date: January 25, 1977 - Recording No.: Reception No. 1709705 - Does not affect this parcel - Intentionally omitted.
- Exception 48 - Terms, conditions, provisions, agreements and obligations contained in the Letter as set forth below: (affects all parcels) Recording Date: October 1, 1981 - Recording No.: Reception No. 1870705 - Affects this parcel, blanket easement.
- Exception 49 - Terms, conditions, provisions, agreements and obligations contained in the Notice Pursuant to C.R.S. Sec. 9-1.5-103 (1) (1981) Concerning Underground Facilities of Union Rural Electric Association, Inc. as set forth below: (affects all parcels) Recording Date: October 1, 1981 - Recording No.: Reception No. 1871004 - Affects this parcel, blanket easement.
- Exception 50 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Associated Natural Gas, Inc.; Purpose: Right(s) of Way - Recording Date: October 10, 1983 - Recording No.: Reception No. 1943074 - Does not affect this parcel - Intentionally omitted.
- Exception 51 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Natural Gas Associates - Purpose: Right(s) of Way - Recording Date: February 23, 1984 - Recording No.: Reception No. 1956975 - Does not affect this parcel - Intentionally omitted.
- Exception 52 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Gas Associates - Purpose: Right(s) of Way - Recording Date: June 4, 1984 - Recording No.: Reception No. 1969199 - Does not affect this parcel - Intentionally omitted.
- Exception 53 - Terms, conditions, provisions, agreements and obligations contained in the Colorado Interstate Gas Company General Description of Underground Facilities in Weld County as set forth below: (affects all parcels) Recording Date: August 31, 1984 - Recording No.: Reception No. 1979784 - Affects this parcel, blanket easement.
- Exception 54 - Terms, conditions, provisions, agreements and obligations contained in the Western Gas Company Description of Area Served as set forth below: (affects all parcels) Recording Date: April 2, 1985 - Recording No.: Reception No. 2004300 - Affects this parcel, blanket easement.
- Exception 55 - Terms, conditions and obligations contained in the Agreement as set forth below: (affects all parcels) Recording Date: April 24, 1985 - Recording No.: Reception No. 2007081 - Amended Grant of Easement and Right of Way - Recording Date: March 21, 2012 - Recording No.: Reception No. 3833393 - Affects this parcel. Location of easement shown hereon is approximate. The location not defined in document.
- Exception 56 - Terms, conditions, provisions, agreements and obligations contained in the Letter as set forth below: (affects all parcels) Recording Date: April 23, 1986 - Recording No.: Reception No. 2050953 - Affects this parcel, pipeline locations not defined in document.
- Exception 57 - Terms, conditions, provisions, agreements and obligations contained in the Notice of General Description of Area Served by Panhandle Eastern Pipeline Company Concerning Underground Facilities Pursuant to C.R.S. Sec. 9-1.5-103 (1) (1981) as set forth below: (affects all parcels) Recording Date: June 4, 1986 - Recording No.: Reception No. 2058722 - Affects this parcel, pipeline locations not defined in document.
- Exception 58 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Associated Natural Gas, Inc.; Purpose: Right(s) of Way - Recording Date: January 5, 1988 - Recording No.: Reception No. 2126848 - Does not affect this parcel - Intentionally omitted.
- Exception 59 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Associated Natural Gas, Inc.; Purpose: Right(s) of Way - Recording Date: April 16, 1993 - Recording No.: Reception No. 2329243 - Does not affect this parcel - Intentionally omitted.
- Exception 60 - Easement(s) for the purpose(s) shown below and rights incidental thereto; as granted in a document: Granted to: Associated Natural Gas, Inc.; Purpose: Right(s) of Way - Recording Date: April 19, 1993 - Recording No.: Reception No. 2329244 - Does not affect this parcel, shown hereon - Intentionally omitted.
- Exception 61 - Notice of Oil and Gas Interests and Surface Use recorded by HS Resources, Inc. - Recording Date: December 12, 2000 - Recording No.: Reception No. 2812785 - Does not affect this parcel - Intentionally omitted.
- Exception 62 - Terms, conditions, provisions, agreements and obligations contained in the Surface Use Agreement as set forth below: Recording Date: August 29, 2008 - Recording No.: Reception No. 3575449 - Does not affect this parcel - Intentionally omitted.
- Exception 63 - Request for Notification of Pending Surface Development recorded by K.P. Kauffman Company, Inc. (KPK) - Recording Date: August 6, 2007 - Recording No.: Reception No. 3495293 - Affects this parcel, not a matter of survey; see Exception 34 - Intentionally omitted. (duplicate to exception 34)
- Exception 64 - Request for Notification of Pending Surface Development recorded by Merit Management Partners H.P., et al - Recording Date: August 24, 2007 - Recording No.: Reception No. 3499549 - Does not affect this parcel - see Exception 35 - Intentionally omitted.
- Exception 65 - Request for Notification (Mineral Estate Owner) recorded by Kerr-McGee Oil & Gas Onshore LP: (affects all parcels) Recording Date: December 21, 2007 - Recording No.: Reception No. 3525268 - Affects this parcel, not a matter of survey; see Exception 36.
- Exception 66 - Request for Notification of Pending Surface Development recorded by Noble Energy, Inc.: (affects all parcels) Recording Date: October 15, 2007 - Recording No.: Reception No. 3511023 - Affects this parcel, not a matter of survey; see Exception 37.
- Exception 67 - Terms, conditions, provisions, agreements and obligations contained in the amended and fully restated "Amended and Restated Perpetual Exclusive Easement Agreement" (affects Parcel 1) Recording Date: February 2, 2015 - Recording No.: Reception No. 4080154. And those certain Consents: Recording Date: February 4, 2015 - Recording No.: Reception No. 4080757 - Recording Date: February 4, 2015 - Recording No.: Reception No. 4080758 - Affects this parcel, shown hereon.
- Exception 68 - Terms, conditions, provisions, agreements, reservations and obligations contained in the Special Warranty Deed as set forth below: (affects Parcel 1) Recording Date: February 13, 2015 - Recording No.: Reception No. 4083279 - Affects this parcel, Vesting deed, shown hereon.
- Exception 69 - Terms, conditions, provisions, agreements and obligations contained in the Bargain and Sale Deed as set forth below: (affects all parcels) Recording Date: February 13, 2015 - Recording No.: Reception No. 4083280 - Affects this parcel, not a matter of survey.
- Exception 70 - Terms, conditions, provisions, agreements and obligations contained in the Ground Lease and Services Agreement as set forth below: Recording Date: February 13, 2015 - Recording No.: Reception No. 4083284 - Affects this parcel, not a matter of survey; Intentionally omitted.
- Exception 71 - Terms, conditions, provisions, agreements and obligations contained in the following instruments: (affects Parcel 1) Annexation Agreement and Plat as set forth below: Recording Date: November 19, 2004 - Recording No.: Reception No. 3237183 and Reception No. 3237186. Ordinance No. 625-15, An Ordinance Approving a Second Amendment to the Annexation Agreement, Grant Western Ethanol LLC, Now ARB Niobrara Connector, LLC as set forth below: Recording Date: July 31, 2015 - Recording No.: Reception No. 4129886 - Affects this parcel, shown hereon.
- Exception 72 - Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Ground Lease and Services Agreement as set forth below: (affects Parcel 1) Recording Date: August 24, 2015 - Recording No.: Reception No. 4136056 - Affects this parcel, not a matter of survey, location shown hereon is approximate. Portions of the Exhibit A provided are illegible and the description doesn't close upon itself.
- Exception 73 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects Parcel 1) Granted to: DCP Midstream, LP - Purpose: Pipeline right-of-way grant with receiver/valve site - Recording Date: October 15, 2015 - Recording No.: Reception No. 4150509 - Affects this parcel, shown hereon.
- Exception 74 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects all parcels) Granted to: JBS Five Rivers Cattle Feeding, LLC, a Delaware limited liability company Purpose: Water Line Easement - Recording Date: March 10, 2016 - Recording No.: Reception No. 4187197 - Affects this parcel, shown hereon.
- Exception 75 - Terms, conditions, provisions, agreements and obligations contained in the Roadway Easement Agreement as set forth below: (affects Parcel 1) Recording Date: March 10, 2016 - Recording No.: Reception No. 4187200 - Affects this parcel, shown hereon.
- Exception 76 - Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Surface Damage Agreement as set forth below: (affects Parcel 1) Recording Date: March 29, 2016 - Recording No.: Reception No. 4191060 - Affects this parcel, shown hereon.
- Exception 77 - Covenants, conditions, restrictions, notes and easements as shown on the Plat for ARB NiCON Subdivision: (affects Parcel 1) Recording Date: February 08, 2017 - Recording No.: Reception No. 4276822 - This plat created Lot 1 (Parcel One).
- Exception 78 - Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Joint Use and Production Matters Agreement as set forth below: (affects all parcels) Recording Date: December 20, 2017 - Recording No.: Reception No. 4361966 - Affects this parcel, not a matter of survey.
- Exception 79 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects all parcels) Granted to: Central Weld County Water District - Purpose: Water Line(s) and Appurtenances - Recording Date: September 21, 2018 - Recording No.: Reception No. 4432878 - Affects this parcel, shown hereon.
- Exception 80 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: (affects all parcels) Granted to: Swanson & Morris, Ltd. - Purpose: Right(s) of Way - Recording Date: July 15, 1993 - Recording No.: Reception No. 2341174 - Affects this parcel, shown hereon.
- Exception 81 - Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below: (affects all parcels) Recording Date: September 18, 1967 - Recording No.: Reception No. 1507868 - Affects this parcel, not a matter of survey.
- Exception 82 - An undivided full interest in all oil, gas and other minerals conveyed to Union Pacific Land Resources Corporation by Mineral Deed, recorded April 14, 1971 at Reception No. 1565712, and any and all assignments thereof or interest therein. (affects all parcels) Affects this parcel, not a matter of survey.
- Exception 83 - Agreement to maintain right of way for ingress and egress disclosed by Quit Claim Deed recorded January 2, 1976 at Reception No. 1677969. (affects Parcel 2) Affects this parcel, shown hereon.
- Exception 84 - Any tax, lien, fee, or assessment by reason of inclusion of the Land in the Evans Fire Protection District, as evidenced by instrument(s) recorded February 3, 2017 at Reception No. 4275355. (affects all parcels) Affects this parcel, not a matter of survey.
- Exception 85 - Terms, conditions and obligations as contained in the Quit Claim Deed Terminating Easement and Grant of Easement as set forth below: (affects Parcel 2) Recording Date: June 27, 2011 - Recording No.: Reception No. 3776326 - Affects this parcel, shown hereon.
- Exception 86 - Request for Notification of Application for Development recorded by SRC Energy, Inc., et al: (affects all parcels) Recording Date: August 28, 2018 - Recording No.: Reception No. 4420477 - Affects this parcel, not a matter of survey.
- Exception 87 - The following matters as shown on survey prepared by Topographic, dated February 4, 2020 and last amended February 27, 2020, Job No. 132814:
 - The fact the fence lines do not correspond with lot lines, as shown thereon.
 - Rights of others in and to those uses and access rights to the wells, drainage and related facilities shown thereon and not lying within a recorded easement(s).
 - Rail road trackage traversing in and outside of property lines as shown thereon.



Notes:

- I hereby confirm that the legal description in the Title Commitment and the legal description on the Survey describe the same property.
- The portion of this property that is located in an area determined to be outside the 0.2% annual chance floodplain according to the National Flood Insurance Program Flood Insurance Rate Map numbers 08123C1710E and 08123C1730E Effective Date January 20, 2016.
- The portion of this property in Section 2 and the north half of the northwest quarter and the southeast quarter of the northwest quarter of Section 11 (Lot 1, ARB NiCON Subdivision), is zoned I-2, Medium Industrial District, per the City of Evans 2019 Official Zoning Map dated 5/28/2019. The unplatted portion in the southwest quarter of the northwest quarter of Section 11 (Parcel A) is zoned A-1, Agriculture per Weld County Property Portal. Building setback lines are shown per City of Evans Municipal Code Section 18.04.080 and Weld County Code Section 23-3-70.
- Underground utilities as shown hereon are based on surveyed locations of physical and visible evidence such as utility pedestals, manholes, inlets, meters, etc.
- According to Colorado Law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.
- Any person who knowingly reserves, alters or defaces any public land survey monument or land boundary monument or accessory commits a Class Two (2) Misdemeanor pursuant to State Statute 18-4-508, C.R.S.
- This plat was prepared for the exclusive use of the parties as named in the certificate, shown hereon. Said certificate does not extend to any unnamed person or entity without an express re-certification by the surveyor.
- Reference is hereby made to the City of Evans Oil and Gas setback requirements per municipal code 18.06.080.
- There was known observable evidence of the Loeffler 4-11 and the Baseball K 11-4X wells at the time of survey. We only got magnetic rings at these locations. COGCC GIS Online shows these wells as Dry & Abandoned and Temporarily Abandoned.
- There were no striped parking spaces observed, only parking signs. For Parcel A, there are 17 parking signs, 3 spaces on concrete pads, 2 car garage and one carport.
- Lot 1, ARB NiCON Subdivision currently uses two access points to Weld County Road 33, shown hereon, see Title Exception 71. Parcel 2A has access to Weld County Road 33 as described as Parcel 2B in Reception Number 4114771, shown hereon, but appears to be currently using indirect access to Weld County Road 33 via the southerly access point on Lot 1.
- Other than the fences shown hereon, there were no other observable encroachments at the time of survey.
- Based on a site inspection performed during the month of January 2020, there is no observable evidence of:
 - Earth moving work, building construction or building additions within recent months, except for the access roads, berms, drainage basins and stock pile, shown hereon - Table A Item 16.
 - No evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork, except for the gravel access, shown hereon - Table A Item 17.
 - No delineation of wetlands observed - Table A Item 18.
- A drainage ditch found in the general area of the Beattie Seepage Ditch as shown on the Map of the Beattie Seepage Ditch filed November 4, 1907 at Reception No. 123594 may or may not be a portion of said ditch. No other evidence of the Beattie Seepage Ditch was found in the field. Due to railroad construction the ditch is not evident in Parcel Three. See Title Exception 32.

Title Exceptions:

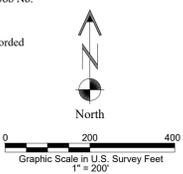
Continued From This Sheet

NOTE: The following exceptions 88 through 108 affect the easement parcel described in Amended and Restated Perpetual Exclusive Easement Agreement recorded February 2, 2015 a Reception No. 4080154 and contained in Parcel Three of Legal Description hereon.

- Exception 88 - Right of Way and rights incidental thereto for County Roads 30 feet on either side of Section and Township lines as established by the Board of County Commissioners for Weld County, as set forth in a document: Recording Date: October 14, 1889 - Recording No.: Book 86 at Page 273. Does not affect this parcel.
- Exception 89 - Reservations contained in the Patent recorded December 30, 1876 in Book 20 at Page 106 which among other things recites as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts; and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law. Affects this parcel, not a matter of survey.
- Exception 90 - Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below: Recording Date: July 21, 1890 - Recording No.: Book 97 at Page 47. Does not affect this parcel.
- Exception 91 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Heirs of John M. McMillan, deceased Purpose: The McMillan Seepage and Drain Ditch - Recording Date: January 26, 1910 - Recording No.: Book 270 at Page 445. Does not affect this parcel.
- Exception 92 - Right of Way for the Beattie Seepage Ditch as evidenced by Map and Statement filed November 4, 1907 at Reception No. 123594, filed in the Weld County Clerk and Recorder's office, insofar as the same may affect the Land. Affects this parcel, see note 14.
- Exception 93 - Right of way for the Farmers Independent Ditch Extension, as evidenced by Map and Statement recorded January 28, 1910 at Reception No. 150830, insofar as the same may affect the subject property. Does not affect this parcel.
- Exception 94 - Terms, conditions, provisions, agreements and obligations contained in the Right of Way as set forth below: Recording Date: July 3, 1907 - Recording No.: Book 307 at Page 407. Does not affect this parcel. The ditch is north of UPRR tracks.
- Exception 95 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Colorado-Wyoming Gas Company Purpose: Pipe lines - Recording Date: February 25, 1949 - Recording No.: Book 1242 at Page 497. Affects this parcel, right of way is not defined in document.
- Exception 96 - An oil and gas lease for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein, and any and all assignments thereof or interests therein. Recording Date: March 26, 1970 - Recording No.: Reception No. 1544404 - Affects this parcel, not a matter of survey.
- Exception 97 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Associated Natural Gas, Inc. - Purpose: Pipe lines - Recording Date: October 10, 1983 - Recording No.: Reception No. 1943074 - Affects this parcel, right of way is not defined in document.
- Exception 98 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Natural Gas Associates, a Colorado partnership Purpose: Pipe lines - Recording Date: February 23, 1984 - Recording No.: Reception No. 1956975 - Affects this parcel, blanket easement.
- Exception 99 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Associated Natural Gas, Inc. - Purpose: Pipe lines - Recording Date: January 5, 1988 - Recording No.: Reception No. 2126848 - Affects this parcel, blanket easement.
- Exception 100 - Terms, conditions, provisions, agreements and obligations contained in the Valve Site Contract as set forth below: Recording Date: April 16, 1993 - Recording No.: Reception No. 2329243. Does not affect this parcel.
- Exception 101 - Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Associated Natural Gas, Inc. - Purpose: Pipelines - Recording Date: April 16, 1993 - Recording No.: Reception No. 2329244. Does not affect this parcel.
- Exception 102 - Terms, conditions, provisions, agreements and obligations contained in the Request for Notification of Pending Surface Development as set forth below: Recording Date: August 6, 2007 - Recording No.: Reception No. 3495293 - Affects this parcel, not a matter of survey.
- Exception 103 - Terms, conditions, provisions, agreements and obligations contained in the Request for Notification (Mineral Estate Owner) as set forth below: Recording Date: December 21, 2007 - Recording No.: Reception No. 3525268 - Affects this parcel, not a matter of survey.

Continued on Sheet 3 of 3

Continued on This Sheet



Revised: February 27, 2020

Date of Survey	2/4/2020
Control File	Ground
Job Number	132814

CITY OF EVANS, COLORADO

ORDINANCE NO. 625-15

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE ANNEXATION AGREEMENT, GREAT WESTERN ETHANOL LLC, NOWARB NIOBRARA CONNECTOR, LLC

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the City and Great Western Ethanol, LLC, entered into an Annexation Agreement (the "Agreement") on October 5, 2004 pursuant to which the property more particularly described on Exhibit A, which is attached hereto, incorporated herein and made a part hereof (hereafter referred to as "the Property") was annexed into the City; and

WHEREAS, a First Amendment to Annexation Agreement was approved and accepted by the City on 20th day of December, 2007 but the First Amendment was not recorded; and

WHEREAS, pursuant to Section 26 of the Agreement, any heirs, transferees, successors and assigns of Great Western Ethanol shall be subject to the terms of the Agreement, as if they were original parties thereto, and any transfer of all or any portion of the Property is subject to approval of the City; and

WHEREAS, the Property is now owned by ARB Niobrara Connection, LLC ("Owner");

WHEREAS, the Owner desires to develop the Property for use as a crude oil trans-loading terminal, the Niobrara Connector ("NiCon") to serve producers and market participants in the greater DJ Basin – Niobrara shale play located in northeastern Colorado and southeastern Wyoming; and

WHEREAS, in order to facilitate such development, the Owner has negotiated the Second Amendment to the Annexation Agreement, a copy of which is attached hereto as Exhibit B, and has requested that the City Council approved the Amended Agreement, and

WHEREAS, the City Council has reviewed the matter and determined that it is in the best interest of the residents and electors of the City of Evans as well as the public health, safety and welfare to encourage such development and to approve the Amended Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. The Second Amendment to the Annexation Agreement – Great Western Ethanol LLC, attached as Exhibit B, is hereby approved.
2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this

Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

3. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance. Any provision to the contrary notwithstanding, nothing in this Ordinance or the Amended Agreement it approves shall affect the fact that the Property previously was and remains annexed to the City of Evans.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 7TH DAY OF JULY, 2015.

ATTEST:


Raegan Robb, City Clerk



CITY OF EVANS, COLORADO

BY: 
John L. Morris, Mayor

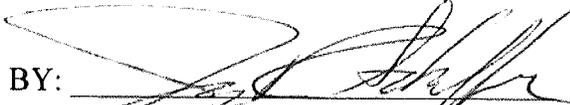
PASSED AND ADOPTED ON A SECOND READING THIS 21ST DAY OF JULY, 2015.

ATTEST:


Raegan Robb, City Clerk



CITY OF EVANS, COLORADO

BY: 
Jay Schaffer, Mayor Pro-Tem

**SECOND AMENDMENT TO THE ANNEXATION AGREEMENT
GREAT WESTERN ETHANOL LLC**

This Second Amendment to the Annexation Agreement (hereinafter "Amended Agreement") is made and entered into this 24th day of July, 2015, by and between ARB Niobrara Connector, LLC, a Delaware limited liability company, hereinafter referred to as "Owner" and the City of Evans, Colorado, a municipal corporation of the State of Colorado, hereinafter referred to as "Evans" or "City."

WITNESSETH:

WHEREAS, the City and Great Western Ethanol, LLC, entered into an Annexation Agreement (the "Agreement") on October 5, 2004 pursuant to which the property more particularly described on Exhibit A, which is attached hereto, incorporated herein and made a part hereof (hereafter referred to as "the Property") was annexed into the City; and

WHEREAS, a First Amendment to Annexation Agreement was approved and accepted by the City on 20th day of December, 2007 but the First Amendment was not recorded; and

WHEREAS, pursuant to Section 26 of the Agreement, any heirs, transferees, successors and assigns of Great Western Ethanol shall be subject to the terms of the Agreement, as if they were original parties thereto, and any transfer of all or any portion of the Property is subject to approval of the City; and

WHEREAS, Owner intends to develop the Property for use as a crude oil trans-loading terminal, the Niobrara Connector ("NiCon") to serve producers and market participants in the greater DJ Basin – Niobrara shale play located in northeastern Colorado and southeastern Wyoming; and

WHEREAS, Owner has prepared a Master Site Development Plan identifying and illustrating the proposed land use and intended development of the Property, more particularly described on Exhibit B, which is attached hereto, incorporated herein and made a part hereof; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Amended Agreement regarding development of the previously annexed Property and other matters as set forth herein; and

WHEREAS, Owner acknowledges that the previously annexed Property is subject to all ordinances, resolutions, and other regulations of Evans, as they may be amended from time to time;

NOW, THEREFORE, in consideration of the above premises and the covenants as

hereinafter set forth, it is agreed by and between the parties as follows:

1. ***Incorporation of Recitals.*** The parties confirm and incorporate the foregoing recitals into this Amended Agreement as if expressly set forth hereunder.

2. ***Purpose.*** The purpose of this Amended Agreement is to set forth the terms and conditions of the development of the Property within Evans. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning development contained in the Evans Municipal Code, Development Regulations and the Comprehensive Plan.

3. ***Zoning and Land Use.*** The parties recognize that it is the intent and desire of Owner to develop the Property as shown on the "Master Site Development Plan" attached as Exhibit "B" to this Amended Agreement. **Exhibit B** shall be consistent with representations of the Owner during all public hearings regarding the level of development to include specific uses, locations of structures, numbers of structures to be built and landscaping to be provided.

A. The Master Site Development Plan attached as Exhibit B indicates the maximum level of the improvements that may be made to the Property, except to the extent that revisions are subsequently approved by the City through the normal development approval procedures of the Evans Municipal Code and/or by subsequent amendment of this Amended Agreement. All improvements are subject to review and approval by the City prior to construction, and subject to all technical requirements of the Municipal Code and in adopted plans and regulations. Owner acknowledges that additional improvements and requirements may be imposed by the Evans Municipal Code, as amended from time to time, in connection with developing and using the Property, and agrees to comply with all Evans Municipal Code provisions and requirements.

B. Owner shall provide a landscape plan for screening the use from adjoining residential uses in compliance with the requirements of the Evans Municipal Code. Landscaping adjacent to County Road 33 shall be located outside of the designated right-of-way area shown on the Master Site Development Plan and plat records for the Property. Owner shall also apply for site plan approval in compliance with the requirements of the Evans Municipal Code. The Master Site Development Plan shall indicate a 30-foot landscape buffer along all property lines adjacent to roads and residential uses. The Master Site Development Plan Attached as Exhibit B indicates some of the improvements that will be made to the Property. However, Owner acknowledges that additional improvements and requirements may be imposed by the Evans Municipal Code, as amended from time to time, in connection with developing and using the Property, and agrees to comply with all Evans Municipal Code provisions and requirements, including all provisions allowing deviations or variances from such requirements.

4. ***Public Use Land Dedication and Impact Fees.*** Owner shall provide a subdivision plat and dedicate public rights-of-way in compliance with the requirements of the designated street plan, as described in the "City of Evans 2004 Transportation Plan". Owner shall be

required to make Improvements to adjacent streets (that portion of County Road 33 described in Section 10, below) in conformance with such Transportation Plan and the City's adopted Engineering Standards. Owner shall pay all duly enacted and applicable impact fees, as required by the Evans Municipal Code, including but not limited to, the Street Impact Fee and the Fire and Rescue Impact Fee, along with the Storm Water Basin Fees as described in the City of Evans Comprehensive Drainage Study, as amended. Owner hereby acknowledges that all dedications, fees, and exactions provided for in this Amended Agreement as well as those provided for in the Evans City Code to the extent they apply to the development of the Property, are fair and equitable and reasonably related to the on-site and off-site impacts of the development of the Property.

5. *Water and Wastewater Utilities.* Owner shall provide evidence the Central Weld County Water District will serve Owner's property with water within 120 days of approval of this Amended Agreement. Owner shall connect to the City's water and / or wastewater treatment network at Owner's expense, at such time as City facilities become available to serve the Property in accordance with the requirements of the Evans Municipal Code. At the time of connecting to the City's sewer system, Owner shall be required to cease use of and abandon any septic tank, cesspool, or similar private sewer disposal facility in accordance with all lawful requirements. Construction and maintenance of such facilities and connecting to the public sewer system shall all be in accordance with the rules and regulations and requirements of the City as outlined in the Evans Municipal Code, as they exist at the time of such connection, as well as all other applicable regulations.

6. *Water Rights Dedication.* At such time as City provides water service to the Property, Owner shall dedicate water in compliance with the requirements of the Evans Municipal Code in effect at that time. At such time as City provides water service to the Property, Owner will transfer to the City all rights, title and interest to Dawson, Denver, Arapahoe, Laramie Fox Hills or Dakota aquifers underlying the Property, if any.

7. *Irrigation.* Owner shall install a water system acceptable to the City's Public Works Director or their designee to provide irrigation water prior to the construction or installation of any landscaping.

8. *Municipal Services.* Evans agrees to make available to the Property all municipal services provided by the City, in accordance with the ordinances and policies of the City in effect for the area of development, except as otherwise provided in this Amended Agreement. City services available at the time of this Amended Agreement include police services, administrative services and storm water management services (as described in the City of Evans Comprehensive Drainage Study). The provision of services not provided by the City shall be discontinued within 120 days of the date such services become available from the City.

9. *Public Improvements.* Water, sewer, stormwater and other public improvements shall be designed and constructed to City standards by Owner at Owner's expense, at such time

as City systems are available in accordance with the requirements in the Evans Municipal Code. In addition to other improvements described in this agreement, Owner agrees to construct required sidewalks on the Property at such time as sidewalks are required for development of any adjacent properties.

10. Road Improvements.

A. Within 180 days of the effective date of this Agreement, the City will contract with Weld County or a private company to grade, maintain and improve the portion of Weld County Road 33 between the Weld County Road 33 and Weld County Road 46 intersection and Owner's northern property line intersection. City shall utilize contractors to provide routine maintenance, or maintenance as may be required, to preserve WCR 33 as a gravel road in good condition for a period not to exceed five (5) years. Road maintenance shall include adding dust palliative on a yearly basis or as may be needed to control dust, as determined by the City's Public Works Department. City shall provide Owner with invoices on a routine basis but no less than one time a year. Owner shall reimburse the City for 100% of these costs within 30 days of receipt of the invoice, until WCR 33 is resurfaced to a fully paved road.

B. Owner shall enter into an agreement with the City for the improvement of the above identified section of WCR 33 to a fully-paved rural local collector roadway standard within 60 days after the occurrence of the earliest of the following events:

- 1) Five (5) years from the effective date of this agreement; or
- 2) When any development occurs on adjoining properties in the City or Weld County (such development shall be deemed to have occurred when an application has submitted to the City or Weld County or the State that triggers the requirement for a traffic impact study, and such traffic impact study results in the City, Weld County, or the State requiring offsite traffic or paving improvements); or
- 3) Prior to approval of any single element of the Phase II Site .Plan development described on **Exhibit B**. For purposes of this Amended Agreement, Phase II shall refer to any improvements represented as a dashed line on Exhibit B, attached, or
- 4) When the State or Weld County impose requirements for traffic or paving improvements.

Standards for improvement are identified in the "2004 City of Evans Transportation Plan" as amended.

C. Owner shall provide the full cost of the improvement of WCR 33, as required in this Agreement and City may enter into a Reimbursement Agreement with Owner, should adjoining properties develop, to return proportionate funds to Owner for improvement of WCR 33.

D. Owner agrees to comply with the requirements of all Weld County and Colorado Department of Transportation standards for road maintenance and improvements, whether imposed as part of the present application or part of future land use applications or agency referral processes. Evidence of compliance may include signed agreements with the County and the State Agency.

E. Any required off-site improvements shall be dedicated, designed, and constructed to City, Weld County, and/or Colorado Department of Transportation standards, whether imposed as part of the present application or future land use or agency referral processes. All such improvements shall be paid for by the Owner unless otherwise stipulated in writing by Weld County or the Colorado Department of Transportation. In no event shall any expense associated with these improvements be the obligation of the City. Owner shall provide collateral, construction drawings, a schedule of improvements and opinion of costs for all road improvements, and other required documents for construction approval including those as may be required by the City of Evans, Weld County and the Colorado Department of Transportation. Owner shall pay its proportional costs for any road improvements the City may cause to happen in the future beyond a Rural Road Section.

F. The access points shown on Exhibit B are approximate and representative only. Actual access locations and design will be determined by the City at the time of site plan approval.

11. Drainage. Owner shall provide at Owner's expense a drainage study of the entire property, subject to review and approval by City prior to site plan approval for development of the site. Required improvements shall be completed at the time of development of the site in conformance with the Comprehensive Drainage Study and other applicable City regulations and ordinances.

12. Reimbursements. To the extent water, sewer, storm drainage facilities or other public utilities are oversized or extended onto property by Owner, or to the extent public improvements are built off-site of the Property by Owner, except as otherwise expressly provided herein the City agrees to use reasonable efforts to provide for reimbursement payable to Owner in connection with future development utilizing said improvements. Should another developer or utility construct oversized improvements that are of benefit to Owner, Owner shall reimburse the party constructing such improvements to the extent of Owner's proportionate share of the facilities.

13. Fee Impositions by the City. Owner agrees to pay and that the Property shall be subject to the fees and obligations set forth in this Amended Agreement, as well as all development fees and other charges provided for in the City's rules, regulations and ordinances.

14. Improvements Agreement. Prior to construction of any public improvements,

including, but not limited to, water, sewer, drainage, sidewalks, or roadways, Owner and the City shall enter into one or more public improvements agreements in a form provided by the City. Each public improvement agreement shall include guarantees or security in the form of a bond or letter of credit or such other form as may be acceptable to the City, to ensure completion of the public improvements. In addition, the Owner shall enter into one or more improvement agreements for non-public improvements resulting from site plan review processes as provided by the City of Evans Code. The public and non-public improvement agreements shall be signed prior to commencement of each phase of site development and upon approval of a site plan for such phase of development.

15. *Conformity with Laws.* Except as otherwise agreed herein or as otherwise provided in conjunction with approval of site plan for the development, Owner agrees that the design, improvement, construction, development and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all City ordinances, resolutions and regulations including without limitation, ordinances, resolutions, and regulations pertaining to subdivision, zoning, storm drainage, utilities, access to City streets and flood control.

16. *No Repeal of Laws.* Nothing contained in this Amended Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this Amended Agreement prohibit the enactment or increase by the City of any tax or fee.

17. *Severability.* The parties agree that if any part, term, portion, or provision of this Amended Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Amended Agreement did not contain the particular part, term, portion, or provision held to be invalid.

18. *Fire Protection.* Prior to commencement of development at the site, Owner shall provide written confirmation from the Evans Fire Protection District that adequate fire protection and emergency medical services can be provided to the Property, and indicating how such services will be provided. To the extent fire protection and or emergency medical services are provided by the LaSalle Fire Protection District, Owner agrees to sign and execute any and all petitions or documents that will be necessary and appropriate to exclude the Property from the LaSalle Fire Protection District, and include it in the Evans Fire Protection District, within 180 days of notice having been provided by the Evans Fire Protection District that it desires to

include the Property into the District.

19. ***Future Cooperation.*** The parties agree they will extend mutual cooperation with one another in accomplishing the terms, conditions, and provisions of the Amended Agreement, and will execute such additional documents as necessary to effectuate the same.

20. ***No Joint Venture or Partnership/No Assumption of Liability.*** Nothing contained in this Amended Agreement is intended to create a partnership or joint venture between the City and Owner, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Amended Agreement does not provide for the joint exercise by the parties of any activity, function or service, nor does it create a joint enterprise, nor does it constitute any party hereto as any agent of another party hereto for any purpose whatsoever. Except as specifically otherwise provided in this Amended Agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.

21. ***Amendment.*** This Amended Agreement may be amended only by mutual agreement of the City and Owner. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property and/or Water Rights subject to the amendment unless otherwise specified in the amendment.

22. ***Entire Agreement.*** This Amended Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Amended Agreement supersedes all previous communications, representations, or Amended Agreements, either verbal or written between the parties, except as expressly indicated herein to the contrary.

23. ***Owner.*** As used in the Amended Agreement, the term "Owner" shall include any of the transferees, successors or assigns of Owner, and all such parties shall have the right to enforce this Amended Agreement, and shall be subject to the obligations and terms of this Amended Agreement as if they were the original parties thereto. In the event of a transfer of all or any portion of the Property, provided the City approves such transfer, such approval not to be unreasonably withheld, the transferring Owner shall be relieved of any and all obligations under this Amended Agreement that arise after the date of such transfer with respect to the transferred portions of the Property.

24. ***Effect of Prior Annexation Agreements.*** This Amended Agreement is expressly intended by the parties to constitute a novation of the original Annexation Agreement as well as the First Amendment from and after the execution of this Amended Agreement, except that the Property was previously annexed to the City pursuant to the original Annexation Agreement and the related ordinance and shall remain annexed to the City, any other provisions of this

Amended Agreement notwithstanding.

25. **Amendments to Law.** As used in this Amended Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, regulation, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, regulation, or policy, and the parties agree such amendments or revisions shall be binding upon Owner.

26. **Binding Effect.** This Amended Agreement shall be binding upon and inure to the benefit of all the transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Amended Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at Owner's expense. This Amended Agreement may be enforced in the District Court of Weld County, Colorado.

27. **Breach of Amended Agreement.**

(A) **Breach by Owner; City's Remedies.** In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Amended Agreement, the City may take action, as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the City from hardship. The City's remedies include:

- (i.) The refusal to issue to the Owner any development permit, building permit, certificate of occupancy, or other approval. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers (i.e. purchasers of individual lots by persons unrelated to Owner);
- (ii.) A demand that the security given for the completion of the public improvements be paid or honored;
- (iii.) The refusal to consider further development plans within the Property; and /or
- (iv.) Any other remedy available at law or equity.

Unless necessary to protect the immediate health, safety, and welfare of the City or City residents, the City shall provide the Owner ten (10) days written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action the City.

(B) **Breach by City.** In the event of a breach by the City, Owner/s remedy shall be limited to the right to seek specific performance of the Amended Agreement and shall not include the right to seek damages or other compensation of any kind from the City.

(C) *Attorney's Fees.* If any party breaches this Amended Agreement, the breaching party shall pay the non-breaching party's reasonable costs and attorney fees incurred in the enforcement of the terms and conditions of this Amended Agreement.

28. *General Provisions. City shall:*

A. Use reasonable efforts to assist Owner in securing, at Owner's expense, construction and maintenance agreements from governmental or private entities in order to allow Owner to fulfill its obligations under this Amended Agreement and to proceed with development of the Property.

B. Cooperate with Owner with any filings, applications, approvals or other administrative procedures with governmental entities other than the City, which are necessary to allow Owner to fulfill its obligations under this Amended Agreement and to develop the Property in a timely manner.

Nothing contained in the Amended Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the City's legislative, governmental or police powers to promote and protect the health, safety, and general welfare of the City or its inhabitants; nor shall this Amended Agreement prohibit the enactment by the City of any tax or fee or other charge which is of uniform or general application.

29. *Notice.* All notices required under this Amended Agreement shall be in writing and shall be hand delivered, sent by facsimile transmission, or sent via registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt, provided a hard copy is mailed the same date. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party, by notice so given, may change the address to which future notices shall be sent.

Notice to City:

Attn: City Manager
1100 37th Street
Evans, CO 80620

With copy to:

Scott Krob, City Attorney
Krob Law Office, LLC
8400 E. Prentice Ave., Penthouse

Greenwood Village, CO 80111

Notice to Purchaser: Adam Bedard
ARB Niobrara Connector, LLC
720 S. Colorado Blvd., Penthouse North
Denver, CO 80246

With copy to: Karen Samuels Jones
Stinson Leonard Street LLP
6400 S. Fiddlers Green Circle, Suite 1900
Greenwood Village, CO 80111

30. ***No Third Party Rights.*** This Amended Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

31. ***Governing Law.*** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Amended Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

32. ***Headings.*** The paragraph headings in this Amended Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

33. ***No Warranties by the City.*** The City is entering into this Amended Agreement in good faith and with the present intention, on the part of the present City Council, that this Amended Agreement will be complied with. However, because some of the provisions of this Amended Agreement may involve areas of legal uncertainty, the City makes no representation as to the validity or enforceability of this Amended Agreement and that no such warranty is made on the part of the City.

34. ***Cost Reimbursement to City.*** Owner shall reimburse City for professional fees and consultants, including but not limited to engineers, testing companies, landscape advisors, and attorneys related to the processing and completion of this development.

35. ***Effective Date.*** This Amended Agreement shall not be effective until thirty (30) days after the ordinance approving this Amended Agreement is published and takes effect.

36. ***Referendum.*** In the event that the ordinance to be considered by the City relative to the approval of this amended agreement becomes the subject of a citizen petitioned referendum,
Second Amended Annexation Agreement – 6.26.15 – COE

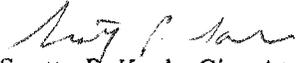
the ordinance subject to such referendum, and this Amended Agreement shall be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such Amended Annexation Agreement, all of the provisions contained herein shall be null and void and of no effect, but shall not be deemed to be a default by the City under Section 27 and remedies provided in Section 27 shall not be available. Conversely, if the result of such referendum election is to affirm the ordinance approving the Amended Annexation Agreement, this Amended Agreement shall become effective and the parties shall be bound by all of the terms and conditions contained herein as of the effective date of this Amended Agreement. In the event of such referendum, the Parties agree to cooperate in the defense of the ordinance approving the Amended Agreement. The Developer shall reimburse the City for all costs and attorneys' fees incurred in defending and participating in such referendum, including but not limited to the costs of the referendum election.

(No Further Information This Page)

CITY OF EVANS, COLORADO
A Municipal Corporation

By: 
John Morris, Mayor

APPROVED AS TO FORM:


Scotty P. Krob, City Attorney



ATTEST:

By: 
Raegan Robb, City Clerk

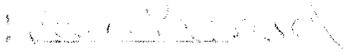
OWNER:
ARB Niobrara Connector, LLC
A Delaware limited liability company,
BY: ARB Midstream, LLC,
A Delaware limited liability company, its sole member

By: 
Adam Bedard
Chief Executive Officer

STATE OF COLORADO

COUNTY OF Denver ss.

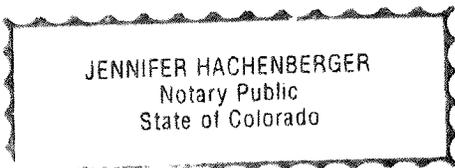
SUBSCRIBED AND SWORN to before me this 20th day of June, 2015 by



WITNESS my hand and official seal.

My commission expires: Nov 2016 

Second Amended Annexation Agreement – 6.26.15 - COE



Notary Public

(SEAL)

EXHIBIT "A"
LEGAL DESCRIPTION
ARB MIDSTREAM RAIL TERMINAL SITE

A TRACT OF LAND BEING ALL OF THE SOUTHWEST ONE-QUARTER OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN LYING SOUTHERLY OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY AND EASTERLY OF COUNTY ROAD 33 RIGHT-OF-WAY; ALL OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN LYING EASTERLY OF COUNTY ROAD 33 RIGHT-OF-WAY; AND THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN BEING LOCATED IN THE CITY OF EVANS, WELD COUNTY, COLORADO. SAID TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND 3-1/4" ALUMINIUM DISC MARKING THE ¼ CORNER COMMON TO SECTIONS 03 AND 02, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN;

THENCE ALONG THE LINE COMMON TO SAID SECTIONS 03 AND 02, SOUTH 00°02'48" EAST, 1,166.07 FEET TO ITS INTERSECTION WITH THE SOUTHERN RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, BEING 75.00 FEET SOUTHERLY OF CENTERLINE WHEN MEASURED AT RIGHT-ANGLES THERETO;

THENCE ALONG SAID SOUTHERN RAILROAD RIGHT-OF-WAY NORTH 86°45'20" EAST, 30.05 FEET TO ITS INTERSECTION WITH THE EASTERN RIGHT-OF-WAY LINE OF COUNTY ROAD 33, BEING 30.00 FEET EASTERLY OF SAID SECTION LINE WHEN MEASURED AT RIGHT-ANGLES THERETO AND TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID RAILROAD RIGHT-OF-WAY NORTH 86°45'20" EAST, 2,662.53 FEET TO ITS INTERSECTION WITH THE NORTH-SOUTH CENTERLINE OF SECTION LINE OF SAID SECTION 02;

THENCE ALONG SAID NORTH-SOUTH CENTERLINE OF SECTION LINE SOUTH 00°57'20" WEST, 1,765.28 FEET TO A FOUND 3-1/4" ALUMINIUM DISC MARKING THE ¼ CORNER COMMON TO SECTIONS 02 AND 11, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN;

THENCE ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 11 SOUTH 00°09'01" EAST, 2,644.44 FEET TO A FOUND 3-1/4" ALUMINIUM DISC MARKING THE CENTER ¼ CORNER OF SAID SECTION 11;

THENCE ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 11 SOUTH 89°45'27" WEST, 1,319.09 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 11;

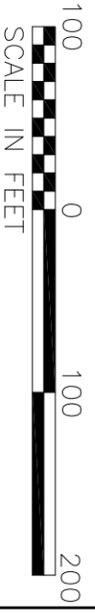
THENCE ALONG THE WESTERN LINE OF THE SOUTHEAST ONE-QUARTER OF SAID NORTHWEST ONE-QUARTER NORTH 00°21'33" WEST, 1,324.89 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 11;

THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER SOUTH 89°52'22" WEST, 1,293.92 FEET TO ITS INTERSECTION WITH THE EASTERN RIGHT-OF-WAY LINE OF COUNTY ROAD 33, BEING 30.00 FEET EASTERLY OF THE WEST LINE OF SAID SECTION 11 WHEN MEASURED AT RIGHT-ANGLES THERETO;

THENCE ALONG SAID RIGHT-OF-WAY LINE PARALLEL TO THE WEST LINE OF SAID SECTION 11 NORTH 00°34'01" WEST, 1,327.66 FEET;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE PARALLEL TO THE WEST LINE OF SAID SECTION 02 NORTH 00°02'48" WEST, 1,614.77 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 9,689,036 SQUARE FEET / 222.430 ACRES, MORE OR LESS.



REV	DATE	AMR	PROJ. ENGR.	DESCRIPTION	BY	CHKD	APP
0	11/03			DETAILED SITE PLAN	CRP	KJ	KB

DRAWN BY:	CRP	LOCATION & DESCRIPTION:	M.P. 1.64, FORT COLLINS INDUSTRIAL LEAD
CHECKED BY:	KJ		LA SALLE, WELD COUNTY, CO
DATE:	12/12/2014		TRackage TO SERVE ARB MIDSTREAM
SHEET NUMBER	100-01	SHEET TITLE:	EXHIBIT B-1

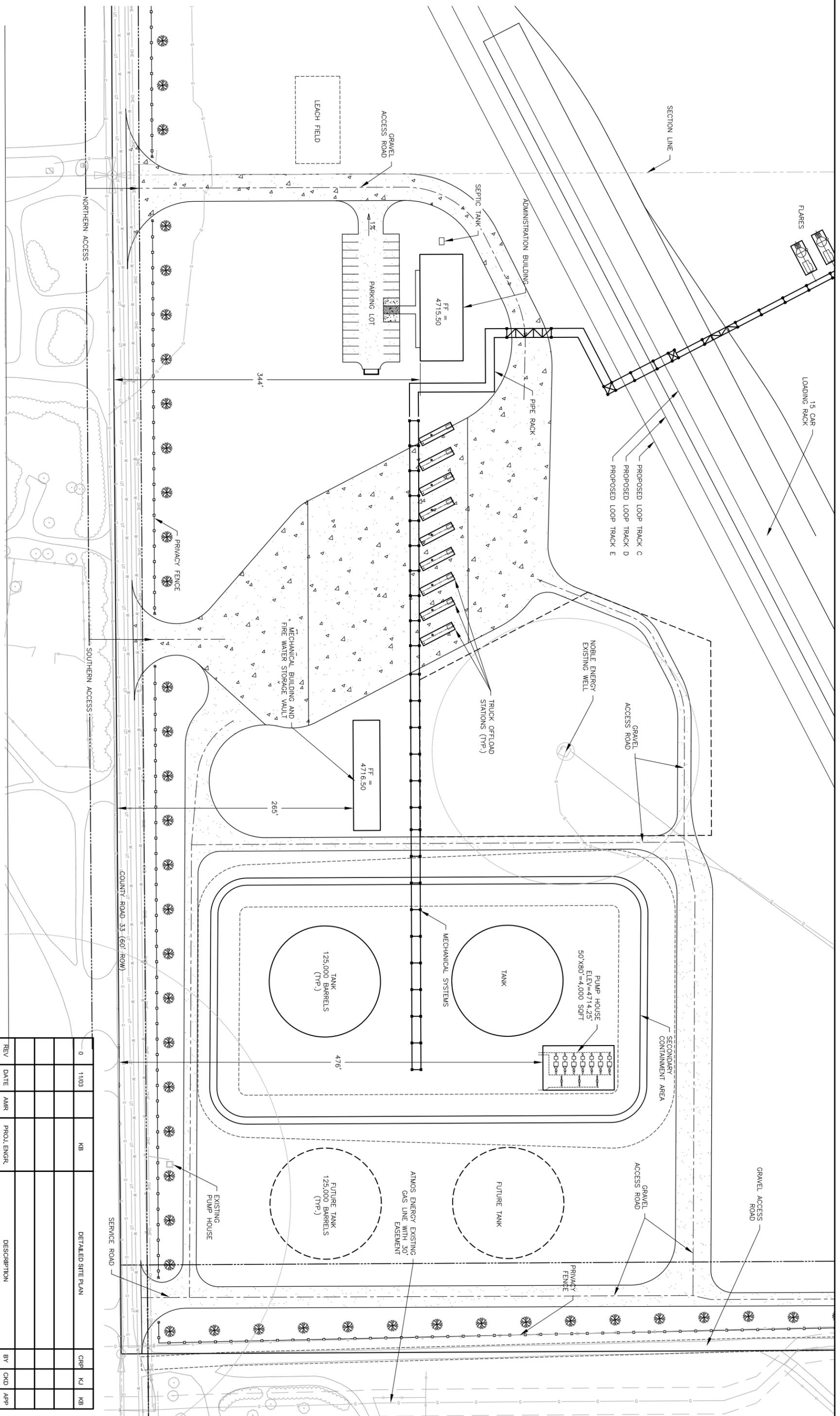
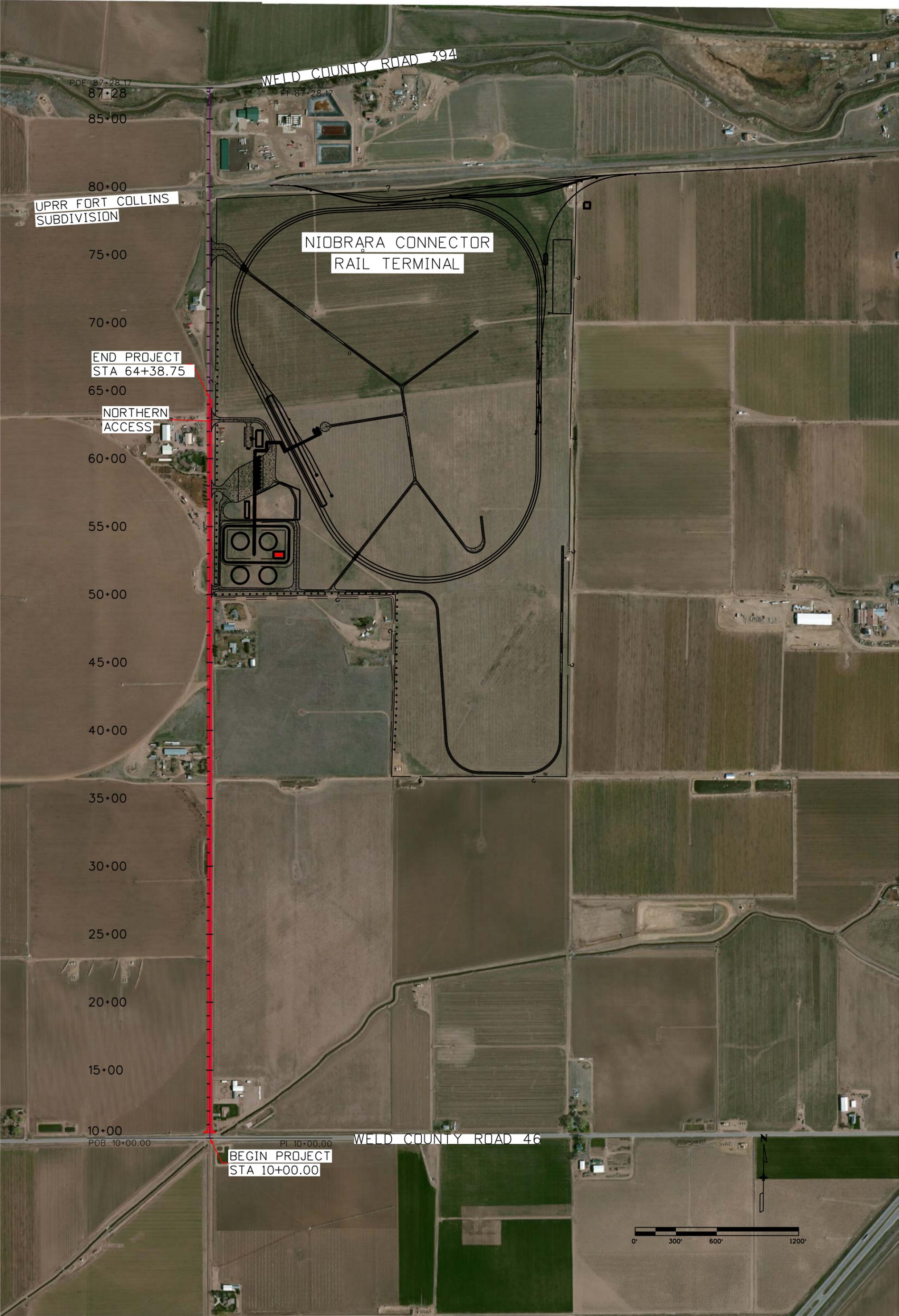


EXHIBIT D
CR 33 Roadway Improvements



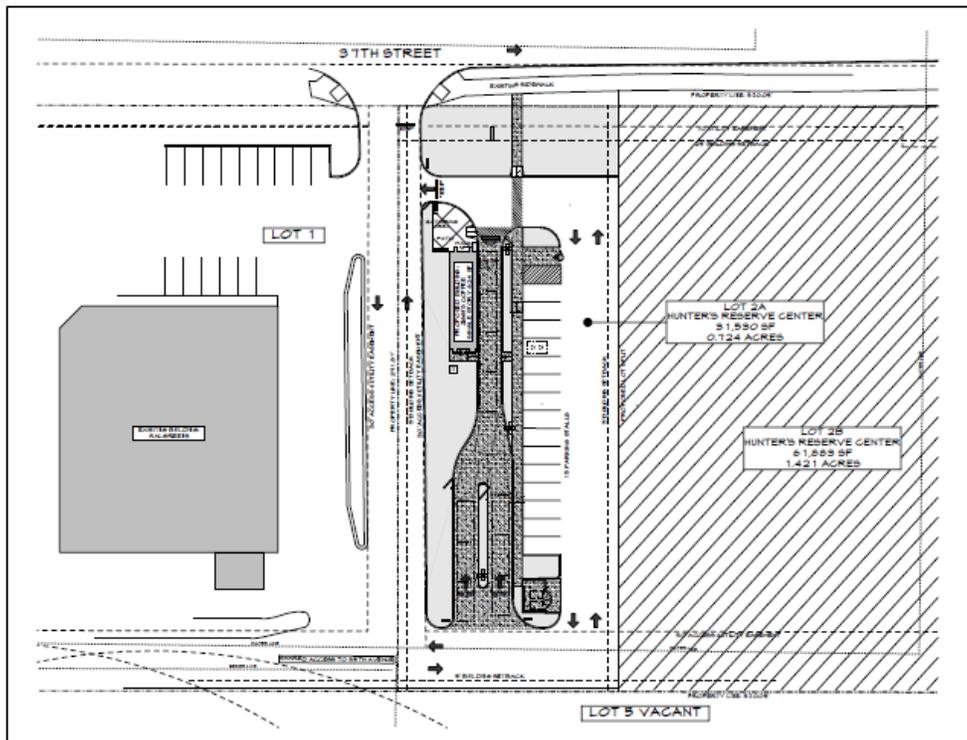
CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.D
SUBJECT: Consideration of Approval of the Site Improvements Agreement for Ziggi's Coffee Shop
PRESENTED BY: James L. Becklenberg, City Manager
Randy L. Ready, Assistant City Manager
Anne Best Johnson, Community Development Director

AGENDA ITEM DESCRIPTION:

On May 21, 2020, Staff approved the Site Plan Review for Ziggi's Coffee Shop through the administrative process and case file #20-SP-03 (Attachment 2). This development was found to meet all requirements of the Commercial (C-3) Zone District and the Site Plan Review Permit process.

At the June 16 Regular Meeting, City Council approved Resolution No. 13-2020 along with Ordinance No. 717-20 on first reading to approve a Minor Replat dividing one parcel into two separate parcels, Lots 2A and 2B for a new Ziggi's coffee shop location on 37th Street just east of Walgreen's. A Site Plan for how Lot 2A will be used is also illustrated below.



The final step of the land use approval process includes City Council review and approval of the Site Improvements Agreement associated with this project. The Agreement (Attachment 1) outlines the on- and off-site improvements and legal requirements associated with developing the property.

This report summarizes the major points of the Site Improvements Agreement that has been jointly drafted by the City of Evans and the Developer along with consultation with the City Attorney. The following items are listed in this agreement for reference:

1. The standard warranty requirement of 115% and post-release of 15% is proposed. The warranty period will be for two years.
2. The developer is responsible for the following:
 - a. Connection to City sanitary sewer and public water
 - b. Connection to City streets
 - c. Landscaping and irrigation improvements and maintenance
 - d. Curb and gutter work

FINANCIAL SUMMARY:

The City has no financial obligations as a result of this Development Agreement. A Letter of Credit in the amount \$46,388 offered by the Developer is attached to the Site Improvements Agreement. The new coffee shop will provide sales tax revenue.

RECOMMENDATION:

Staff recommends that the City Council approve the Site Improvements Agreement for Ziggi's Coffee Shop.

SUGGESTED MOTIONS:

"I move to Approve the Site Improvements Agreement for Ziggi's Coffee Shop and authorize the mayor to sign the Site Improvements Agreement"

"I move to Deny the Site Improvements Agreement for Ziggi's Coffee Shop and NOT authorize the mayor to sign the Site Improvements Agreement."

ATTACHMENTS:

Attachment 1: Site Improvements Agreement with Exhibits

Attachment 2: Administrative Decision for Site Plan dated May 21, 2020

Attachment 3: Letter of Credit

**SITE IMPROVEMENTS AGREEMENT
(ZIGGI'S COFFEE SHOP)**

THIS AGREEMENT is entered into between the City of Evans, a Colorado home rule municipality ("the City") and DLR Property Holdings, LLC ("the Developer") effective the 7th day of July, 2020.

WHEREAS, the Developer is the owner of the real property described on Exhibit A, attached, (hereinafter referred to as "the Property");

WHEREAS, the City has approved the Site Plan, case file 20-SP-03 for the Property in accordance with the provisions of the Evans City Code (the "Site Plan").

WHEREAS, the Developer intends to develop the Property, the effect of which will be to directly impact and generate the need for on-site and off-site improvements. The Developer acknowledges that the exactions set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate;

WHEREAS, the City has approved the Construction Plans prepared by HCI Engineering a division of Harber Carpentry, Inc. dated May 29, 2020 for the Property (the "Construction Drawings");

WHEREAS, the parties desire to provide for the construction of the improvements described in the Construction Drawings that are required to serve the Property (the "Improvements") as set forth herein.

NOW, THEREFORE, in consideration of the premises, the Parties hereto agree as follows:

1. Improvements Required

Developer agrees to make, construct and install (or cause to be made, constructed or installed) the improvements set forth in Exhibit B attached hereto and incorporated herein by reference (the "Developer Improvements"). Such improvements shall be made, constructed and installed in accordance with the Construction Drawings. Any and all costs of City inspection of improvements shall be borne solely by the Developer. The extent of the Developer's compliance with this Agreement shall be determined solely by the City and its duly authorized agents and employees. Prior to commencement of work on the Property, the Developer shall obtain all necessary permits to complete the Improvements. In addition, Developer shall fully comply with all terms and conditions of any such permits.

2. Performance Guarantee

The Developer shall furnish the City in a form and substance acceptable to the City, an Irrevocable Letter of Credit, or other security deemed acceptable by the City (the "Performance Guarantee"), in an amount not less than one hundred fifteen percent (115%) of the total

estimated cost of the improvements, as certified to the City by the Developer and as accepted by the City and as set forth in Exhibit B which have not been completed as of the date on which such security is provided to the City. The security is included in Exhibit C.

The Performance Guaranty shall be subject to the following terms and conditions:

a. The Developer providing the Performance Guarantee shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

b. In the event that prior to City acceptance of the Improvements the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying, or the cost of improvements construction is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee, or augment the deficient security to achieve one hundred fifteen percent (115%) of the cost of improvements completion. If such Performance Guarantee is not timely furnished, then development activities including but not limited to the issuance of building permits and certificates of occupancy and the extension of utility services, may be suspended by the City pending compliance herewith.

c. The Developer shall ensure that all contractors and/or subcontractors employed in connection with construction or installation of the Improvements shall be licensed, to the extent such licensing is required, before any work on the Improvements is commenced.

3. Completion of Improvements

All improvements described in this Agreement shall be completed within 24 months of the date of this Agreement. The time for completion of the improvements may be extended by mutual agreement of the parties, particularly when the need for such extension is caused by persons or matters over which the Developer has no control.

4. Completion of Improvements by City

In the event the Developer fails to complete the Improvements in compliance with this Agreement, the City may, but shall not be obligated to, proceed with restoring or completing some or all of the remaining portions of the Improvements to a condition satisfactory, in the sole discretion of the City Council, to the health, safety and welfare of the City. The City shall be entitled to draw on the letter of credit or security in order to accomplish such restoration and/or completion. The City must give the Developer at least Thirty (30) days prior written notice of its intent to draw on the letter of credit or security in order to restore or complete all or any portion of the Project. If the City completes some or all of the Improvements, then the City Council shall have full discretion to determine the rules and regulations governing use of the Improvements and any fees to be charged for or associated with such use.

5. Development Standards and Procedures

a. Engineering Services

The Developer shall at its sole expense procure all engineering and landscaping services necessary and appropriate in conjunction with the development of the Property, which shall fully conform to the City's applicable ordinances, standards and specifications. Professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed by the State of Colorado as may be appropriate. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.

b. Review

The Construction Drawings prepared by HCI Engineering a division of Harber Carpentry, Inc. dated May 29, 2020 were reviewed and approved by the City on June 9, 2020.

c. Testing

The Developer, at its sole expense, shall employ a professionally qualified, independent testing company acceptable to the City to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with applicable standards and specifications. Developer shall furnish the City with certified copies of test results, and agrees to release and authorize full access by the City and its designated representatives to all work-up materials, procedures and documents used in preparing the test results as requested by the City.

d. Inspection

At all times during construction of the Improvements, and until final acceptance thereof by the City, the City shall have the right, but not the duty, to inspect materials and workmanship in order to ascertain conformance with the Construction Drawings and all applicable standards and specifications. Developer shall reasonably cooperate and assist the City to gain appropriate access to the areas designated for inspection. It shall also be the duty of the Developer to notify the City upon discovery of any nonconformance with the said plans, standards and specifications. Inspection and acceptance of work by City personnel shall not relieve the Developer of any responsibility.

e. Street access

Developer shall, at its own expense, be responsible for keeping on-site streets, off-site streets used as construction routes, and rights-of-way clean of mud, rocks, and debris at all times during said construction. All work shall conform to the requirements for erosion control as described in statutes, ordinances, or

regulations. Should the Developer fail to meet said requirements, the City may take corrective action and invoice the Developer at the City's prevailing rate.

f. Initial acceptance of improvements

The Developer shall submit a Request For Initial Acceptance, including Certification of Completion, "as built" drawings of the Improvements and certified cost estimates of Public Improvements, to the City upon completion of the Improvements. Said Certification shall be submitted upon written oath or affirmation of the Developer that the Improvements have been fully paid for and Developer has fully paid all persons or entities having furnished labor or materials for the design, construction and installation of such Improvements. The City, however, shall not be deemed to have accepted any payment responsibility or liability in conjunction with the ascertainment of such payment. The City shall inspect such Improvements within ten (10) working days of the City's receipt of the Developer's request for Initial Acceptance, unless unable to do so due to inclement weather or other natural conditions or conditions beyond the City's control. Upon a finding of satisfactory completion of the Improvements in compliance herewith and all applicable ordinances and standards of the City, the City shall issue a Certificate of Initial Acceptance to the Developer, for the completed improvements. Following the issuance of the Certificate of Initial Acceptance, the City shall, upon request by the Developer, release the Performance Guarantee, provided a Warranty Guarantee meeting the requirements of subsection (g) below has been executed and delivered to the City, and provided no mechanics lien statements have been filed with respect to the project.

Upon the issuance of the Certificate of Initial Acceptance with respect to the Improvements consisting of water and sewer lines and facilities, the Developer shall convey such lines and facilities to the City by bill of sale.

g. Warranty

(1) For a period of two (2) years from the date of initial acceptance or the date of repair for repairs made during the initial warranty period, Developer warrants that all improvements hereunder will be free from defects, including but not limited to defects in materials, workmanship, design, construction and installation, and that the Improvements otherwise fully comply with all applicable standards and specifications.

(2) A Warranty Guarantee shall be equal to fifteen percent (15%) of the total cost of the Improvements, as certified to the City. The Warranty Guarantee shall be in the form of an Irrevocable Letter of Credit or other security acceptable to the City conforming to the requirements applicable to the Performance Guarantee set forth at Section 2 hereof. The Warranty Guarantee shall provide security for the costs which may be incurred in repairing and/or replacing improvements during a warranty period of two years following Initial Acceptance by the City.

(3) In the event that any substantial repair or replacement is required to any of the Improvements during the warranty period and such repair or replacement is not timely made upon notice of defect or in any event before the expiration of the warranty period, the City may elect, but shall not be obligated, to:

(a) call the Warranty Guarantee and secure repair or replacement of the nonconforming improvements, or

(b) order denial or suspension of building permits, utility services or certificates of occupancy outstanding until repair or replacement of any non-conforming Improvements have been performed.

(c) Take such other action as may be authorized in law or equity.

6. Procedure for Final Acceptance of Improvements

a. No earlier than sixty (60) days or later than thirty (30) days prior to the expiration of the warranty period, the Developer shall submit a written request for Final Acceptance of Improvements, and within ten (10) days of such request the City shall conduct a final inspection of the Improvements, unless precluded from doing so by weather or natural conditions. If the Improvements subject to the inspection request fully conform to this Agreement and all applicable standards and specifications, and/or all repairs, if any are needed, have been made to bring same into such conformance, then the City shall issue a Certificate of Completion and certify Final Acceptance of the Improvements to the Developer . After Final Acceptance the Developer may request, and the City shall release the Warranty Guarantee, and Developer shall have no further obligations or liabilities with respect to such Improvements.

b. If Developer fails to have Improvements finally accepted as provided in this Section 6, the Developer shall be in default of this Agreement and the City may exercise its rights to secure performance as provided by Section 4 hereof. In the event that the Developer has not requested Final Acceptance forty-five (45) days prior to the scheduled completion dates applicable, as may have been extended as herein provided, the City shall have the right, but not the obligation, to at any time thereafter conduct a final inspection of the Improvements. If pursuant to Final Inspection requested by the Developer or initiated by the City, any such Improvements are found to not conform to this Agreement, or applicable standards and specifications, the City shall have the rights set forth at Section 4, 5, and elsewhere herein.

Nothing herein shall be construed or deemed as requiring the City to finally accept and release from warranty any Improvements that are defective or damaged.

7. Liability Limitations

a. Indemnification

The Developer agrees to indemnify and hold harmless the City, and its officers, agents and employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arises out of or is in any manner connected with the work to be performed under this Agreement, if

such injury, loss, or damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident or other fault of the Developer, any Subcontractor of the Developer, or any officer, employee, or agent of the Developer, contractor or subcontractor. The obligations of this Section shall not apply to damages for which the City shall become liable by final judgment to pay a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City.

b. Insurance

(1) The Developer agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages: Commercial General or Business Liability Insurance with Minimum combined single limits of NineHundred Ninety Thousand Dollars (\$990,000) for any one occurrence, with respect to each of the Developer's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the Developer's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the Developer who utilizes an automobile in providing services to the City or the Developer under this Agreement.

(2) Developer shall insure that all contractors and subcontractors providing services provide Workers' Compensation as required by the Labor Code of the State of Colorado and Employers' Liability Insurance;

(3) If approved by the City in its sole discretion, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

(4) Developer shall at a minimum procure and maintain insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Developer pursuant to retroactive dates, and extended reporting periods shall be procured to maintain such continuous coverage.

(5) A Certificate of Insurance shall be completed by the Developer's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(6) Failure on the part of the Developer to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material Breach of Agreement and, if said breach is not cured within ten (10) days of written notice by City to Developer, City may immediately terminate this Agreement, or at its discretion, City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith and all monies so paid by City shall be repaid by the Developer to City upon demand, or City may offset the cost of the premiums against any monies

due to Developer from City, or the City may cease to issue building permits or certificates of occupancy, or to provide utility services until the defect has been remedied.

(7) The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Developer agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this particular job.

(8) The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$330,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, agents or employees.

c. Nonliability

Developer acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare, and that no specific relationship with, or duty of care to the Developer or third parties is created or assumed by such review approval, or is any immunity waived, as is more specifically set forth at Section 24-10-101, et seq. C.R.S., Colorado Governmental Immunity Act.

No one, individually or otherwise, other than the parties hereto, shall acquire, as a result of this Agreement, any rights, claims or obligations from or against the City, its agents, employees or officers. Actions by the City against Developer to enforce any provision of this Agreement shall be at the sole discretion of the City Council of the City. No third parties shall have any right to require any action by the City pursuant to this Agreement; and this Agreement shall not create a liability on the part of or be a cause of action against the City for any personal or property damage that may result to any third parties from the failure of Developer to perform or construct the improvements herein specified.

8. Enforcement and Remedies

a. Breach of Agreement

In the event the Developer fails to timely comply with any of the terms, conditions, covenants and undertakings hereof, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the Developer by the City, unless the City in writing designates a longer cure period reasonably requested by the Developer, then the City may call for payment of the Performance or Warranty Guarantee. The City may also during the cure period withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing hereunder shall be construed to limit the City from pursuing any other remedy at law or in equity which may be appropriate under the statutes and ordinances, and applicable laws and legal standards of the State of Colorado or the United States, before

any court of competent jurisdiction. Such remedies shall be cumulative. Notice by the City to the Developer shall specify the conditions of default.

b. Non-Waiver

The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Developer, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

9. Binding Effect

This Agreement shall be binding on the parties hereto, their respective successors and assigns, and shall be deemed to constitute a covenant running with the land. The Developer and any such successor and assign shall be jointly and severally liable for performance of this Agreement; provided, however, that no individual lot that has been sold to an individual lot owner shall have any obligation or liability of any kind under this Agreement.

10. Entire Agreement

This Agreement shall constitute the entire agreement between the parties. No subsequent amendment hereto shall be valid unless made in writing and properly executed by the parties hereto.

11. Notice

Any notice given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other, and unless amended by written notice, to the following:

City Manager
City of Evans
1100 31st Street
Evans, Colorado 80620

DLR Property Holdings, LLC
20067 Northmoor Dr
Johnstown CO 80534

12. Applicable Law, Jurisdiction, Venue and Severability

This Agreement is to be governed and construed according to the laws of the State of Colorado. Any action or claim filed to enforce this Agreement or relating directly or indirectly to the provisions, performance or enforcement of this Agreement shall be filed in the District Court of Weld County, State of Colorado. In the event that any provision of this Agreement is held to be in violation of the City's ordinances or the laws of the State of Colorado or the United States and

thereby rendered unenforceable, such unenforceable provision shall be ineffective without invalidating the remaining provisions of this Agreement

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

[DEVELOPER]

By: _____
Brian Rudy, Mayor

By: Lisa M Dell
owner, manager
Ziggi's Coffee
DLR Property Holdings LLC

ATTEST:

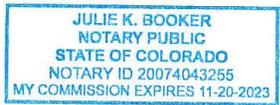
Karen Frawley, City Clerk

STATE OF COLORADO)
)
COUNTY OF Larimer) ss

Acknowledged before me this 26 day of May, 2020 by Lisa M Dell as owner, of Ziggi's Coffee a DLR Property Holdings.

Witness my hand and official seal.
My commission expires: 11/20/2023

(Seal)



Julie K Booker
Notary Public



May 28, 2020

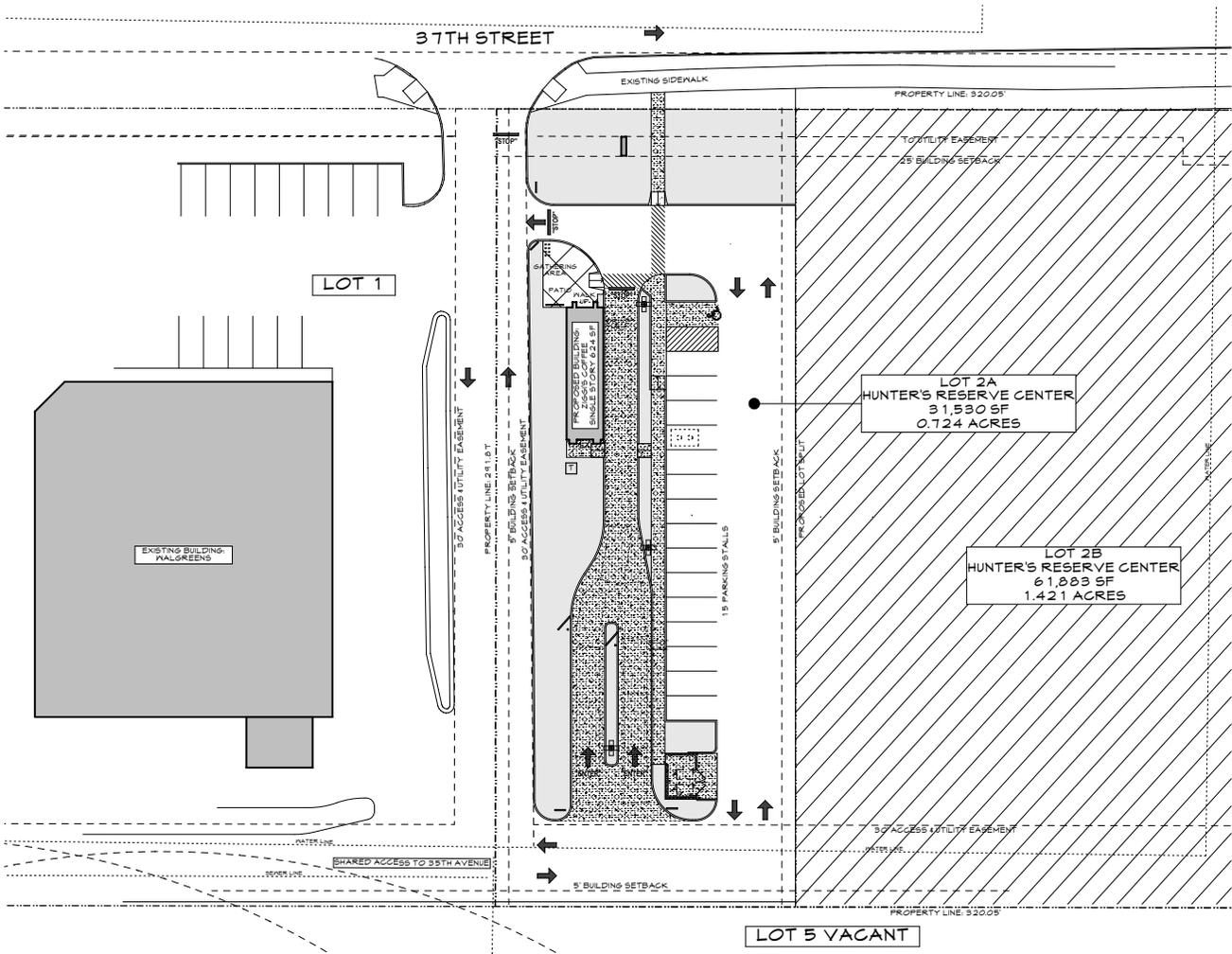
Project Name: Ziggi's Coffee-Evans

Please find this letter to serve as **Exhibit A** in the Site Development Agreement for the above referenced project.

The Legal Description of the address for the above referenced project is as follows:

EVS HRC L2 HUNTERS RESERVE CENTER

The site in question is identified in the Site Plan below:



Please let me know if there are any questions.

Respectfully,

A handwritten signature in black ink, reading "Nick Brewka". The signature is fluid and cursive, with the first name "Nick" and last name "Brewka" clearly legible.

Nick Brewka
MAH Architectural Group



May 28, 2020

Project Name: Ziggi's Coffee-Evans

Please find this letter to serve as **Exhibit B** in the Site Development Agreement for the above referenced project.

The proposed development is the construction of Type V-B, wood framed commercial drive-thru coffee kiosk called Ziggi's Coffee. It is a 624 square foot, single story building serving only as a drive-thru and walk-up coffee shop. There is no dining room or indoor areas meant for customers to consume their beverages.

Along with the construction of the building will be the development of the site, which as it currently sits is a completely undeveloped parcel of land placed between a Walgreens pharmacy and some residential neighborhoods. The proposed site development will consist of the modification of existing curbs to tie into existing transportation infrastructure and the creation of new drive-thru lanes, parking areas, sidewalks, landscaping and a patio for walk-up orders. Access to the developed site will utilize the existing shared access road serving the Walgreens off of 37th Street as well as the access road from 35th Avenue. No additional access ways off of 35th Avenue or 37th Street will be constructed.

An itemized record of site improvements with cost estimates can be found in a table on the sheet that follows.

Please let me know if there are any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nick Brewka'. The signature is fluid and cursive, with a large, sweeping initial 'N'.

Nick Brewka
MAH Architectural Group

EXHIBIT B

LINE ITEM	IMPROVEMENT	COST ESTIMATE
1	CURB AND GUTTER (\$14.80 PER LF; ASPHALT \$32.45 PER SY)	\$1,888.00
2	LANDSCAPING	\$27,345.00
3	IRRIGATION	\$7,655.00
4	SEWER SERVICE TIE-IN	\$8,500
5	WATER SERVICE TIE-IN	\$1,000.00
6	RIGHT-OF-WAY	N/A
	TOTAL	\$46,388.00



**ADMINISTRATIVE DECISION FOR SITE PLAN
May 21, 2020**

ITEM: Ziggi’s Coffee Shop, Site Plan Review of Resubmittals dated April 23, 2020

PREPARED BY: Lauren Richardson, City Planner

ACTION: Review for Administrative Approval Site Plan

SITE INFORMATION		
Location	37 th Street & 35 th Avenue, Evans, CO 80620	
Parcel Number	095925214002	
Property Owner	Lisa Dell - DLR Property Holdings LLC	
Applicant	Nick Brewka – MAH Architectural Group	
Property Acreage	0.724 acres	
Existing Land Use	Vacant	
Proposed Land Use	Personal Service Establishment, Drive-Thru Coffee Kiosk	
Surrounding Uses:	North	A Bank and Business Park
	South	Vacant
	East	Vacant
	West	Drug Store
Zoning	C-3 Commercial District	
Surrounding Zoning	North	C-1, A Bank and Business Park
	South	C-3, Vacant
	East	C-3, Vacant
	West	R-1, Drug Store - Walgreens
Comprehensive Plan Future Use Designation	The 2014 Future Land Use Map designates the site as being appropriate for Commercial Development	
Overlay Districts	None	

VICINITY MAP

The property is outlined in red on the image below obtained from Weld County GIS on March 11, 2020. Two access points are proposed. Access to the developed site would come from existing access road off of 37th Street and an access road from 35th Avenue.



SITE PLAN REVIEW PURPOSE

According to the Municipal Land Development Code, the purpose of the Site Plan Regulations is to “promote orderly and sound development standards as they apply to the City. Site development standards are intended to enhance and protect the community’s natural as well as manmade environments. Site plan approval is needed for a building permit for all multi-family, commercial and industrial developments as well as parks, open space and trails.” The Review and referral process outlined in City Code Section 18.06.090.B.5 was followed.

PROJECT DESCRIPTION

The applicant provided materials for a Site Plan application for a proposed Coffee Shop. Staff has reviewed the application materials and found these to be in compliance with the review criteria for a Site Plan found in Section 18.06.090.D of the Municipal Code.

The applicant seeks approval of their Site Plan Review application for the proposed drive-thru Coffee Shop. The purpose of the High-Intensity Commercial, C-3 Zone District is to provide an area for serving the daily needs of the total community. The C-3 Zone District lists Retail Uses, Extensive as a contemplated use in Section 18.04.070 of the Land Use Code. The project includes a proposed single-story building serving as the drive-thru and walk-up coffee shop. The small 624 square foot building will not have inside seating. The project proposes shared access of the road serving Walgreens off of 37th Street as well as another access road from 35th Avenue. The site plan shows parking spaces, sidewalks, and landscaping.

Details of the proposal under review include the following:

- The drive-up Coffee Shop is proposed to be a 624 square foot structure
- Single-story building serving as drive thru and walk-up coffee shop.
- There will be no indoor seating and outdoor seating is limited
- There will be two drive-thru lanes created
- Site access includes the following:
 - Access from 35th Avenue through the Walgreens access
 - Access from 37th Street through the Walgreens access
 - Both Walgreens Access points allow for access to these parcels
 - Access to the parcel to the east created by the Replat will utilize same access points
- Ziggi's application materials indicate there will be 2-4 employees
- Water and Sanitary Sewer service will be provided by the City of Evans

The following describes the site in relationship to existing plans in place.

- A. Highway 85 Plan:** Not applicable
- B. 2010 Comprehensive Plan:** The existing Zone District of C-3, Commercial is consistent with the commercial land use designation in the 2010 Comprehensive Plan, Future Land Use Map.
- C. Freedom Parkway Master Plan.** 37th Avenue is Freedom Parkway. Lot 2A will need to preserve access across the south property to serve lot 2B in perpetuity.

18.06.090.D REVIEW CRITERIA FOR SITE PLAN

- A. All of the information required on a site plan is shown.**

Staff reviewed the submitted materials and find the required information was provided and shown on the site plan.
- B. The lot size and lot dimensions are consistent with what is shown on the approved final plat, if applicable.**

The Weld County Assessor's website illustrates a 0.73acre parcel and the site plan illustrates the same lot size and dimensions. Conditions of Approval address reflecting the acreage to be consistent with Lot 2A.
- C. No buildings or structures infringe on any easements.**

The 30' easement proposed from 37th Street shall be used as an access road including the fire lane access for this project and may not be removed without approval from the Fire District.
- D. The proposed site grading is consistent with the requirements of the current City of Evans Master Drainage Plan.**

Review by the City Engineering Department concludes the proposed site imperviousness was calculated when the Hunter's Reserve neighborhood was designed. No on-site



detention is needed. The City Engineering Department has concluded the Drainage Memo satisfies the application requirements.

E. The use, density and dimensions shown conform to the requirements as set forth in the appropriate zoning or to the approved PUD requirements.

The property is zoned C-3 and allows for personal service establishments as well as extensive and intensive commercial uses. The setbacks and lot coverage meet code requirements.

F. The applicable design principles and development standards have been adequately addressed and the proposed improvements are in conformance.

The submitted documentation outlines the site plan design of the proposed access points.

G. All economic concerns regarding impact to City services have been addressed appropriately.

The developer intends to use existing City services that are intended for this site. No economic concerns have been identified for this proposal.

Conditions of Approval for Site Plan

The applicant shall provide written responses to the City Planning Department regarding how the Applicant intends to meet the Conditions of Approval and include supporting documentation such as revised plans, agreements and amended documents.

1. A Site Improvement Agreement is required for on-site and off-site improvements, both private and public. This Agreement will be presented to City Council for acceptance at a Public Hearing. Please work with City Planning to schedule this hearing. The Site Plan will not be finalized until after the Site Improvement Agreement has been approved by City Council.
2. The Applicant shall amend The Materials Calculation Table found on Sheet A3.0 to include the percentage of windows and doors on the north, west, and east elevations.
3. The Applicant shall provide the City with information regarding the EQRs needed to serve the project site.
4. The parking requirements of 18.08.080.B appear to exceed code requirements. Should the Applicant choose to reduce parking and add additional landscaping, please coordinate with the Planning Department.
5. Upon approval of the Site Plan, an electronic copy of plats/plans along with supporting documents, as necessary, are to be provided to the City Planning Department for review.
 - a. The final copy of the Site Plan shall be submitted for recording within thirty (30) days of the date on the final Staff Comments.



6. Prior to construction:
 - a. The Site Plan shall be recorded with the Weld County Clerk and Recorder by the City Planning Department.
 - b. The Applicant shall provide evidence to the City that the water necessary to operate the site has been purchased.
 - c. The Site Improvement Agreement shall be executed between the Developer/Property Owner and Evans City Council and all surety accepted.
 - d. A Building Permit and Sign Permit are required and will be reviewed with the Development Standards found in Chapter 18.08 and 18.09.
 - e. The Applicant shall prepare final construction drawings and provide these to the City Engineer for approval.
 - f. A Grading Permit and Access Permit(s) are required.

7. Development Standards. The following development standards shall be placed on the Site Plan.
 - a. Approval of this plan may create a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended.
 - b. The plans reviewed by the City and subsequently recorded with Weld County Clerk and Recorder constitute the extent of the land use approval. Any changes may necessitate an amendment to the land use permit.
 - c. Architectural Design Standards found in Section 18.08.040.G of the Land Use Code, as amended, shall be followed. Architectural review shall also occur at the time a building permit is filed for the future building.
 - d. The approved Site Improvement Agreement shall be adhered to.
 - e. The applicant shall apply for building permits with the City of Evans.
 - i. Plan review by the Fire Protection District is required.
 - ii. The applicant shall coordinate with the Fire Protection District for all inspections.
 - f. A Grading Permit issued by the City of Evans is required prior to construction.
 - g. On-site lighting shall be shielded to not shine onto adjacent properties.
 - h. 37th Avenue is Freedom Parkway. Lot 2A will need to preserve access across the south property to serve lot 2B in perpetuity.
 - i. The 30' easement proposed from 37th Street shall be used as an access road including the fire lane access for this project and may not be removed without approval from the Fire District.
 - j. A key lock box on the building shall be provided to the Fire Protection District.
 - k. The applicant will refrain from using raised sidewalks or traffic calming devices.



HIGH PLAINS BANK

Employee Owned • Community Driven

IRREVOCABLE LETTER OF CREDIT NO. 44302192

ISSUE DATE: July 8th 2020

APPLICANT: DLR Property Holdings, LLC

BENEFICIARY: City of Evans
1100 31st Street
Evans, Colorado 80620
c/o City Manager

AMOUNT: \$49,321.12

MATURITY DATE: One year from the issue date

Dear Sir or Madam:

We hereby establish our irrevocable Letter of Credit in your favor in the amount of \$49,321.12. The purpose of this Letter of Credit is to secure performance of a Site Improvements Agreement for the TBD site between the City of Evans and DLR Property Holdings, LLC.

You are hereby authorized to draw on sight on High Plains Bank, by drafts, up to the aggregate amount of \$49,321.12. Such total amount may be reduced, at the sole discretion of the City, from time to time, as a result of the completion of a portion of the site improvements by DLR Property Holdings, LLC.

The sole condition for payment of any draft drawn against this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager, or other City designee to the effect that DLR Property Holdings, LLC is in default of Developer's obligations pursuant to the Site Improvement Agreement. In the event of wrongful dishonor, we will reimburse the City for all court costs, investigative costs and reasonable attorney fees incurred by the City in enforcing this letter of credit. We further agree that jurisdiction and venue for any legal action enforcing this letter of credit shall be in the District Court of Weld County, Colorado.

We hereby agree with drawers and endorsers, and bona fide holders of drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

Multiple drafts may be presented.

This Letter of Credit will be automatically extended without amendments for one year from the present, and each future expiration date thereof, unless Issuer delivers written notice within ninety

FLAGLER

329 Main Avenue
P.O. Box 158
Flagler, CO 80815
719.765.4000
719.765.4658 fax

BENNETT

235 South Ash Street
P.O. Box 329
Bennett, CO 80102
303.644.4900
303.644.4904 fax

WIGGINS

502 Central Avenue
P.O. Box 220
Wiggins, CO 80654
970.483.7334
970.483.7302 fax

LONGMONT

600 Kimbark Street
Longmont, CO 80501
303.776.2265
303.776.3939 fax

(90) days prior to any such expiration date to the City of Evans of its intents not to renew this Letter of Credit. Any such notice shall be in writing and shall be delivered with an acknowledged receipt, either in hand or by certified mail.

This Letter of Credit is not transferable.

This Letter of Credit sets forth in full our understanding, and such undertaking shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument or agreement, referred to herein, except for such certificate and draft(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate and draft(s).

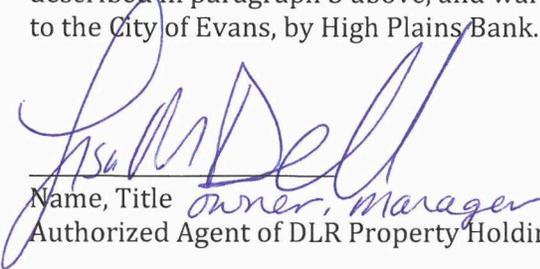
Except so far as otherwise expressly stated herein, this Letter of Credit shall be subject to Article 5 of the State of Colorado Uniform Commercial Code (UCC) and the Uniform Customs and practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (UCPDC). To the extent of any conflict between the UCC and the UCPDC, the UCC shall control.

Signed this 23rd day of June, 2020 on behalf of High Plains Bank.



Chris McVay, Longmont President
High Plains Bank

On behalf of DLR Property Holdings, LLC, I hereby authorize High Plains Bank to pay the City of Evans, all, or a portion of this Letter of Credit upon receipt by High Plains Bank of the letter described in paragraph 3 above, and waive any claims or defense which I may have to the payment to the City of Evans, by High Plains Bank.



Name, Title owner, manager
Authorized Agent of DLR Property Holdings, LLC

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.E
SUBJECT: Consideration of Planning Commission Member Appointments
PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best Johnson, Community Development Director

AGENDA ITEM DESCRIPTION:

With the resignation of two Planning Commissioners on June 4, 2020, the Evans Planning Commission has two open positions. In addition to these two open positions, City Council has the opportunity to appoint a sixth Planning Commission member to the newly-created Alternate position.

The City posted a vacancy announcement for the Planning Commission positions on June 5 and applications were due to the City Clerk by June 24, 2020.

Applicant interviews are scheduled on July 7, before the Regular Meeting of the City Council.

During its regular meeting on July 7, 2020, City Council may choose to appoint the new Planning Commission members. Two applicants should be appointed to five-year terms on the Planning Commission and a third applicant should be appointed to the newly-created Planning Commission Alternate Member position. The alternate member will receive the Planning Commission packet, can participate in the discussions at meetings, and, if fewer than five regular members are present, then the alternate member can vote on the issues before the commission.

FINANCIAL SUMMARY:

None.

RECOMMENDATION:

Appointment of three Planning Commissioners by City Council. Two will be regular members of the Planning Commission and the third appointment will be in the Alternate position.

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.F
SUBJECT: Consideration of an Intergovernmental Agreement (IGA) with Weld County for the 23rd Avenue Arterial Construction Project
PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Mark Oberschmidt, P.E. City Engineer

DESCRIPTION:

In 2019, the City committed to constructing 23rd Avenue from its current southern terminus at 37th Street south to Prairie View Drive in 2020. The future segment will be approximately one mile in length and include two lanes (total) for both north and south traffic. The project will open the existing 23rd Avenue corridor to the community to the south and open new opportunities for development along the future corridor. The impetus for the 2019 discussions and plan was the approval of the Mission Springs community development project, which requires access to and from the future 23rd Avenue for efficient transportation flow. The developer is required to construct the southern third of the new road as part of its project. The City's project in 2020 will build the remainder of the two-lane road north from Mission Springs to its intersection with 37th Street.

The Right-of-Way (ROW) alignment for 23rd Avenue abuts land in unincorporated Weld County to the east. At approximately the time the City's discussions about the two-lane road were occurring, Mayor Rudy and Weld County Commissioner Barbara Kirkmeyer began discussions of potentially collaborating to widen the two-lane 23rd Avenue to its ultimate four-lane arterial standard with two-lanes of traffic each direction, appropriate medians, sidewalks, and landscaping. As part of a collaborative agreement, the County would partner with the City in the cost of the road and the City would commence annexation procedures with affected property owners to incorporate the parcels adjacent to the 23rd Avenue corridor. The City and the County would also collaboratively explore the potential for using Urban Renewal tools to redevelop the corridor and other properties in the vicinity.

In July 2019, the Weld County Commissioners held a work session to discuss the project. A City of Evans contingent, led by Mayor Rudy, presented the plans underway for the two-lane road and the conceptual plan and costs for the ultimate four-lane arterial segment. Following discussion, the commissioners provided unanimous direction to partner with the City in the project and contribute \$2,000,000 to the widening project. The widening from two to four lanes is tentatively planned for 2023, following the annexation, ROW acquisition, and utility relocation work that must occur prior to the construction of the final two lanes. The City will manage all aspects of the project.

The IGA presented for the City's Council's consideration provides for the project and partnership outlined above. The total project, including the 2020 City costs and the widening to four lanes is expected to cost between \$4.5 and \$5.0 million in total, of which the County will pay \$2.0 million. The agreement also provides that impact fees ultimately generated from parcels currently in the Weld County will be forwarded to the County when the parcels develop. It also provides that redevelopment revenues from the potential urban renewal projects could be shared between the City and County to help reimburse costs for the road project.

At its meeting on June 22, 2020, the Weld County Board of County Commissioners approved the attached agreement.

FINANCIAL SUMMARY:

The IGA will ensure that the City and Weld County will share the costs of the road project, with \$2 million funded by the County and \$2.5 million to 3.0 million to be paid by the City. The City's portion of the project is planned to be paid from transportation impact fees, Capital Street Fund monies, and a General Fund allocation already approved in the 2020 budget.

The City will also pay any costs associated with annexation, which are projected to be nominal, plus the costs associated with establishing an urban renewal project area, which could total approximately \$75,000.

RECOMMENDATION:

Staff recommends approval of the IGA with Weld County for the 23rd Avenue Arterial Construction project.

SUGGESTED MOTIONS:

"I move to approve the Intergovernmental Agreement with Weld County (IGA) for the 23rd Avenue Arterial Construction Project and authorize the Mayor's signature on the Agreement."

"I move to reject the Intergovernmental Agreement with Weld County (IGA) for the 23rd Avenue Arterial Construction Project"

ATTACHMENTS:

- Intergovernmental Agreement (IGA) with Weld County for the 23rd Avenue Arterial Construction project

INTERGOVERNMENTAL AGREEMENT
FOR ROADWAY IMPROVEMENTS FOR 23rd AVENUE, BETWEEN
37th STREET AND 42nd STREET

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2020, by and between the City of Evans, Colorado, a municipal corporation of the State of Colorado, whose address is 1100 37th Street, Evans, Colorado 80620, hereinafter referred to as "Evans," and the County of Weld, State of Colorado, by and through the Board of County Commissioners of the County of Weld, Colorado whose address is P.O. Box 758, 1150 "O" Street, Greeley, Colorado 80632, hereinafter referred to as "Weld County." Evans and Weld County are each referred to herein as "Party," and collectively as "the Parties."

WITNESSETH:

WHEREAS, at present, the City of Evans and Weld County share jurisdiction of 23rd Avenue, from 37th Street and 42nd Street, hereinafter referred to as "23rd Avenue," which Evans intends to annex the remaining portion thereof, and

WHEREAS, Evans desires to make certain road improvements to 23rd Avenue as described and detailed herein, hereinafter referred to as the "Project," and agrees to commence annexation proceedings for the entirety of 23rd Avenue, and

WHEREAS, Weld County agrees to contribute \$2,000,000 to help pay for the Project because of its benefit to transportation in the area, and

WHEREAS, Weld County agrees to petition Evans for the annexation of 23rd Avenue using petition forms and annexation plat provided by Evans, and

WHEREAS, both Parties are authorized to enter into said Agreement by C.R.S. Sec. 29-1-203 and the Colorado Constitution Article XIV, Sec. 18(2), for the purpose of achieving greater efficiencies for the provision of services to the public.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **TERM:** The term of this Agreement shall be from the date first written above to and until such time as the Project described herein shall be completed.
2. **DESCRIPTION OF IMPROVEMENTS:** The Project's improvements shall consist of Evans' designing the ultimate arterial configuration from 23rd Avenue to 42nd Street. The construction will be a four-lane arterial street with median, curbs, gutters and sidewalks. The Project will include right-of-way acquisition, surveying, design, utility relocations, waterline and storm sewer installation, traffic signal modifications at 37th Street and 42nd Streets, intersection improvements at 37th and 42nd Streets, street landscaping and irrigation, street lighting, fill, grading, paving and concrete work. A cross-section of the Project is attached hereto as Exhibit "A." Estimated completion of the Project will be no

06/22

later than December 31, 2023. All procurement for and management of the Project shall be the responsibility of Evans.

3. ANNEXATION OF 23rd AVENUE BY EVANS: Evans agrees to commence proceedings for the annexation of 23rd Avenue within six (6) months after the approval and signing of this Agreement by both Parties. Weld County agrees to petition Evans for the annexation of 23rd Avenue. The petition form, annexation plat, and all annexation fees will be provided by Evans at no cost to Weld County.
4. PAYMENT OF COSTS FOR PROJECT AND REIMBURSEMENT: Weld County agrees to pay \$2,000,000 to Evans as Weld County's entire financial contribution to the Project. The sum of \$1,000,000 will be paid upon approval and signing of this Agreement by both Parties. The sum of \$1,000,000 will be paid upon substantial completion of the Project. All costs for the Project in excess of the \$2,000,000 paid by Weld County shall be the responsibility of Evans.
 - a. As development of properties adjacent to 23rd Avenue occurs, transportation impact fees that are assessed by the City of Evans attributable to such properties presently in unincorporated Weld County will be paid to Weld County as reimbursement for Weld County's contribution to the Project.
 - b. Evans and Weld County agree to discuss collaboration to form an Urban Renewal Area (URA) to facilitate additional reimbursement of Project costs or help facilitate development in the blighted areas in the vicinity of 23rd Avenue. Revenues from the URA may be used to reimburse some or all of the costs for the Project incurred by the Parties, subject to plans for the URA area collaboratively developed by the Urban Renewal Authority and Weld County.
 - c. Once Project design and construction details are known, Evans and Weld County agree consider a collaborative application for a DOLA Energy Impact grant, the proceeds of which would offset the costs as then agreed to by the Parties.
5. ENTIRE AGREEMENT: This writing, together with the exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter herein, and shall be binding upon the Parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of the Parties.
6. NO THIRD-PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in the Agreement. It is the express intention of the Parties that any entity other than the Parties receiving services or benefits under this Agreement shall be incidental beneficiary only.
8. SEVERABILITY: If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without

such provision to the extent that this Agreement is then capable of execution within the original intent of the Parties.

9. MODIFICATION AND BREACH: This Agreement contains the entire Agreement and understanding between the Parties and supersedes any other Agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, notation, renewal, or other alteration of or to this Agreement shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the Parties. No breach of any term, provision, or clause of this Agreement shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party, or waiver of, a breach by any other Party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

10. NOTICES: All notices required herein shall be mailed via First Class Mail to the Parties' representatives at the addresses set forth below:

EVANS:
Brian Rudy, Mayor
1100 37th Street
Evans, CO 80620
Phone: 970-475-1104

WELD COUNTY:
Jay McDonald, Director, Public Works
P.O. Box 758, 1111 "O" Street
Greeley, CO 80632
Phone: 970-304-6496

11. NO WAIVER OF GOVERNMENTAL IMMUNITY: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate of the day and year first hereinabove written.

ATTEST:

CITY OF EVANS, COLORADO

By: _____
Karen Frawley, Clerk

By: _____
Brian Rudy, Mayor

ATTEST: *Arthur G. Meisk*
WELD COUNTY Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

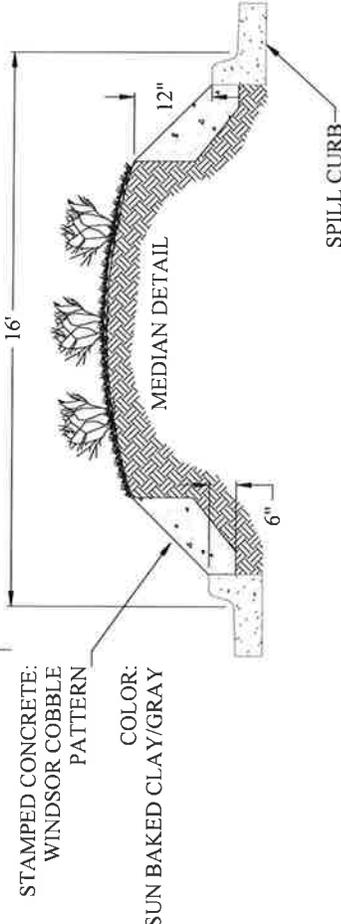
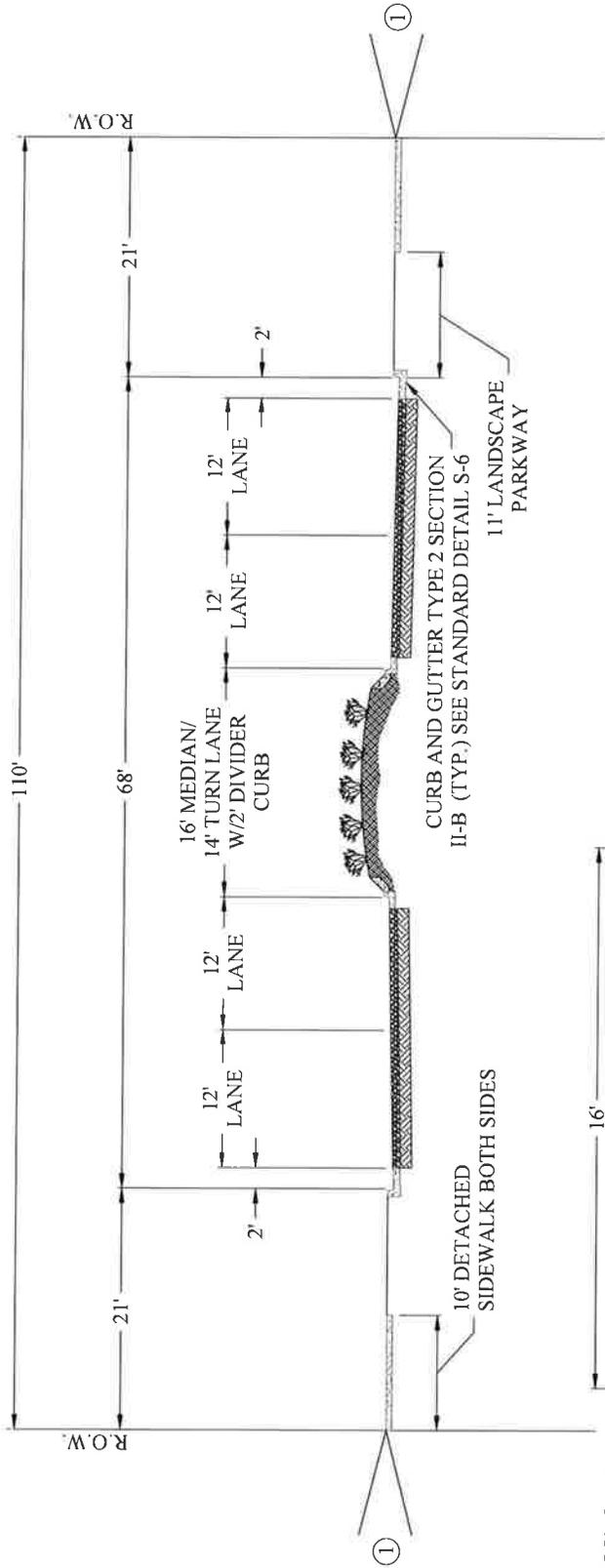
By: *Cheryl Waffner*
(Deputy) Clerk to the Board

Mike Freeman
Mike Freeman, Chair



JUN 22 2020

2020-1895 (1)



- NOTES:
1. CUT AND FILL SLOPES SHALL BE A MAXIMUM OF 4:1.
 2. RIGHT OF WAY AND EASEMENT AREAS SHALL BE GRADED (CUT & FILL) TO SUBGRADE ± 6" AT UTILITY LOCATIONS, INCLUDING SERVICES, PRIOR TO UTILITY INSTALLATION.
 3. STANDARD CROWN SLOPE IS 2%. WITH SPECIAL DESIGN REVIEW, 1% TO 4% IS ALLOWABLE AT TRANSITION AND OTHER ATYPICAL SECTIONS.
 4. LANDSCAPED PARKWAY OF EITHER MAINTAINED TURF OR XERISCAPE IS REQUIRED.
 5. NO PARKING SIGNS REQUIRED, BOTH SIDES OF STREET.

STAMPED CONCRETE:
WINDSOR COBBLE
PATTERN
COLOR:
SUN BAKED CLAY/GRAY



Public Works
Department

ROADWAY SECTION DETAIL
ARTERIAL

Scale: N.T.S

Detail No. S-22

May 2019

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.G
SUBJECT: Consideration of IGA with Weld County for Funding of the Widening of 37th Street between 35th Avenue and 47th Avenue
PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Mark Oberschmidt, P.E. City Engineer

AGENDA ITEM DESCRIPTION:

In 2018, the City applied for North Front Range Metropolitan Planning Organization (NFRMPO) Surface Transportation Block Grant (STBG) funding to assist the City with widening 37th Street between 35th Avenue and 47th Avenue. That application was approved on March 7, 2019, awarding the City \$1,118,565 in MPO funds and setting a (minimum) \$232,522 local match requirement. The MPO funds are scheduled to be disbursed in FY 2022-2023 (Exhibit A).

Most of the property along this stretch of 37th Street is in Evans, but a small portion of it is in Weld County (Exhibit B). Before applying for the MPO grant, the City approached Weld County to see if they would be willing to contribute to the cost of this project. Weld County responded with a letter dated December 13, 2018, committing \$24,000 to the project (Exhibit C).

Thirty-Seventh Street passes through several jurisdictions as it stretches from US 85 on the east to I-25 on the west. In those jurisdictions it is variously known as WCR 54 and SH 402. This roadway is classified as a Regionally Significant Corridor in the Federal 2040 RTP, and its development is the subject of the 2018 multi-jurisdictional Freedom Parkway Access Control Plan. Freedom Parkway is envisioned as a four-lane thoroughfare that can absorb the increased transportation needs that are expected as the North Front Range continues to experience growth and infill.

Starting at US 85, 37th Street is a four-lane roadway until it reaches 35th Avenue. West of 35th Avenue it becomes a two-lane roadway. This project will widen 37th Street to four lanes in accordance with the Freedom Parkway ACP. In the bigger picture, this will meet the travel needs of the anticipated regional growth across the North Front Range, but in the smaller picture, it will also meet the expanding travel needs of the City of Evans. Currently, there are about 1,400 housing units in various stages of planning and development along 37th Street west of 35th Avenue. A widened roadway and improved intersections will become a necessity for safe and convenient travel within Evans over the next few years.

This portion of the project will widen 37th Street from 35th Avenue to 47th Avenue. Happening simultaneously is a separate project on 47th Avenue that will widen that roadway from the Evans/Greeley boundary south to 37th Street. Rights-of-way purchases and utilities installation are

expected to be completed on 47th Avenue this calendar year, followed by the roadway widening in 2021. Design plans are also underway to improve the 37th Street/47th Avenue intersection as well, where these two widening projects will intersect.

The Intergovernmental Agreement (IGA) with Weld County submitted for consideration spells out the expectations and responsibilities for each party surrounding the funding and completion of the 37th Street widening project between 35th Avenue and 47th Avenue.

Phasing of this project has been reorganized in a way that will make the best use of funds available for this project within a timeline that is workable for all entities involved. The proposed new phasing reverses the original phasing as outlined below:

- Design of the project is underway and is being paid for from City roadway maintenance funds that have been designated for this stretch of road.
- Phase One of construction, from 35th Avenue to Stampede Drive, will be paid for with funds from this IGA with Weld County, MPO STGB funds, and City of Evans funds. This phase will be completed in 2022.
- Phase Two of construction, from Stampede Drive to 47th Avenue, will be paid for with City of Evans funds. This phase will be completed in 2023.
- Phase Three of construction, the 37th Street/47th Avenue intersection (roundabout) will be paid for with City of Evans funds. This phase will be completed in 2024.

The Intergovernmental Agreement (IGA) with Weld County submitted for consideration spells out the expectations and responsibilities for each party surrounding the funding and completion of Phase One of the construction of this project.

FINANCIAL SUMMARY:

The total estimated cost for this project is: \$13,285,466.

- Weld County is contributing \$24,000 in local match funds to the MPO grant, as outlined in the IGA submitted for consideration;
- The City of Evans is contributing \$208,522 in local match funds to the MPO grant, as outlined in the IGA submitted for consideration;
- The City of Evans has been awarded \$1,118,565 in MPO STBG funds during FY 2022-2023; and
- The City anticipates an additional \$11,934,379 in local overmatch funds will be necessary to complete this project over the next several years. These funds will come from CIP funds, and the 1% sales tax for roads that voters approved in April 2020.

Weld County's total contribution:	\$ 24,000
City of Evans' total contribution:	\$12,142,901
NFRMPO's total contribution:	<u>\$ 1,118,565</u>
Total:	<u>\$13,285,466</u>

RECOMMENDATION:

Staff recommends that the City Council approve the Intergovernmental Agreement with Weld County (IGA) for the 37th Street Widening Project and authorize the Mayor's signature on the attached Letter of Intent and Terms and Conditions (IGA).

SUGGESTED MOTIONS:

"I move to approve the Intergovernmental Agreement with Weld County (IGA) for the 37th Street Widening Project and authorize the Mayor's signature on the Grant Agreement."

"I move to reject the Intergovernmental Agreement with Weld County (IGA) for the 37th Street Widening Project."

ATTACHMENTS:

- IGA with Weld County for 37th Street Widening Funding
- Exhibit A – 37th Street Widening Project Map
- Exhibit B – Weld County Letter of Support
- Exhibit C – Scope of Work



March 8, 2019

Randy Ready
Public Works Director
City of Evans
1100 37th Street
Evans, Colorado 80620

Dear Mr. Ready:

The North Front Range Metropolitan Planning Organization (NFRMPO) is pleased to notify you of the Surface Transportation Block Group (STBG) award to the City of Evans for the *37th St Widening* project.

The Scoring Committee reviewed and scored CMAQ and STBG applications for the NFRMPO FY2022-2023 Call for Projects on January 8, 2019. The NFRMPO Planning Council approved the recommended projects on March 7, 2019. Recommended projects will be programmed in the FY2020-2023 Transportation Improvement Program (TIP). The NFRMPO Planning Council has approved your project as follows:

Funding	FY 2022	FY 2023	Total
STBG	\$0	\$1,118,565	\$1,118,565
Local	\$0	\$232,522	\$232,522
Local Overmatch	\$0	\$11,934,379	\$11,934,379
Total	\$0	\$13,285,466	\$13,285,466

Project funds should be moved to obligation during the years programmed. As a recipient of funding through the NFRMPO Call for Projects, the project is subject to the NFRMPO TIP Project Delay Procedure as defined in the TIP Narrative.

The next step is to contact the appropriate CDOT Project Manager to set up the initial project meeting. At the initial meeting your agency's Project Manager will need to provide their contact information, a copy of the project application, and Project Conceptual Plans (if applicable and available).

The federal project funding process requires a significant amount of time to implement and complete; you are encouraged to engage with CDOT as soon as possible. Please remember the expenditure of any funds prior to fully executing the Intergovernmental Agreement (IGA) with CDOT may not be reimbursed and those funds are not eligible for inclusion in the IGA project budget.



Please contact Medora Bornhoft at (970) 416-2293 or mbornhoft@nfrmpo.org if you have any questions or concerns.

Cordially,

Suzette Mallette
Executive Director

Encl: Project Application
Planning Council **Resolution 2019-05**

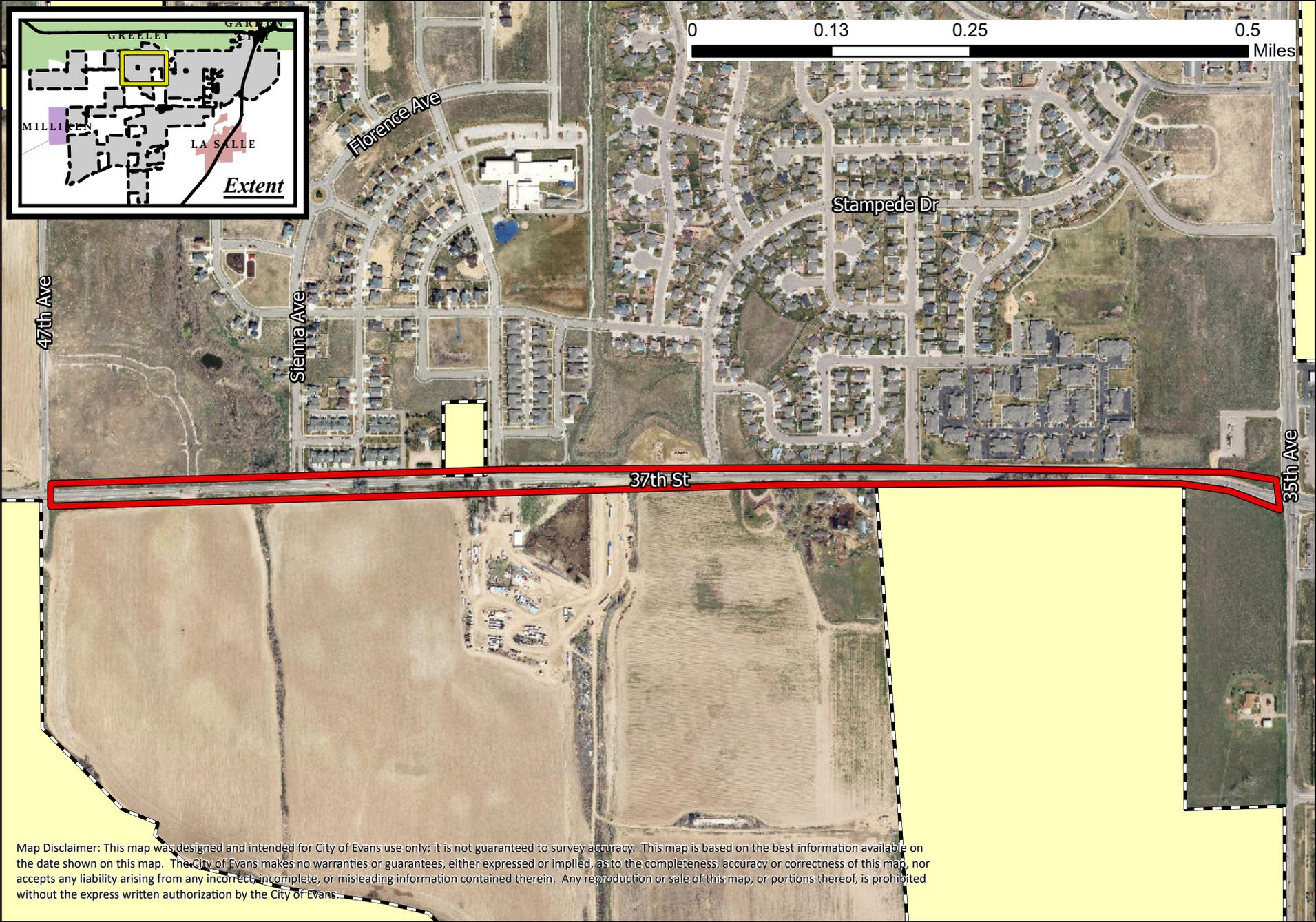
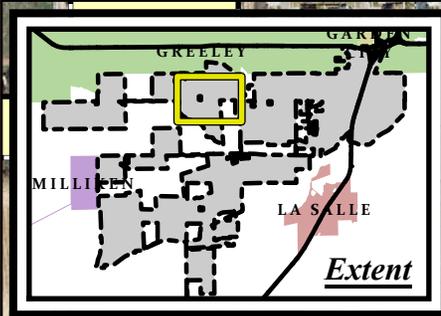
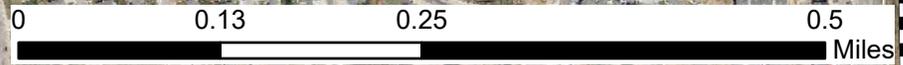
CC: Karen Schneiders, CDOT Region 4
Alana Koenig, CDOT Region 4
Jake Schuch, CDOT Region 4
Medora Bornhoft, NFRMPO
Becky Karasko, NFRMPO
Medora Bornhoft, NFRMPO
Dawn Anderson, Weld County
Karen Sabin, City of Evans



Reference Map:
37th St Widening 35th Ave - 47th Ave

 Project Extent
 Evans City Limits

 Weld County



Map Disclaimer: This map was designed and intended for City of Evans use only; it is not guaranteed to survey accuracy. This map is based on the best information available on the date shown on this map. The City of Evans makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy or correctness of this map, nor accepts any liability arising from any incorrect, incomplete, or misleading information contained therein. Any reproduction or sale of this map, or portions thereof, is prohibited without the express written authorization by the City of Evans.



OFFICE OF BOARD OF COMMISSIONERS
PHONE: 970-336-7204
FAX: 970-336-7233
1150 O STREET
P.O. BOX 758
GREELEY, COLORADO 80632

December 13, 2018

Evans City Council
Honorable Mayor Brian Rudy
1100 37th Street
Evans, CO 80620

RE: Support of NFRMPO STBG FY'22-23 Application

Dear Mayor Rudy:

The Weld County Commissioners are pleased to collaborate with the City of Evans on your 37th Street widening project between 35th and 47th Avenues. The county is supportive of the City's application for funds through the North Front Range Metropolitan Planning Organization (NFRMPO) Surface Transportation Block Grant Program (STBG).

This project will assist Weld County residents by addressing some much needed infrastructure improvements. As well as, promoting future improvements in accordance with the overall vision of this regionally significant corridor. The Freedom Parkway (CR 54/37th Street/SH 402) corridor is vital for transportation in Weld County as well as in the NFRMPO region. This improvement project will improve the quality, safety and mobility of the roadway.

This partnership is consistent with our goal of promoting roadway quality, functionality, and safety for the traveling public. The county is committed to financially supporting this project in the amount of \$24,000.

Thank you for your consideration, and if you have any questions, please feel free to contact us.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Steve Moreno, Chair

c: WC Public Works

**INTERGOVERNMENTAL AGREEMENT BETWEEN WELD COUNTY AND
THE CITY OF EVANS FOR THE WIDENING OF 37TH STREET
BETWEEN 35TH AVENUE AND 47TH AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of _____, 2020, by and between Weld County, a body corporate and political subdivision of the State of Colorado, with offices located at 1150 O Street, Greeley, Colorado, 80632, through its Board of County Commissioners (hereinafter referred to as “Weld County”), and the City of Evans, with offices located at 1100 37th Street, Evans, Colorado, 80620, a municipality (hereinafter referred to as “Evans”).

WITNESSETH:

WHEREAS, Weld County and Evans each have jurisdiction of portions of 37th Street between 35th and 47th Avenue, as depicted in Exhibit A, which is attached hereto and incorporated herein by references; and

WHEREAS, the parties desire to jointly enter into the Scope of Work as shown on Exhibit B, which is attached hereto and incorporated herein by reference; and

WHEREAS, each party wishes to make road improvements to 37th Street in their respective jurisdiction and share the local match costs of a NFRMPO STBG grant for the phased widening of 37th Street between 35th Avenue and 47th Avenue (hereinafter referred to as the “Project”); and

WHEREAS, both parties hereto desire to enter into this Agreement for the purpose of defining their respective roles and responsibilities regarding the completion of this project; and

WHEREAS, both parties are authorized to enter into this Agreement by C.R.S. § 29-1-203 and Colorado Constitution Article XIV§ 18(2) (1), for the purpose of achieving greater efficiencies for the provision of services to the public.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE ADEQUACY OF WHICH IS ACKNOWLEDGED BY AND BETWEEN THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. **MAXIMUM ESTIMATED COSTS**

This is a City of Evans project which, due to the shared value nature of the project, Weld County wishes to assist with in the form of partial local match funding.

The maximum estimated local match cost to each party for the project, is as follows:

City of Evans Budget:	\$12,142,901
Weld County Budget:	<u>\$ 24,000</u>
Total Local Project Budget:	<u>\$12,166,901</u>

It is understood and agreed, by both parties hereto, that the total cost of the local match stated herein is the best estimate prior to bid and award available, and such cost is subject to revision(s) based upon the actual cost of the project. Any revision in cost will not affect Weld County's contribution to this project.

2. RESPONSIBILITY

Weld County agrees to pay \$24,000 to Evans as Weld County's entire financial contribution to the Project upon approval and signing of this Agreement by both parties, as it will be utilized in Phase 1 of the project, as outlined below. All costs for the Project in excess of the \$24,000 paid by Weld County shall be the responsibility of Evans.

In order to make the best use of funding for this project as it becomes available, Evans will coordinate phasing of this project as follows:

Phase 1:	35 th Avenue to Stampede Drive:	2022
Phase 2:	Stampede Drive to 47 th Avenue:	2023
Phase 3:	37 th Street/47 th Avenue Intersection:	2024

3. FUNDING CONTINGENCY

This Agreement is contingent upon all funds designated for the project being made available from Weld County and Evans. Should these sources fail to provide necessary funds as agreed upon herein, this contract may be terminated by either party upon written notice being delivered to the other party.

4. ROADWAY STANDARDS

The parties agree that the project shall be designed and built according to the specifications set forth in the October 16, 2018, Freedom Parkway Access Control Plan, which is incorporated herein by reference.

5. ENTIRE AGREEMENT

This contract, together with the exhibits attached hereto and any other documents incorporated herein by reference, constitutes the entire agreement between the parties with respect to the project, and shall be binding upon the parties, their officers, employees, agents, and assigns, and shall inure to the benefit of any successors and assigns of said parties.

6. NO THIRD-PARTY BENEFICIARY ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all the rights of action relating to such enforcement, shall be strictly reserved to Weld County and Evans, and nothing contained in this Agreement shall give or allow any claim or right of action whatever by any other person on this Agreement. It is the express intention of Weld County and Evans that any entity other than the parties receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

7. GOVERNMENTAL IMMUNITY

No term of condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or protections provided by common law or state statute, including the Colorado Governmental Immunity Act §§ 24-10-101 et seq., as

applicable now, or as hereafter amended.

8. MODIFICATION AND BREACH OF CONTRACT

This Agreement contains the entire agreement and understanding between the parties and supersedes any other agreements concerning the project whether oral or written. No modification, amendment, revocation, renewal, or other alteration of/to this Agreement and the attached schedules, shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties.

No breach of any term, provision, or clause of this Agreement or its attached schedules shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of a breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

9. LEGAL REMEDIES AND RESPONSIBILITIES

This Agreement shall be governed by the laws of the State of Colorado. Any and all legal action necessary to enforce the Agreement will be held in Weld County, Colorado. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law, statute, or otherwise, including but not limited to specific performance.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Each party shall be responsible for defending itself and its officers, employees, and assigns in any action brought against that party specifically. Neither party shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other party or the representatives thereof arising out of the project or the terms of this Agreement.

10. SEVERABILITY

If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent this Agreement is then capable of execution within the original intent of the parties.

11. NOTICES

All notices required herein shall be mailed via First Class Mail to the parties' representatives at the addresses set forth below.

WELD COUNTY

Attn: Mike Freeman, Board of County
Commissioners Chair
1150 O Street
P.O. Box 758
Greeley, CO 80632
mfreeman@co.weld.co.us

CITY OF EVANS

James Becklenberg, City Manager
1100 37th Street
Evans, CO 80620
jbecklenberg@evanscolorado.gov

12. ACKNOWLEDGEMENT

Weld County and Evans acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. Both parties further agree that this Agreement with all attached exhibits and documents incorporated herein by reference, is the complete and exclusive statement of agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF WELD COUNTY, COLORADO

CITY OF EVANS, COLORADO

By: _____
Mike Freeman, Chair

By: _____
Brian Rudy, Mayor

ATTEST:

ATTEST:

By: _____
Deputy County Clerk

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

APPROVED AS TO FINANCING:

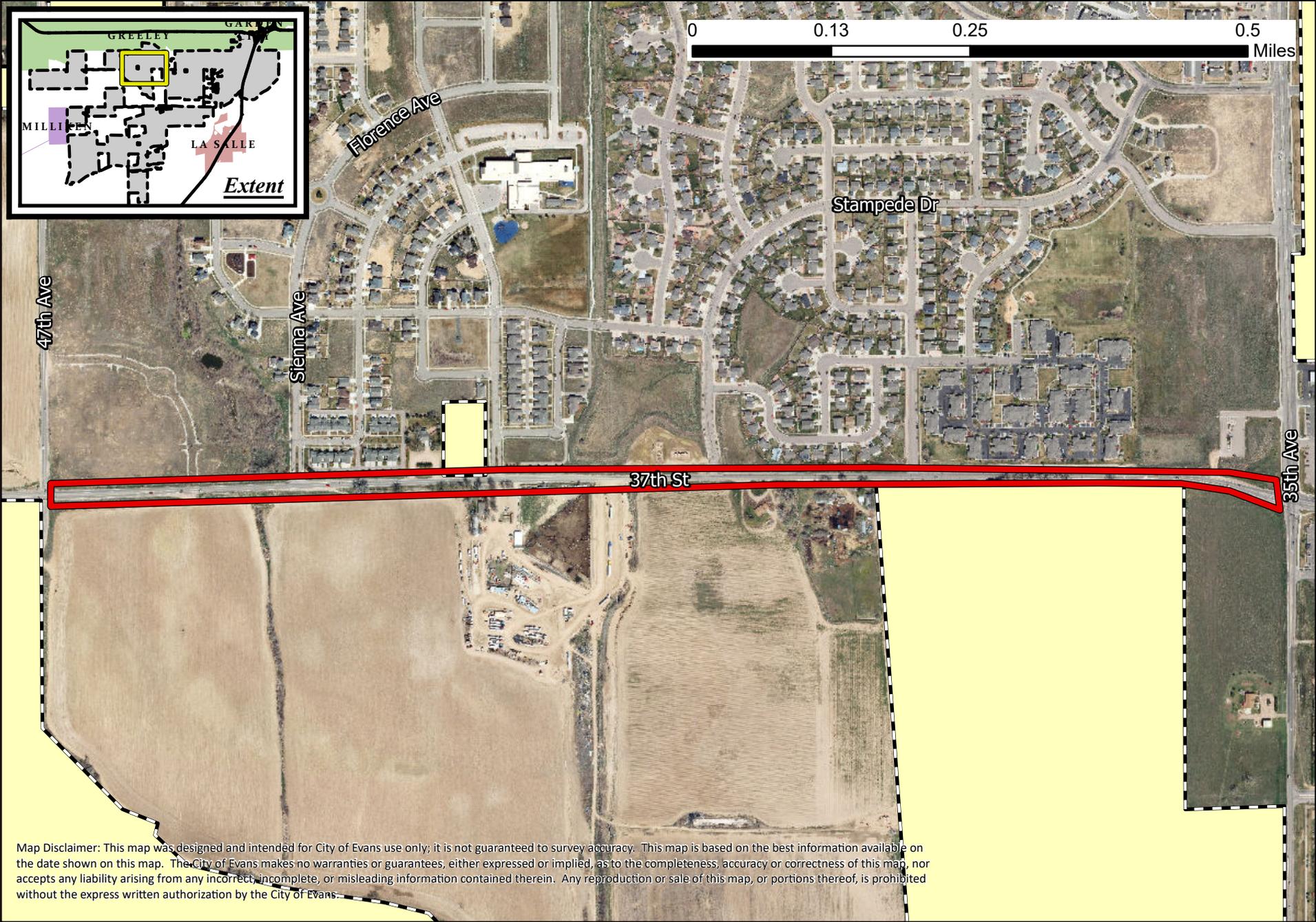
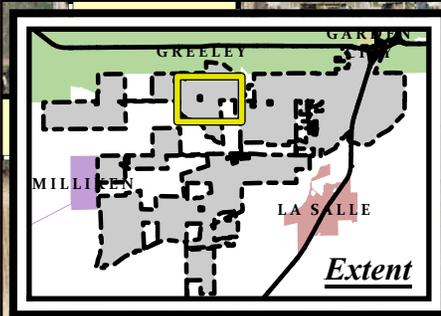
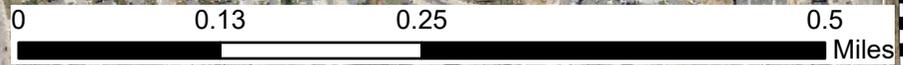
By: _____
Jacque Troudt, Finance Director



Reference Map:
37th St Widening 35th Ave - 47th Ave

 Project Extent
 Evans City Limits

 Weld County



Map Disclaimer: This map was designed and intended for City of Evans use only; it is not guaranteed to survey accuracy. This map is based on the best information available on the date shown on this map. The City of Evans makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy or correctness of this map, nor accepts any liability arising from any incorrect, incomplete, or misleading information contained therein. Any reproduction or sale of this map, or portions thereof, is prohibited without the express written authorization by the City of Evans.

Exhibit B – Scope of Work

The 37th Street corridor is an important regional arterial roadway that stretches from US 85 on the east to I-25 on the west. This corridor is the subject of extensive plans for multi-jurisdictional development as set forth in the 2018 Freedom Parkway Access Control Plan. It provides local access, North Front Range commuter access, and east-west connections between Evans, Greeley, Johnstown, Loveland, Larimer County, and Weld County, and is envisioned as a four-lane thoroughfare that can absorb the increased transportation needs that are expected as the North Front Range continues to experience growth and infill.

Currently, 37th Street is a two-lane asphalt roadway between 35th Avenue and 47th Avenue. In accordance with the Freedom Parkway ACP, this phased project will expand 1.1 miles of 37th Street to a four-lane roadway that includes median, turn lanes, and detached multi-use paths on each side.

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.H
SUBJECT: Consideration of IGA with Weld County for the Transportation Master Plan
PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Assistant City Manager
Anne Best Johnson, Director of Community Development

AGENDA ITEM DESCRIPTION:

On January 30, 2020, the City applied for a North Front Range Metropolitan Planning Organization (NFRMPO) Multimodal Options Fund grant to assist the City with updating our Transportation Master Plan. That application was approved on April 2, 2020 (Exhibit A), awarding the City \$150,000 in MPO funds and setting a (minimum) \$18,000 local match requirement. The MPO funds are scheduled to be disbursed in 2020 and are required to be used in their entirety by 2023 at the latest.

The grant application review was a competitive process. The NFRMPO encourages inter-community cohesiveness by awarding scoring points to communities who turn in evidence of a 2% financial partnership from another jurisdiction with their application. To this end, Evans approached Weld County and requested 2% (or \$3,000) of the required local match from them. On January 13, 2020, Weld County agreed to provide that portion of the match (Exhibit B).

The City of Evans' current Transportation Master Plan was done in 2004. Municipal Master Plans provide a framework of goals, objectives, and aspirations for the future growth of a community. With that continual eye toward the future, it is recommended that Master Plans be updated every five (5) years or so, and that unless there are extenuating circumstances, they never be more than ten (10) years out of date.

The timing of this award is good for the City of Evans for two reasons. First, this region is experiencing tremendous growth which makes current Master Plans to guide City growth a necessity. And second, the City is updating the 2010 Comprehensive Plan this year as well, which will have a section dedicated to transportation. The City can make good use of the information gained in the Transportation Master Plan to help build the transportation section of the Comprehensive Plan.

The Intergovernmental Agreement (IGA) with Weld County submitted for consideration spells out the expectations and responsibilities for each party surrounding the funding and completion of the Transportation Master Plan.

FINANCIAL SUMMARY:

Current total funding for this project is \$168,000 from the following sources:

- Weld County is contributing \$3,000 in local match funds to the MPO grant, as outlined in the IGA submitted for consideration.
- The City is contributing \$15,000 in local match funds to the MPO grant, as outlined in the IGA submitted for consideration; and
- The City has been awarded \$150,000 MPO funds to be used between 2020 and 2023.

Weld County's total contribution:	\$ 3,000
City of Evans' total contribution:	\$ 15,000
NFRMPO's total contribution:	<u>\$ 150,000</u>
Total:	<u>\$ 168,000</u>

RECOMMENDATION:

Staff recommends that the City Council approve the Intergovernmental Agreement with Weld County (IGA) for the Transportation Master Plan and authorize the Mayor's signature on the attached Letter of Intent and Terms and Conditions (IGA).

SUGGESTED MOTIONS:

"I move to approve the Intergovernmental Agreement with Weld County (IGA) for the Transportation Master Plan and authorize the Mayor's signature on the Grant Agreement."

"I move to reject the Intergovernmental Agreement with Weld County (IGA) for the Transportation Master Plan."

ATTACHMENTS:

- IGA with Weld County for Transportation Master Plan
- Exhibit A – NFRMPO TA Award Letter
- Exhibit B – Weld County Letter of Support

**INTERGOVERNMENTAL AGREEMENT BETWEEN WELD COUNTY AND
THE CITY OF EVANS FOR THE 2020 TRANSPORTATION MASTER PLAN UPDATE**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of _____, 2020, by and between Weld County, a body corporate and political subdivision of the State of Colorado, with offices located at 1150 O Street, Greeley, Colorado, 80632, through its Board of County Commissioners (hereinafter referred to as “Weld County”), and the City of Evans, with offices located at 1100 37th Street, Evans, Colorado, 80620, a municipality (hereinafter referred to as “Evans”).

WITNESSETH:

WHEREAS, Evans is updating their 2004 Transportation Master Plan, a document that guides future development of all driver and non-driver routes of travel within City limits; and

WHEREAS, Evans is located inside Weld County and because of this, growth in Evans directly impacts Weld County in many ways, including Evans’ present and future transportation network; and

WHEREAS, each party wishes to have plans in place for a good-quality network of roads and intersections, transit, trails, and pedestrian routes that provide safe travel, enjoyment, convenience, and environmental mitigation to drivers and non-drivers alike who live in and travel through this region, and therefore wish to jointly enter into this project; and

WHEREAS, both parties hereto desire to enter into this Agreement for the purpose of defining their respective roles and responsibilities regarding the completion of this project; and

WHEREAS, both parties are authorized to enter into this Agreement by C.R.S. § 29-1-203 and Colorado Constitution Article XIV§ 18(2) (1), for the purpose of achieving greater efficiencies for the provision of services to the public.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE ADEQUACY OF WHICH IS ACKNOWLEDGED BY AND BETWEEN THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. MAXIMUM ESTIMATED COSTS

This is a City of Evans project which, due to the shared value nature of the project, Weld County wishes to assist with in the form of partial local match funding.

The maximum estimated local match cost to each party for the project, is as follows:

City of Evans Budget:	\$ 15,000
Weld County Budget:	\$ 3,000
Total Local Project Budget:	<u>\$ 18,000</u>

It is understood and agreed, by both parties hereto, that the total cost of the local match stated herein is the best estimate prior to bid and award available, and such cost is subject to revision(s) based upon the actual cost of the project. Any revision in cost will not affect Weld County’s

contribution to this project.

2. RESPONSIBILITY

Weld County agrees to pay \$3,000 to Evans as Weld County's entire financial contribution to the project upon approval and signing of this Agreement by both parties. All costs for the project in excess of the \$3,000 paid by Weld County shall be the responsibility of Evans.

Evans will coordinate the project, as described herein, and shall be responsible for all payments to contractors associated with this project.

3. FUNDING CONTINGENCY

This Agreement is contingent upon all funds designated for the project being made available from Weld County and Evans. Should these sources fail to provide necessary funds as agreed upon herein, this contract may be terminated by either party upon written notice being delivered to the other party.

4. ENTIRE AGREEMENT

This contract, together with any exhibits and any other documents incorporated herein by reference, constitutes the entire agreement between the parties with respect to the project, and shall be binding upon the parties, their officers, employees, agents, and assigns, and shall inure to the benefit of any successors and assigns of said parties.

5. NO THIRD-PARTY BENEFICIARY ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all the rights of action relating to such enforcement, shall be strictly reserved to Weld County and Evans, and nothing contained in this Agreement shall give or allow any claim or right of action whatever by any other person on this Agreement. It is the express intention of Weld County and Evans that any entity other than the parties receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

6. GOVERNMENTAL IMMUNITY

No term of condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or protections provided by common law or state statute, including the Colorado Governmental Immunity Act §§ 24-10-101 et seq., as applicable now, or as hereafter amended.

7. MODIFICATION AND BREACH OF CONTRACT

This Agreement contains the entire agreement and understanding between the parties and supersedes any other agreements concerning the project whether oral or written. No modification, amendment, revocation, renewal, or other alteration of/to this Agreement and the attached schedules, shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties.

No breach of any term, provision, or clause of this Agreement or its attached schedules shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of a

breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

8. LEGAL REMEDIES AND RESPONSIBILITIES

This Agreement shall be governed by the laws of the State of Colorado. Any and all legal action necessary to enforce the Agreement will be held in Weld County, Colorado. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law, statute, or otherwise, including but not limited to specific performance.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Each party shall be responsible for defending itself and its officers, employees, and assigns in any action brought against that party specifically. Neither party shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other party or the representatives thereof arising out of the project or the terms of this Agreement.

9. SEVERABILITY

If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent this Agreement is then capable of execution within the original intent of the parties.

10. NOTICES

All notices required herein shall be mailed via First Class Mail to the parties' representatives at the addresses set forth below.

WELD COUNTY

Attn: Mike Freeman, Board of County
Commissioners Chair
1150 O Street
P.O. Box 758
Greeley, CO 80632
mfreeman@co.weld.co.us

CITY OF EVANS

James Becklenberg, City Manager
1100 37th Street
Evans, CO 80620
jbecklenberg@evanscolorado.gov

11. ACKNOWLEDGEMENT

Weld County and Evans acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. Both parties further agree that this Agreement along with any exhibits and documents incorporated herein by reference, is the complete and exclusive statement of agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF WELD COUNTY, COLORADO

CITY OF EVANS, COLORADO

By: _____
Mike Freeman, Chair

By: _____
Brian Rudy, Mayor

ATTEST:

ATTEST:

By: _____
Deputy County Clerk

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

APPROVED AS TO FINANCING:

By: _____
Jacque Troudt, Finance Director



April 6, 2020

Randy Ready
Deputy City Manager and Public Works Director
City of Evans
1100 37th Street
Evans, CO 80620

Dear Mr. Ready:

The North Front Range Metropolitan Planning Organization (NFRMPO) is pleased to notify you of the Multimodal Options Fund (MMOF) award to the City of Evans for the *Evans Transportation Master Plan* project.

The Scoring Committee reviewed and scored MMOF applications for the NFRMPO FY2019 MMOF Call for Projects on February 11, 2020. The NFRMPO Planning Council approved the recommended projects on April 2, 2020. Recommended projects will be programmed in the FY2020-2023 Transportation Improvement Program (TIP). The NFRMPO Planning Council has approved your project as follows:

Funding	FY 2020	FY 2021	FY 2022	Total
MMOF	\$150,000	\$0	\$0	\$150,000
Local	\$18,000	\$0	\$0	\$18,000
Total	\$168,000	\$0	\$0	\$168,000

MMOF funds are programmed in the TIP in Fiscal Year (FY) 2020 and may be rolled forward if needed; however, MMOF project expenditures **must be completed, invoiced and reimbursed by CDOT prior to June 30, 2023**, per State Fiscal Policy. Any remaining MMOF award funds will be forfeited back to the State's General Fund after this date and any affected project expenses will be the responsibility of the project sponsor and not eligible for reimbursement with MMOF funds. It is recommended that all MMOF expenditures be completed by June 1, 2023 and immediately submitted to CDOT for reimbursement.

The next step is to contact Jake Schuch at jake.schuch@state.co.us to set up the initial project meeting. At the initial meeting your agency's Project Manager will need to provide their contact information, a copy of the project application, and Project Conceptual Plans (if applicable and available).

The State project funding process requires a significant amount of time to implement and complete; you are encouraged to engage with CDOT as soon as possible. Please remember the initiation of competitive procurement processes or the expenditure of any funds prior to fully executing the Intergovernmental Agreement (IGA) and/or the necessary Award Contract with CDOT may render those funds ineligible for inclusion in the project budget.



Please contact Becky Karasko at (970) 289-8281 or bkarasko@nfrmpo.org if you have any questions or concerns.

Cordially,

Suzette Mallette
Executive Director

Encl: Project Application
Planning Council **Resolution 2020-12**

CC: Karen Schneiders, CDOT Region 4
Whitney Holcombe, CDOT Region 4
Jake Schuch, CDOT Region 4
Michael Snow, CDOT
Marissa Guaghan, CDOT
Becky Karasko, NFRMPO
AnnaRose Cunningham, NFRMPO
Medora Bornhoft, NFRMPO
Mark Oberschmidt, City of Evans
Mark Clark, City of Evans



OFFICE OF BOARD OF COMMISSIONERS
PHONE: 970-336-7204
FAX: 970-336-7233
1150 O STREET
P.O. BOX 758
GREELEY, COLORADO 80632

January 13, 2020

Suzette Mallette
MPO Executive Director
North Front Range Metropolitan Planning Organization
419 Canyon Ave. Suite 300
Fort Collins, CO 80521

RE: Support of Evans Application for North Front Range MPO Multi-Modal Options Fund

Dear Suzette Mallette:

The Weld County Commissioners are pleased to support and partner with the City of Evans' grant application to update their 2004 Transportation Master Plan inclusive of trails, transportation and multi-modal options. The multi-jurisdictional approach proposed with this application meets the goals of the North Front Range region.

This partnership is consistent with the goals set out in the application and the county has committed to financially support the project in the amount of \$3,000.00 which is 2% of the total ask.

Thank you for your consideration, and if you have any questions, please feel free to contact us.

Sincerely,

A handwritten signature in blue ink that reads 'Mike Freeman'. The signature is written in a cursive style and is positioned above a horizontal line.

Mike Freeman, Chair
Weld County Commissioner

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020
AGENDA ITEM: 7.1
SUBJECT: Consideration of Resolution No. 19-2020 Approving an Intergovernmental Agreement with the Colorado Department of Transportation (CDOT) Regarding Funding for the Update to the City of Evans' Multimodal Transportation Master Plan
PRESENTED BY: James L. Becklenberg, City Manager
Randy L. Ready, Asst. City Manager
Anne Best Johnson, Community Development Director

AGENDA ITEM DESCRIPTION:

The Multimodal Transportation Master Plan update is a significant component to the community Master Plan update that is underway in 2020. The Multimodal Transportation Master Plan will provide the City with a current blueprint for trails, transit and vehicular traffic movement within the City, will update the 2004 Transportation Master Plan, and will update the Trails component of the 2004 Open Space and Trails Master Plan.

The scope of work will include:

- Sidewalk and Trail Gap Analysis.
- Identify existing areas of concern related to transportation and project future areas of concern.
- Provide recommendations regarding traffic congestion, traffic calming options and improvements in accident-prone areas.
- Options to connect to regional transportation and trail networks recognized by the North Front Range Metropolitan Planning Organization as well as regional transportation and trail networks envisioned by the City's neighboring communities.
- Identify popular destination points in Evans and plan for non-motorized connectivity.
- Provide opportunities for City Council and all interested residents to engage in this update process.
- Involve service entities such as Envision and the Area Agency on Aging to ensure equity in Transportation.
- Collaborate with CDOT regarding US 85 Access control.
- Collaborate with the City of Greeley on the Greeley-Evans Transit system and efficient movement of transit in Evans.

Resolution No. 19-2020 would approve a substantially-complete draft of an Intergovernmental Agreement (IGA) for Project # MTF M415-023 (23925) between the City of Evans and CDOT. The intent of the IGA is for the purpose of obtaining reimbursement from the State of Colorado for work resulting from the Multimodal Transportation Master Plan update. Staff expects to receive a final version of the contract from CDOT within the next week, but in order to expedite

the effective date of this agreement, staff requests Council approval of the attached draft version with any minor changes between the draft and the final to be reviewed and approved by the City Attorney. CDOT will send the final IGA once CDOT receives the Resolution from the City of Evans.

The effective date of the agreement will be immediately upon the final execution and signing by CDOT that is expected within the next month. The standard term of current CDOT IGAs is ten years, with an expiration date for this agreement of May 28, 2030. While the work for this project will be completed by the end of September, 2021, the final documentation is due to CDOT before October 31, 2021.

The City of Evans applied for Multimodal Options Fund grant funding in the 2020 Call for Projects administered by the North Front Range Metropolitan Planning Organization (NFRMPO). The city received a notice of award letter on April 6, 2020 for a grant of \$150,000. With the city's local match in the amount of \$15,000 and the \$3,000 contribution from Weld County, the total funded award through the call for projects and the agreement maximum amount is \$168,000.

The Scope of the Work covered by this IGA is outlined above and further defined within the IGA Exhibit "A."

FINANCIAL SUMMARY:

A total of \$168,000 is budgeted for the update to the Multimodal Transportation Master Plan from the following sources:

Weld County Local Match	\$ 3,000
City of Evans Local Match	\$ 15,000
CDOT Grant	\$150,000

RECOMMENDATION:

Staff recommends approval of the draft IGA with the Colorado Department of Transportation through the adoption of Resolution No. 19-2020. Staff further recommends that City Council authorize the City Attorney to review and approve any minor changes between the attached draft version and the final version to be received within the next few days.

SUGGESTED MOTIONS:

"I move to adopt Resolution No. 19-2020 approving the substantially-complete IGA with the Colorado Department of Transportation regarding funding to update the Multimodal Transportation Master Plan. Further, I move that that the Mayor is authorized to sign the agreement and the City Attorney is authorized to approve minor, non-substantive changes required prior to execution by CDOT."

"I move NOT to adopt Resolution No. 19 -2020."

ATTACHMENTS:

- Resolution No. 19-2020
- IGA with CDOT

CITY OF EVANS, COLORADO

RESOLUTION NO. 19-2020

**A RESOLUTION APPROVING A CONTRACT BETWEEN THE
DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO, AND
THE CITY OF EVANS, COLORADO REGARDING FUNDING FOR THE
MULTIMODAL TRANSPORTATION MASTER PLAN**

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the Evans City Council desires to complete an update to the 2004 Multimodal Transportation Master Plan (“Work”); and

WHEREAS, the Evans City Council desires to obtain financial assistance from the Colorado Department of Transportation (“CDOT”); and

WHEREAS, in 2020, the City applied for State Multimodal Transportation Options Funding (MMOF) through the North Front Range Metropolitan Planning Organization (NFRMPO) and the Colorado Department of Transportation (CDOT) for the Work; and

WHEREAS, a grant in the amount of \$150,000 in State MMOF funds was awarded to the City for use in State Fiscal Years 2020-2021 with a local match of \$15,000; and

WHEREAS, CDOT has agreed to provide financial assistance in the funding of the Work, pursuant to the provisions in the State of Colorado, Department of Transportation Contract with the City of Evans” attached hereto as the State of Colorado Intergovernmental Agreement for Project # MTF M415-022 (23641) (“the CDOT Contract”); and

WHEREAS, cooperation and agreements to pursue common purposes are encouraged among governmental entities by the Colorado constitution and by statute; and

WHEREAS, the City Council has reviewed the CDOT Contract and finds that it is in the best interest of the public and promotes the health, safety, and welfare of the public to authorize the Mayor to enter into the CDOT Contract on behalf of the City of Evans.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO, that the attached draft State of Colorado, Department of Transportation Contract with the City of Evans is hereby approved and the Mayor is authorized and directed to execute said Agreement on behalf of the City as soon as the final contract is provided by CDOT.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Evans on this 7th day of July, 2020.

ATTEST:

CITY OF EVANS, COLORADO

Karen Frawley, City Clerk

Brian Rudy, Mayor

State \$LAWRK
PROJECT: MTF M415-023 (23925)
Transportation Master Plan MMOF

REGION: 4
jh

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF EVANS hereinafter referred to as the “Contractor” or the “Local Agency.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400 or MTF, GL Acct: 4511000010, (Contract Encumbrance Amount: \$0.00.)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for Transportation Master Plan and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written “Notice to Proceed” prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project MTF M415-023 (23925), Transportation Master Plan referred to as the “Project” or the “Work.” Such Work will be performed in Evans, Colorado, specifically described in **Exhibit A**.
6. The State has funds available and desires to provide 10.71% of the funding for the work. Local Agency will provide the other 89.29%. State funds **may be** awarded pursuant to Multimodal Transportation Options Funding (“MMOF”). MMOF means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund. These funds are subject to an expiration date.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of Transportation Master Plan, in Evans, Colorado, as more specifically described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in **Section 27** of this contract

2. This contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit B** (Local Agency Resolution)
5. **Exhibit C** (Funding Provisions)
6. **Exhibit D** (Option Letter)

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. It shall terminate on August 01, 2030, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Contract.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project.
- B. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding will be detailed in **Exhibit C** of the funding provisions.

Section 5. Project Payment Provisions

- A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the project, and will not be reimbursed by the State.
- B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
 1. In accordance with the provisions of **Section 5** and with the terms and conditions of this contract;
 2. Necessary for the accomplishment of the Work;
 3. Reasonable in the amount for the goods and services provided;
 4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
 5. Incurred for Work performed after the effective date of this contract;
 6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
 1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
 2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
 1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future

- apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State. If the project is funded by MMOF, then billing for all work must be submitted 30 days prior to end of State fiscal year. The State fiscal year ends June 30th. MMOF projects must submit final billing for all work 30 days prior to the end of the State fiscal year that funds expire. If MMOF are used, and the State knows that the funds will expire, the State shall promptly notify Local Agency of the expiration date. The State will promptly notify the Local Agency if that expiration date changes.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
 3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
 4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. Option Letter Modification

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on Exhibit C, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

- A. Option to begin a phase and/or increase or decrease the encumbrance amount.
The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.
- B. Option to transfer funds from one phase to another phase.
The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

C. Option to do both Options A and B.

The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

Section 7. State and Local Agency Commitments

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:
 - a. perform or provide the Plans, to the extent required by the nature of the Work.
 - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
 - c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
 - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
 - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
 - f. provide final assembly of Plans and contract documents.
 - g. be responsible for the Plans being accurate and complete.
 - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
2. If the Local Agency is the responsible party:
 - a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
 - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:
 - (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
 - (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
 - (3) it shall require that all consultant billings under that contract shall comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

- (4) it (or its consultant) shall use the CDOT procedures described in **Exhibit A** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b).
 - (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with 23 CFR 172.5(b).
 - (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."
 - (b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."
 - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."
 - (d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.
- B. Construction [if applicable]
1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in **Exhibit A**. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements as described in the Scope of Work in **Exhibit A**.
 2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
 3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
 - (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
 - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
 - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the Stat in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

- (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
 - (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
 - (4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.
- C. State's obligations
1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
 2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in **Exhibit A**, within the Work of this contract.

Section 8. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

Section 9. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 10. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.
- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 11. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 12. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.
- Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.
- If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize

its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

If to State	If to the Local Agency
CDOT Region: 4	City of Evans
Jake Schuch	Anne Best Johnson
Project Manager	Project Manager
10601 10th St	1100 37th Street
Greeley, CO 80634	Evans, CO 80620
970-350-2205	970-475-2228

Section 17. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 27. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Section 28. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>THE LOCAL AGENCY CITY OF EVANS</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis Department of Transportation</p> <p>By: _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____ Signature – Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

<p>STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Colorado Department of Transportation</p> <p>Date: _____</p>

EXHIBIT A – SCOPE OF WORK MMOF

The Colorado Department of Transportation (CDOT) will oversee the City of Evans when the City of Evans completes a Transportation Master Plan (Hereinafter referred to as “This Work”). CDOT and the City of Evans believe it will be beneficial to perform This Work to enable the City of Evans to prioritize transit, transportation, multi-modal and trail planning activities.

This work will begin in the summer of 2020 and shall be completed by October 2021. The project is funded with Multi-Modal Options Funding (MMOF). MMOF funding expenditures shall be completed, invoiced, and reimbursed by CDOT by June 30, 2023.

The project is funded with Multi-Modal Options Funding (MMOF). MMOF funding expenditures shall be invoiced by June 1st of the year they expire.

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DRAFT

EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

(if applicable)

DRAFT

EXHIBIT C – FUNDING PROVISIONS

MTF M415-023 (23925) MMOF

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$168,000.00, which is to be funded as follows:

1. BUDGETED FUNDS					
a. State Funds (89.29% of Participating Costs)					\$150,000.00
b. Local Agency Matching Funds (10.71% of Participating Costs)					\$18,000.00
TOTAL BUDGETED FUNDS					\$168,000.00
2. ESTIMATED PAYMENT TO LOCAL AGENCY					
a. State Funds Budgeted					\$150,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY					\$150,000.00
3. FOR CDOT ENCUMBRANCE PURPOSES					
a. Total Encumbrance Amount					\$150,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109					\$0.00
Net to be encumbered as follows:					\$150,000.00
<i>Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>					
		Performance Period Start*/End Date			
WBS Element 23925.10.30		N/A / N/A	Design	3020	\$0.00
WBS Element 23925.20.10		N/A / N/A	Const.	3301	\$0.00

*The Local Agency should not begin work until both of the following are in place:

- 1) The execution of the document encumbering funds for the respective phase; and
- 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Matching Funds

The matching ratio for this Work is 89.29% State funds to 10.71% Local Agency funds, it being understood that such ratio applies only to the \$168,000.00 of total budgeted funds, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total cost of performance of the Work is less than \$168,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$150,000.00 (for CDOT accounting purposes, the State funds of \$150,000.00 will be encumbered, but the Local Agency matching funds of \$18,000.00 will NOT be encumbered), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. The total budget of this project is \$168,000.00. It is understood and agreed by the parties hereto that the total cost of the Work stated herein before is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency’s awarded contract is less than the budgeted total of the State funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 6 of this contract.

EXHIBIT D – OPTION LETTER

SAMPLE OPTION LETTER

State Agency Department of Transportation		Option Letter Number ZOPTLETNUM
Local Agency ZVENDORNAME		Agreement Routing Number ZSMARTNO
Agreement Maximum Amount Initial term State Fiscal Year ZFYY_1 Extension terms State Fiscal Year ZFYY_2 State Fiscal Year ZFYY_3 State Fiscal Year ZFYY_4 State Fiscal Year ZFYY_5 Total for all state fiscal years	\$ ZFYA_1	Agreement Effective Date The later of the effective date or ZSTARTDATEX
	\$ ZFYA_2	
	\$ ZFYA_3	Current Agreement Expiration Date ZTERMDATEX
	\$ ZFYA_4	
	\$ ZFYA_5	
\$ ZPERSVC_MAX_AMOUNT		

1. OPTIONS:

- A. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads) and to update encumbrance amounts (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

2. REQUIRED PROVISIONS:

Option A

In accordance with Section 6, A of the Original Agreement referenced above, the State hereby exercises its option to authorize the Local Agency to begin a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)* and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for *(Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)* is *(insert dollars here)*. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. *(The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.)*.

Option B

In accordance with Section 6, B of the Original Agreement referenced above, the State hereby exercises its option to authorize the Local Agency to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with Section 6, C of the Original Agreement referenced above, the State hereby exercises its

option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

(The following language must be included on ALL options):

The Agreement Maximum Amount table on the Contract’s Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

Jared S. Polis, Governor

By: _____ Date: _____

Executive Director, Colorado Department of Transportation



CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

State Controller

Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

AGENDA ITEM: 7.J

SUBJECT: Public Hearing: Consideration of Ordinance Number 725-20 An Ordinance Amending the 2020 Budget (1st Reading)

PRESENTED BY: James L. Becklenberg, City Manager
Jacque Troudt, CPA, Finance Director

AGENDA ITEM DESCRIPTION:

The City Council approves specific items during the year which require an amendment to the adopted budget as required by the City of Evans Charter (Section 7.3 & 8.6). In this case, the revenues, expenditures (or expenses in enterprise funds) and transfers have been previously approved by the City Council. Staff action is usually taken on these items immediately following Council direction. Budget revisions are scheduled at regular intervals throughout the year to facilitate a flexible and accurate City budget.

Ordinance No. 725-20 is the first revision to the 2020 Operating and Capital Budget. The original 2020 Budget was approved by Ordinance No. 705-19 on October 1, 2019.

The Finance Committee reviewed the proposed budget revision items on June 9, 2020 and the City Council also reviewed this information at work session on June 16, 2020 and directed staff to present the budget revision for adoption.

FINANCIAL SUMMARY:

Included are the updated long-range plans for the funds impacted by the revision.

Attachment “A” identifies the details of each proposed council action. The following descriptions are listed in the same order as the funds on Attachment “A”.

Many of the items included are carry forward items, which were related to a specific project(s) appropriated for in the 2019 budget but were not finished in that fiscal year. Since appropriations lapse, the budget for these items needs to be appropriated (carried forward) in 2020.

The General Fund includes the following proposed revision items:

- 1.1 to carry forward budget for the extension of 23rd Avenue, \$226,341
- 1.2 to carry forward budget to complete updates to the Comprehensive Master Plan and Transportation Master Plan, \$328,000 with \$233,000 grant revenue also recognized

The Restricted Revenue requests include:

- 1.3 \$143,000 of traffic calming surcharge to improve traffic signals at six intersections throughout the City
- 1.4 \$12,000 of traffic calming surcharge to upgrade the Brazos E-ticketing system
- 1.5 \$18,000 of court security surcharge fees to reimburse two police recruit employees for academy costs

Item 1.6 will add \$20,000 additional budget to the Heritage Days program, as previously approved by Council.

Item 1.7 recognizes \$15,000 of revenue received from the Arrowhead Water Association and associated expenditure for clean-up of natural vegetation remaining on the open space site recently acquired by the City.

The Street Impact Fund includes 1.8 for the carryforward of budget for the completion of traffic signal installation at 35th Avenue and 34th Street.

Item 1.9 requests \$100,000 to be utilized for the 23rd Avenue extension project.

Item 1.10 requests \$80,814 to be reimbursed to the Peakview Metro District for road improvements completed which will service future capacity needs of the City.

The Park Impact Fund includes item 1.11 as a carry forward request of \$1,220,000 to purchase open space property adjacent to the Arrowhead subdivision

Also included is item 1.12 to allocate a portion of Tract O property purchase to the Park Impact fund, of \$133,737.

The Conservation Trust Fund includes item 1.13 for carry forward of \$65,000 for resurfacing of the tennis courts at Village Park, and item 1.14 for site preparation costs of \$20,000 for the open space property adjacent to the Arrowhead subdivision.

The CIP – Streets fund includes carryforward of road projects at items 1.15-1.18. These include:

- US Highway 85 Access Control at 31st Street, \$490,285, as well as associated grant revenue of \$398,434
- 35th Avenue widening- 37th to Prairie View, \$10,776
- 37th Street widening, \$490,285
- 47th Avenue widening- \$2,725,000

The CIP - Streets fund also includes item 1.19 for \$185,000 of project management cost for 37th Street, as previously approved by Council.

The CIP - Parks fund includes 1.20 for Riverside completion and monitoring items, for \$87,000.

The CIP - Food Tax fund has two carry forward items, 1.21 to complete bridge replacement at

CR 396 for \$481,809, and item 1.22 for \$39,202 of completion costs on the US Highway 85 Access Control at 31st Street project.

Revision items for the Water fund include the following carryforward items 1.23- 1.28:

- \$60,000 for the Neville's Crossing non-potable direct supply project
- \$437,813 for Tuscany non-potable irrigation system
- \$200,000 for completion of the Evans ditch measurement project
- \$161,808 for continued work on the Evans Ditch Condition Survey and repair project
- \$231,382 for the Water portion of design costs for the 37th Street utility improvements
- \$804,171 to complete the 17th Avenue water line replacement

The Water Fund also has the following new requests:

- 1.29 for \$80,000 to replace water meters to allow for remote reading and shut off capability
- 1.30 \$177,958 to be reimbursed to the Peakview Metro District for water system improvements completed which will service future capacity needs of the City
- 1.31 \$500,000 anticipated first payment for the Willowbrook non-potable system potential purchase

The carry forward requests in the Waste Water Fund at 1.32- 1.35 are as follows:

- \$70,084 to complete construction on the Ashcroft Draw Aerial Crossing
- \$285,414 for the construction of utility improvements along 37th Street
- \$150,924 to complete the Waste Water Dewatering project
- \$144,918 to continue sewer line maintenance

The Waste Water Fund also has the following new requests:

- 1.36 \$65,000 to complete a plant capacity study and plant expansion plan
- 1.37 \$203,907 to complete a design plan for decommissioning of the old lagoon. This also includes associated grant revenue available to fund the design
- 1.38 \$93,740 to be reimbursed to the Peakview Metro District for waste water system improvements completed which will service future capacity needs of the City
- 1.39 \$350,000 to fund Vapex Ozone system odor control project

Items 1.40- 1.47 for revision in the Storm Drainage fund include:

- \$45,000 for a storm fund truck
- \$302,341 for utility improvements along 37th Street
- \$174,020 for 29th and Anchor Inlet Additions
- \$199,146 for the Ridge at Prairie View Outfall
- \$139,899 to complete improvements on the Ashcroft Heights Channel
- \$45,000 for design of the 37th Street storm line from Railroad to Boulder
- \$345,000 for design of a new alignment at 35th Street
- \$67,800 for design of storm drainage at Heritage Inn across Highway 85

Also included in the Storm Drainage Fund is item 1.48 for \$165,000 toward the non-potable irrigation system at the Tuscany subdivision.

Details of all financial items are available for Council or Citizens upon request from the Finance Department by contacting Jacque Troudt at 970-475-1127 or jtroudt@evanscolorado.gov.

RECOMMENDATION:

Staff recommends approval of the ordinance to amend the 2020 Budget.

SUGGESTED MOTIONS:

"I move to adopt Ordinance No. 725-20 on first reading."

"I move to deny Ordinance No. 725-20."

ATTACHMENTS:

- A - Ordinance No. 725-20
- B - Detail of proposed budget revision items

CITY OF EVANS, COLORADO

ORDINANCE NO. 725-20

AN ORDINANCE AMENDING THE 2020 BUDGET; INCREASING GENERAL FUND REVENUES BY \$248,000, APPROPRIATING GENERAL FUND EXPENDITURES OF \$762,341, APPROPRIATING STREET IMPACT FUND EXPENDITURES OF \$453,429, APPROPRIATING PARK IMPACT FUND EXPENDITURES OF \$1,353,737, APPROPRIATING CONSERVATION TRUST FUND EXPENDITURES OF \$85,000, INCREASING CIP STREETS FUND REVENUES BY \$398,434, APPROPRIATING CIP STREETS FUND EXPENDITURES OF \$3,901,346, APPROPRIATING CIP PARKS FUND EXPENDITURES OF \$87,000, APPROPRIATING CIP FOOD TAX FUND EXPENDITURES OF \$521,011, APPROPRIATING WATER FUND EXPENSES OF \$2,519,395, INCREASING WASTE WATER FUND REVENUES BY \$203,907, APPROPRIATING WASTE WATER FUND EXPENSES OF \$1,363,987, APPROPRIATING STORM DRAINAGE FUND EXPENSES OF \$1,483,206.

WHEREAS, in accordance with Section 8.6 of the Evans Home Rule Charter the Council may make additional appropriations by ordinance during the fiscal year; and

WHEREAS, the City Manager has certified that additional funds are available for appropriations in each fund from actual and anticipated revenues of the current year and prior year cash reserves; and

WHEREAS, the City Council is advised that certain revenues, expenditures and transfers must be approved by ordinance.

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

Section 1: Upon the City Manager’s certification that there are current and prior year revenues available for appropriation in the General Fund, Street Impact Fund, Park Impact Fund, Conservation Trust Fund, Capital Projects – Streets Fund, Capital Projects – Parks Fund, Capital Projects – Food Tax Fund, Water Fund, Waste Water Fund, Storm Drainage Fund, and the City Council hereby makes supplemental appropriations as itemized in Attachment “A” attached hereto.

Section 2: The City Council hereby authorizes and directs the City Manager to enter into such contracts and execute such documents on behalf of the City as may be necessary and customary to expend the funds hereby appropriated for all operations, capital projects and debt within this budget as amended in accordance with the requirements of the Home Rule Charter and the City’s Financial Policies.

Section 3: The adoption of this Ordinance will promote the health, safety and general welfare of the Evans community.

Section 4: If any provision of this Ordinance or portion thereof is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other provision which can be given effect without the invalid portion.

Section 5: All prior ordinances, resolutions, or other acts, or parts thereof, by the City of Evans in conflict with this Ordinance are hereby repealed, except that this repealer shall not be construed to revive any previously repealed or expired act, ordinance or resolution, or part thereof.

Section 6: This Ordinance shall be effective following the adoption by Section 8.5 of the Home Rule Charter.

PASSED and APPROVED at a regular meeting of the City Council of the City of Evans on this 7th day of July, 2020.

ATTEST: CITY OF EVANS, COLORADO

By: _____
City Clerk

By: _____
Mayor

PASSED, APPROVED AND ADOPTED ON SECOND READING this 21st day of July, 2020.

ATTEST: CITY OF EVANS, COLORADO

By: _____
City Clerk

By: _____
Mayor

Attachment A
2020 Budget Revision #1

#	Description	Fund/Funding Source	From Fund Balance	From New Revenue	2020 Expense Budget	Comment
GENERAL FUND						
General Fund - Carryforward Items						
1.1	23rd Avenue Design	General - 2019 Carryforward- Fund Balance	226,341	-	226,341	Carryforward budget for 23rd Avenue extension
1.2	Transportation Master Plan & Comprehensive Master Plan	General - 2019 Carryforward- Fund Balance & Grant Revenue	95,000	233,000	328,000	Carryforward the budget for update to Comprehensive Master Plan and Transportation Plans, and grant award from CDOT/MPO and anticipated grant from DOLA
General Fund - 2019 Restricted Revenue Usage						
1.3	Upgrade traffic signals to improve public safety	General- Traffic Calming Surcharge	143,000	-	143,000	Usage of traffic calming surcharge for modification of traffic signals to operate optimally and adjust to various traffic flow conditions. Includes intersections of: 11th Ave & 32nd St, 23rd Ave & 32nd St, 35th Ave & 37th St, 23rd Ave & 37th St, and 17th Ave & 37th St
1.4	Brazos E-Ticketing System Upgrade	General- Traffic Calming Surcharge	12,000	-	12,000	Usage of traffic calming surcharge for upgrade to Brazos E-Ticketing system
1.5	Police academy training costs	General- Court Security Surcharge	18,000	-	18,000	Usage of court security surcharge revenue for police academy training costs for 2 recruits.
General Fund - 2020 New Requests						
1.6	Heritage Days Budget	General- Excess Fund Balance	20,000	-	20,000	Increase budget per preliminary Council approval on March 3, 2020 for Heritage Days 2020
1.7	Arrowhead site clean up	General- Association reimbursement	-	15,000	15,000	Recognition of \$15,000 received from the Arrowhead Water Association for removal of natural material on the open space site, and expense to complete the work.
Total General Fund			514,341	248,000	762,341	
						<i>2020 V1 Budgeted Ending Fund Balance</i>
						<i>Fund Balance Impact</i>
						2020 V2 Budgeted Ending Fund Balance
STREET IMPACT FUND						
Street Impact Fund - Carryforward Items						
1.8	Traffic Signal Installation- 35th Ave and 34th Street	Street Impact - 2019 Carryforward- Fund Balance	272,615	-	272,615	Carryforward budget for installation of traffic signal at 35th Avenue and 34th Street
Street Impact Fund - 2020 New Requests						
1.9	23rd Avenue Extension Funding	Street Impact- Excess Fund Balance	100,000	-	100,000	Funding for 23rd Avenue extension
1.10	Peakview Metro District- 65th Avenue reimbursement	Street Impact - Impact Fee Revenue	80,814	-	80,814	To be paid to Peakview Metro District for building 65th Ave for future needs.
Total Street Impact Fund			453,429	-	453,429	
						<i>2020 V1 Budgeted Ending Fund Balance</i>
						<i>Fund Balance Impact</i>
						2020 V2 Budgeted Ending Fund Balance

#	Description	Fund/Funding Source	From Fund Balance	From New Revenue	2020 Expense Budget	Comment
PARK IMPACT FUND						
Park Impact Fund - Carryforward Items						
1.11	Arrowhead open space purchase					
		Park Impact - 2019 Carryforward- Fund Balance	1,220,000	-	1,220,000	Preliminary budget revision was approved on December 3, 2019 for the purchase of open space property adjacent to Arrowhead subdivision
Park Impact Fund - 2020 New Requests						
1.12	Tuscany non-potable irrigation system					
		Park Impact Fund- Excess Fund Balance	133,737	-	133,737	Park land purchase for Tract O at Tuscany subdivision
Total Park Impact Fund			1,353,737	-	1,353,737	
					2020 V1 Budgeted Ending Fund Balance	4,413,092
					Fund Balance Impact	(1,353,737)
					2020 V2 Budgeted Ending Fund Balance	3,059,355
CONSERVATION TRUST FUND						
Conservation Trust Fund - Carryforward Items						
1.13	Village Park Tennis Court					
		CTF- 2019 Carryforward- Fund Balance	65,000	-	65,000	Carryforward budget for tennis court surfacing at Village Park
Conservation Trust Fund - 2020 New Requests						
1.14	Arrowhead Open Space site preparation costs					
		CTF- Excess Fund Balance	20,000	-	20,000	Boundary survey, fencing along property boundary, and signage to prepare site for public use
Total Conservation Trust Fund			85,000	-	85,000	
					2020 V1 Budgeted Ending Fund Balance	534,630
					Fund Balance Impact	(85,000)
					2020 V2 Budgeted Ending Fund Balance	449,630
CIP STREETS FUND						
CIP Streets Fund - Carryforward Items						
1.15	31st St Access Control construction					
		CIP Streets- 2019 Carryforward- Fund Balance	91,851	398,434	490,285	Carryforward budget for completion of 31st St Access Control construction, and grant revenue
1.16	35th Avenue widening construction					
		CIP Streets- 2019 Carryforward- Fund Balance	10,776	-	10,776	Carryforward budget for completion of 35th Avenue widening construction
1.17	37th Street widening design					
		CIP Streets- 2019 Carryforward- Fund Balance	490,285	-	490,285	Carryforward budget for completion of 37th Street design
1.18	47th Avenue widening					
		CIP Streets- 2019 Carryforward- Fund Balance	2,725,000	-	2,725,000	Carryforward budget for acquisition of right of way for 47th Avenue widening
CIP Streets Fund - 2020 New Requests						
1.19	37th Street Project Management					
		CIP Streets- Excess Fund Balance	185,000	-	185,000	Preliminary budget revision approved for 37th Street project management
Total CIP Streets Fund			3,502,912	398,434	3,901,346	
					2020 V1 Budgeted Ending Fund Balance	4,109,515
					Fund Balance Impact	(3,502,912)
					2020 V2 Budgeted Ending Fund Balance	606,603
CIP PARKS FUND						
CIP Parks Fund - Carryforward Items						
1.20	Riverside Park completion items					
		CIP Parks- 2019 Carryforward- Fund Balance	87,000	-	87,000	Carryforward of Riverside Park completion and monitoring costs
Total CIP Parks Fund			87,000	-	87,000	
					2020 V1 Budgeted Ending Fund Balance	302,251
					Fund Balance Impact	(87,000)
					2020 V2 Budgeted Ending Fund Balance	215,251

#	Description	Fund/Funding Source	From Fund Balance	From New Revenue	2020 Expense Budget	Comment
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CIP FOOD TAX FUND
CIP Food Tax Fund - Carryforward Items

1.21	CR 396 bridge replacement	CIP Food Tax- 2019 Carryforward- Fund Balance	481,809	-	481,809	Carryforward remaining budget to complete the renovations on CR 396 bridge
1.22	31st St Access Control	CIP Food Tax- 2019 Carryforward- Fund Balance	39,202	-	39,202	Carryforward budget for completion of 31st St Access Control
Total CIP Food Tax Fund			521,011	-	521,011	
					2020 V1 Budgeted Ending Fund Balance	1,188,277
					Fund Balance Impact	(521,011)
					2020 V2 Budgeted Ending Fund Balance	667,266

WATER FUND
Water Fund - Carryforward Items

1.23	Neville's Crossing non-potable direct supply project	Water Fund- 2019 Carryforward- Fund Balance	60,000	-	60,000	Carryforward budget for Neville's Crossing non-potable direct supply project
1.24	Tuscany non-potable irrigation system	Water Fund- 2019 Carryforward- Fund Balance	304,076	-	304,076	Carryforward budget for completion of non-potable irrigation system at Tuscany subdivision
1.25	Evans ditch measurement project	Water Fund- 2019 Carryforward- Fund Balance	200,000	-	200,000	Carryforward budget for completion of the Evans ditch measurement project
1.26	Evans ditch condition survey and repair	Water Fund- 2019 Carryforward- Fund Balance	161,808	-	161,808	Carryforward budget for the Evans ditch condition survey and repair
1.27	37th Street Utility Improvements	Water Fund- 2019 Carryforward- Fund Balance	231,382	-	231,382	Carryforward budget for completion of 37th Street utility improvements
1.28	17th Ave line replacement 37th St to North city limits	Water Fund- 2019 Carryforward- Fund Balance	804,171	-	804,171	Carryforward of budget to complete 17th Ave line replacement
Water Fund - 2020 New Requests						
1.29	Remote Operation Water Meters	Water Fund- Excess Fund Balance	80,000	-	80,000	Sensus meter reading upgrades (antenna and meters) for remote shut off capabilities
1.30	Water system oversizing	Water Fund- System Development Fee Revenue	177,958	-	177,958	To be paid to Peakview Metro District for building system to meet future development needs
1.31	Potential purchase of Willowbrook Non-potable system purchase	Water Fund- Excess Fund Balance	500,000	-	500,000	Potential purchase of the Willowbrook Non-potable system, 1st payment anticipated to be issued in 2020
Total Water Fund			2,519,395	-	2,519,395	
					2020 V1 Budgeted Ending Fund Balance	6,932,136
					Fund Balance Impact	(2,519,395)
					2020 V2 Budgeted Ending Fund Balance	4,412,741

WASTE WATER FUND
Waste Water Fund - Carryforward Items

1.32	Ashcroft Draw Aerial Crossing	Waste Water Fund- 2019 Carryforward- Fund Balance	70,084	-	70,084	Carryforward of budget to complete construction on the Ashcroft Draw Aerial Crossing
1.33	37th Street Utility Improvements	Waste Water Fund- 2019 Carryforward- Fund Balance	285,414	-	285,414	Carryforward budget for completion of 37th Street utility improvements
1.34	Waste Water Dewatering	Waste Water Fund- 2019 Carryforward- Fund Balance	150,924	-	150,924	Carryforward budget for completion of Waste Water Dewatering project
1.35	Annual Sewer Line Maintenance	Waste Water Fund- 2019 Carryforward- Fund Balance	144,918	-	144,918	Carryforward budget for annual sewer line maintenance

#	Description	Fund/Funding Source	From Fund Balance	From New Revenue	2020 Expense Budget	Comment
Waste Water Fund - 2020 New Requests						
1.36	Plant capacity and expansion planning					
		Waste Water Fund- Excess Fund Balance	65,000	-	65,000	Budget for plant capacity study and plant expansion planning, previously approved by Council
1.37	Lagoon decommissioning design					
		Waste Water Fund- Excess Fund Balance	-	203,907	203,907	Preliminary budget revision on February 18, 2020 approved using remaining SRF loan funds for this project
1.38	Waste Water system oversizing					
		Waste Water Fund- System Development Fee Revenue	93,740	-	93,740	To be paid to Peakview Metro District for building system to meet future development needs
1.39	Wastewater Treatment Plant odor control (Vapex Ozone system)					
		Waste Water Fund- Excess Fund Balance	350,000	-	350,000	Vapex Ozone System to improve odor control at the Wastewater Treatment Plant
Total Waste Water Fund			1,160,080	203,907	1,363,987	
					2020 V1 Budgeted Ending Fund Balance	10,294,157
					Fund Balance Impact	(1,160,080)
					2020 V2 Budgeted Ending Fund Balance	9,134,077
STORM DRAINAGE FUND						
Storm Drainage Fund - Carryforward Items						
1.40	Storm department truck					
		Storm Fund- 2019 Carryforward- Fund Balance	45,000	-	45,000	This production of this truck was delayed after order due to GM Strike, carryforward budget for completion in 2020.
1.41	37th Street Stormwater improvements- design					
		Storm Fund- 2019 Carryforward- Fund Balance	302,341	-	302,341	Carryforward budget for the Stormwater improvements on 37th Street
1.42	29th and Anchor Inlet					
		Storm Fund- 2019 Carryforward- Fund Balance	174,020	-	174,020	Carryforward budget to complete improvements at 29th and Anchor inlet
1.43	Ridge at Prairie View Outfall					
		Storm Fund- 2019 Carryforward- Fund Balance	199,146	-	199,146	Carryforward budget to complete improvements at Ridge at Prairie View Outfall
1.44	Ashcroft Heights Channel Improvement					
		Storm Fund- 2019 Carryforward- Fund Balance	139,899	-	139,899	Carryforward budget to complete improvements on the Ashcroft Heights Channel
1.45	37th Street Storm Line from Railroad to Boulder					
		Storm Fund- 2019 Carryforward- Fund Balance	45,000	-	45,000	Carryforward budget to complete improvements on the 37th St Storm line from railroad to Boulder St
1.46	35th Street Alignment					
		Storm Fund- 2019 Carryforward- Fund Balance	345,000	-	345,000	Carryforward budget to complete design of the 35th Street alignment
1.47	Heritage Inn across Highway 85 drainage					
		Storm Fund- 2019 Carryforward- Fund Balance	67,800	-	67,800	Carryforward budget to complete design of the drainage across Highway 85 at Heritage Inn
Storm Drainage Fund - 2020 New Requests						
1.48	Tuscany non-potable irrigation system					
		Storm Fund- Excess Fund Balance	165,000	-	165,000	Carryforward budget for completion of non-potable irrigation system at Tuscany subdivision
Total Storm Drainage Fund			1,483,206	-	1,483,206	
					2020 V1 Budgeted Ending Fund Balance	8,027,025
					Fund Balance Impact	(1,483,206)
					2020 V2 Budgeted Ending Fund Balance	6,543,819

CITY COUNCIL AGENDA REPORT

DATE: July 7, 2020

AGENDA ITEM: 7.K

SUBJECT: Public Hearing: Consideration of Ordinance No. 726-20 an Ordinance Amending Chapter 13.24 to Protect the Public Water System from Contaminants or Pollutants that Could Enter the Distribution System by Backflow (1st Reading)

PRESENTED BY: James L. Becklenberg, City Manager
Randy Ready, Asst. City Manager
Scott Sandridge, Operations and Parks Manager
Drew Lyman, Assistant City Attorney

AGENDA ITEM DESCRIPTION:

On February 18, 2020, the Field Services Section of the Colorado Department of Public Health & Environment's Water Quality Control Division (the CDPHE) performed a sanitary survey at the City of Evans in accordance with the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11 (Regulation 11), Sections 11.38(1)(b) and 11.38(2).

As a result of the survey, the CDPHE determined that Evans should amend the Evans Municipal Code to comply with Regulation 11, Section 11.39(2)(a), which requires water suppliers, such as the City of Evans, to develop and implement a written Backflow Prevention and Cross-connection Control (BPCCC) program. The purpose of the BPCCC program is to prevent uncontrolled cross connections that have the potential to cause severe health risks to consumers in the water distribution system.

Currently our adopted construction specifications require backflow prevention devices for all commercial water users in the same manner that the recommended code amendment prescribes, however CDPHE maintains that construction specifications are not as legally enforceable as municipal code. This new code section will not have any new financial impact or change the way we allow commercial users to build their water lines or plumb their buildings as our past specifications have already required these types of devices to be installed prior to a Certificate of Occupancy being granted. None of the proposed code changes impact residential water users.

The CDPHE expects the City of Evans to submit a copy of the codified BPCCC program to the CDPHE inspector. The language of this ordinance is based upon a sample ordinance provided by the CDPHE.

FINANCIAL SUMMARY:

There is minimal financial impact anticipated by the ordinance. The City has contracted with Backflow Solutions Inc. (BSI) to assist with the management of all backflow data, testing, surveys and testing schedules. The annual cost for that service is \$500 to the City and a \$15 per year

charge for commercial water accounts for each backflow prevention device that they have installed.

RECOMMENDATION:

Staff recommends that City Council adopt the proposed Ordinance 726-20 to amend Chapter 13.24 of the Evans Municipal Code to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow.

SUGGESTED MOTIONS:

“I move to adopt Ordinance No. 726-20 as proposed to amend Chapter 13.24 of the Evans Municipal Code to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow.”

“I move to deny Ordinance No. 726-20 as proposed for the reasons stated.”

ATTACHMENTS:

- Ordinance No. 726-20

CITY OF EVANS, COLORADO

ORDINANCE NO. 726-20

**AN ORDINANCE AMENDING CHAPTER 13.24 OF THE EVANS
MUNICIPAL CODE TO PROTECT THE PUBLIC WATER SYSTEM
FROM CONTAMINANTS OR POLLUTANTS THAT COULD ENTER
THE DISTRIBUTION SYSTEM BY BACKFLOW**

WHEREAS, the City Council of the City of Evans, Colorado (the “City Council”), pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado (the “City”); and

WHEREAS, on February 18, 2020, the Field Services Section of the Colorado Department of Public Health & Environment’s Water Quality Control Division (CDPHE) performed a sanitary survey at the City of Evans in accordance with the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11 (Regulation 11), Sections 11.38(1)(b) and 11.38(2); and

WHEREAS, the CDPHE recommended that the City address several items identified in the survey, including implementing written Backflow Prevention and Cross-Connection Control Program procedures that include all the requirements specified under Regulation 11, Section 11.39(2)(a); and

WHEREAS, in furtherance of the CDPHE recommendations following the survey, City staff recommends amending Chapter 13.24 of the Code by repealing and replacing Chapter 13.24; and

WHEREAS, by the provisions of this Ordinance, it is the City’s intention to repeal Chapter 13.24 of the Code in its entirety and to adopt a new Chapter 13.24 to adopt updated an Backflow Prevention and Cross-Connection Control Program to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow from a customer’s water supply system through the service connection.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF EVANS, COLORADO AS FOLLOWS:**

Section 1. Repeal and Readoption: Chapter 13.24 of the Evans Municipal Code is hereby repealed in its entirety and readopted to read as follows:

Chapter 13.24 - Plumbing Cross Connection Control

13.24.010 - Purpose.

The purpose of this Ordinance is to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow from a customer’s water supply system through the service connection.

13.24.020 - Authority.

- A. The authority to implement this program is contained in the following statute, legislation and regulations and acts:
 - 1. Section 1-114 and Section 1-114.1 of Title 25 of the Colorado Revised Statutes (CRS);
 - 2. Section 39 of 5 CCR 1002-11, Colorado Primary Drinking Water Regulations;
 - 3. Colorado Plumbing Code.
- B. The public water system supplier shall have the authority to survey all service connections within the distribution system to determine if the connection is a cross-connection.
- C. The public water system supplier may control any service connections within the distribution system in lieu of a survey if the service connection is controlled with an air gap or reduced pressure zone backflow prevention assembly.
- D. The public water system supplier may collect fees for the administration of this program.
- E. The public water system supplier shall maintain records of cross-connection surveys and the installation, testing and repair of all backflow prevention assemblies installed for containment and containment by isolation purposes.
- F. Except as otherwise provided herein, the public water system supplier shall administer, implement, and enforce the provisions of this Ordinance.

13.24.030 - Applicability.

This Ordinance applies to all commercial, industrial, and multi-family residential service connections within the public water system and to any persons outside the City who are, by contract or agreement with the public water system supplier, or otherwise, users of the public water system. This Ordinance does not apply to single-family-residential service connections unless the public water system supplier becomes aware of a cross connection at the single-family connection.

13.24.040– Definitions.

- A. “ACTIVE DATE” means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross-connection in each calendar year.
- B. “AIR GAP” is a physical separation between the free-flowing discharge end of a

potable water supply pipeline and an open or non-pressure receiving vessel installed in accordance with standard ASME A112.1.2.

- C. “BACKFLOW” means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the public water systems distribution system from any source or sources other than its intended source.
- D. “BACKFLOW CONTAMINATION EVENT” means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the Colorado Primary Drinking Water Regulations or presents an immediate health and/or safety risk to the public.
- E. “BACKFLOW PREVENTION ASSEMBLY” means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.
- F. “BACKFLOW PREVENTION METHOD” means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.
- G. “CERTIFIED CROSS-CONNECTION CONTROL TECHNICIAN” means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.
- H. “CONTAINMENT” means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.
- I. “CONTAINMENT BY ISOLATION” means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer’s water system such that backflow from a cross connection into the public water system is prevented.
- J. “CONTROLLED” means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.
- K. “CROSS CONNECTION” means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer’s water

system into a public water system's distribution system or any other part of the public water system through backflow.

- L. "MULTI-FAMILY" means a single residential connection to the public water system's distribution system from which two or more separate dwelling units are supplied water.
- M. "SINGLE-FAMILY" means:
 - 1. A single dwelling which is occupied by a single family and is supplied by a separate service line; or
 - 2. A single dwelling comprised of multiple living units where each living unit is supplied by a separate service line.
- N. "UNCONTROLLED" means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.
- O. "WATER SUPPLY SYSTEM" means a water distribution system, piping, connection fittings, valves and appurtenances within a building, structure, or premises. Water supply systems are also referred to commonly as premise plumbing systems.

13.24.050– Requirements.

- A. Commercial, industrial, and multi-family service connections shall be subject to a survey for cross connections. If a cross connection has been identified an appropriate backflow prevention assembly and or method shall be installed at the customer's water service connection within 120 days of its discovery. The assembly shall be installed downstream of the water meter or as close to that location as deemed practical by the public water system supplier. If the assembly or method cannot be installed within 120 days the public water system supplier must take action to control or remove the cross connection, suspended service to the cross connection or receive an alternative compliance schedule from the Colorado Department of Public Health and Environment.
- B. In no case shall it be permissible to have connections or tees between the meter and the containment backflow prevention assembly.
- C. In instances where a reduced pressure principle backflow preventer cannot be installed, the owner must install approved backflow prevention devices or methods at all cross-connections within the owner's plumbing system.
- D. Backflow prevention assemblies and methods shall be installed in a location that

provides access for maintenance, testing and repair.

- E. Reduced pressure principle backflow preventers shall not be installed in a manner subject to flooding.
- F. Provisions shall be made to provide adequate drainage from the discharge of water from reduced pressure principle backflow prevention assemblies. Such discharge shall be conveyed in a manner that does not impact waters of the state.
- G. All assemblies and methods shall be protected to prevent freezing. Those assemblies and methods used for seasonal services may be removed in lieu of being protected from freezing. The assemblies and methods must be reinstalled and then tested by a certified cross-connection control technician upon reinstallation.
- H. Where a backflow prevention assembly or method is installed on a water supply system using storage water heating equipment such that thermal expansion causes an increase in pressure, a device for controlling pressure shall be installed.
- I. All backflow prevention assemblies shall be tested at the time of installation and on an annual schedule thereafter. Such tests must be conducted by a Certified Cross-Connection Control Technician.
- J. The public water system supplier shall require inspection, testing, maintenance and as needed repairs and replacement of all backflow prevention assemblies and methods, and of all required installations within the owner's plumbing system in the cases where containment assemblies and or methods cannot be installed.
- K. All costs for design, installation, maintenance, testing and as needed repair and replacement are to be borne by the customer.
- L. No grandfather clauses exist except for fire sprinkler systems where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system.
- M. For new buildings, all building plans must be submitted to the public water system supplier and approved prior to the issuance of water service. Building plans must show:
 - 1. Water service type, size, and location
 - 2. Meter size and location
 - 3. Backflow prevention assembly size, type, and location
 - 4. Fire sprinkler system(s) service line, size, and type of backflow prevention assembly.
 - 5. All fire sprinkling lines shall have a minimum protection of an approved double check valve assembly for containment of the

system.

6. All glycol (ethylene or propylene), or antifreeze systems shall have an approved reduced pressure principle backflow preventer for containment.
7. Dry fire systems shall have an approved double check valve assembly installed upstream of the air pressure valve.
8. In cases where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system the public water system supplier can choose to not require the backflow protection. The public water system supplier will measure chlorine residual at location representative of the service connection once a month and perform periodic bacteriological testing at the site. If the public water system supplier suspects water quality issues the public water system supplier will evaluate the practicability of requiring that the fire sprinkler system be flushed periodically.

13.24.060– Inspection, Testing and Repair.

- A. Backflow prevention assemblies or methods shall be tested by a Certified Cross-Connection Control Technician upon installation and tested at least annually, thereafter. The tests shall be made at the expense of the customer.
 1. Any backflow prevention assemblies or methods that are non-testable, shall be inspected at least once annually by a certified cross-connection control technician. The inspections shall be made at the expense of the customer.
- B. As necessary, backflow prevention assemblies or methods shall be repaired and retested or replaced and tested at the expense of the customer whenever the assemblies or methods are found to be defective.
- C. Testing gauges shall be tested and calibrated for accuracy at least once annually.

13.24.070– Reporting and Recordkeeping.

- A. Copies of records of test reports, repairs and retests, or replacements shall be kept by the customer for a minimum of three (3) years.
- B. Copies of records of test reports, repairs and retests shall be submitted to the public water system supplier by uploading results to Backflow Solutions Inc. website at www.bsionline.com by the testing company or testing technician.
- C. Information on test reports shall include, but may not be limited to:
 1. Assembly or method type
 2. Assembly or method location
 3. Assembly make, model and serial number
 4. Assembly size
 5. Test date
 6. Test results including all results that would justify a pass or fail

outcome

7. Certified cross-connection control technician certification agency
8. Technician's certification number
9. Technician's certification expiration date
10. Test kit manufacturer, model, and serial number
11. Test kit calibration date

13.24.080– Right of entry.

A properly credentialed representative of the public water system supplier shall have the right of entry to survey all buildings and premises for the presence of cross-connections for possible contamination risk and for determining compliance with this section. This right of entry shall be a condition of water service to protect the health, safety, and welfare of customers throughout the public water system's distribution system.

13.24.090– Compliance.

- A. Customers shall cooperate with the installation, inspection, testing, maintenance, and as needed repair and replacement of backflow prevention assemblies and with the survey process. For any identified uncontrolled cross-connections, the public water system supplier shall complete one of the following actions within 120 days of its discovery:
 1. Control the cross connection
 2. Remove the cross connection
 3. Suspend service to the cross connection
- B. The public water system supplier shall give notice in writing to any owner whose plumbing system has been found to present a risk to the public water system's distribution system through an uncontrolled cross connection. The notice and order shall state that the owner must install a backflow prevention assembly or method at each service connection to the owner's premises to contain the water service. The notice and order will give a date by which the owner must comply. In instances where a backflow prevention assembly or method cannot be installed, the owner must install approved backflow prevention assemblies or methods at all cross-connections within the owner's water supply system. The notice and order will give a date by which the owner must comply.

13.24.100 – Violations and Penalties.

Any violation of the provisions of this ordinance, shall, upon conviction be punishable as provided in all applicable statutes, laws, and regulations.

13.24.110 – Conflict with other codes.

If a dispute or conflict arises between the Colorado Plumbing Code as adopted herein, and

any plumbing, mechanical, building, electrical, fire or other code adopted by the State, then the most stringent provisions of each respective code shall prevail.

Section 2. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. This Ordinance shall become effective upon final passage.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 7TH DAY OF JULY 2020.

ATTEST:

CITY OF EVANS, COLORADO

BY: _____
Karen Frawley, City Clerk

By: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS ___ DAY OF _____, 2020.

ATTEST:

CITY OF EVANS, COLORADO

BY: _____
Karen Frawley, City Clerk

BY: _____
Brian Rudy, Mayor

City Managers Weekly City Council Update July 2, 2020

Communications	<ul style="list-style-type: none">• Staff produced videos for human resources• Staff shot video of parks and rec working• Staff updated website for various departments• Staff promoted Planning Dept. Surveys• Staff sent notifications to the public regarding fireworks and building closures
Human Resources/Risk Management	<ul style="list-style-type: none">• Staff continually seeks to find efficient and effective ways to improve processes and utilize more advanced technology. In collaboration with the finance team, staff transitioned from paper earning statements to electronic earnings statements on June 26th. Employees can access pay stubs through ADP through the Internet or their Mobile APP and view, save and/or print earnings statements 24/7 from their ADP records. We continue to market ADP's other convenient electronic features, such as, viewing and changing personal information, direct deposit information, tax withholdings, and accessing W-2's in effort to reduce paper-related processing.
Finance	<ul style="list-style-type: none">• July 1st is the effective date of our new sales/use tax rate of 4.5%. Finance staff started an informational communication campaign in May and has now sent three different information packages to business owners. In the past week staff completed a postal mailing to all businesses located within the City of Evans, and the 3rd email blast to all licensed businesses. Included in this package were the tax increase notification (also in Spanish language), along with the new sales tax form and a marketing piece from Xpress Bill Pay encouraging online filing/payment. We will complete a 4th and final communication to all businesses in the last week of July.
Recreation	<ul style="list-style-type: none">• This short holiday week, 47 patrons used the cardio/weight room and 26 took part in SilverSneakers classes.• The Evans Recreation Center will be closed on Friday, July 3 in observance of the Independence Day holiday.• Staff is working with companies and community groups to reschedule meetings and events.

Planning

City of Evans Land Use Applications							
Name	Case #	Acres	Location	Brief description	Planning Commission	City Council	City Council
Submitted Applications							
Ridge at Prairie View Replat	Incomplete, submitted 1/3/2020	<1	West of Yellowbells Drive in Prairie View	Vacating Noble ROW	TBD	TBD	NA
ACME Oil Field Services	20-USR-01	<1	Lots 1-4 and 16-18, Block 4, Evans Industrial Park		TBD	TBD	NA
H&H Excavation (Hojojo)	20-SP-02	<1	industrial Park	Site plan for business/storage	TBD	TBD	NA
Ziggi's Coffee Shop	20-SP-03; 20-AP-02	<1	37th Street/35th Ave	Drive through Coffee Shop; Site Plan is approved administratively; Site Improvements Agreement & Minor Replat are heard by both	5/26/2020	6/19/2020	7/7/2020
Grapevine Hollow, Outlot 5	Incomplete, submitted 2/20	<1	Grapevine Hollow	3 Lots from Outlot	TBD	TBD	TBD
Village Park Apartments	20-SPR-04	<1	1655 37th St	4-Plex, Infill	Administrative		
Mountain TRAX	20-ANNX-01; 20-COZ-01	3.84	22744 WCR 33	Annexing the northern Colorado headquarters building into the greater site; Rezoning all to I-3 with	6/23 for COZ	7/7/2020	7/21/2020
Approved, pending recording, Development Agreement, Etc.							
Crescent Cove Apartments, expansion	20-SP-01; 20-AP-07	17.83	32nd St between 29th Ave and Harbor Lane	12 buildings, clubhouse/pool; 288 units - 72 1B, 144 2B, 72 3B; Site Plan is administratively reviewed; replatting for easement is administratively	Administrative		
Quality Lube	20-AP-06; 19-USR-03	<1	3303 23rd Ave	AmSUP to expand existing business footprint will be heard by PC and CC; Minor Replat to remove a lot line is administratively approved	5/26/2020	6/19/2020	NA
20-TELE-01 Knotty Pine - Verizon	20-TELE-01	<1	NE corner 34th Street and 23rd	Colocation for Verizon infrastructure on Xcel pole	Administrative		
Odell Hair Studio	20-HMOC-02	<1	3239 Borrossa	Home Occupation for salon	Administrative		
Varra ROW Vacation	20-AP-04	1 +/-	14822 WCR 3396	Vacation of ROW (ROW is remnant of 1889 patent to Weld County) Now, through 2004 annexation, the ROW belongs to the City.	NA	6/2/2020	6/16/2020
Extraction Oil and Gas	SUP	20.1	Nw corner 47th & 37th	Oil and gas operations; SUP approved by PC and CC; Minor Replat to dedicate ROW was approved administratively; Awaiting DA finalization			
Dr. Patsi Lowe, 3524 Central Street			3524 Central Street	CDL Driver's Physical Testing; Awaiting plat to be finalized for recording			
Peakview Final Plat, Filing 1	18-SUB-01	225	Two Rivers Parkway & 37th	1037 RES, 20 Acres CC, 50 acres OS; Final Plat approved by CC; Awaiting finalization of plat			
Kum & Go	19-AP-08		US 85 & 31/32nd St.	Minor Replat due to 8th Avenue closure at US85; Awaiting plat for recording			
Peerless Tires	18-SP-04 and 19-AP-06		11th Ave and 37th St.	Site Plan approved administratively; awaiting DA finalization			

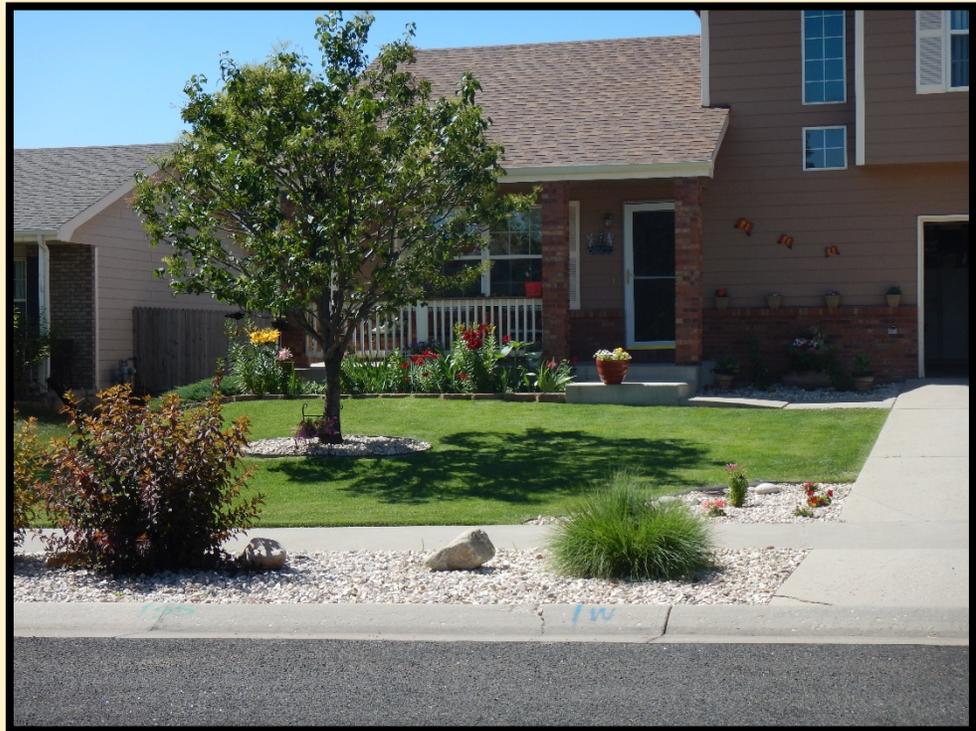
- The preferred consulting team for the Transportation/Trails/Multimodal Master Plan has been selected pending contract execution with CDOT. A meeting with the consultant, City and CDOT was held July 2.
- The RFP for the City's Master Plan was published on June 18. A mandatory pre-application meeting was held on July 1 with eight prospective consulting teams.
- Planning Commission interviews and appointments will be made by City Council on July 7. To date, five applications have been received for the three positions.
- The Water Conservation chapter/suggestions for the Master Plan is approaching the final draft stage. Presentation to Council is forthcoming.
- The first of three community engagement events have been held for the Arrowhead and Tract O Open Spaces. More than 40 residents attended the Arrowhead event at City Hall on June 18. Approximately 20 residents attended the Tract O event held at Renaissance Park on June

25. Residents aged 2 – 80+ have participated and the Community Development Team has had fun planning and executing these events. Voting on site amenities was offered and the tie-breaking events will be held at City Hall on July 2 for Arrowhead and July 9 at Renaissance Park for Tract O. Hammock stands, kite-flying fields, kinetics wind sculptures, bird boxes and raptor posts, drought-tolerant landscaping, interpretive signage and traditional amenities such as trails, trash cans, dog waste bins, and parking lots have been selected. The “Big Reveal” for the desired site amenities will occur at City Hall on July 16 for Arrowhead and July 30 at Renaissance Park for Tract O. All engagement events are held from 4 – 6 p.m. and feature the City’s Party Trailer too. Planning Commission and City Council will hear the Special Use Permits for both cases in the months to come.

- Grant-writing for a GOCO Grant to fund the amenities and improvements in the Arrowhead and Tract O Open Spaces is proceeding.

Neighborhood Services

- The July Yard of the Month Award was presented to Luis Adame at 2622 Park View Dr shown below.



- WCYCC resumed work on the Riverside Park Open Space Restoration project on Monday, June 29th and have made significant progress. There are approximately 3 weeks of work remaining on this project.



- Code Enforcement completed 143 activities including inspections, notices, and 17 citations. Below is a code violation addressed by Code Enforcement this week.



Engineering

- 2020 Asphalt Patch Project – Work is progressing and the crew is in the North Point Subdivision. Ashcroft Height's and Tuscany Subdivisions are complete.

- 2020 Surface Treatment Project - Staff advertised for this project on June 26th with a Bid Opening on July 10th.
- 2020 Concrete is advertised for final payment on July 8th.
- Staff is working with Building Division to approve Final Grading Certificates.
- Staff is working with WL Contractors to upgrade the camera systems of 5 traffic signals in the city. 3 along 37th Street and 2 along 32nd St. Staff also working with finance to use approximately \$126,000 of traffic calming funds for these traffic improvements.
- Staff is working with Morton Electric on the installation of a new traffic Signal at 35th Ave and 34th St. Morton's subcontractor replaced the southwest ADA ramp this week and Morton preparing options for the east-side caissons regarding potential need to interrupt the Xcel transmission lines two times for successful completion.
- Staff continues to work with Xcel Energy to provide power to the 35th Ave irrigation system. The system has not been energized because of internal issues within Xcel.
- East Side Storm Sewer – Staff is working with the CMaR team on the design documents and potholing plan for the 31st Street Storm Sewer.
- Lagoon Decommissioning – Staff & our consultant had a teleconference with CDPHE staff, who appeared amenable to the City's proposed decommissioning memorandum. Bronco Engineering & Lithos are preparing design options for the lift station emergency overflow containment and re-grading plan for the decommissioning.
- Staff continues to work on development reviews and development agreements as they are received.
- 23rd Ave – Bid opening is scheduled for 07/23/2020
- East Side Storm Sewer Environmental Assessments – Staff provided CDPHE some additional information regarding the projects for the EA determination. Staff conducted a virtual open house on June 24th. There was no one from the public in attendance
- Evans Ditch flume project- Staff has selected an alternative flow measurement device. Waiting to hear back from River Commissioners staff for approval of its use.
- Neville's Crossing Non-Potable Direct Supply – The system is using non-potable water. Minor maintenance work is in progress on the pump vault.
- Greeley Customer Transfer to Evans - Greeley is reviewing the City's counter offer. Greeley has agreed to include compensation of water shares to the City for the customers along 49th St. Planning on meeting to finalize the water exchange in the next week or so.
- Water Efficiency Report – Staff is proceeding with plans for a presentation to the Water & Sewer Board then City Council for consideration.
- 17th Avenue Waterline – Remaining work includes installation of new outdoor meter pits, milling and paving of the intersection of 34th St. and 17th Avenue and striping.
- Staff is reviewing water usage data for Prairie Hts. middle school for the purpose of compliance with the IGA regarding potential credits.
- 37th St. Overlay Project – Plans are ready for bidding. Staff is working with CDOT to get the concurrence to advertise. Staff is coordinating with Rail Pros to plan for railroad flaggers when the construction gets close to the railroad crossing later this year
- Tuscany Non-Pot/Tract O – Coffey Engineering has conducted the existing conditions survey and integrating the surface model with the original design topography. Staff has also solicited bids for the system pumps to be provided as "owner supplied equipment" for installation by the general contractor in conjunction with the site grading & irrigation pump station bid (forthcoming).
- Staff is working with CDOT to close out 31st Street and 35th Avenue projects.

- 47th Avenue –Bid opening Thursday 07/02/2020
- Wiedeman Irrigation Water Supply Pipeline to feed Tract O pond – Staff is completing a estimate of future maintenance and an Opinion of Probable costs for replacement of portions of the line.
- Willowbrook NP System Purchase – A draft of the Sales Agreement has been prepared and is nearing completion of review by the City Attorney. Closing is scheduled for October 2020.
- Staff is working on establishing EQR dedication requirements for several development projects.
- Staff conducted a pre bid for the Inspection and Testing Services contract for 23rd and 47th Avenue on June 25th. Bid opening is scheduled for 07/09/2020.

Police

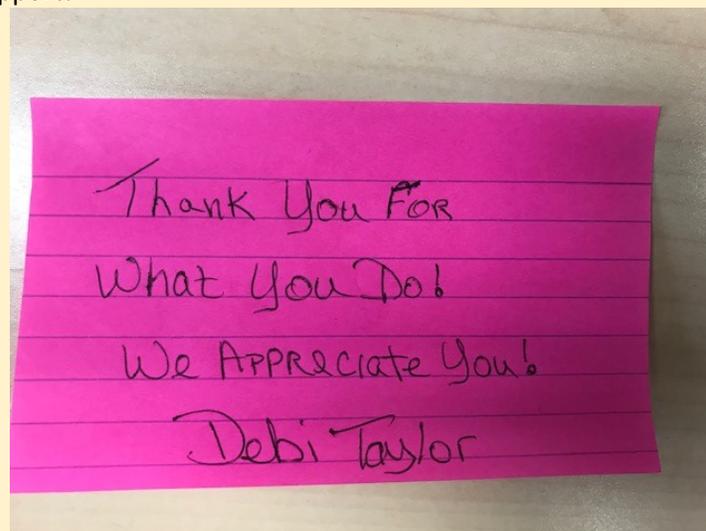
- Officers have been handling an unusually high call volume of illegal fireworks. Calls this year are up about 700% over the same time period last year. Officer's are strictly enforcing the City ordinance prohibiting certain types of fireworks and trying to keep up with the call volume.



- While patrolling in Ashcroft Heights Officer Bobby Gallegos came across some neighborhood kids skating and biking safely by wearing helmets. Officer Gallegos rewarded them with Sonic ice cream coupons. Stay safe kids and enjoy the ice cream!



- Officers McClatchey and Cowper found a note on the windshield of their patrol car while handling a call on Tuesday. We have such a great community and we are grateful for the support!



Parks

- Staff performed locates for 4 headstones at the Cemetery.
- Turf mowing continues to be on schedule.

- Staff held a pre-bid meeting for the Cemetery landscape grant project.
- Staff have begun spraying weeds in the cracks of streets and gutters ahead of the crack seal project.

PW Operations

- Staff started mowing right-of-way areas along Highway 85.
- Staff are grading dirt roads.
- Pothole repairs continue.
- Staff assisted the contractor with the water line tie in at 17th Avenue & 34th Street.
- Staff completed 14 work orders and responded to 6 phone inquiries for items related to water meters, high usage, and new meter installation.

Wastewater

- Seasonal grounds maintenance and irrigation system repair is ongoing.
- Staff spent most of the week trying to vacuum all the sludge and liquid from underneath the damaged pond liner with little success. IT was determined that we would have to remove the entire bottom of the liner to get all the sludge and liquid removed.

