

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 21, 2020 - 7:00 PM

Please click this URL to join virtually: <https://us02web.zoom.us/j/89898746188>  
Or join by phone: 1-669-900-9128  
Webinar ID: 898 9874 6188

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

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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. RECOGNITION

A. Planning Commission Recognition

B. Water & Sewer Board Recognition

C. Police Department Recognition: Life-Saving Awards and Medals

5. 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!

## 6. APPROVAL OF AGENDA

## 7. 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 July 7, 2020 City Council Meeting Minutes
- B. Consideration of Ordinance Number 725-20 An Ordinance Amending the 2020 Budget (2<sup>nd</sup> Reading)
- C. 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 (2<sup>nd</sup> Reading)
- D. Consideration of Ordinance No. 721-20 Approving a Change of Zone from I-2 to I-3 for MountainTRAX, an Industrial Park located at 7300 47<sup>th</sup> Avenue (2<sup>nd</sup> Reading)

## 8. OLD BUSINESS

- A. Public Hearing: Consideration of Ordinance No: 722-20 Annexing and Zoning Certain Lands Concurrently in Connection with the MountainTRAX Intermodal LLC Petition for Annexation (2<sup>nd</sup> Reading)

## 9. NEW BUSINESS

- A. Consideration of Board of Zoning Appeals and Planning Commission Appointments
- B. Consideration of Award of Bid for the 47th Avenue Construction Project
- C. Consideration of Intergovernmental Agreement with the City of Greeley for 47<sup>th</sup> Avenue Widening Funding
- D. Consideration of Resolution Number 23-2020 in Support of the Great Outdoors Colorado Grant to Fund Improvements at Arrowhead Lake Open Space and Tract O Open Space
- E. Public Hearing: Consideration of Ordinance Number 728-20 Implementing the Colorado Sales and Use Tax Software System (SUTS) (1<sup>st</sup> Reading)
- F. Consideration of Resolution Number 24-2020 A Resolution Rescheduling the October 6, 2020 City Council Meeting
- G. Consideration of Resolution Number 25-2020 – Appointment of the Evans Interim City Clerk

## 10. REPORTS

- A. City Manager
- B. City Attorney

11. AUDIENCE PARTICIPATION (general comments)

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

12. EXECUTIVE SESSION

- A. To Confer with the City Attorney Regarding Possible Purchase, Acquisition, or Transfer of Property, Pursuant to Section 24-6-402(4)(a) and (b), C.R.S.

13. 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.

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 4.A  
**SUBJECT:** Planning Commission Recognition  
**NAME & TITLE:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager  
Anne Best Johnson, Community Development Director

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**ISSUE DESCRIPTION:**

Deborah Linn and Steve Bernardo served on the City of Evans Planning Commission--Ms. Linn for 6 years and Mr. Bernardo for 3 years.

Planning Commission is important for providing transparent, thoughtful and timely due process for land use development, for refining the Land Use Code, and for collaborating on Master Planning efforts and other planning studies that may take place. Planning Commission provides its recommendation through diligent review and hearing public testimony.

The City of Evans is grateful for the service provided by both Ms. Linn and Mr. Bernardo and would like to recognize their service with a plaque commemorating their time. But above and beyond a surface recognition of their service, each of these individuals contributed their personal strengths to the planning and development process, and each member was uniquely valuable.

- Ms. Linn brought perspective that can only be gained through the years of service she had already contributed in other communities. Her perspective helped raise breadth and awareness within our own land use process and ideas about community growth. It is never good to get locked into a local-only point of view, and Ms. Linn often brought up questions and concerns that stretched the local perspective in healthy and productive ways. She did all this in addition to serving as the chairperson of the Commission.
- Mr. Bernardo brought a point of view to the land use and development process that was almost opposite Ms. Linn's, but which was no less valuable for its difference. He was unfailingly aware of the City of Evans' unique needs and history of growth, and often voiced local concerns in a way that was both protective and productive. He would raise concerns about projects without attempting to halt development. This juxtaposition resulted in an attitude of careful progress that is difficult to find and very valuable in a community like Evans.

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**FINANCIAL SUMMARY:**

There are no financial implications to recognize Planning Commissioners for their service above the cost of the recognition plaques.

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**REQUESTING FROM CITY COUNCIL:**

Staff requests that Mayor Rudy present outgoing Planning Commissioners Deb Linn and Steve Bernardo with plaques commemorating their service and demonstrating the City's appreciation of them.

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 4.B  
**SUBJECT:** Water & Sewer Board Recognition  
**NAME & TITLE:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager

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**ISSUE DESCRIPTION:**

James Krenzel served on the City of Evans Water & Sewer Board for 29 years from 1991 to 2020.

The Water and Sewer Board provides guidance and service to the City in regard to a number of important functions. The Board makes recommendations regarding important issues such as billing rates, debt service, additions to the reserve, appeals regarding rates or policies, water rights purchases, standards of water and sewer construction, annual reporting, adequate fire flows throughout the City, ensuring system and facility compliance with state and federal standards, and much more.

A member of the community who donates his or her time to serve the City is always appreciated. A member like Jim Krenzel, who donates 29 years to serve the City is a rare gift. In addition to Jim's generosity with his time, he brought to the City a point of view that balanced long-range vision, short-range needs, and available resources. He has been with the City through quiet years and years of rapid growth alike, keeping his level-headed perspective through it all. His long-term knowledge of the City and his service has been greatly appreciated by all who worked with him, and he will be missed.

The City of Evans is grateful for the service Jim Krenzel has provided and would like to recognize him with a plaque commemorating his time and honoring his dedication.

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**FINANCIAL SUMMARY:**

None.

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**REQUESTING FROM CITY COUNCIL:**

Staff requests that Mayor Rudy present outgoing Water & Sewer Board member James Krenzel with a plaque commemorating his service and demonstrating the City's appreciation of his dedication.

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 4.C  
**SUBJECT:** Police Department Recognition: Life-Saving Awards and Medals  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Rick D. Brandt, Chief of Police

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**AGENDA ITEM DESCRIPTION:**

Five police officers are recognized for saving the lives of individuals in two incidents occurring in the first half of 2020. The first incident on March 1, 2020 involved an individual attempting suicide by carbon monoxide poisoning. Officers Troy McDaniel, Jason Peppas, Jason Schissler, and Todd Ediger responded to a home where a person had been threatening suicide. The officers could hear a vehicle running in a closed attached garage and forced entry into the residence to gain access to the garage where they found an unconscious male in a vehicle with the engine running. The officers rushed into the poisonous environment and removed the man from the garage. The male slowly regained consciousness and was transported to the hospital where he fully recovered. Their quick actions and disregard for personal safety ultimately saved the man's life.

On June 15, 2020 Officer Luis Garcia was dispatched to a store on a medical call of a potential overdose. He found a woman providing CPR to an unresponsive male. Officer Garcia properly assessed that the man had symptoms indicative of an opioid overdose and administered two doses of Narcan resulting in a reversal of the potentially fatal overdose. The man was hospitalized and recovered from the overdose thanks to the quick response and actions of Officer Garcia. It is noted that Officer Garcia was the first Evans officer to administer Narcan in 2016 when the drug was made available to law enforcement.

The Evans Police Department Life-Saving Medal may be awarded to a member who is responsible for the saving of a human life. In both instances the quick and decisive actions taken by the officers are credited with saving the lives of both individuals. All officers are awarded the Evans Police Department Life Saving Medal.

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**FINANCIAL SUMMARY:**

None

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**RECOMMENDATION:**

None

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**SUGGESTED MOTIONS:**

N/A

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**ATTACHMENTS:**  
Add Attachments Here

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 7.A  
**SUBJECT:** Approval of the July 7, 2020 City Council Meeting Minutes  
**PRESENTED BY:** Karen Frawley, City Clerk

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**AGENDA ITEM DESCRIPTION:**

Approval of minutes

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

N/A

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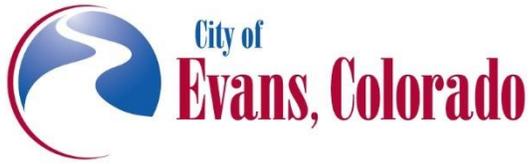
**SUGGESTED MOTIONS:**

“I move to approve the minutes as presented.”

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**ATTACHMENTS:**

- July 7, 2020 City Council Meeting Minutes



## MINUTES

City Council Regular Meeting

July 07, 2020 - 7:00 PM

### 1. CALL TO ORDER

Mayor Rudy called the meeting to order at 7:06 p.m.

### 2. PLEDGE

### 3. ROLL CALL

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

### 4. AUDIENCE PARTICIPATION

There was no audience participation

### 5. APPROVAL OF AGENDA

Mayor Rudy moved agenda item 7E to the place of 7A and all others followed suit.

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

### 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 (2<sup>nd</sup> 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 (2<sup>nd</sup> Reading)

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

## 7. NEW BUSINESS

### E. Consideration of Planning Commission Member Appointments

Mayor Rudy stated that there are two openings and an alternate position on the Planning Commission. Planning Commission is vital to the Council, it is a recommendation board to the Council. After holding interviews earlier this evening, Council has made its selection of Mark LeClaire, Robert Phillips, and Kalen Meyers to the Planning Commission.

### 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.

Mr. Becklenberg informed the Council that this is one of three steps in this annexation process for a property located at 7300 47<sup>th</sup> Avenue. The first step determines eligibility of annexation per State Statute.

Drew Lyman, Assistant City Attorney informed the Council that there are two parcels owned by MountainTRAX LLC. The eligibility resolution considers seven criteria and make findings of fact for eligibility of annexation.

Council Member Speer asked if this property is South of the river? Drew Lyman responded that it is.

Council Member Johnson made the motion, seconded by Mayor Pro-Tem Clark to approve Resolution Number 18-2020 as proposed. The motion passed with all others voting in favor thereof.

### 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 (1<sup>st</sup> Reading)

Mayor Rudy opened the Public Hearing at 7:14 p.m.

Anne Best Johnson, Community Development Director provided an overview of the entire MountainTRAX project.

Drew Lyman, Assistant City Attorney informed the Council that the ordinance will legally annex the property into the City. The ordinance will also zone the property since the property has not been part of the city before. The ordinance will also approve the annexation agreement with MountainTRAX.

Tamara Such, with MountainTRAX presented to Council an overview of the annexation and rezoning proposal.

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; Pat Osiecki from 23151 County Road 33 addressed the Council regarding his concerns about the promises have been made in the past and have not come to fruition and making sure that if approved, things promised are actually done.

Tamara Such, applicant responded to the concerns by stating additional ways they will make sure that their project will be different from ones before.

Mayor Pro-Tem Clark asked if the annexation is approved, would they have to pay impact fees, Mr. Becklenberg responded that they would have to.

Council Member Speer asked about services to the annex sites. Mark Oberschmidt, City Engineer, stated that the site is serviced by Central Weld Water and is limited in its volume, but as the development occurs, staff would work with Central Weld Water to upgrade the system. Council Member Speer asked about the sewer system, Mark replied that they are currently on a septic system and will be for the foreseeable future.

Mayor Rudy closed the public hearing at 7:44 p.m.

Council Member Neal stated that he stood right where Pat was sixteen years ago and also complained about the road.

Mayor Pro-Tem Clark stated that he is looking at this where the majority of the property is already annexed into the City and it makes sense to annex all of the property into the City.

Mayor Rudy stated that he agrees with Mayor Pro-Tem and there are some things they will look at in the future such as the roads and infrastructure.

Council Member Johnson stated that she also echoes the sentiments of annexing this property in.

Council Member Speer stated that while she does agree with the rest of Council about making their property whole, she is with the long-standing residents who believe Evans should not be South of the river because of the services that the City cannot provide.

Council Member Johnson stated that she likes what this company is doing, because it will help diversify the City.

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to adopt Ordinance Number 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. The motion passed with a vote of 5 to 1, with Council Member Speer voting no.

- 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 47<sup>th</sup> Avenue (1<sup>st</sup> Reading)

Mayor Rudy opened the Public Hearing at 7:49 p.m.

Mr. Becklenberg informed the Council that this item will change the zone of the large property that is already annexed into the City to align the zoning to the zoning that was just assigned to the Smidge property.

Anne Best Johnson, Community Development Director, presented to Council an overview of the change of zone process and criteria.

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 if this property was in the flood zone, Anne Best Johnson responded that it is not.

Mayor Pro-Tem Clark asked since this property has separate parcels, if each one of those tenants will have to present a site plan to the City? Anne Best Johnson stated that is correct. Mayor Pro-Tem asked if each of those tenants would have to pay impact fees as well? Anne Best Johnson responded they would.

Mayor Rudy closed the public hearing at 8:00 p.m.

Mayor Pro-Tem Clark stated that he is in favor of the change of zone.

Mayor Rudy stated that he is also in favor of this and will be voting yes.

Council Member Johnson stated that she is also in favor of this.

Council Member Neal provided some history on the original annexation of this property.

Mayor Pro-Tem Clark made the motion, seconded by Council Member Mortenson to approve Ordinance Number 721-20 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 Mayor Pro-Tem Clark to approve Resolution Number 17-2020 as proposed with the conditions of approval and development standards. The motion passed with all others voting in favor thereof.

Council Member Speer stated that she wanted to note that the reason she voted yes on the above item is because it has already been annexed into the City prior and this is just changing the zoning on the property.

D. Consideration of Approval of the Site Improvements Agreement for Ziggi's Coffee Shop

Mr. Becklenberg informed the Council that this item is a Site Improvements Agreement for Ziggi's Coffee Shop which is in the works for the property just to the East of Walgreens.

Anne Best Johnson, Community Development Director, present an overview of the site improvements agreement.

Mayor Pro-Tem thanked the owner for choosing Evans to locate this business and wished them well.

Council Member Johnson stated that she is excited to see the coffee shop come in that area.

Council Member Speer stated that she wanted to say thank you for coming to Evans and congratulate the business owner on a successful business.

Council Member Mortenson made the motion, seconded by Council Member Neal to approve the Site Improvements Agreement for Ziggi's Coffee Shop and authorize the Mayor to sign the Site Improvements Agreement. The motion passed with all others voting in favor thereof.

F. Consideration of an Intergovernmental Agreement (IGA) with Weld County for the 23<sup>rd</sup> Avenue Arterial Construction Project

Mr. Becklenberg informed the Council that the City committed to constructing 23<sup>rd</sup> Avenue from 37<sup>th</sup> Street to Prairie View Drive in 2020. The project will be for two lanes between 37<sup>th</sup> and Prairie View. The need for this project came out of the development of the Mission Springs community. The County Commissioners agreed to work together to build out this part of the road. The County pledge \$2 million to help with the cost of this project. One of the purposes of this project is to open that area up for future development. It is important to note that this will be a City managed project and the County's participation will be limited to the monetary donation. Staff is recommending approval of this agreement.

Council Member Speer asked for clarification on the timing of the two lanes. Mr. Becklenberg stated that they would be done this year and Council would be receiving a contract in the next few meetings.

Mayor Rudy stated his appreciation to the County Commissioners for their support and assistance on this project.

Council Member Johnson stated that she wanted to thank the Mayor for working with the County Commissioners on this project.

Council Member Johnson made the motion, seconded by Council Member Mortenson to approve the Intergovernmental Agreement with Weld County (IGA) for the 23<sup>rd</sup> Avenue Arterial Construction Project and authorize the Mayor's signature on the agreement. The motion passed with all others voting in favor thereof.

G. Consideration of IGA with Weld County for Funding of the Widening of 37<sup>th</sup> Street between 35<sup>th</sup> Avenue and 47<sup>th</sup> Avenue

Mr. Becklenberg informed the Council that the City has also been awarded a grant for the widening of 37<sup>th</sup> Street between 35<sup>th</sup> Avenue and 47<sup>th</sup> Avenue, that grant is for over \$1.1 million and the project is slated for a couple years from now. The grant was for the entire section and therefore the IGA with the County is for that entire section. The County was a big part of the City obtaining the grant from the North Front Range MPO. Staff is recommending approval of this IGA with Weld County.

Mayor Pro-Tem stated that this is one project that needs to get done and he is in favor of it.

Council Member Speer asked what the intersection at 37<sup>th</sup> and 47<sup>th</sup> will look like for now because in the past there has been approval for a roundabout. Mr. Becklenberg stated that after the widening is complete, there will be a roundabout per Council's direction to staff.

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

H. Consideration of IGA with Weld County for the Transportation Master Plan

Mr. Becklenberg informed the Council that the transportation component of the City's master plan is critical and the largest component that will require the most collaboration with others. This IGA with Weld County will secure \$3,000 from the County to assist with obtaining \$115,000 from the North Front Rang MPO.

Council Member Neal stated that he is happy to see all the work from staff and the Mayor and Mayor Pro-Tem on obtaining grants.

Council Member Johnson thanked all involved in the work to obtain the grant.  
Mayor Pro-Tem Clark made the motion, seconded by Council Member Neal to

approve the Intergovernmental Agreement with Weld County (IGA) for the Transportation Master Plan and authorize the Mayor's signature on the Grant Agreement. The motion passed with all others voting in favor thereof.

- 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

Mr. Becklenberg informed the Council that this is an IGA with CDOT related to a large grant related to the transportation master plan for \$150,000. Staff is recommending approval of the IGA.

Council Member Johnson thanked staff for working with CDOT on this item and working toward the transportation master plan.

Council Member Johnson made the motion, seconded by Mayor Pro-Tem Clark to adopt Resolution Number 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 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. The motion passed with all others voting in favor thereof.

- J. Public Hearing: Consideration of Ordinance Number 725-20 An Ordinance Amending the 2020 Budget (1<sup>st</sup> Reading)

Mayor Rudy opened the Public Hearing at 8:32 p.m.

Mr. Becklenberg informed the Council that one of the routine responsibilities of the Council is to keep the City's budget current. That entails considering revisions to the budget periodically throughout the year. At the June 16<sup>th</sup> meeting, Council heard a work session on the recommended revisions to the budget. Staff is recommending approval of the budget revisions.

Jacque Troudt, Finance Director, provided an overview of the amendments to the budget.

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 8:40 p.m.

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to

adopt Ordinance Number 725-20 on first reading. The motion passed with all others voting in favor thereof.

- 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 (1<sup>st</sup> Reading)

Mayor Rudy opened the Public Hearing at 8:41 p.m.

Mr. Becklenberg informed the Council that this item is the final step in the City's effort to gain compliance with the State's drinking water system requirements. The City has been notified by the Colorado Department of Public Health and Environment (CDPHE) that we needed to implement a written backflow prevention and cross connection control program. The purpose of that program is to prevent cross connections that have the potential to cause health risks in the water system. The City has not been completely in compliance with the written backflow prevention program. It is important to note that the City has been forcing building code compliance for backflow prevention for some time. Additionally, the law requires that we have an ordinance like this to ensure that those backflow requirements are in our municipal code. Staff is recommending approval of this 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 8:44 p.m.

Mayor Pro-Tem Clark stated that he is in favor of this and is glad we are in compliance with the State.

Council Member Neal stated that since there are some people who are concerned since they received the notice of the violation, after speaking with staff, they will send communication out stating that the violation has been corrected.

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

## 8. REPORTS

- A. City Manager

Mr. Becklenberg informed the Council that there is a lot of work happening. The pavement management is about halfway complete. The asphalt patching work is

underway now and the surface treatment project will be getting started. The big projects for the year which includes the 47<sup>th</sup> Avenue utilities project, the 23<sup>rd</sup> Avenue construction project, and the 37<sup>th</sup> Avenue overlay project back to us or out to bid which sets those up for Council consideration over the next few meetings.

B. City Attorney

Mr. Scott Krob informed the Council that normally there would be a legislative update that comes out of the CML conference, however due to COVID-19, the conference has been postponed and will have an update soon.

9. AUDIENCE PARTICIPATION (general comments)

There was no audience participation

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.

Mayor Pro-Tem Clark made the motion, seconded by Council Member Johnson to adjourn into executive session at 9:03 pm 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 C.R.S. 24-6-402(4)(d). The motion passed with all voting in favor thereof.

The meeting reconvened at 10:10 p.m.

Mr. Krob noted for the record that the executive session that Council concluded was within the scope of the statute and that he was present for the duration of the discussion, so the discussion is subject to the attorney client privilege.

There was no action following the Executive Session.

11. ADJOURNMENT

The meeting was adjourned at 10:10 p.m.

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020

**AGENDA ITEM:** 7.B

**SUBJECT:** Consideration of Ordinance Number 725-20 An Ordinance Amending the 2020 Budget (2<sup>nd</sup> Reading)

**PRESENTED BY:** James L. Becklenberg, City Manager  
Jacque Troutd, CPA, Finance Director

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## **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.

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## **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 23<sup>rd</sup> 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 35<sup>th</sup> Avenue and 34<sup>th</sup> Street.

Item 1.9 requests \$100,000 to be utilized for the 23<sup>rd</sup> 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 31<sup>st</sup> Street, \$490,285, as well as associated grant revenue of \$398,434
- 35<sup>th</sup> Avenue widening- 37<sup>th</sup> to Prairie View, \$10,776
- 37<sup>th</sup> Street widening, \$490,285
- 47<sup>th</sup> Avenue widening- \$2,725,000

The CIP - Streets fund also includes item 1.19 for \$185,000 of project management cost for 37<sup>th</sup> 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 31<sup>st</sup> 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 37<sup>th</sup> Street utility improvements
- \$804,171 to complete the 17<sup>th</sup> 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 37<sup>th</sup> 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 37<sup>th</sup> Street
- \$174,020 for 29<sup>th</sup> 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 37<sup>th</sup> Street storm line from Railroad to Boulder
- \$345,000 for design of a new alignment at 35<sup>th</sup> 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](mailto:jtroudt@evanscolorado.gov).

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**RECOMMENDATION:**

*Staff recommends approval of the ordinance to amend the 2020 Budget.*

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**SUGGESTED MOTIONS:**

*"I move to adopt Ordinance No. 725-20 on second reading."*

*"I move to deny Ordinance No. 725-20."*

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**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 7<sup>th</sup> day of July, 2020.**

ATTEST: CITY OF EVANS, COLORADO

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

**PASSED, APPROVED AND ADOPTED ON SECOND READING this 21<sup>st</sup> 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
<b>GENERAL FUND</b>						
<b>General Fund - Carryforward Items</b>						
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
<b>General Fund - 2019 Restricted Revenue Usage</b>						
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.
<b>General Fund - 2020 New Requests</b>						
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.
<b>Total General Fund</b>			<b>514,341</b>	<b>248,000</b>	<b>762,341</b>	
						<i>2020 V1 Budgeted Ending Fund Balance</i>
						<i>Fund Balance Impact</i>
						<b>11,586,842</b>
						<b>(514,341)</b>
						<b>11,072,501</b>
<b>STREET IMPACT FUND</b>						
<b>Street Impact Fund - Carryforward Items</b>						
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
<b>Street Impact Fund - 2020 New Requests</b>						
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.
<b>Total Street Impact Fund</b>			<b>453,429</b>	<b>-</b>	<b>453,429</b>	
						<i>2020 V1 Budgeted Ending Fund Balance</i>
						<i>Fund Balance Impact</i>
						<b>1,493,818</b>
						<b>(453,429)</b>
						<b>1,040,389</b>

#	Description	Fund/Funding Source	From Fund Balance	From New Revenue	2020 Expense Budget	Comment
<b>PARK IMPACT FUND</b>						
<b>Park Impact Fund - Carryforward Items</b>						
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
<b>Park Impact Fund - 2020 New Requests</b>						
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
<b>Total Park Impact Fund</b>			<b>1,353,737</b>	<b>-</b>	<b>1,353,737</b>	
					2020 V1 Budgeted Ending Fund Balance	4,413,092
					Fund Balance Impact	(1,353,737)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>3,059,355</b>
<b>CONSERVATION TRUST FUND</b>						
<b>Conservation Trust Fund - Carryforward Items</b>						
1.13	Village Park Tennis Court					
		CTF- 2019 Carryforward- Fund Balance	65,000	-	65,000	Carryforward budget for tennis court surfacing at Village Park
<b>Conservation Trust Fund - 2020 New Requests</b>						
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
<b>Total Conservation Trust Fund</b>			<b>85,000</b>	<b>-</b>	<b>85,000</b>	
					2020 V1 Budgeted Ending Fund Balance	534,630
					Fund Balance Impact	(85,000)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>449,630</b>
<b>CIP STREETS FUND</b>						
<b>CIP Streets Fund - Carryforward Items</b>						
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
<b>CIP Streets Fund - 2020 New Requests</b>						
1.19	37th Street Project Management					
		CIP Streets- Excess Fund Balance	185,000	-	185,000	Preliminary budget revision approved for 37th Street project management
<b>Total CIP Streets Fund</b>			<b>3,502,912</b>	<b>398,434</b>	<b>3,901,346</b>	
					2020 V1 Budgeted Ending Fund Balance	4,109,515
					Fund Balance Impact	(3,502,912)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>606,603</b>
<b>CIP PARKS FUND</b>						
<b>CIP Parks Fund - Carryforward Items</b>						
1.20	Riverside Park completion items					
		CIP Parks- 2019 Carryforward- Fund Balance	87,000	-	87,000	Carryforward of Riverside Park completion and monitoring costs
<b>Total CIP Parks Fund</b>			<b>87,000</b>	<b>-</b>	<b>87,000</b>	
					2020 V1 Budgeted Ending Fund Balance	302,251
					Fund Balance Impact	(87,000)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>215,251</b>

#	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
<b>Total CIP Food Tax Fund</b>			<b>521,011</b>	<b>-</b>	<b>521,011</b>	
					2020 V1 Budgeted Ending Fund Balance	1,188,277
					Fund Balance Impact	(521,011)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>667,266</b>

**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
<b>Water Fund - 2020 New Requests</b>						
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
<b>Total Water Fund</b>			<b>2,519,395</b>	<b>-</b>	<b>2,519,395</b>	
					2020 V1 Budgeted Ending Fund Balance	6,932,136
					Fund Balance Impact	(2,519,395)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>4,412,741</b>

**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
<b>Waste Water Fund - 2020 New Requests</b>						
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
<b>Total Waste Water Fund</b>			<b>1,160,080</b>	<b>203,907</b>	<b>1,363,987</b>	
					2020 V1 Budgeted Ending Fund Balance	10,294,157
					Fund Balance Impact	(1,160,080)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>9,134,077</b>
<b>STORM DRAINAGE FUND</b>						
<b>Storm Drainage Fund - Carryforward Items</b>						
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
<b>Storm Drainage Fund - 2020 New Requests</b>						
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
<b>Total Storm Drainage Fund</b>			<b>1,483,206</b>	<b>-</b>	<b>1,483,206</b>	
					2020 V1 Budgeted Ending Fund Balance	8,027,025
					Fund Balance Impact	(1,483,206)
					<b>2020 V2 Budgeted Ending Fund Balance</b>	<b>6,543,819</b>

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 7.C  
**SUBJECT:** 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 (2<sup>nd</sup> Reading)  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Randy Ready, Asst. City Manager  
Scott Sandridge, Operations and Parks Manager  
Drew Lyman, Assistant City Attorney

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## AGENDA ITEM DESCRIPTION:

This agenda item is for second reading of Ordinance No. 726-20 to amend Chapter 13.24 of the Municipal Code in order to protect the public water system by requiring backflow prevention devices on all commercial and multi-family water taps in the City of Evans. City Council approved this ordinance on first reading at the July 7, 2020 Regular Meeting.

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.

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**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.

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**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.

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**SUGGESTED MOTIONS:**

*“I move to adopt Ordinance No. 726-20 on second reading 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.”*

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**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](http://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

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020

**AGENDA ITEM:** 7.D

**SUBJECT:** Consideration of Ordinance No. 721-20 Approving a Change of Zone from I-2 to I-3 for MountainTRAX, an Industrial Park located at 7300 47<sup>th</sup> Avenue (2<sup>nd</sup> Reading)

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

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## AGENDA ITEM DESCRIPTION:

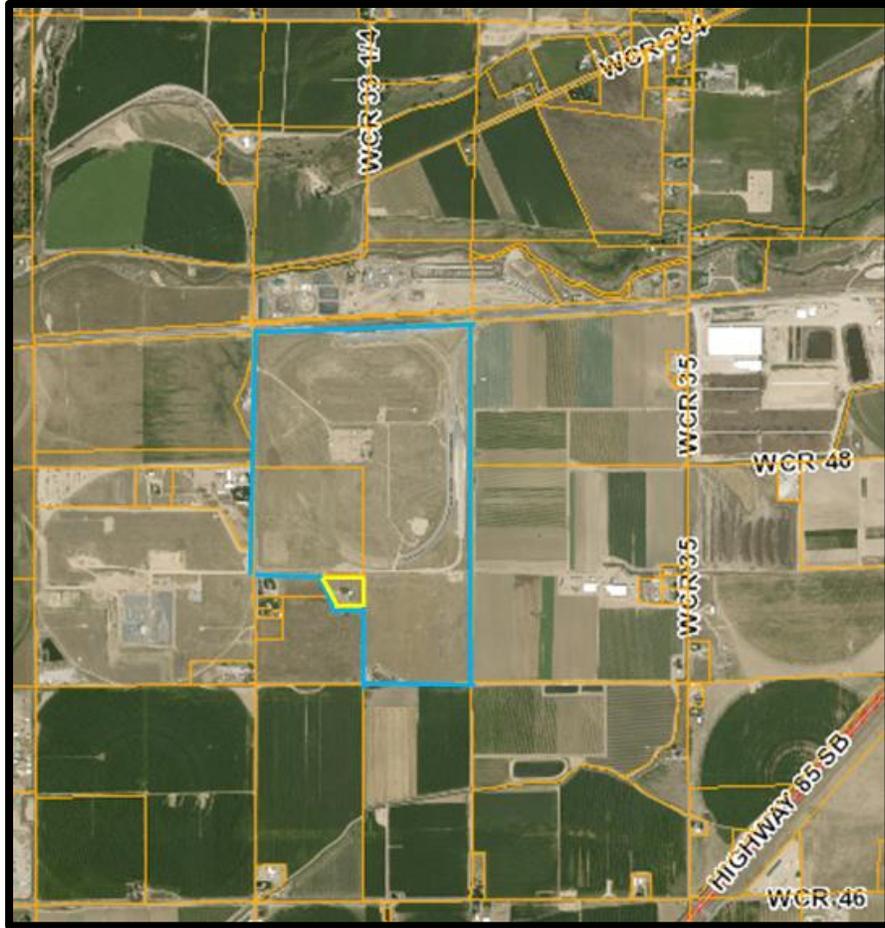
This agenda item represents the Second Reading of Ordinance 721-20 for a Change of Zone from Industrial, I-2 to Industrial, I-3 excluding Junkyards and Livestock Trailer Washouts. The Change of Zone was presented to Planning Commission on June 23, 2020. Planning Commission voted unanimously to forward its recommendation of approval to City Council. City Council approved the Change of Zone request on first reading on July 7, 2020.

The applicant, MountainTRAX, seeks approval of a Change of Zone from I-2 to I-3 with restrictions to disallow Livestock Trailer Wash-outs and Junkyards. The applicant wishes to expand its capabilities on site to include three additional use categories above the allowances in the I-2 zone district to include an Auction Yard, Natural Resource Extraction and Treatment, and Recycling Center. Land uses are not being contemplated with this particular request. Uses listed in the Staff Report on page 3 provide contemplated land uses reviewed through either the Site Plan, Minor Development plan or Use by Special Review processes.

The property was originally annexed to the City in 2004 through the Great Western Ethanol Annexation. MountainTRAX is located on a 221+/- acre property adjacent to 47<sup>th</sup> Avenue / Weld County Road 33 and approximately ¾ mile north of Weld County Road 46. The existing MountainTRAX facility is outlined in blue on the aerial image found on page 2, less the parcel outlined in yellow.

Surrounding land uses include EnviroTech, and industrial operation to the north, rural residential to the east, west and south. Natural gas/oil processing operated by DCP is also located to the west.

The intent of the Change of Zone process including the application requirements, processing standards and review procedures are found in Title 18.06.040.B of the Evans Municipal Code. Staff and the applicant have followed these procedures as well as the public notice procedures found in Title 18.10.010 and 18.10.020.



Title 18.06.030.D provides a clear outline of nine Criteria to be met for City Council to approve an application request for a Change of Zone. These Criteria are listed in the attached Staff Report with narrative detailing how staff has found each criteria to be met or can be met with the Conditions of Approval and Development Standards found in the attached Staff Report, Resolution and Ordinance. Application materials are found in Attachment 5.

Staff, referral agencies and the Planning Commission found that the application materials illustrate compliance with the Land Use Code and Comprehensive Plan. At the June 23, 2020 Planning Commission hearing, surrounding property owners noted they have no concerns with the proposal other than the timing of road construction which will be discussed during the Development Agreement phase of review. Planning Commission Minutes are found in Attachment 4.

Conditions of Approval and Development Standards are found in the Resolution in Attachment 1.

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**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.

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**RECOMMENDATION:**

Planning Commission recommends City Council approve Ordinance No. 721-20 with the recommended Conditions of Approval and Development Standards for the MountainTRAX Change of Zone. Planning Commission Minutes can be found in Attachment 4. At its July 7, 2020 meeting, City Council approved Ordinance No. 721-20 on first reading with the recommended conditions of approval and development standards.

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**SUGGESTED MOTIONS:**

Section 18.06.040.C.12 states that City Council shall make an action on the Rezoning by Resolution and Section 18.06.040.C.13 states that City Council shall adopt an Ordinance (Attachment 3) rezoning the property. Resolution No.17-2020 was approved by City Council on July 7. Sample motions for second reading of the ordinance 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 stated.”*

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**ATTACHMENTS:**

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

**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 47<sup>th</sup> 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 47<sup>th</sup> 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 Nicom 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, 2019.**

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 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;

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**

### **ORDINANCE NO. 721-20**

#### **AN ORDINANCE REZONING CERTAIN PROPERTY REFERRED GENERALLY AS MOUNTAINTRAX INDUSTRIAL PARK LOCATED AT 7300 47<sup>th</sup> 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. 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 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 47<sup>th</sup> 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 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.
- 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: \_\_\_\_\_  
Mark Clark, Mayor Pro-Tem

**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 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;

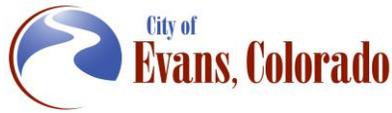
Thence N 00°41'31" W, parallel with and 40 feet distant from said west line, a distance of 1326.37 feet, more or less, to a pin and orange plastic cap PLS 38058 on the south line of the southwest quarter of Section 2, Township 4 North, Range 66 West of the Sixth Principal Meridian;

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.



## AGENDA

### Planning Commission Regular Meeting

**Tuesday, June 23, 2020, 6:00 pm**

Evans Community Complex, City Council Chambers, 1100 37<sup>th</sup> Street

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### 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**

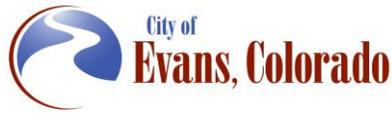
Tamara Such, Hunter Hoshiko, and Trevin Hogg for Applicant  
Anne Best Johnson for City of Evans

**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 47<sup>th</sup> 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.

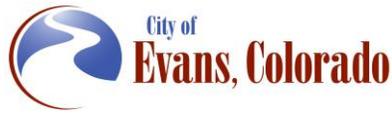
**06:31 pm:** Hunter Hoshiko for Applicant. MountainTRAX. Purchased ARB Midstream at the end of March. We are a locally owned company, we are not from Denver or from out of State. We want to seek this zoning change in order to diversify. Our predecessor failed to diversify; crude by rail was their operation 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 47<sup>th</sup> 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 28<sup>th</sup> 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 37<sup>th</sup> 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.

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.

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

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**Account No(s):**

(1) R8948397

**Parcel No(s):**

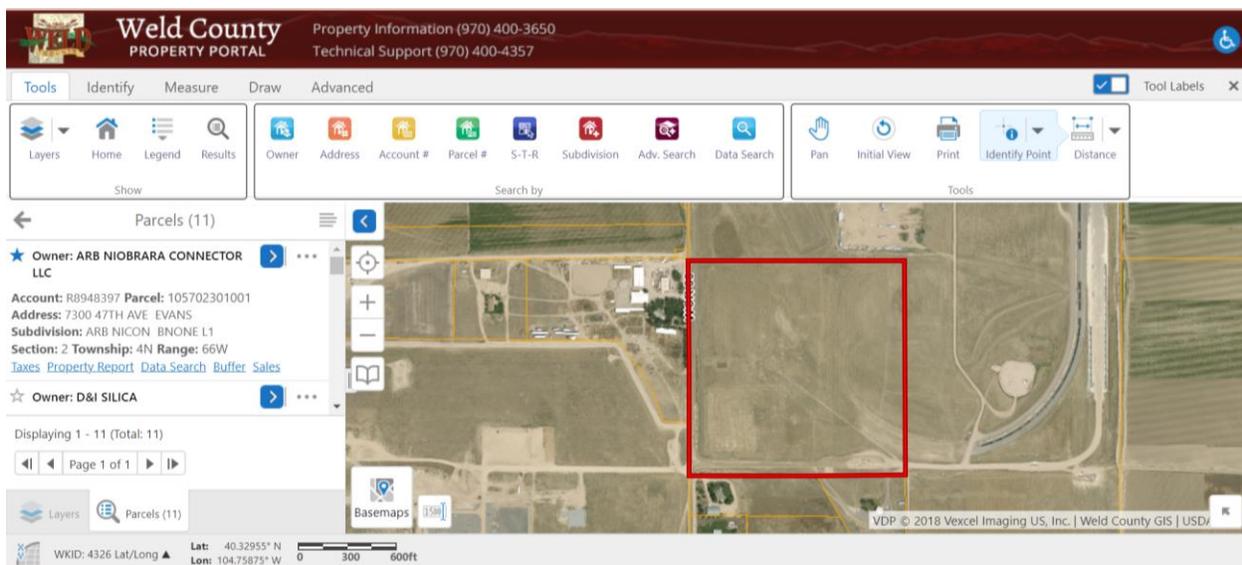
(1) 105702301001

**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

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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

**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

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

Parcels (1)

☆ Owner: ARB NIOBRARA CONNECTOR LLC

Account: R4393986 Parcel: 105711000067

Address: 22744 COUNTY ROAD 33 WELD

Subdivision:

Section: 11 Township: 4N Range: 66W

Taxes Property Report Data Search Buffer Sales

Displaying 1 - 1 (Total: 1)

Page 1 of 1

WKID: 4326 Lat/Long Lat: 40.33022° N Lon: 104.74705° W

Scale: 0 100 200ft

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

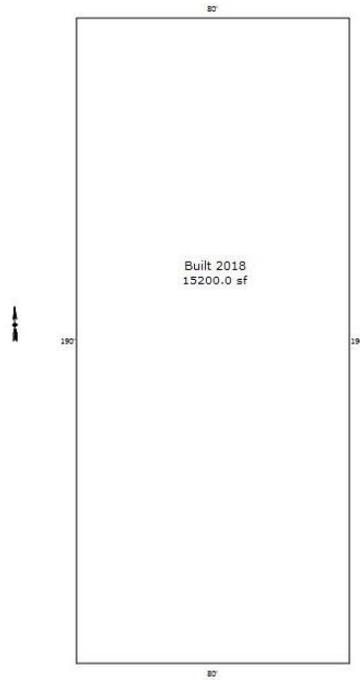
#### Built As Details for Building 2

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

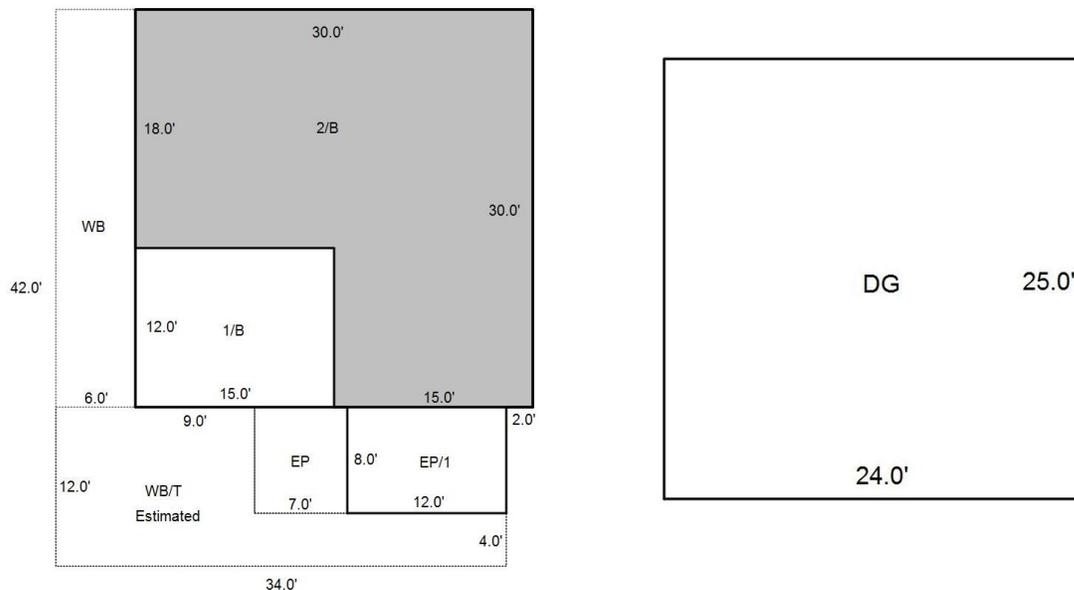


**Built As Details for Building 1**

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

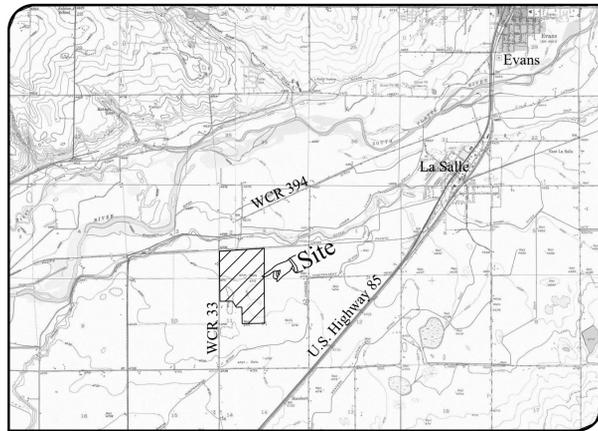


**Building 2 - Photo**

# 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:

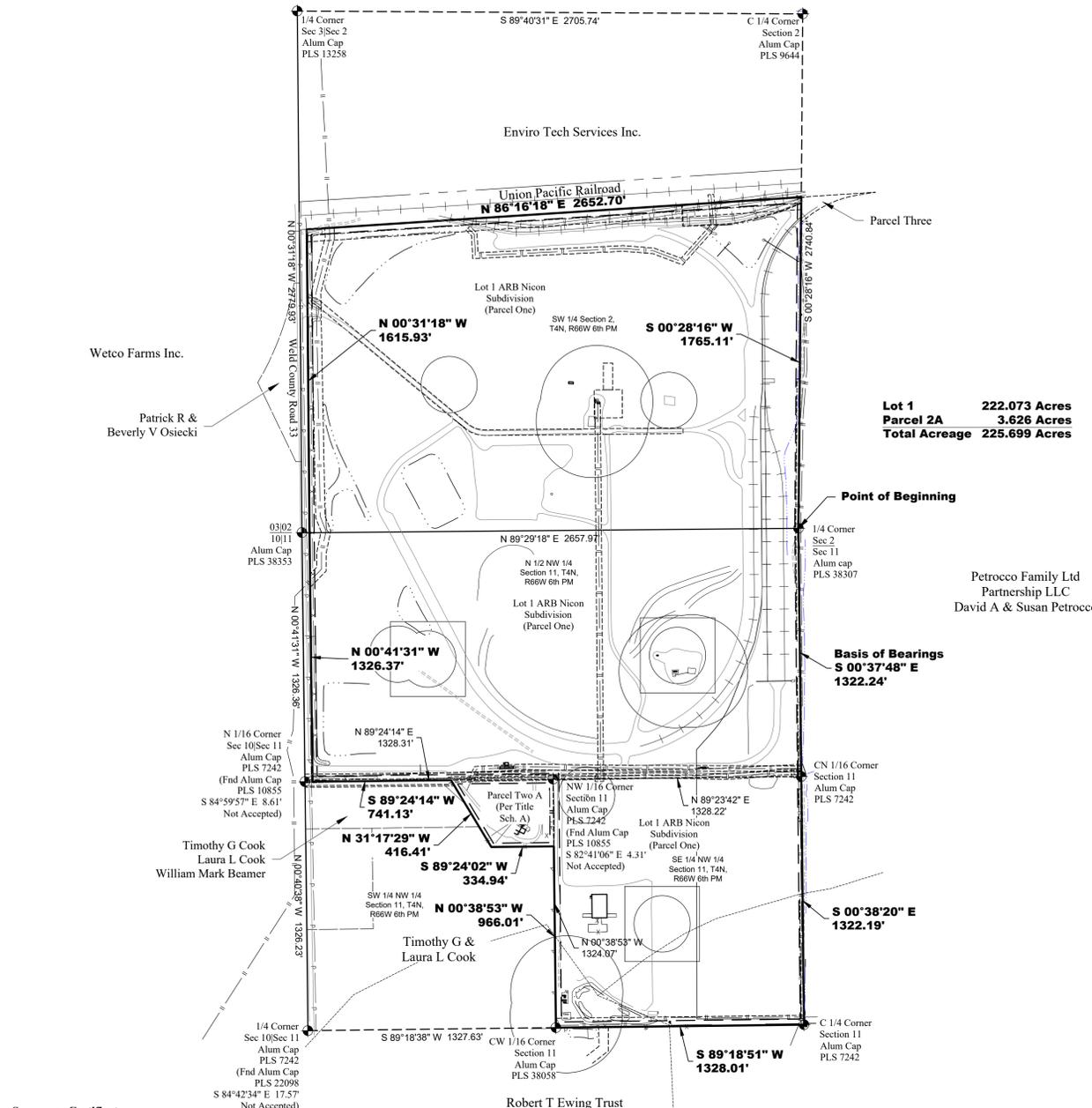
Together with:  
Parcel A as conveyed by Warranty Deed filed June 10, 2015 at Reception Number 4114771 in the southwest quarter of the northwest quarter of Section 11, Township 4 North, Range 66 West of the Sixth Principal Meridian, Weld County, Colorado.

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.



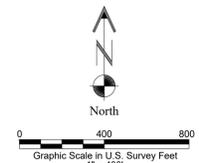
### Surveyors Certificate:

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 UPRRR 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 UPRRR 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: 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.: 3833993 - 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

Sheet 1 of 3



# ALTA/NSPS LAND TITLE SURVEY

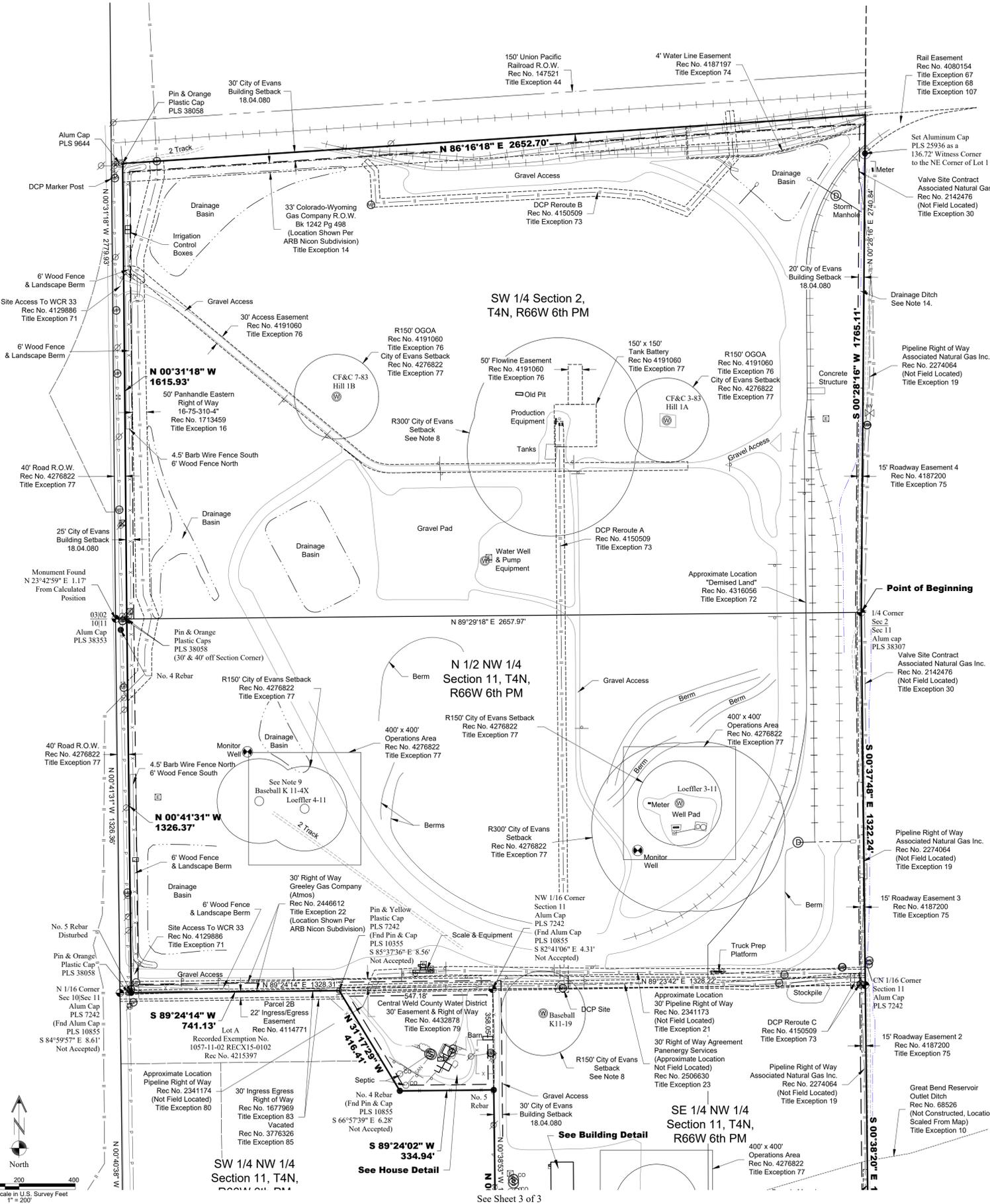
## ARB Niobrara Connector Parcels

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 Pipe Line 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. - 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:

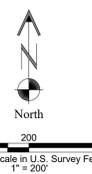
Continued From This Sheet

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





CITY OF EVANS, COLORADO

ORDINANCE NO. 625-15

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE ANNEXATION AGREEMENT, GREAT WESTERN ETHANOL LLC, NOW ARB 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 20<sup>th</sup> 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 7<sup>TH</sup> 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 21<sup>ST</sup> 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 24<sup>th</sup> 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 20<sup>th</sup> 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 37<sup>th</sup> 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

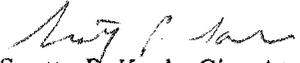
the ordinance subject to such referendum, and this Amended Agreement shall be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such Amended Annexation Agreement, all of the provisions contained herein shall be null and void and of no effect, but shall 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

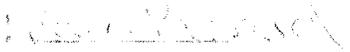
**OWNER:**  
**ARB Niobrara Connector, LLC**  
**A Delaware limited liability company,**  
**BY: ARB Midstream, LLC,**  
**A Delaware limited liability company, its sole member**

By:   
Adam Bedard  
Chief Executive Officer

STATE OF COLORADO

COUNTY OF Denver ss.

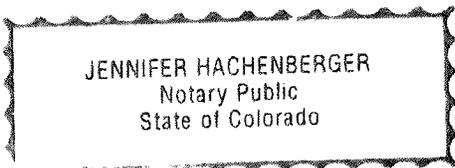
SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of June, 2015 by



WITNESS my hand and official seal.

My commission expires: Nov 01 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 6<sup>TH</sup> 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 6<sup>TH</sup> 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 6<sup>TH</sup> 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 6<sup>TH</sup> 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 6<sup>TH</sup> 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;

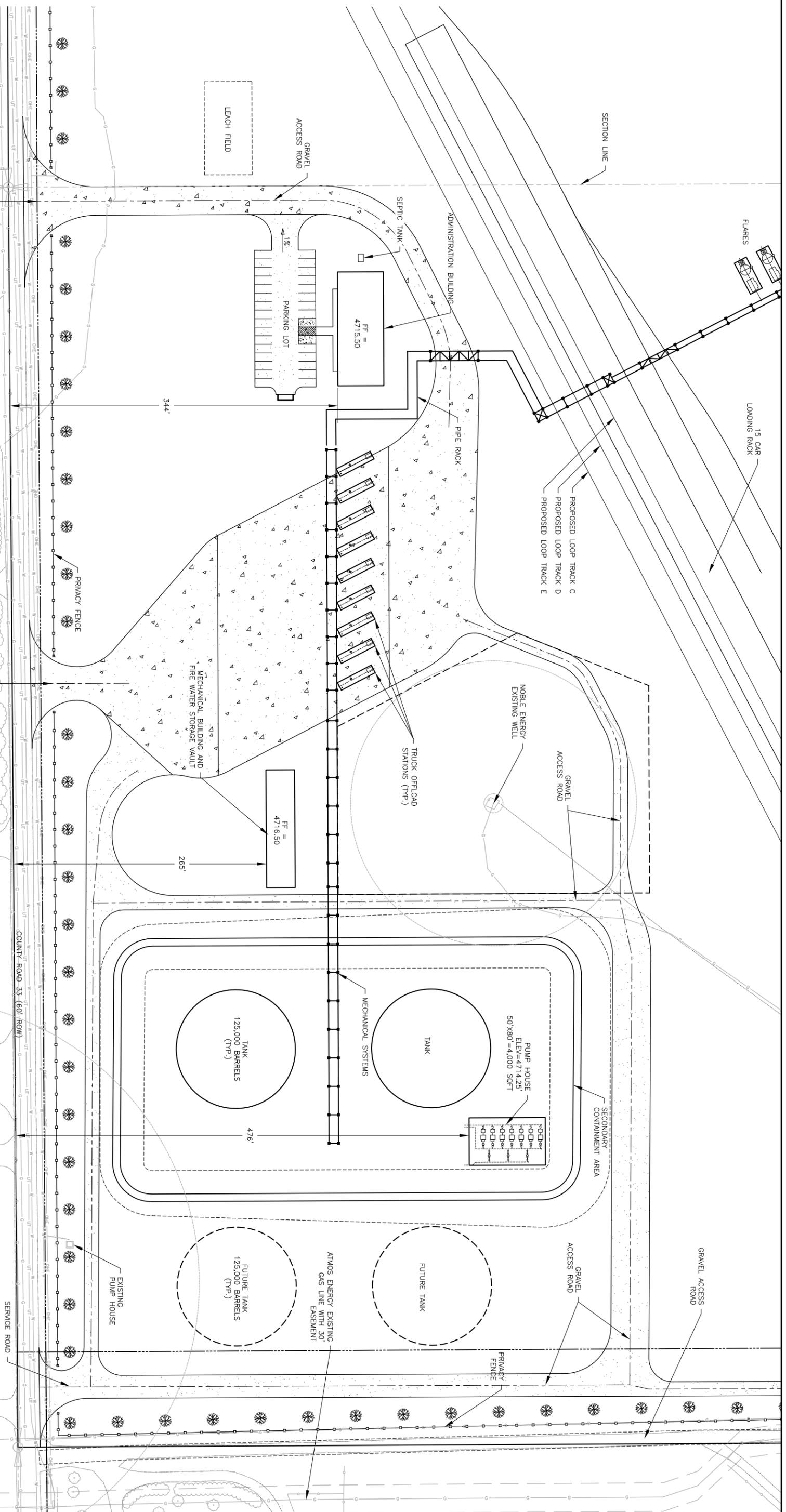
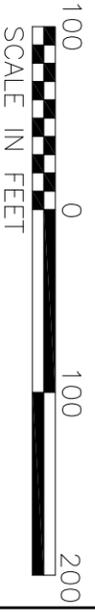
THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER SOUTH 89°52'22" WEST, 1,293.92 FEET TO ITS INTERSECTION WITH THE EASTERN RIGHT-OF-WAY LINE OF COUNTY ROAD 33, BEING 30.00 FEET EASTERLY OF THE WEST LINE OF SAID SECTION 11 WHEN MEASURED AT RIGHT-ANGLES THERETO;

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.





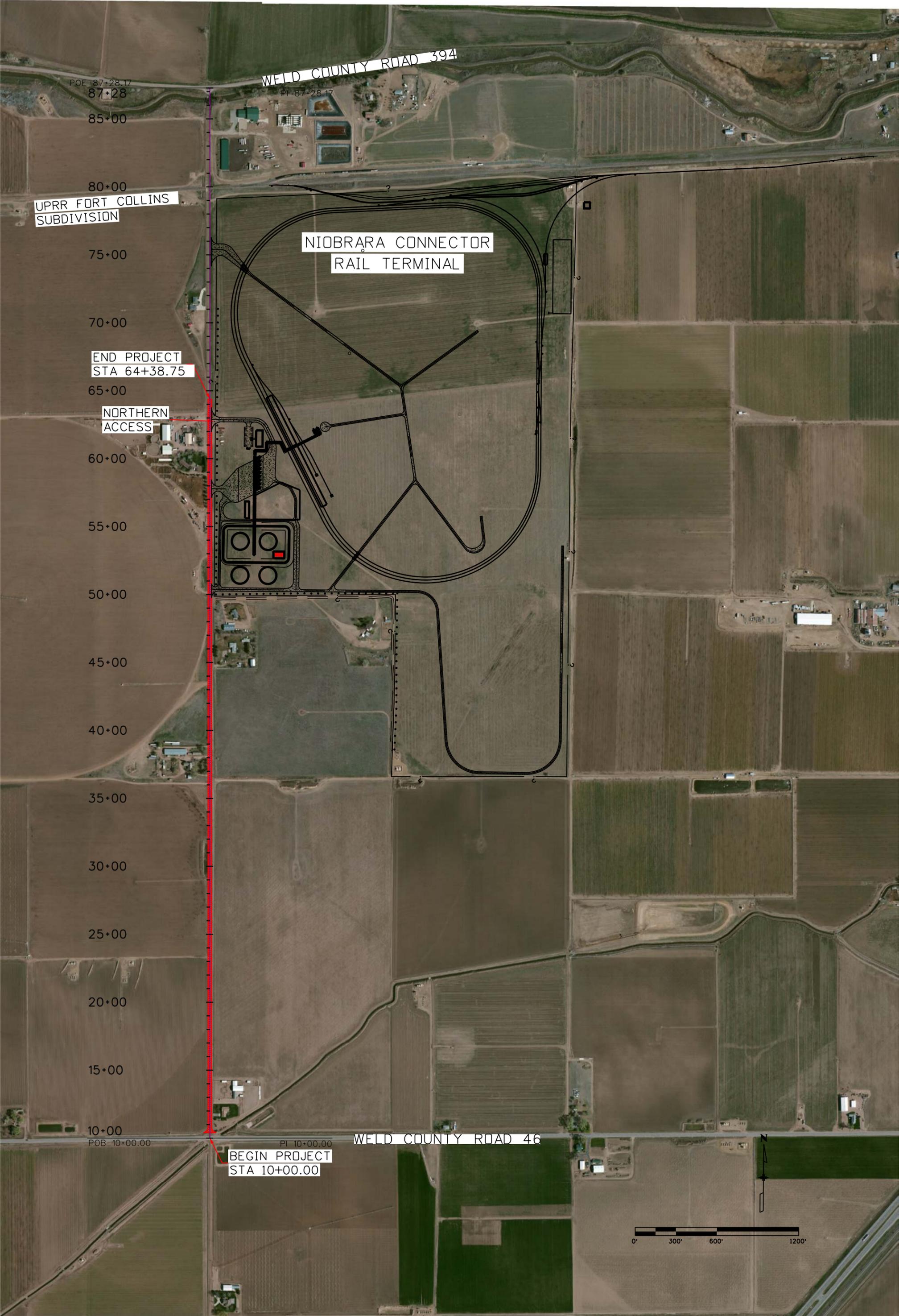
REV	DATE	AMR	PROJ. ENGR.	DESCRIPTION	BY	CHKD	APP
0	11/03			DETAILED SITE PLAN	CRP	KJ	KB

DRAWN BY: CRP  
 CHECKED BY: KJ  
 DATE: 12/12/2014  
 SHEET NUMBER: 100-01

LOCATION & DESCRIPTION:  
 M.P. 1.64, FORT COLLINS INDUSTRIAL LEAD  
 LA SALLE, WELD COUNTY, CO  
 TRackage TO SERVE ARB MIDSTREAM

SHEET TITLE:  
 EXHIBIT B-1

EXHIBIT D  
CR 33 Roadway Improvements



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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020

**AGENDA ITEM:** 8.A

**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  
(2<sup>nd</sup> Reading)

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

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## **AGENDA ITEM DESCRIPTION:**

This agenda item involves 2<sup>nd</sup> Reading of Ordinance No, 722-20 regarding the proposed annexation and zoning of a small parcel of land contiguous with the larger MountainTrax (formerly ARB) parcel, located east of Weld County Road 33 and approximately ¾ mile north of Weld County Road 46. City Council approved this ordinance on first reading at the July 7, 2020 Regular Meeting. However, in order to comply with noticing requirements, staff is requesting that Council reopen a Public Hearing on this item on second reading at the July 21 meeting, as well.

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.

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**FINANCIAL SUMMARY:**

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

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**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.

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**SUGGESTED MOTIONS:**

*"I move to adopt Ordinance No. 722-20 on 2<sup>nd</sup> Reading 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."*

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**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 47<sup>th</sup> 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

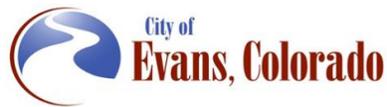
WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement regarding annexation of the Property to the City and other matters as set forth herein; and

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 37<sup>th</sup> 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.

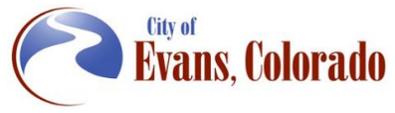
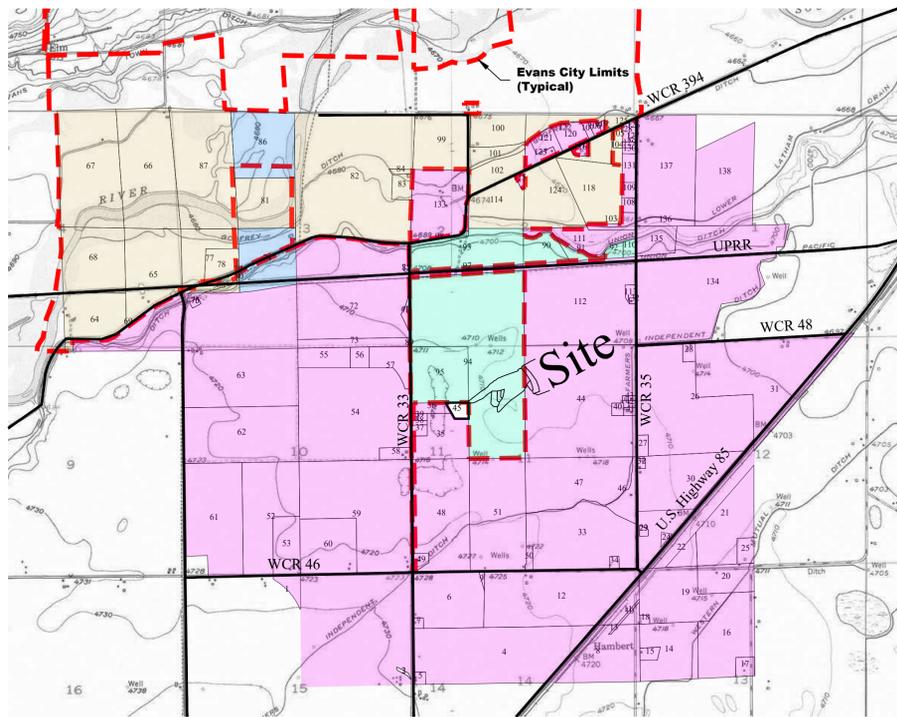


EXHIBIT B:

# 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
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	MARQUEZ FUENTES 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	105702000057	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

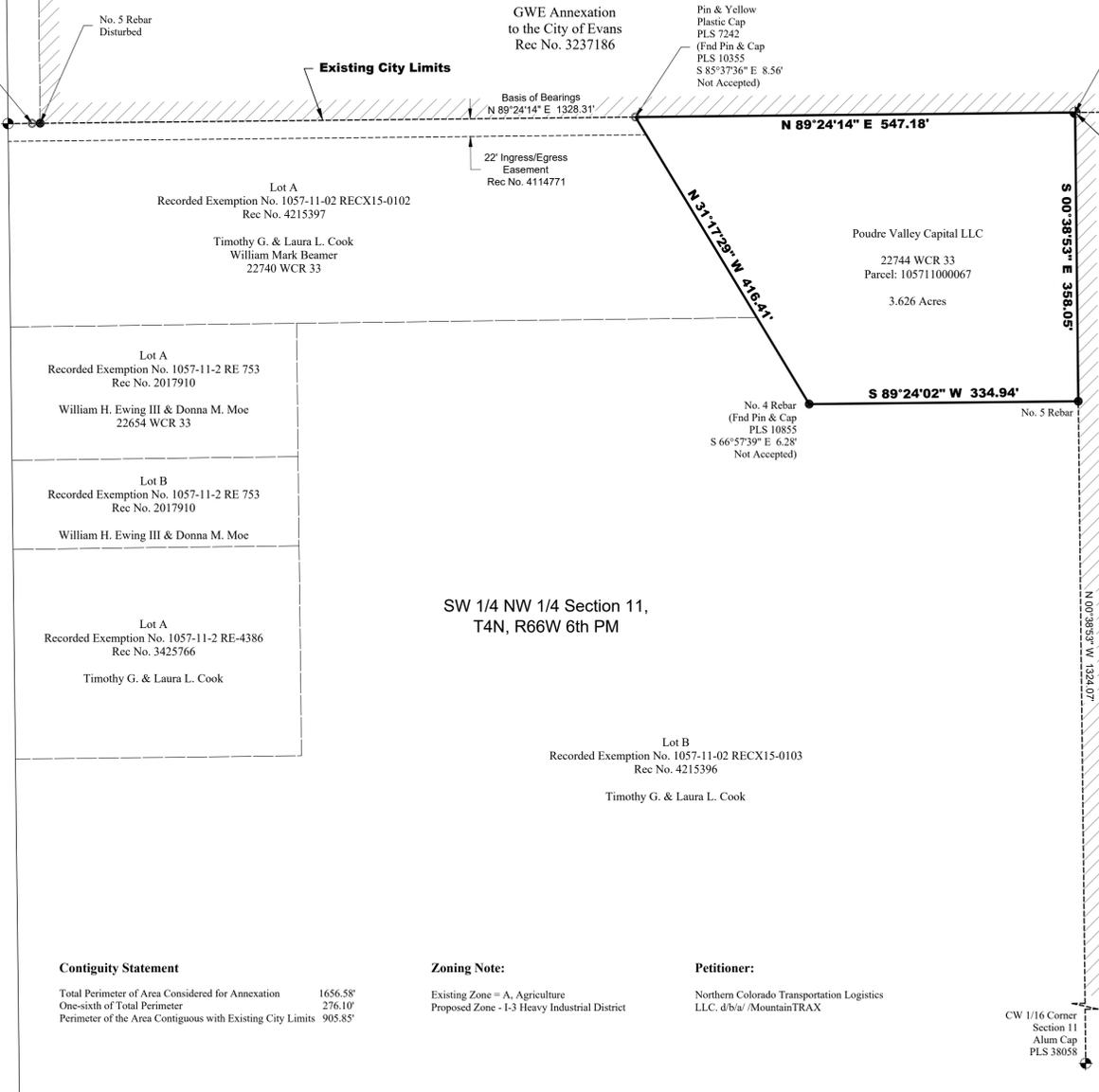
Lot 1, ARB Nicon Subdivision  
Poudre Valley Capital LLC

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

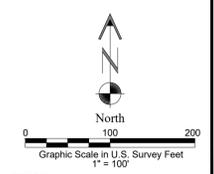
Attest: City Clerk

### 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://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





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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.A  
**SUBJECT:** Consideration of Board of Zoning Appeals and Planning Commission Appointments  
**NAME & TITLE:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager  
Anne Best-Johnson, Community Development Director

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## **AGENDA ITEM DESCRIPTION:**

### Board of Zoning Appeals Appointments

Ordinance 714-20 was adopted on May 19, 2020 to enact the results of a November 4, 2014 approval of a City Charter amendment authorizing members of the Planning Commission and the members of the Zoning Board of Appeals (BZA) to hold other positions within the City of Evans. Ordinance 714-20 synchronizes the City Charter with the Municipal Code.

The role of the Zoning Board of Appeals is to hear and determine appeals from refusals of building permits and to permit exceptions to or variations from the zoning regulations in accordance with the principles, conditions, and procedures specified in the Municipal Code for standards such as setbacks and height variances.

Section 2.56.020 of the Municipal Code provides direction in the appointment of members of the Board of Zoning Appeals. Planning Commission appointment can also include appointment to the Board of Zoning Appeals. Therefore, with City Council approval, the following Planning Commissioners will also serve on the Board of Zoning Appeals:

Lyle Achziger  
Billy Castillo  
Mark LeClere, Alternate  
Kalen Myers  
Robert Phillips  
Dan Usery

The term of office on the Board of Zoning Appeals is defined in Section 2.56.030 of the Municipal Code as five years. Therefore, City Council appointment of the BZA Board Members at the July 21 Regular Meeting will authorize the members to serve until July 2025, or the end of their term of service on the Planning Commission, whichever comes first.

### Planning Commission Appointment

Billy Castillo was appointed to the Planning Commission on June 23, 2015 with a term expiring on July 7, 2020. Mr. Castillo has requested reappointment to the Planning Commission. He is currently serving in a leadership role on the Planning Commission as chairperson and demonstrates deep commitment to fulfilling his duties as a planning commissioner and acting in the best interest of the City.

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### **FINANCIAL SUMMARY:**

There are no financial implications to appoint Planning Commission members to the Board of Zoning Appeals. If the City does not have a full Board of Zoning Appeals, the financial implications could be that the development community becomes delayed during the land use process in Evans.

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### **RECOMMENDATION:**

Staff recommends appointment of the Planning Commission members to the Zoning Board of Appeals by City Council. Terms of their appointment should run for five years or the end of their terms on the Planning Commission, whichever comes first.

Staff further recommends that City Council re-appoint Billy Castillo for another five-year term on the Planning Commission.

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### **SUGGESTED MOTIONS:**

*“I move to appoint the current members of the Planning Commission to also serve as members of the Zoning Board of Appeals.”*

*“I move to re-appoint Billy Castillo as a member of the Planning Commission.”*

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### **ATTACHMENTS:**

- Chapter 2.56 of Municipal Code
- Ordinance No. 714-20

## **CHAPTER 2.56 - Zoning Board of Appeals**

### **2.56.010 - Created.**

There is created the City Zoning Board of Appeals.

(Ord. 655 86, 1986)

### **2.56.020 - Membership - appointment and qualifications.**

The Zoning Board of Appeals shall consist of five (5) members, who shall be qualified electors appointed by the City Council. A Board member may hold any other position with the City except City Council Member.

( [Ord. 714-20](#), § 4, 2020; Ord. 809-91, 1991; Ord. 655 86, 1986)

### **2.56.030 - Term of office.**

The term of office shall be five (5) years, except that of the members first appointed they shall be appointed one (1) for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years, and one (1) for five (5) years. Any member of the Zoning Board of Appeals may be removed by the City Council for cause, and if a hearing is requested by such member within five (5) days of notification of removal, after public hearing.

(Ord. 809-91, 1991; Ord. 655 86, 1986)

### **2.56.040 - Vacancy filling.**

- A. Vacancies shall be filled by appointment of the City Council for the unexpired term of the vacancy.
- B. A vacancy exists when a member dies, resigns, is removed by action of the City Council, or if a member moves outside the City limits and thus is no longer a qualified elector in the City.

(Ord. 655 86, 1986)

### **2.56.050 - Meetings - rules for operation.**

All meetings of the Zoning Board of Appeals shall be held at the call of the chairman and at such other times as the Zoning Board of Appeals may determine. All meetings and records of the Zoning Board of Appeals shall be open to the public. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions. Every order, requirement, decision, or determination of the Zoning Board of Appeals shall immediately be filed in the office of the City Clerk and shall be a public record. Three (3) members of the Zoning Board of Appeals shall constitute a quorum for the transaction of business. The Zoning Board of Appeals

is empowered to make rules and regulations for its conduct and operations not inconsistent with state and municipal law.

(Ord. 809-91, 1991; Ord. 655 86, 1985)

### **2.56.060 - Organization and officers.**

The Zoning Board of Appeals shall elect one (1) of its members as chairperson. The chairperson's duties shall be those customarily performed by such officer and as specified by the rules of the Zoning Board of Appeals. The chairperson shall hold office for one (1) year or until a successor is elected. The City Manager shall provide a staff person to record minutes of each meeting and conduct correspondence for the Zoning Board of Appeals.

(Ord. 655 86, 1986)

### **2.56.070 - Powers and duties.**

The Zoning Board of Appeals shall have the power to hear and determine appeals from refusals of building permits and to permit exceptions to or variations from the zoning regulations in accordance with the principles, conditions, and procedures specified in the ordinance. The Zoning Board of Appeals shall exercise other powers and duties as may be required by state law. The findings and determinations of the Zoning Board of Appeals may be reviewed, modified, affirmed, or reversed by five (5) votes of the Council upon its own motion, or upon the application therefor by any interested person within thirty (30) days after such findings or determination has been made and entered upon its record.

(Ord. 655 86, 1986)

**CITY OF EVANS, COLORADO**

**ORDINANCE NO. 714-20**

**AN ORDINANCE AMENDING SECTIONS 2.52.020 AND 2.56.020 OF THE EVANS MUNICIPAL CODE AND SECTIONS 12.1 AND 12.5 OF THE EVANS CHARTER TO CONFORM WITH THE RESULTS OF A CHARTER ELECTION REGARDING MEMBERSHIP OF THE PLANNING COMMISSION AND ZONING BOARD OF APPEALS ,AND FURTHER AUTHORIZING APPOINTMENT OF AN ALTERNATE PLANNING COMMISSION MEMBER**

**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**, Section 12.1 of the Evans Charter addresses the creation and appointment of the Planning Commission; and

**WHEREAS**, Section 12.5 of the Evans Charter addresses the creation and appointment of the Zoning Board of Appeals; and

**WHEREAS**, Section 2.52.020 of the Evans Municipal Code addresses the membership, appointment and qualifications of Planning Commission members; and

**WHEREAS**, Section 2.56.020 of the Evans Municipal Code addresses the membership, appointment and qualifications of the Zoning Board of Appeals; and

**WHEREAS**, at a municipal election on November 4, 2014, the electors of the City of Evans approved a charter amendment that, among other things, authorized members of the Planning Commission and the Zoning Board of Appeals to hold other positions with the City of Evans; and

**WHEREAS**, the City Council has determined that in order to ensure the timely processing of land use applications and other matters that come before the Planning Commission it is necessary and appropriate to authorize appointment of an alternate Planning Commission member and to authorize them to act when necessary to establish a quorum or take other actions.

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

1. Section 12.1 of the Evans City Charter is hereby revised pursuant to the approved Charter amendment by adding the underlined language to read as follows:

### **12.1 - Planning Commission.**

There shall be a City Planning Commission which shall consist of five members, all of whom shall be qualified electors residing within the City and all of whom shall be appointed by the City Council for a term of five years. Members of the City Council shall be prohibited from serving on the Planning Commission. A Planning Commission member may hold any other position with the City, except City Council member. Three members of the Commission shall constitute a quorum. Any member of the Commission may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Commission shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Commission shall be open to the public. City staff shall keep minutes of the Commission's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

2. Section 12.5 of the Evans City Charter is hereby revised pursuant to the approved Charter amendment by adding the underlined language to read as follows:

### **12.5 - Zoning Board of Appeals.**

There shall be a Zoning Board of Appeals which shall consist of five members, all of whom shall be qualified electors residing within the City and all of whom shall be appointed by the City Council for a term of five years. Members of the City Council shall be prohibited from serving on the Zoning Board of Appeals. A Zoning Board of Appeals member may hold any other position with the City, except City Council member. Three members of the Board shall constitute a quorum. Any member of the Board may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Board shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Board shall be open to the public. City staff shall keep minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

3. Section 2.52.020 of the Evans Municipal Code is hereby amended to read as follows:

### **2.52.020 – Membership – Appointment and Qualifications.**

The Planning Commission shall consist of five (5) members, who shall be qualified electors and residents of the City appointed by the City Council

~~none of whom shall hold any other position with the City.~~ A Planning Commission member may hold any other position with the City except City Council Member. The Director of Planning or ~~his~~ their appointed designee shall serve in an advisory capacity to the Planning Commission. The City Council may appoint an alternate Planning Commission member. The alternate member shall receive all materials received by the regular members and may participate in the discussion of any matters during a Planning Commission meeting. The alternate member shall be permitted to vote when fewer than five regular members are present. The presence of the alternate member may also be used when necessary to determine whether a quorum is present.

4. Section 2.56.020 of the Evans Municipal Code is hereby amended to read as follows:

**2.56.020 – Membership – appointment and qualifications.**

The Zoning Board of Appeals shall consist of five (5) members, who shall be qualified electors appointed by the City Council, ~~none of whom shall hold any other position with the City.~~ A Board member may hold any other position with the City except City Council Member.

5. 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.
6. 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 5<sup>TH</sup> DAY OF MAY, 2020.**

**ATTEST:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Karen Frawley, City Clerk

BY: \_\_\_\_\_  
Brian Rudy, Mayor

**PASSED AND ADOPTED ON A SECOND READING THIS 19<sup>th</sup> DAY OF MAY, 2020.**

**ATTEST:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Karen Frawley, City Clerk

BY: \_\_\_\_\_  
Brian Rudy, Mayor

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.B  
**SUBJECT:** Consideration of Award of Bid for the 47th Avenue Construction Project

**PRESENTED BY:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager  
Mark Oberschmidt, P.E. City Engineer

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## AGENDA ITEM DESCRIPTION:

The City has been budgeting and planning to widen sections of 47<sup>th</sup> Avenue and 37<sup>th</sup> Street for several years. 47<sup>th</sup> Avenue Widening is the first of the next round of widening projects to be ready for construction. The project extends from just north of 37<sup>th</sup> Street on the south into the City of Greeley to approximately 31<sup>st</sup> Street. The road will be widened to be a 4-lane arterial road along the entire length of the project.

The City received eleven (11) bids for this project ranging from \$3,500,084 to \$4,645,947. A summary of the bids is provided below.

1. DeFalco Construction	\$3,503,943.74
2. Mountain Constructors	\$3,623,585.60
3. Asphalt Specialties	\$3,808,825.80***
4. HEI Civil	\$3,844,137.10
5. Duran Excavating	\$3,848,384.59
6. Millstone Weber	\$3,898,239.80
7. Villalobos Concrete	\$3,918,639.90
8. Concrete Express	\$4,147,042.35
9. American Civil Constructors	\$4,165,146.00
10. Noraa Concrete	\$4,641,558.30
11. Lobos Structures	\$4,645,497.25

\*\*\* bid not accepted due to missing paperwork

The Engineer's Estimate (EE) for this project is \$3,965,410.00. Seven of the bids were under the EE and four were over. Please note that the original DeFalco bid was \$3,500,084.27. This bid did not account for an addendum that modified the bid quantity for two items. All the bids were based on this addendum to ensure a proper comparison. The change is documented in Attachment B.

DeFalco Construction is in good standing with the City of Evans. DeFalco also received good reviews for recent projects that they have completed for Weld County, the Town of Erie and the City of Longmont.

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**FINANCIAL SUMMARY:**

The City has a total budget of \$4,225,000 for this project. \$328,659 has been encumbered or already spent on design, engineering and right-of-way acquisition out of this budget leaving \$3,896,341 of City funds available.

Greeley will be contributing \$214,822 for the work to be completed within Greeley city limits. An IGA with Greeley committing those funds will be presented to council separately.

The Wildhorse development project will be constructed along the east side of the corridor and contributing \$56,000 to the project budget to cover the cost of sidewalk construction adjacent to that development. These private funds will be deposited with the City at the time of issuance of the first building permit.

The Minor Subdivision Plat for the Extraction property on the Northwest corner of 47<sup>th</sup> Avenue and 37<sup>th</sup> Street has been recorded to dedicate the ROW needed for the road widening. Staff is still working with Extraction regarding the development agreement before they can proceed with site improvements. As part of the development agreement, once approved and signed by both parties, Extraction would be required to commit \$101,450 to the project budget for sidewalks and lighting. At this time, staff is not including these funds in the project budget as there is uncertainty about when the Extraction project will move forward.

Total funding currently available for the 47<sup>th</sup> Avenue Widening project includes the following:

- City of Evans \$3,896,341
- City of Greeley \$ 214,822
- Wildhorse Development \$ 56,000
- TOTAL \$4,167,163

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**RECOMMENDATION:**

Staff recommends that City Council approve the contract with DeFalco Construction in the amount of \$3,503,943.74 with a contingency of \$350,356.26 (~10%) to be accessed with City Manager approval to handle unforeseen circumstances that may occur with the project. The not to exceed amount will be \$3,854,300 or approximately 92.5% of the remaining budget.

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**SUGGESTED MOTIONS:**

*“I move to award the “47<sup>th</sup> Avenue Widening Project” to DeFalco Construction and to authorize the Mayors signature on an agreement in the amount of \$3,503,943.74 with a not to exceed amount of \$3,854,300.”*

*“I move to deny the award of the “47<sup>th</sup> Avenue Widening Project” contract.”*

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**ATTACHMENTS:**

- Attachment A: DeFalco Construction Bid Package
- Attachment B: Checked DeFalco Bid Tab



1.5.2 BID PROPOSAL

**47<sup>th</sup> Avenue Widening**

Proposal of DEFALCO CONSTRUCTION Co. (hereinafter called bidder, doing business as \* CORPORATION organized and existing under the laws of the State of COLORADO, to the City of Evans (hereinafter called CITY).

In compliance with your Advertisement for Bids, bidder hereby proposes to perform all work for the **47<sup>th</sup> Avenue Widening** in strict accordance with contract documents, within the time set forth therein, and at prices stated below.

By submission of this bid, each bidder certifies, and in cases of a joint bid, each party hereto certifies as to their own organization, that this bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this bid with any other bidder or with any competitor.

Bidder hereby agrees to commence work under this contract on or before a date specified in the Special Conditions. Bidder further agrees to pay liquidated damages as provided in the Special Conditions.

Bidder acknowledges receipt of the following Addendum:

1:2:3:4:5  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bid shall include all applicable taxes and fees.

Bidder agrees to perform all work described in the contract documents in accordance with the attached Bid Schedule.

\* Insert "a Corporation", "a Partnership", or "an Individual" as applicable.

**47th Avenue Widening - Summary of Bid Items**

ITEM NUMBER	ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL
201-00000	Clearing and Grubbing	LS	1	\$18,061.36	\$18,061.36
202-00010	Removal of Tree	EACH	28	\$1,194.37	\$33,442.36
202-00015	Removal of Headwall	EACH	3	\$1,812.56	\$5,437.68
202-00019	Removal of Inlet	EACH	4	\$1,508.13	\$6,032.52
202-00025	Removal of Ditch Lining	LF	40	\$21.32	\$852.80
202-00027	Removal of Riprap	SY	78	\$24.71	\$1,927.38
202-00032	Removal of Valve	EACH	2	\$1,240.12	\$2,480.24
202-00035	Removal of Pipe	LF	1,405	\$38.27	\$53,769.35
202-00195	Removal of Median Cover	SY	88	\$6.11	\$537.68
202-00200	Removal of Sidewalk	SY	52	\$10.33	\$537.16
202-00203	Removal of Curb and Gutter	LF	258	\$7.47	\$1,927.26
202-00206	Removal of Concrete Curb Ramp	SY	57	\$4.71	\$268.47
202-00220	Removal of Asphalt Mat	SY	7,978	\$3.87	\$30,874.86
202-00240	Removal of Asphalt Mat (Planing)	SY	861	\$8.76	\$7,542.36
202-00250	Removal of Pavement Marking	SF	338	\$5.55	\$1,875.90
202-00810	Removal of Ground Sign	EACH	12	\$90.63	\$1,087.56
202-01000	Removal of Fence	LF	485	\$6.98	\$3,385.30
203-00010	Unclassified Excavation (Complete In Place)	CY	14,671	\$9.63	\$141,281.73
203-01100	Proof Rolling	HOUR	50	\$111.06	\$5,553.00
203-01500	Blading	HOUR	110	\$154.46	\$16,990.60
203-01550	Dozing	HOUR	10	\$146.80	\$1,468.00
203-01597	Potholing	HOUR	60	\$194.25	\$11,655.00
206-01000	Bed Course Material	CY	37	\$50.78	\$1,878.86
207-00205	Topsoil	CY	1,349	\$17.62	\$23,769.38
207-00405	Topsoil (Special)	CY	860	\$35.93	\$30,899.80
208-00002	Erosion Log Type 1 (12 Inch)	LF	6,000	\$5.19	\$31,140.00
208-00020	Silt Fence	LF	2,000	\$2.45	\$4,900.00
208-00035	Aggregate Bag	LF	1,600	\$6.14	\$9,824.00
208-00045	Concrete Washout Structure	EACH	1	\$1,351.81	\$1,351.81
208-00053	Storm Drain Inlet Protection (Type I) (84 Inch)	EACH	16	\$127.97	\$2,047.52
208-00054	Storm Drain Inlet Protection (Type II)	EACH	3	\$117.23	\$351.69
208-00070	Vehicle Tracking Pad	EACH	2	\$1,193.53	\$2,387.06
208-00071	Maintenance Aggregate (Vehicle Tracking Pad)	CY	24	\$61.70	\$1,480.80
208-00103	Removal and Disposal of Sediment (Labor)	HOUR	20	\$65.10	\$1,302.00
208-00105	Removal and Disposal of Sediment (Equipment)	HOUR	20	\$98.29	\$1,965.80
208-00106	Sweeping (Sediment Removal)	HOUR	400	\$122.10	\$48,840.00
208-00107	Removal of Trash	HOUR	8	\$237.43	\$1,899.44
208-00207	Erosion Control Management (ECM)	DAY	60	\$172.33	\$10,339.80
210-00050	Reset Fire Hydrant	EACH	1	\$5,380.45	\$5,380.45
210-00810	Reset Ground Sign	EACH	3	\$223.81	\$671.43
210-01710	Reset Valve	EACH	8	\$423.16	\$3,385.28
210-04010	Adjust Manhole	EACH	2	\$462.73	\$925.46
212-00004	Sod	SF	3,555	\$1.22	\$4,337.10
212-00006	Seeding (Type I)	ACRE	1.5	\$4,280.16	\$6,420.24
212-00022	Seeding (Type II)	ACRE	1.9	\$4,847.37	\$9,210.00
212-00028	Seeding (Wetland)	ACRE	0.3	\$5,710.95	\$1,713.29
212-00032	Soil Conditioning	ACRE	4.0	\$7,525.80	\$30,103.20
213-00004	Mulching (Weed Free Straw)	ACRE	4.0	\$2,726.16	\$10,904.64
213-00005	Mulching (Brown Western Red Cedar)(4" Depth)	CY	70	\$97.68	\$6,837.60
213-00006	Weed Barrier Fabric (Under River Rock Cobble)	SF	18,110	\$0.20	\$3,622.00
213-00061	Mulch Tackifier	LB	800	\$5.00	\$4,000.00
213-00067	1.5" x 3" Tan River Rock (3" Depth)	TON	150	\$94.35	\$14,152.50
213-00700	Siloam Landscape Boulder A (2' x 4')	EACH	33	\$394.05	\$13,003.65
213-00700	Siloam Landscape Boulder B (3' x 4')	EACH	23	\$527.25	\$12,126.75
213-00700	Siloam Landscape Boulder C (4' x 4')	EACH	39	\$699.30	\$27,272.70
213-00700	Steel Edger	LF	900	\$6.11	\$5,499.00
214-00220	Deciduous Tree (2" Cal.)	EACH	25	\$760.35	\$19,008.75
214-00230	Deciduous Ornamental Tree (1.5" Cal.)	EACH	22	\$627.15	\$13,797.30
214-00350	Deciduous Shrub (5 Gal.)	EACH	106	\$59.94	\$6,353.64
214-00350	Ornamental Grasses and Perennials (1 Gal.)	EACH	314	\$24.42	\$7,667.88
214-00350	Evergreen Shrub (5 Gal.)	EACH	64	\$64.38	\$4,120.32
214-00508	Existing Tree Protection	LS	1	\$3,558.88	\$3,558.88
240-00000	Wildlife Biologist	HOUR	10	\$122.10	\$1,221.00
304-06007	Aggregate Base Course (Class 6)	CY	4,770	\$48.28	\$230,295.60
403-00720	Hot Mix Asphalt (Patching)(Asphalt)	TON	250	\$177.60	\$44,400.00
403-34741	Hot Mix Asphalt (Grading SX)(75)(PG 64-22)	TON	6,679	\$79.31	\$529,711.49
411-10255	Emulsified Asphalt (Slow Setting)	GAL	1,574	\$2.22	\$3,494.28
412-00600	Concrete Pavement (6 Inch)	SY	171	\$73.89	\$12,635.19
412-00800	Concrete Pavement (8 Inch)	SY	69	\$96.46	\$6,655.74
504-08255	Masonry Landscape Wall (Dry Stack)	SF	51	\$53.28	\$2,717.28
506-00209	Riprap (9 Inch)	CY	22	\$75.78	\$1,667.16
506-00212	Riprap (12 Inch)	CY	119	\$82.64	\$9,834.16
601-03000	Concrete Class D	CY	8	\$1,412.09	\$11,296.72
602-00000	Reinforcing Steel	LB	1,146	\$2.44	\$2,796.24
603-01185	18 Inch Reinforced Concrete Pipe (Complete In Place)	LF	256	\$92.31	\$23,631.36
603-01245	24 Inch Reinforced Concrete Pipe (Complete In Place)	LF	74	\$126.94	\$9,393.56
603-01305	30 Inch Reinforced Concrete Pipe (Complete In Place)	LF	624	\$139.11	\$86,804.64
603-01365	36 Inch Reinforced Concrete Pipe (Complete in Place)	LF	1,881	\$163.42	\$307,393.02
603-05030	30 Inch Reinforced Concrete End Section	EACH	1	\$2,292.90	\$2,292.90

603-05036	36 Inch Reinforced Concrete End Section	EACH	1	\$2,706.03	\$2,706.03
603-50008	8 Inch Plastic Pipe	LF	125	\$103.00	\$12,875.00
603-50010	10 Inch Plastic Pipe	LF	830	\$66.53	\$55,219.90
604-00305	Inlet Type C (5 Foot)	EACH	4	\$4,390.66	\$17,562.64
604-00310	Inlet Type C (10 Foot)	EACH	1	\$5,808.30	\$5,808.30
604-19105	Inlet Type R L 5 (5 Foot)	EACH	3	\$4,590.46	\$13,771.38
604-19110	Inlet Type R L 5 (10 Foot)	EACH	1	\$6,529.80	\$6,529.80
604-19205	Inlet Type R L 10 (5 Foot)	EACH	2	\$6,655.06	\$13,310.12
604-19210	Inlet Type R L 10 (10 Foot)	EACH	2	\$8,641.18	\$17,282.36
604-20000	Outlet Structure	EACH	1	\$17,272.82	\$17,272.82
604-30005	Manhole Slab Base (5 Foot)	EACH	1	\$3,520.59	\$3,520.59
604-30010	Manhole Slab Base (10 Foot)	EACH	8	\$5,397.04	\$43,176.32
604-30015	Manhole Slab Base (15 Foot)	EACH	1	\$6,420.79	\$6,420.79
607-11525	Fence (Plastic)	LF	100	\$3.72	\$372.00
608-00000	Concrete Sidewalk (8 Inch)	SY	189	\$73.52	\$13,895.28
608-00006	Concrete Sidewalk (6 Inch)	SY	4,835	\$61.18	\$295,805.30
608-00010	Concrete Curb Ramp	SY	188	\$143.47	\$26,972.36
609-21010	Curb and Gutter Type 2 (Section I-B)	LF	2,563	\$25.73	\$65,945.99
609-21020	Curb and Gutter Type 2 (Section II-B)	LF	5,199	\$26.79	\$139,281.21
609-24008	Gutter Type 2 (8 Foot)	LF	92	\$87.29	\$8,030.68
610-00026	Median Cover Material (6 Inch Patterned Concrete)	SF	5,090	\$14.03	\$71,412.70
610-00030	Median Cover Material (Concrete)	SF	1,229	\$18.09	\$22,232.61
614-00011	Sign Panel (Class 1)	SF	124	\$22.20	\$2,752.80
614-00214	Steel Sign Post (1.75x1.75 Inch Tubing)	LF	233	\$16.65	\$3,879.45
614-70448	Traffic Signal Face (12-12-12-12)	EACH	1	\$1,443.00	\$1,443.00
614-72875	Loop Detector Wire	LF	485	\$7.16	\$3,472.60
614-80321	Barricade (Type 3M-A)	EACH	2	\$705.90	\$1,411.80
614-80322	Barricade (Type 3M-B)	EACH	1	\$1,411.81	\$1,411.81
614-80323	Barricade (Type 3M-C)	EACH	2	\$2,568.32	\$5,136.64
620-00020	Sanitary Facility	EACH	1	\$3,829.50	\$3,829.50
621-00450	Detour Pavement	SY	167	\$101.44	\$16,940.48
623-07006	3/4 Inch Water Meter	EACH	4	\$1,536.91	\$6,147.64
623-07008	1 Inch Water Meter	EACH	1	\$1,824.32	\$1,824.32
623-09900	Irrigation System	LS	1	\$218,115.00	\$218,115.00
625-00000	Construction Surveying	LS	1	\$34,965.00	\$34,965.00
626-00000	Mobilization	LS	1	\$115,025.42	\$115,025.42
626-01000	Public Information Services (Tier IV)	LS	1	\$22,200.00	\$22,200.00
627-00008	Modified Epoxy Pavement Marking	GAL	56	\$194.81	\$10,909.36
627-30405	Preformed Thermoplastic Pavement Marking (Word-Symbol)	SF	241	\$26.64	\$6,420.24
629-01004	Survey Monument (Type 4)	EACH	7	\$111.00	\$777.00
630-00000	Flagging	HOUR	2,000	\$30.64	\$61,280.00
630-00007	Traffic Control Inspection	DAY	70	\$114.89	\$8,042.30
630-00012	Traffic Control Management	DAY	125	\$459.54	\$57,442.50
630-80337	Barricade (Type 3M-C) (Temporary)	EACH	6	\$255.30	\$1,531.80
630-80341	Construction Traffic Sign (Panel Size A)	EACH	20	\$223.39	\$4,467.80
630-80342	Construction Traffic Sign (Panel Size B)	EACH	15	\$191.48	\$2,872.20
630-80350	Vertical Panel	EACH	50	\$31.91	\$1,595.50
630-80360	Drum Channelizing Device	EACH	200	\$19.15	\$3,830.00
630-80380	Traffic Cone	EACH	100	\$12.77	\$1,277.00
700	F/A Irrigation	F A	1	\$10,000.00	\$10,000.00
700-70034	F/A Prairie Dog Management	F A	1	\$10,000.00	\$10,000.00
				<b>Total Bid =</b>	<b>\$3,500,084.27</b>

DEFALCO CONSTRUCTION CO.

Tony Defalco

ANTHONY DEFALCO

PRESIDENT

7/2/2020

614-80321	Barricade (Type 3M-A)	EACH	2		
614-80322	Barricade (Type 3M-B)	EACH	1		
614-80323	Barricade (Type 3M-C)	EACH	2		
620-00020	Sanitary Facility	EACH	1		
621-00450	Detour Pavement	SY	167		
623-07006	3/4 Inch Water Meter	EACH	4		
623-07008	1 Inch Water Meter	EACH	1		
623-09900	Irrigation System	LS	1		
625-00000	Construction Surveying	LS	1		
626-00000	Mobilization	LS	1		
626-01000	Public Information Services (Tier IV)	LS	1		
627-00008	Modified Epoxy Pavement Marking	GAL	56		
627-30405	Prefomed Thermoplastic Pavement Marking (Word-Symbol)	SF	241		
629-01004	Survey Monument (Type 4)	EACH	7		
630-00000	Flagging	HOUR	2,000		
630-00007	Traffic Control Inspection	DAY	70		
630-00012	Traffic Control Management	DAY	125		
630-80337	Barricade (Type 3M-C) (Temporary)	EACH	6		
630-80341	Construction Traffic Sign (Panel Size A)	EACH	20		
630-80342	Construction Traffic Sign (Panel Size B)	EACH	15		
630-80350	Vertical Panel	EACH	50		
630-80360	Drum Channelizing Device	EACH	200		
630-80380	Traffic Cone	EACH	100		
700	F/A Irigation	F A	1		
700-70034	F/A Prairie Dog Management	F A	1		
				<b>Total Bid =</b>	

Base Bid – Grand Total:

\$ \_\_\_\_\_

The undersigned, if awarded the Contract, at the prices shown in the bid, agrees to complete the work within 140 working days after the Notice to Proceed is issued.

Date 7/2/2020

DEFALCO CONSTRUCTION Co.

Company

Official Address:  
PO BOX 820  
LONGMONT, CO 80502

Tony Defalco

Signature

PRESIDENT

Title

1.5.4 BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, **DeFalco Construction Company** as Principal, and **Employers Mutual Casualty\*** as surety, are hereby held and firmly bound unto the City of Evans in the penal sum of (\$ -----5%-----\*\*) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this 15th day of June, 2020.

The condition of the above obligations is such that whereas the Principal has submitted to the City of Evans a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing, for the

**47<sup>th</sup> Avenue Widening**

NOW THEREFORE,

- (A) If said bid shall be rejected, or in the alternate,
- (B) If said bid shall be accepted and the Principal shall execute and deliver a contract in the form of contract attached hereto (properly) completed in accordance with said bid and shall furnish a bond for its faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid,

then this obligation shall be void, otherwise, the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations by any extension of the time within which the CITY may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunder set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

**DeFalco Construction Company**

Tony DeFalco  
Principal **PRESIDENT**

**Employers Mutual Casualty Company**

Surety

By: Sarah Brown  
Sarah Brown, Attorney-in-Fact



\*Company

\*\*Five Percent of the Amount Bid



P.O. Box 712 • Des Moines, Iowa 50306-0712

### POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation
- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

**Sarah Brown**

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

**Any and All Bonds**

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire April 1st, 2021, unless sooner revoked.

### AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 1st day of July, 2018.

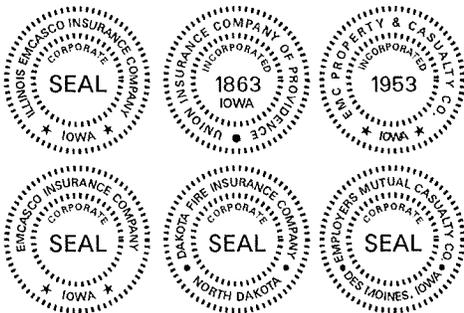
*Bruce G. Kelley*

Bruce G. Kelley, CEO, Chairman of Companies 2, 3, 4, 5 & 6; President of Companies 1, 2 & 6; Treasurer of Companies 1, 2, 3, 4 & 6

*Todd Strother*

Todd Strother  
Vice President

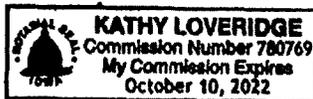
Seals



On this 1st day of July, 2018 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President and Treasurer, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2022.

*Kathy Loveridge*  
Notary Public in and for the State of Iowa



### CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 1st day of July, 2018, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 15th day of June, 2020.

*James D. Clough*  
Vice President

## 47th Avenue Widening - Summary of Bid Items

DeFalco

ITEM NUMBER	ITEM	UNIT	QNTY	UNIT PRICE	COST
201-00000	Clearing and Grubbing	LS	1	\$18,061.36	\$18,061.36
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203-01500	Blading	HOUR	110	\$154.46	\$16,990.60
203-01550	Dozing	HOUR	10	\$146.80	\$1,468.00
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207-00205	Topsoil	CY	1,349	\$17.62	\$23,769.38
207-00405	Topsoil (Special)	CY	860	\$35.93	\$30,899.80
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208-00020	Silt Fence	LF	2,000	\$2.45	\$4,900.00
208-00035	Aggregate Bag	LF	1,600	\$6.14	\$9,824.00
208-00045	Concrete Washout Structure	EACH	1	\$1,351.81	\$1,351.81
208-00053	Storm Drain Inlet Protection (Type I) (84 Inch)	EACH	16	\$127.97	\$2,047.52
208-00054	Storm Drain Inlet Protection (Type II)	EACH	3	\$117.23	\$351.69
208-00070	Vehicle Tracking Pad	EACH	2	\$1,193.53	\$2,387.06
208-00071	Maintenance Aggregate (Vehicle Tracking Pad)	CY	24	\$61.70	\$1,480.80
208-00103	Removal and Disposal of Sediment (Labor)	HOUR	20	\$65.10	\$1,302.00
208-00105	Removal and Disposal of Sediment (Equipment)	HOUR	20	\$98.29	\$1,965.80
208-00106	Sweeping (Sediment Removal)	HOUR	400	\$122.10	\$48,840.00
208-00107	Removal of Trash	HOUR	8	\$237.43	\$1,899.44
208-00207	Erosion Control Management (ECM)	DAY	60	\$172.33	\$10,339.80
210-00050	Reset Fire Hydrant	EACH	1	\$5,380.45	\$5,380.45
210-00810	Reset Ground Sign	EACH	3	\$223.81	\$671.43
210-01710	Reset Valve	EACH	8	\$423.16	\$3,385.28
210-04010	Adjust Manhole	EACH	2	\$462.73	\$925.46
212-00004	Sod	SF	3,555	\$1.22	\$4,337.10
212-00006	Seeding (Type I)	ACRE	1.5	\$4,280.16	\$6,420.24
212-00022	Seeding (Type II)	ACRE	1.9	\$4,847.37	\$9,210.00
212-00028	Seeding (Wetland)	ACRE	0.3	\$5,710.95	\$1,713.29
212-00032	Soil Conditioning	ACRE	4.0	\$7,525.80	\$30,103.20
213-00004	Mulching (Weed Free Straw)	ACRE	4.0	\$2,726.16	\$10,904.64
213-00005	Mulching (Brown Western Red Cedar)(4" Depth)	CY	70	\$97.68	\$6,837.60

213-00006	Weed Barrier Fabric (Under River Rock Cobble)	SF	18,110	\$0.20	\$3,622.00
213-00061	Mulch Tackifier	LB	800	\$5.00	\$4,000.00
213-00067	1.5" x 3" Tan River Rock (3" Depth)	TON	150	\$94.35	\$14,152.50
213-00700	Siloam Landscape Boulder A (2' x 4')	EACH	33	\$394.05	\$13,003.65
213-00700	Siloam Landscape Boulder B (3' x 4')	EACH	23	\$527.25	\$12,126.75
213-00700	Siloam Landscape Boulder C (4' x 4')	EACH	39	\$699.30	\$27,272.70
213-00700	Steel Edger	LF	900	\$6.11	\$5,499.00
214-00220	Deciduous Tree (2" Cal.)	EACH	25	\$760.35	\$19,008.75
214-00230	Deciduous Ornamental Tree (1.5" Cal.)	EACH	22	\$627.15	\$13,797.30
214-00350	Deciduous Shrub (5 Gal.)	EACH	106	\$59.94	\$6,353.64
214-00350	Ornamental Grasses and Perennials (1 Gal.)	EACH	314	\$24.42	\$7,667.88
214-00350	Evergreen Shrub (5 Gal.)	EACH	64	\$64.38	\$4,120.32
214-00508	Existing Tree Protection	LS	1	\$3,558.88	\$3,558.88
240-00000	Wildlife Biologist	HOUR	10	\$122.10	\$1,221.00
304-06007	Aggregate Base Course (Class 6)	CY	4,770	\$48.28	\$230,295.60
403-00720	Hot Mix Asphalt (Patching)(Asphalt)	TON	250	\$177.60	\$44,400.00
403-34741	Hot Mix Asphalt (Grading SX)(75)(PG 64-22)	TON	6,679	\$79.31	\$529,711.49
411-10255	Emulsified Asphalt (Slow Setting)	GAL	1,574	\$2.22	\$3,494.28
412-00600	Concrete Pavement (6 Inch) (DELETED)	SY	0	\$73.89	\$0.00
412-00800	Concrete Pavement (8 Inch) (INCREASED AFTER 6-INCH DELETED)	SY	240	\$96.46	\$23,150.40
504-08255	Masonry Landscape Wall (Dry Stack)	SF	51	\$53.28	\$2,717.28
506-00209	Riprap (9 Inch)	CY	22	\$75.78	\$1,667.16
506-00212	Riprap (12 Inch)	CY	119	\$82.64	\$9,834.16
601-03000	Concrete Class D	CY	8	\$1,412.09	\$11,296.72
602-00000	Reinforcing Steel	LB	1,146	\$2.44	\$2,796.24
603-01185	18 Inch Reinforced Concrete Pipe (Complete In Place)	LF	256	\$92.31	\$23,631.36
603-01245	24 Inch Reinforced Concrete Pipe (Complete In Place)	LF	74	\$126.94	\$9,393.56
603-01305	30 Inch Reinforced Concrete Pipe (Complete In Place)	LF	624	\$139.11	\$86,804.64
603-01365	36 Inch Reinforced Concrete Pipe (Complete in Place)	LF	1,881	\$163.42	\$307,393.02
603-05030	30 Inch Reinforced Concrete End Section	EACH	1	\$2,292.90	\$2,292.90
603-05036	36 Inch Reinforced Concrete End Section	EACH	1	\$2,706.03	\$2,706.03
603-50008	8 Inch Plastic Pipe	LF	125	\$103.00	\$12,875.00
603-50010	10 Inch Plastic Pipe	LF	830	\$66.53	\$55,219.90
604-00305	Inlet Type C (5 Foot)	EACH	4	\$4,390.66	\$17,562.64
604-00310	Inlet Type C (10 Foot)	EACH	1	\$5,808.30	\$5,808.30
604-19105	Inlet Type R L 5 (5 Foot)	EACH	3	\$4,590.46	\$13,771.38
604-19110	Inlet Type R L 5 (10 Foot)	EACH	1	\$6,529.80	\$6,529.80
604-19205	Inlet Type R L 10 (5 Foot)	EACH	2	\$6,655.06	\$13,310.12
604-19210	Inlet Type R L 10 (10 Foot)	EACH	2	\$8,641.18	\$17,282.36
604-20000	Outlet Structure	EACH	1	\$17,272.82	\$17,272.82
604-30005	Manhole Slab Base (5 Foot)	EACH	1	\$3,520.59	\$3,520.59
604-30010	Manhole Slab Base (10 Foot)	EACH	8	\$5,397.04	\$43,176.32
604-30015	Manhole Slab Base (15 Foot)	EACH	1	\$6,420.79	\$6,420.79
607-11525	Fence (Plastic)	LF	100	\$3.72	\$372.00
608-00000	Concrete Sidewalk (8 Inch)	SY	189	\$73.52	\$13,895.28
608-00006	Concrete Sidewalk (6 Inch)	SY	4,835	\$61.18	\$295,805.30
608-00010	Concrete Curb Ramp	SY	188	\$143.47	\$26,972.36
609-21010	Curb and Gutter Type 2 (Section I-B)	LF	2,563	\$25.73	\$65,945.99
609-21020	Curb and Gutter Type 2 (Section II-B)	LF	5,199	\$26.79	\$139,281.21
609-24008	Gutter Type 2 (8 Foot)	LF	92	\$87.29	\$8,030.68
610-00026	Median Cover Material (6 Inch Patterned Concrete)	SF	5,090	\$14.03	\$71,412.70
610-00030	Median Cover Material (Concrete)	SF	1,229	\$18.09	\$22,232.61
614-00011	Sign Panel (Class 1)	SF	124	\$22.20	\$2,752.80
614-00214	Steel Sign Post (1.75x1.75 Inch Tubing)	LF	233	\$16.65	\$3,879.45

614-70448	Traffic Signal Face (12-12-12-12)	EACH	1	\$1,443.00	\$1,443.00
614-72875	Loop Detector Wire	LF	485	\$7.16	\$3,472.60
614-80321	Barricade (Type 3M-A)	EACH	2	\$705.90	\$1,411.80
614-80322	Barricade (Type 3M-B)	EACH	1	\$1,411.81	\$1,411.81
614-80323	Barricade (Type 3M-C)	EACH	2	\$2,568.32	\$5,136.64
620-00020	Sanitary Facility	EACH	1	\$3,829.50	\$3,829.50
621-00450	Detour Pavement	SY	167	\$101.44	\$16,940.48
623-07006	3/4 Inch Water Meter	EACH	4	\$1,536.91	\$6,147.64
623-07008	1 Inch Water Meter	EACH	1	\$1,824.32	\$1,824.32
623-09900	Irrigation System	LS	1	\$218,115.00	\$218,115.00
625-00000	Construction Surveying	LS	1	\$34,965.00	\$34,965.00
626-00000	Mobilization	LS	1	\$115,025.42	\$115,025.42
626-01000	Public Information Services (Tier IV)	LS	1	\$22,200.00	\$22,200.00
627-00008	Modified Epoxy Pavement Marking	GAL	56	\$194.81	\$10,909.36
627-30405	Preformed Thermoplastic Pavement Marking (Word-Symbol)	SF	241	\$26.64	\$6,420.24
629-01004	Survey Monument (Type 4)	EACH	7	\$111.00	\$777.00
630-00000	Flagging	HOUR	2,000	\$30.64	\$61,280.00
630-00007	Traffic Control Inspection	DAY	70	\$114.89	\$8,042.30
630-00012	Traffic Control Management	DAY	125	\$459.54	\$57,442.50
630-80337	Barricade (Type 3M-C) (Temporary)	EACH	6	\$255.30	\$1,531.80
630-80341	Construction Traffic Sign (Panel Size A)	EACH	20	\$223.39	\$4,467.80
630-80342	Construction Traffic Sign (Panel Size B)	EACH	15	\$191.48	\$2,872.20
630-80350	Vertical Panel	EACH	50	\$31.91	\$1,595.50
630-80360	Drum Channelizing Device	EACH	200	\$19.15	\$3,830.00
630-80380	Traffic Cone	EACH	100	\$12.77	\$1,277.00
700	F/A Irrigation	F A	1	\$10,000.00	\$10,000.00
700-70034	F/A Prairie Dog Management	F A	1	\$10,000.00	\$10,000.00

**TOTAL BID** \$3,503,943.74

**Bid Presented** \$3,500,084.27

**Delta** \$3,859.47

**Original Bid Tab**

412-00600	Concrete Pavement (6 Inch) (DELETED)		171	\$73.89	\$12,635.19
412-00800	Concrete Pavement (8 Inch) (INCREASED AFTER 6-INCH DELETED)		69	\$96.46	\$6,655.74
				<b>Total</b>	<b>\$19,290.93</b>

**Corrected Bid Tab**

412-00600	Concrete Pavement (6 Inch) (DELETED)		0	\$73.89	\$0.00
412-00800	Concrete Pavement (8 Inch) (INCREASED AFTER 6-INCH DELETED)		240	\$96.46	\$23,150.40
				<b>Total</b>	<b>\$23,150.40</b>
				<b>Delta</b>	<b>\$3,859.47</b>

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.C  
**SUBJECT:** Consideration of Intergovernmental Agreement with the City of Greeley for 47<sup>th</sup> Avenue Widening Funding  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager  
Mark Oberschmidt, P.E., City Engineer

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## AGENDA ITEM DESCRIPTION:

The City has been budgeting and planning to widen sections of 47<sup>th</sup> Avenue and 37<sup>th</sup> Street for several years. 47<sup>th</sup> Avenue is the first of the next round of widening projects to be ready for construction. The project extends from just north of 37<sup>th</sup> Street into the City of Greeley. The road will be widened to be a 4-lane arterial road along the entire length of the project. Approximately 550 feet of the project is in the City of Greeley, just north of the Evans city limits.

As part of this project, Greeley has asked that Evans take over servicing five water service customers currently served by Greeley on an old dead-end line. As part of this request, Greeley will be transferring water rights to Evans and paying for the installation of the new water lines and meters.

Also in cooperation with Greeley, staff has determined that the estimated cost of improvements for the section of roadway that will be the financial responsibility of Greeley to be \$214,822.50. Please refer to the attached cost estimate for additional detail. These improvements will include.

- Curb, gutter and sidewalk
- Landscaping
- Road work
- Installation of five (5) water services connecting to Evans water mains and transferring these customers from Greeley to Evans.

The attached Intergovernmental Agreement (IGA) with Greeley submitted for consideration spells out the expectations and responsibilities of each party regarding the funding and completion of this project.

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**FINANCIAL SUMMARY:**

Current total funding available for this project is approximately \$4.4 million from the following sources:

- City                   \$4,225,000.00
- Greeley               \$ 214,822.50
- Wildhorse           \$ 56,000.00
- TOTAL               \$4,438,450.50

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**RECOMMENDATION:**

Staff recommends that the City Council approve the Intergovernmental Agreement with Greeley for the 47<sup>th</sup> Avenue Widening Project and authorize the Mayor's signature on the attached Letter of Intent and Terms and Conditions.

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**SUGGESTED MOTIONS:**

*"I move to approve the Intergovernmental Agreement with Greeley for the 47<sup>th</sup> Avenue Widening Project and authorize the Mayor's signature on the Agreement."*

*"I move to reject the Intergovernmental Agreement with Greeley for the 47<sup>th</sup> Avenue Widening Project."*

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**ATTACHMENTS:**

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF GREELEY AND THE CITY OF EVANS FOR GREELEY'S  
FUNDING PARTICIPATION IN THE 47<sup>TH</sup> AVENUE WIDENING PROJECT

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Greeley, Colorado (hereinafter referred to as "Greeley,"), with offices located at 1000 10th Street, Greeley, Colorado 80631, and the City of Evans, Colorado (hereinafter referred to as "Evans"), with offices located at 1100 37th Street 1h Street, Evans, Colorado 80620, **for construction widening of a portion of 47th Avenue as a major arterial street between US 34 and 37th Street.**

WITNESSETH:

WHEREAS, Greeley and Evans each have jurisdiction of portions of **47<sup>th</sup> Avenue** as depicted on Exhibit C; which is attached hereto and incorporated herein by this reference: and,

WHEREAS, the parties desire to jointly enter into the Scope of Work as shown on Exhibit A which is attached hereto and incorporated herein by this reference (hereafter referred to as the "Project"); and

WHEREAS, each party wishes to make road improvements to **47<sup>th</sup> Avenue** in their respective jurisdiction and share the costs of improvements on **47<sup>th</sup> Avenue** from approximately **37<sup>th</sup> Street in Evans**; and approximately **31<sup>st</sup> Street in Greeley**

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:

**MAXIMUM ESTIMATED COSTS AND PAYMENT PARTY FOR THE PROJECT.** This is a joint project between Greeley and Evans for the construction of a major arterial street. Evans will be coordinating the final design. The Project limits between Greeley and Evans are from **37<sup>th</sup> Street north to the City Limits being in Evans (~ 2750 feet and from the City limits north to 31<sup>st</sup> Street being in Greeley (~ 550 feet).**

The maximum estimated cost to each party for the Project, as specifically detailed on IGA, is as follows:

City of Greeley Costs:	\$ 214,822.50
City of Evans Costs:	<u>\$3,561,758.50</u>
Total Project Costs:	<u>\$ 3,776,581.00</u>

It is understood and agreed by both parties hereto that the total cost of the project stated herein is the best estimate available pre-bid and pre-award, and such cost is subject to revisions based upon the actual costs for the items established at a later date.

Greeley agrees to pay \$ **214,822.50** to Evans as Greeley'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 \$ **214,822.50** paid by Greeley shall be the responsibility of Evans.

Subject to the approval of the invoice by Evans, which approval will not be unreasonably withheld, Greeley shall reimburse Evans within thirty (30) days of receipt of each invoice.

PROJECT SCHEDULE. Evans will coordinate the project schedule as specified in Exhibit B which is attached hereto and incorporated herein by this reference.

AMOUNT CONTINGENT UPON APPROPRIATION OF FUNDS. This Agreement is contingent upon all funds designated for the Project herein being made available from Greeley and Evans. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party upon written notice being delivered to the other party.

ROADWAY STANDARDS. The Parties agree that the entire roadway shall meet or exceed City of Evans Standards current at the time of construction provided that the northern 365'+/- of the project is intended to meet or exceed City of Greeley Roadway Standards current at the time of construction as well.

JOINT RESPONSIBILITIES. The Parties shall be jointly responsible for the review of the final design.

ENTIRE AGREEMENT. This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

PRESERVATION OF IMMUNITY. Nothing in this agreement shall be construed as a waiver of immunity provided by common law or by state statute, including the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et. seq., and further shall not be deemed as an assumption of any duty with respect to any non-party to this Agreement.

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 undersigned parties. 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 undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be incidental beneficiary only.

MODIFICATION AND BREACH. This Intergovernmental Agreement contains the entire agreement and understanding between the parties to this and supersedes any other Intergovernmental Agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, notation, renewal, or other alteration of or to this Intergovernmental Agreement shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the undersigned parties. No breach of any term, provision, or clause of this Intergovernmental 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 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.

REMEDIES. 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 at law or in equity or by statute or otherwise, including but not limited to specific performance. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. 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.

NOTICES. All notices required herein shall be mailed via First Class Mail to the parties' representatives at the addresses set forth below:

CITY OF GREELEY:  
Tom Hellen, P.E., City Engineer  
City of Greeley, Public Works Dept.  
1001 9<sup>th</sup> Avenue  
Greeley, CO 80631  
Phone: (970) 350-9792  
[Tom.Hellen@greeleygov.com](mailto:Tom.Hellen@greeleygov.com)

CITY OF EVANS:  
Mark Oberschmidt, P.E. City Engineer  
City of Evans, Engineering Dept.  
1100 37th Street  
Evans, CO 80620-2036  
Phone: (970) 475-1110  
[moberschmidt@evanscolorado.gov](mailto:moberschmidt@evanscolorado.gov)

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF GREELEY, COLORADO

CITY OF EVANS, COLORADO

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney, Greeley

By: \_\_\_\_\_  
City Attorney, Evans

APPROVED AS TO SUBSTANCE:

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
City Manager, Greeley

By: \_\_\_\_\_  
City Manager, Evans

AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Director of Finance Greeley

# Exhibit A – 47<sup>th</sup> Avenue Scope of Work

The City of Evans along with the City of Greeley plans to widen 47<sup>th</sup> Avenue and existing 2-lane road to a 4-lane arterial roadway from just north of the the Evans City line south to 37<sup>th</sup> Street. Construction will take place in two phases: 1) installation of utilities under and beside the current road in 2020, followed by 2) construction of the expanded roadway in 2021.

Relocating XCEL transmission poles on the east side out of the proposed curb line is expected to take some time this year along with installing a new storm sewer on the west side the road to convey stormwater through a new water quality pond and then into Arrowhead Lake. The storm sewer will relieve some of the flooding issues that occur in the 47<sup>th</sup> Avenue/37<sup>th</sup> Street intersection. Evans is working in conjunction with Greeley to have a consistent road cross-section from 29<sup>th</sup> Street in Greeley to 37<sup>th</sup> Street in Evans.

Additional work on the road will include some dry utility relocation to accommodate the new road along with landscaping, irrigation and street light installation.



Greeley Approximate Length: 550'

Evans Approximate Length: 2750'

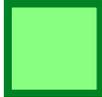
-  City of Greeley
-  City of Evans

Exhibit C

**City of Greeley**  
**47th Avenue Widening**  
**Engineer's Opinion of Probable Construction Cost**  
**Exhibit C - Evans Greeley IGA for 47th Avenue**

<b>ITEM NUMBER</b>	<b>ITEM</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>COST</b>
202-00019	Removal of Inlet	EACH	1	\$1,300.00	\$1,300.00
202-00035	Removal of Pipe	LF	13	\$25.00	\$325.00
202-00220	Removal of Asphalt Mat	SY	1,443	\$9.00	\$12,987.00
202-00240	Removal of Asphalt Mat (Planing)	SY	861	\$2.50	\$2,152.50
202-00810	Removal of Ground Sign	EACH	6	\$92.00	\$552.00
210-01710	Reset Valve	EACH	4	\$1,500.00	\$6,000.00
304-06007	Aggregate Base Course (Class 6)	CY	363	\$35.00	\$12,705.00
403-34741	Hot Mix Asphalt (Grading SX) (75) (PG 64-22)	TON	580	\$81.00	\$46,980.00
411-10255	Emulsified Asphalt (Slow Setting)	GAL	140	\$2.50	\$350.00
603-01245	24 Inch Reinforced Concrete Pipe (Complete In Place)	LF	8	\$150.00	\$1,200.00
604-19105	Inlet Type R L 5 (5 Foot)	EACH	2	\$5,900.00	\$11,800.00
608-00006	Concrete Sidewalk (6 Inch)	SY	783	\$62.00	\$48,546.00
608-00010	Concrete Curb Ramp	SY	29	\$160.00	\$4,640.00
609-21020	Curb and Gutter Type 2 (Section II-B)	LF	691	\$35.00	\$24,185.00
623-07006	3/4 Inch Water Meter	EACH	4	\$8,000.00	\$32,000.00
623-07008	1 Inch Water Meter	EACH	1	\$8,000.00	\$8,000.00
627-00008	Modified Epoxy Pavement Marking	GAL	10	\$110.00	\$1,100.00
<b>Subtotal:</b>					<b>\$214,822.50</b>
<b>TOTAL COST OF CONSTRUCTION BID ITEMS</b>					<b>\$214,822.50</b>

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.D  
**SUBJECT:** Consideration of Resolution Number 23-2020 in Support of the Great Outdoors Colorado Grant to Fund Improvements at Arrowhead Lake Open Space and Tract O Open Space  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Randy Ready, Assistant City Manager  
Anne Best Johnson, Community Development Director

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## AGENDA ITEM DESCRIPTION:

Great Outdoors Colorado (GOCO) has released a new program for 2021 called the Resilient Communities fund. This fund is a one-time \$15 million program to help advance GOCO initiatives in communities disrupted by the COVID-19 pandemic. Eligible projects will fund one-time immediate needs or will assist with opportunities that have emerged in direct response to the pandemic as long as the project context fits GOCO's five program values: resource conservation, outdoor stewardship, community vitality, equitable access and youth connections. There are four application rounds. The first was July 17 followed by August 7, October 16 and February 2021. The City is targeting grant application submittal before August 7, 2021 to request funding to assist with improvements to the open space areas at Arrowhead Lake and Tuscany Tract O.

Staff has conducted four Open Houses to interact with citizens regarding the desired site amenities at both of these sites. Through a vote-with-dot campaign, the City was able to solicit input from more than 100 City and County residents while respecting social distancing requirements. The City proposes to request funding for a set of Phase 1 improvements to both of these properties. The specific components in the first phase of improvements will be determined by the availability of funding and City Council direction. A summary of the most popular amenities suggested so far by community members includes the following:

- Arrowhead
  - 10' wide concrete trail with a 3' crusher fine shoulder
  - Parking lot for 8-12 vehicles
  - Sandstone benches
  - Moss rocks for climbing
  - A short grass field for kite-flying or other field games
  - Picnic shelter(s)
  - Exercise stations (1 or 2 stations)
  - Bird boxes and raptor posts
  - Interpretive signs
  - Trash cans, animal waste bins, and a screened port-a-let
  - Signs to delineate private property

- Tuscany Tract O
  - 4-6' wide crusher fine trail
  - Sandstone benches
  - Kinetic art
  - Sculptural music stations
  - Interpretive signs
  - Trash cans and animal waste bins
  - Signs to delineate private property

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**FINANCIAL SUMMARY:**

The \$1,203,790 financial expenditure incurred by the City to purchase the Arrowhead property can be used as match for this grant funding program. The cost of staff's time to engage the public pre-grant request submittal and to manage the project installation may be able to be included in the grant application, as well.

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**RECOMMENDATION:**

*Staff recommends City Council approval of Resolution No. 23-2020 in support of the Great Outdoors Colorado Resilient Communities grant application.*

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**SUGGESTED MOTIONS:**

*"I move to adopt Resolution No. 23-2020 and authorize the City Manager to sign the Great Outdoors Colorado Resilient Communities application form."*

*"I move to deny Resolution No. 23-2020."*

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**ATTACHMENTS:**

Resolution No. 23-2020

**CITY OF EVANS, COLORADO**

**RESOLUTION NO. 23-2020**

**A RESOLUTION AUTHORIZING STAFF TO SUBMIT A GRANT APPLICATION TO GREAT OUTDOORS COLORADO FOR RESILIENT COMMUNITIES FUNDING TO IMPROVE THE ARROWHEAD OPEN SPACE AND THE TUSCANY TRACT O OPEN SPACE AREAS**

**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**, the City of Evans is committed to providing outdoor recreation opportunities for residents and intends to add amenities and improvements to both the Arrowhead and Tuscany Tract O Open Spaces; and

**WHEREAS**, the City has engaged residents to participate in selecting amenities for each location; and

**WHEREAS**, the City has reduced budget and staffing levels in Operations in response to both the COVID-19 pandemic and the downturn in economic activity in the oil and gas industry; and

**WHEREAS**, Great Outdoors Colorado (GOCO) has announced grant funding through the Resilient Communities program.

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

1. The City Council authorizes staff to submit a grant application and to accept and execute grant funding from Great Outdoors Colorado.
2. The City Council acknowledges that the grant application mandates matching funds which will be provided from the 2020 purchase expense for the Arrowhead Open Space.
3. The City Council further authorizes staff to administer any funds awarded to the City for eligible purposes of the Great Outdoors Colorado Resilient Communities grant program.

**PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 21<sup>ST</sup> DAY OF JULY, 2020.**

ATTEST:

CITY OF EVANS, COLORADO

\_\_\_\_\_  
Karen Frawley, City Clerk

BY: \_\_\_\_\_  
Brian Rudy, Mayor

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 7, 2020  
**AGENDA ITEM:** 9.E  
**SUBJECT:** Public Hearing: Consideration of Ordinance Number 728-20  
Implementing the Colorado Sales and Use Tax Software  
System (SUTS) (1<sup>st</sup> Reading)  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Jacque Troutd, CPA, Finance Director

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## AGENDA ITEM DESCRIPTION:

A change has occurred as a result of the decision from the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), where a retailer's obligation to collect sales tax for remote sales is no longer based on the retailer's physical presence in the City, and the City's Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said decision. Evans has previously adopted state standardized sales tax definitions and adopting this additional language into the municipal code will further efforts of uniform guidance.

As a result of this change, Senate Bill 19-006 requires the Colorado Department of Revenue to implement a system for accepting and processing returns and payments for the sales and use tax levied to the State and local tax jurisdictions.

The State of Colorado Sales and Use Tax Software System (SUTS) project led by a taskforce group, selected the vendor MUNIRevs to create a single filing portal. This portal will allow businesses with taxable transactions in the State of Colorado to file a single sales and use tax return, for all participating jurisdictions. A system named TTR will also be utilized for GIS capability to allow businesses to search delivery locations and gain information on taxing jurisdictions and applicable sales and use tax rates.

It is voluntary for Evans to participate, and the main benefit is anticipated timeliness of collections from businesses who do not have a physical presence in the City of Evans. These businesses will easily be able to identify the applicable taxes, file and remit in one single filing.

The payments received on Evans' behalf will be batched and remitted automatically to the City. The MUNIRevs system is a Colorado based company who integrates very well with our current software, Caselle. Staff does not foresee any issues with collection of data, or payments from the MUNIRevs platform.

An agreement is required between the Colorado Department of Revenue and the City of Evans to participate in the software system.

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**FINANCIAL SUMMARY:**

The cost to participate is \$1.00 per ACH batch of payments Evans receives from the State.

The City has a potential for increased sales tax collections as this process will require payment of Evans' sales tax rate for sales into the city limits. Taxpayers with few sales into smaller cities may inadvertently miss remitting proper sales tax if they had to file separate returns specifically for the local jurisdiction.

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**RECOMMENDATION:**

*Staff recommends approval of the agreement with Colorado Department of Revenue to participate in the SUTS (Sales and Use Tax Software) System and adoption of Ordinance No. 728-20 to maintain uniform tax guidance with the State definitions.*

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**SUGGESTED MOTIONS:**

*"I move approve the Sales and Use Tax Software user agreement, and to adopt Ordinance No. 728-20 on first reading."*

*"I move to deny the Sales and Use Tax Software user agreement and Ordinance No. 728-20."*

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**ATTACHMENTS:**

- Ordinance No. 728-20
- SUTS User Agreement

**CITY OF EVANS, COLORADO**

**ORDINANCE NO. 728-20**

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 3.04 OF THE EVANS MUNICIPAL CODE TO ESTABLISH ECONOMIC NEXUS FOR RETAILERS WITHOUT PHYSICAL PRESENCE IN THE STATE; REQUIRE MARKETPLACE FACILITATORS TO COLLECT; AND REMIT SALES TAXES FOR SALES MADE BY MARKETPLACE SELLERS ON THE MARKETPLACE FACILITATOR'S MARKETPLACE.**

**WHEREAS**, the City of Evans Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

**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**, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use tax is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

**WHEREAS**, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code (the "Code"), under which City sales tax is levied on all sales and purchases of tangible personal property at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

**WHEREAS**, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State ("Remote Sales"); and

**WHEREAS**, based upon such decision, the retailer's obligation to collect sales tax on Remote Sales is no longer based on the retailer's physical presence in the City and the City's Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

**WHEREAS**, the delivery of goods and services into the City rely on and burden local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

**WHEREAS**, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the state and its respective communities, resulting in fewer jobs and increasing the

share of taxes to those consumers who buy from competitors with a physical presence in the state and its municipalities; and

**WHEREAS**, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the City, but do have a taxable connection with the City;

**WHEREAS**, this ordinance provides a safe harbor to those who transact limited sales within the City; and

**WHEREAS**, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales would allow remote sale customers to unfairly evade a lawful tax and permit an inequitable exception that prevents market participants from competing on an even playing field; and

**WHEREAS**, the City Council adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers without physical presence in the State and require marketplace facilitators to collect and remit sales tax for sales made by marketplace sellers on the marketplace facilitator's marketplace.

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

**Section 1:** Title 3, Chapter 3.04, Section 3.04.030 of the Evans Municipal Code is hereby amended to add the following underlined language:

**“Engaged in Business in the City”** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; ~~or~~ (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus.

**Section 2:** Title 3, Chapter 3.04, Section 3.04.030 of the Evans Municipal Code is hereby further amended to add the following underlined language:

**“Retailer”** means any vendor or person selling, leasing, renting, or granting a license to use tangible personal property or services at retail or otherwise selling articles of tangible personal property or taxable services to purchasers, as defined herein. The term “Retailer” shall include, but is not limited to, any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;
- (5) Marketplace facilitator or marketplace seller engaged in business in the city.

**Section 3:** Title 3, Chapter 3.04, Section 3.04.030 of the Code is hereby further amended by the addition of the following definitions:

**“Economic Nexus”** means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person makes retail sales into the City, and:

- (A) In the previous calendar year, the person has made retail sales into the state exceeding the state threshold; or
- (B) In the current calendar year, 90 days has passed following the month in which the person has made retail sales into the state exceeding the state threshold.

**“Marketplace”** means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

**“Marketplace Facilitator”**

(A) Means a person who:

- (1) Contracts with a marketplace seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;

- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller.

(B) “Marketplace Facilitator” does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

**“Marketplace Seller”** means a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

**Section 4:** Title 3, Chapter 3.04, Section 3.04.030 of the Code is hereby further amended by deleting the definition of the term *Vendor* as follows:

~~*Vendor* means a retailer, merchant, jobber, dealer or any other person selling articles of tangible personal property or taxable services to purchasers, as defined herein.~~

**Section 5:** Title 3, Chapter 3.04 of the Evans Municipal Code is hereby amended by the addition of Section 3.04.270 to read in its entirety as follows:

**Title 3, Chapter 3.04, Section 3.04.270  
Marketplace Sales**

- Sec. 3.04.270(A) Marketplace Facilitator Liability.
- Sec. 3.04.270(B) Exception to Marketplace Facilitator Liability.
- Sec. 3.04.270(C) Marketplace Seller Liability.

(A)

- (1) A marketplace facilitator engaged in business in the city is required to collect and remit sales or use tax on all taxable sales made by the marketplace facilitator, or facilitated for marketplace sellers to customers in the city, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales or use tax had the sale not been facilitated by the marketplace facilitator. A marketplace facilitator has all the liabilities, obligations, and rights of a retailer under Chapter 3.04 of the City of Evans Municipal Code.
- (2) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this

article if it also offers for sale tangible personal property, products, or services through other means.

- (3) Except as provided in subsection (B)(1) of this section, a marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
  - a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
  - b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(B)

- (1) If a marketplace facilitator demonstrates to the satisfaction of the Treasurer that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, products, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest. The Treasurer will determine the length of time that the marketplace facilitator is relieved of liability to remit tax hereunder.
- (2) If a marketplace facilitator is relieved of liability under subsection (B)(1) of this section, the marketplace seller is liable under this section for tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
- (3) This subsection (B) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller that is an affiliate of the marketplace facilitator.

(C) With respect to any sale a marketplace seller makes that is not facilitated by a marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

**Section 6:** This ordinance shall become effective on the first day of the month that is at least thirty (30) days after date of its adoption.

**Section 7:** 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 8.** 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 21<sup>st</sup> 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 \_\_\_\_\_, 2020.**

**ATTEST: CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Karen Frawley, City Clerk

BY: \_\_\_\_\_  
Brian Rudy, Mayor

## **AGREEMENT REGARDING DEPARTMENT OF REVENUE SALES AND USE TAX SOFTWARE (“SUTS SYSTEM”)**

This agreement regarding the SUTS System (“**Agreement**”) is entered between the Colorado Department of Revenue (“**CDOR**”) and the undersigned home rule local taxing jurisdiction (“**Jurisdiction,**” collectively, “**the Parties**”) for the purposes of permitting access to the SUTS System and its related tax information look up tool as described in this Agreement. The SUTS System permits the acceptance of returns and processing of payments for the sales and use tax levied by the state and any local taxing jurisdictions in accord with the objectives of SB19-006. To further those objectives here, the Parties agree to the following:

### **AGREEMENT**

CDOR grants Jurisdiction access to the SUTS System for Jurisdiction’s use in the collection and payment of Sales and Use tax under the terms set forth in this Agreement.

#### **A. Purpose of Agreement**

Pursuant to Senate Bill 19-006, CDOR has contracted with vendors, including at this time, MUNIREvs, Inc. and Transaction Tax Resources, Inc., Fast Enterprises, LLC, and others, which may change from time to time (collectively, “Vendors”) to provide a sales and use tax simplification system that allows taxpayers to look up and remit sales and use taxes through a single portal managed by Vendors and held in trust for the benefit of the Jurisdiction.

#### **B. Definitions**

- 1) “Confidential Information” means any information derived from the SUTS System, including but not limited to taxpayer information, return information, and “personally identifiable information,” as defined in section 24-73-101(4) (b), C.R.S.
- 2) A "Security Incident," has the meaning set forth in section 24-37.5-402(10), C.R.S., which is “an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources. Security incidents include but are not limited to: a) detection of a virus, worm, malware, etc; b) unauthorized use of an information resource; c) unauthorized modification of an information resource; d) theft or diversion of an information resource; e) theft or diversion of property using an information resource, and f) vandalism or other damage to an information resource.”

- 3) "Taxpayer" means any individual or business required to remit sales or use taxes to a taxing jurisdiction.
- 4) "Sales and Use Tax" means sales and use tax collected by Taxpayers and remitted to a jurisdiction by Taxpayers. Sales and Use Tax does not include excise taxes or other taxes or fees that a jurisdiction requires taxpayers to pay.

### **C. Confidentiality.**

- 1) CDOR agrees to continually maintain a secure place in which Confidential Information will be stored, regardless of whether Confidential Information is in physical or electronic form and will restrict access to Confidential Information to persons whose duties and responsibilities require such access. All third-party contractors who need such access for purposes consistent with this Agreement shall sign confidentiality agreements with CDOR or Jurisdiction no less restrictive than the confidentiality terms of this Agreement.
- 2) Except as may be ordered by a court of competent jurisdiction, no Confidential Information obtained pursuant to this Agreement shall be disclosed by CDOR or Jurisdiction to any person or entity not authorized to receive such information by the laws of the Jurisdiction or the State of Colorado.
- 3) If CDOR or Jurisdiction is served with a request for Confidential Information, CDOR or Jurisdiction shall use reasonable efforts to provide notice to the other Party within such time that CDOR or Jurisdiction may intervene and seek a protective order or other relief if it so chooses.
- 4) The information obtained pursuant to this Agreement shall be used only for the purpose of administration and enforcement of the sales and/or use tax laws of the Jurisdiction or the State of Colorado.
- 5) Nothing in this agreement shall prevent a Jurisdiction from contacting their Taxpayers for auditing or other purposes.
- 6) If either party becomes aware of any Security Incident, they shall notify the other immediately and cooperate with one another regarding recovery, remediation, and the necessity to involve law enforcement.

### **D. Payments of Taxes to Jurisdiction.**

- 1) All funds deposited by a Taxpayer shall be and shall remain the property of Jurisdiction held in trust until transferred to Jurisdiction. Deposited remittances

shall be transferred to Jurisdiction as soon as the funds have settled with the SUTS bank following NACHA guidelines.

2) If any Taxpayer payment is returned via an ACH or credit card charge-back against the account past the settlement process above, that Jurisdiction will pay applicable amounts back to the SUTS System within five banking days of notification of return.

### **E. Data and Reports.**

1) Jurisdiction will have access to all information from tax forms processed in the SUTS System that involve transactions within the Jurisdiction via CSV file downloads, PDF files or some other manner that is mutually acceptable.

2) The following reports will be available to Jurisdiction with the SUTS System:

- a) Assessment Report: This report shows all assessments, by business and includes several filters.
- b) Form Data Report: The form data report provides the ability to see all data for a taxpayer's form (e.g., gross sales through all deductions).
- c) Business Comparison Reports by Month: Allows review of trends over time for particular businesses, or an audience of businesses.
- d) Business Contact Report.
- e) Missing Account Number Report for validating Jurisdiction's Local Account Number for each registered account in the SUTS System.

### **F. Support.**

CDOR will provide Taxpayer user support during regular, published State business hours. Support to Jurisdiction's administrative users for system questions is provided by Vendor specialists who will be available by email and phone Monday through Friday from 8:00 am to 5:00 pm Mountain Time, excluding Federal and State Holidays.

### **G. Retention of Data.**

The SUTS System will retain, for a minimum of three years, all data, records, returns, and information: a) submitted by Taxpayers to the SUTS System, b) derived from Taxpayer submissions, and c) transferred to Jurisdiction.

### **H. System Failure.**

If the SUTS System becomes disabled, CDOR will use good faith and reasonable

efforts to recover the system and all Jurisdiction data not already in the possession of Jurisdiction This recovery of the SUTS System and data will be conducted at no additional cost to Jurisdiction.

### **I. Reservation of Rights.**

The software, workflow processes, user interface, designs, know-how and other services and technologies which are the sole property provided by Vendors as part of the SUTS System and CDOR's agreements with Vendors will remain with Vendors and Jurisdiction will not have any right, title or interest in or to such items, including all associated intellectual property rights.

### **J. Restrictions on Use of The SUTS System.**

1) Jurisdiction *may not* a) sell, resell, rent or lease the SUTS System, b) use the SUTS System to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights, c) interfere with or disrupt the integrity or performance of the SUTS System, or d) attempt to gain unauthorized access to the SUTS System or its related systems or networks.

2) Jurisdiction may allow its third-party contractors to use the SUTS System solely on behalf of and for the benefit of Jurisdiction and only in compliance with the terms and conditions of this Agreement. Jurisdiction is responsible for compliance with the terms of this Agreement by its contractors.

### **K. Initial Setup.**

Jurisdiction shall furnish the following items in order to use the SUTS System:

1) Jurisdiction Depository Information: Jurisdiction will provide bank deposit information (routing & account number) to CDOR's appropriate Vendors within 5 days of signing this Agreement. This information will be utilized for the deposits of taxes, penalties, and interest from the SUTS System. It is the responsibility of Jurisdiction to provide updated depository information should this account need to be changed at any point in time.

2) Initial Account Number Validation: Jurisdiction will upload their local account numbers for their Taxpayers to the SUTS System using the SUTS standard upload format (e.g. Excel, CSV) as soon as is reasonable after signing this Agreement. CDOR will use this information to validate account numbers for businesses registering on the SUTS System with actual account numbers for each jurisdiction for accurate account information on SUTS System tax returns.

3) The local account numbers will include the Taxpayer's account number, business name, dba, FEIN#, address and any other contact information or the SUTS System to validate and match the registered account to Jurisdiction's account number.

4) The SUTS System will not activate for Jurisdiction for tax receipts until the Existing Account Number Data File has been provided to CDOR, imported to the SUTS System and validated by Vendor.

5) It is the responsibility of Jurisdiction to update the account numbers that need to be added or edited in the SUTS System in order to display the local account number on future tax returns generated from the SUTS System.

#### **L. Use Tax Purchase Details.**

Taxpayers filing tax returns through the SUTS System are not required to include use tax purchase details. Purchase details are typically required on Schedule B to tax returns required by local jurisdictions. However, nothing in this Agreement prevents Jurisdiction from requesting these use tax details directly from the Taxpayer.

#### **M. Business Licenses.**

The SUTS System will not require any Taxpayer to obtain separate Jurisdiction business licenses or any other license. Jurisdiction may, at Jurisdiction's discretion, use the information provided by the Taxpayer in the SUTS System to reach out separately and independently to their Jurisdiction's Taxpayers for licenses or any other requirements from the Jurisdiction that is not included in the SUTS System.

#### **N. Frequency of Tax Filings.**

Taxpayers may file tax returns via the SUTS System at the frequency which is required of Taxpayer for State taxes under CDOR regulations; however, Jurisdiction may request from CDOR that the Taxpayer may be moved to a more frequent filing, which will not be unreasonably denied.

#### **O. Jurisdiction New Account Review.**

When a Taxpayer submits a new registration with the SUTS System and does not have a Colorado Account Number, the SUTS System will require that the Taxpayer submit an online Sales Tax License Application and pay the State of Colorado license fee. The application and fee shall be sent to the CDOR for license issuance and account number creation for the Colorado Account Number. It is the

responsibility of the Jurisdiction to use the SUTS reports to include any new businesses in their external system of record and to update their local account number in the SUTS System using the procedures set forth above.

**P. Jurisdiction Rate Validation.**

- 1) Jurisdiction will provide written confirmation to Vendors of its sales and use tax rates, rules, and boundaries. Jurisdiction will use due care and make best efforts to provide accurate rates, rules, and boundaries.
- 2) Jurisdiction agrees to specify to Vendors authorized Jurisdiction users who are allowed to propose changes within the SUTS System administrative tools.
- 3) Jurisdiction will use best efforts to email Vendors or use the SUTS System administrative tools to notify Vendors of any tax rates, rules, boundaries, or other needed data changes 30 days before they are effective for them to be updated in the system. All notifications must include details on the changes and the period for which changes are effective.

**Q. Tax Data Integration.**

This Agreement does not provide a direct interface or integration to Jurisdiction’s system of record for sales and use tax. If a direct interface or custom format is desired by Jurisdiction to better integrate to Jurisdiction’s system of record, Jurisdiction may contact Vendor to discuss custom options, which may entail programming fees to be paid directly to the Vendor by the Jurisdiction.

**R. Licensed Documentation.**

All SUTS System user guides, sample data, marketing, training and other items provided through the SUTS System or by Vendors (“Licensed Documentation”) may be used and copied by Jurisdiction via a non-exclusive license for the duration of the Agreement for Jurisdiction’s use solely with the SUTS System according to the terms of this Agreement.

**S. Payment and Merchant Fees.**

Taxpayer pays credit, debit or any other merchant processor or bank fee associated with Taxpayer’s remittance payment, and the Jurisdiction agrees to pay the ACH Credit or Debit *transfer* fees from the SUTS System to Jurisdiction’s bank account, which is currently one dollar (\$1) per banking day, or approximately twenty dollars (\$20) per month for a Jurisdiction that gets a payment every banking day. The Jurisdiction will Pre-pay an amount of two hundred and sixty dollars (\$260) during

the SUTS onboarding process as a credit towards the transfer fees. Jurisdiction will replenish any funds used, paying in advance of each CDOR fiscal year on or before July 1 after receiving a notice of account and balance due by June 1.

#### **T. Additional Terms.**

- 1) **Governing Law.** This Agreement is governed by Colorado law without regard to conflicts of law principles.
- 2) **Survival of Terms.** Any terms that by their nature survive termination or expiration of this Agreement, will survive.
- 3) **Entire Agreement and Changes.** This Agreement constitutes the entire agreement between the Parties, and supersedes all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this Agreement is effective unless in a written instrument signed by both Parties.
- 4) **No Assignment.** Neither Party may assign or transfer this Agreement to a third party.
- 5) **Enforceability:** If any term of this Agreement is determined to be invalid or unenforceable, the other terms remain in effect.
- 6) **Notices:** All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (a) by hand with receipt required, (b) by certified or registered mail to such Party's principal representative at the address set forth below or (c), as an email with read receipt requested addressed as given herein. This contact information may be changed by notice submitted in accordance with this section.

For CDOR:

Name: Scott McKimmy

Title: Director, Business Information Group

Email: [Scott.McKimmy@state.co.us](mailto:Scott.McKimmy@state.co.us)

Address: 1707 Cole Blvd., Lakewood, CO 80401

Phone: 720-793-8117

For Jurisdiction: City of Evans

Name:   Brian Rudy  

Title:   Mayor  

Email:   brudy@evanscolorado.gov  

Address:   1100 37th Street, Evans CO 80620  

Phone:   970-475-1100

7) **Counterparts, Facsimiles and E-Mail.** This Agreement may be signed in any number of counterparts, which together shall constitute one and the same instrument. Original signatures of the Parties on copies of this Agreement transmitted by facsimile or electronically/scanned and e-mailed copies shall be deemed originals for purposes of this Agreement, and such copies shall be binding on all Parties.

8) **Authority to Execute Agreement.** Each person executing this Agreement on behalf of each Party represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the Jurisdiction and CDOR, respectively, and to bind Jurisdiction and CDOR, to all the terms, conditions, provisions, and obligations of this Agreement.

9) **Termination of Agreement:** CDOR or Jurisdiction may terminate this Agreement for any reason on 90 days written notice to the other Party. In the event of a breach of contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach of contract, at its sole expense, within 30 days after the delivery of written notice, the Party may terminate the contract. Notwithstanding any provision of this Agreement to the contrary, both Parties retain any statutory rights they may have to immediately terminate this Agreement in whole or in part in order to protect the public interest of their citizens.

10) **Limited Financial Obligation.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of either party not performed during the current fiscal year is subject to annual appropriation, so the obligation shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

11) **Limitation of Liability for CDOR.** CDOR, its employees, agents, including Vendors and assignees shall not be liable for any costs, expenses, claims, damages, liabilities, court fees and other amounts (including attorneys' fees and related costs) including but not limited to cost of delay, loss of data or information, failure of the SUTS system, loss of moneys remitted to SUTS, direct losses, consequential, special, indirect, incidental, punitive or exemplary loss incurred by Jurisdiction in relation to any services, including database access in connection with this Agreement.

12) **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, or of the Jurisdiction, 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.

<b>Jurisdiction Approval</b>	
By Brian Rudy	Title Mayor
*Signature	Date
Municipality or County of City of Evans	Date 7/21/2020
Jurisdiction Mailing Address 1100 37th Street, Evans, CO 80620	Appointee Phone Number
Appointee Name	Title
Appointee Signature	Appointee Email
Name of Chief Administrative Officer or Designee	Title
Chief Administrative Officer or Designee Signature	Chief Administrative Officer or Designee Email
* <input type="checkbox"/> By checking this box and signing above, I hereby represent, warrant, assure, and guarantee that I have full legal authority to execute this Agreement on behalf of the Jurisdiction and to bind Jurisdiction to all the terms, conditions, provisions, and obligations of this Agreement.	
<b>Colorado Department of Revenue Approval</b>	
By	Title
Signature	Date

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.F  
**SUBJECT:** Consideration of Resolution Number 24-2020 A Resolution Rescheduling the October 6, 2020 City Council Meeting  
**PRESENTED BY:** James L. Becklenberg, City Manager  
Karen Frawley, City Clerk

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**AGENDA ITEM DESCRIPTION:**

October 6, 2020 is a regularly scheduled City Council meeting, which due to the COVID-19 pandemic is when National Night Out has been rescheduled for. Staff has prepared an agenda item and required resolution that would facilitate rescheduling the City Council meeting to allow City Council Members the opportunity to attend various National Night Out events throughout the city. The City Council may wish to consider rescheduling this meeting to Monday, October 5, 2020 or another date in October to allow City Council Members to participate in National Night Out.

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

Should the City Council wish to reschedule the October 6, 2020 City Council Meeting, please consider adopting Resolution Number 24-2020

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**SUGGESTED MOTIONS:**

*"I move to adopt Resolution No. 24-2020."*

*"I move to deny the adoption of Resolution No. 24-2020."*

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**ATTACHMENTS:**

- Resolution Number 24-2020

**CITY OF EVANS, COLORADO**

**RESOLUTION NO. 24-2020**

**RESCHEDULING THE OCTOBER 6, 2020  
CITY COUNCIL MEETING**

**WHEREAS**, Section 3.13 of the Home Rule Charter of the City of Evans provides that times and numbers of regular City Council meetings shall be provided by ordinance and further that the City Council, may by resolution, change the time and place of any particular regular meeting, and

**WHEREAS**, Section 2.04.010 of the Evans Municipal Code provides that City Council meetings shall be on the first and third Tuesdays of every month, and

**WHEREAS**, due to the COVID-19 pandemic, National Night Out was rescheduled to October 6, 2020

**WHEREAS**, the first Tuesday in the month of October, 2020 is now National Night Out.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EVANS reschedules the October 6, 2020 City Council meeting to occur on Monday, October 5, 2020. The meeting will be held at 7:00 p.m. in Council Chambers, Evans Community Complex, 1100 37<sup>th</sup> Street, Evans, Colorado.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Evans on this 21<sup>st</sup> day of July, 2020.

CITY OF EVANS, COLORADO

By \_\_\_\_\_  
Brian Rudy, Mayor

ATTEST:

\_\_\_\_\_  
Karen Frawley, City Clerk

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# CITY COUNCIL AGENDA REPORT

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**DATE:** July 21, 2020  
**AGENDA ITEM:** 9.G  
**SUBJECT:** Consideration of Resolution Number 25-2020 – Appointment of the Evans Interim City Clerk  
**PRESENTED BY:** James L. Becklenberg, City Manager

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**AGENDA ITEM DESCRIPTION:**

With the recent resignation of the City Clerk, it is necessary to appoint an Interim City Clerk to fulfill the City Charter requirements of having a City Clerk as outlined in Section 4.7 of the City Charter. Section 4.7(a) of the Evans City Charter also provides for the City’s Manager’s appointment of the City Clerk, “with the approval by majority vote of the all members of the City Council.” Accordingly, staff is requesting the City Council to consider Resolution No. 25-2020 to ratify the appointment of Julie Roeder as the Interim City Clerk.

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

*Staff recommends adoption of Resolution No. 25-2020 to ratify the appointment of Julie Roeder as the Evans Interim City Clerk.*

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**SUGGESTED MOTIONS:**

*“I move to adopt Resolution No. 25-2020”*  
*“I move to deny the adoption of Resolution No. 25-2020”*

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**ATTACHMENTS:**

- Resolution Number 25-2020

**CITY OF EVANS, COLORADO**

**RESOLUTION NO. 25-2020**

**A RESOLUTION APPOINTING AN INTERIM CITY CLERK**

**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**, the Section 4.7 of the Evans City Charter provides that the City Clerk “shall be appointed and removed by the City Manager with the approval by a majority vote of all members of the City Council.”

**WHEREAS**, the City Clerk has recently resigned, resulting in a vacancy in the City Clerk position; and

**WHEREAS**, it is necessary for the City to appoint an Interim City Clerk ; and

**WHEREAS**, the City Manager has appointed Julie Roeder as the Interim City Clerk; and

**WHEREAS**, the City Council desires to approve the appointment of Julie Roeder as Interim City Clerk.

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

1. The City Council hereby approves the appointment of Julie Roeder as Interim City Clerk, and confers upon her all the rights and responsibilities of the position of the City Clerk until such time as a replacement City Clerk is hired.
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.
3. Repeal. Existing resolutions or parts of resolutions covering the same matters embraced in this Resolution are hereby repealed and all Resolutions or parts of Resolutions inconsistent with the provisions of this Resolution are hereby repealed.

**PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL  
OF THE CITY OF EVANS ON THIS 21ST DAY OF JULY, 2020.**

ATTEST:

CITY OF EVANS, COLORADO

\_\_\_\_\_  
Julie Roeder, Interim City Clerk

BY: \_\_\_\_\_  
Brian Rudy, Mayor

## City Managers Weekly City Council Update July 17, 2020

<b>City Clerk's Office</b>	<ul style="list-style-type: none"> <li>Due to Karen Frawley's resignation as City Clerk, Karen has been training additional staff on key position functions over the last week. We are incredibly grateful to Karen for her professionalism and the extraordinary effort she has exhibited during this transition process. Karen's last day is July 21<sup>st</sup>. It is the Administrative Services Director's interest to cover her position internally while the City's proceeds with a recruitment and selection process. We are fortunate and appreciative there is internal staff that is willing to take on additional responsibility in the interim. The City has received 98 applications/resumes thus far for the City Clerk position, including three internal applicants. Although the position is posted Open Until Filled, the first review date is scheduled for July 27<sup>th</sup>.</li> </ul>
<b>Communications</b>	<ul style="list-style-type: none"> <li>Staff began producing the Evans Express monthly newsletter in-house instead of contracting to third party in an effort to conserve budgetary expenses.</li> <li>Staff produced video promoting CPAC.</li> <li>Staff attended Jared Polis mask mandate statewide conference call.</li> <li>Staff met with Engineering and Parks to discuss high level infrastructure projects.</li> <li>Staff designed Qalert descriptions, app organization, and graphics.</li> <li>Staff continues to promote Planning's community surveys.</li> </ul>
<b>Human Resources/Risk Management</b>	<ul style="list-style-type: none"> <li>Staff received a 12-month utilization report from Colorado Employer Benefit Trust (CEBT) through June 2020 for the City's medical plans. The City's 12-month loss ratio (claims paid versus premium contributed) was 103.6%. This is down from May 2020's 12-month loss ratio which was reported at 106.7%. However, this is up from June 2019's 12-month loss ratio which was reported at 65.7%. The CEBT board meets July 29<sup>th</sup> to set member rates for 2021. The City anticipates receiving its renewal on August 7<sup>th</sup>.</li> </ul>
<b>Finance</b>	<ul style="list-style-type: none"> <li>Sales tax collections YTD reported a (5.7%) decrease compared to prior year. Collections for the May 2020 month rebounded significantly, totaling \$763,305, which is even with May 2019, and a 33% increase from April 2020.</li> </ul> <p>Every Category except Industrial and Utilities increased from the prior month. As shown below, the categories Industrial (i.e. energy, manufacturing), Restaurant, and Motor Vehicle comprise most of the YTD decline.</p> <p>Collections for the month of May 2020 in the General Fund subtotal (which does not include food for home consumption) reported a 6% decrease from May 2019 and a 41% increase from April 2020.</p>

May 2020			
Category	2019 YTD	2020 YTD	YOY % Change
<b>Storefront Retail</b>	677,747	681,629	1%
<b>Base</b>	800,816	812,004	1%
<b>Industrial</b>	373,976	173,220	-54%
<b>Restaurant</b>	238,430	186,622	-22%
<b>Convenience/Fuel</b>	146,438	131,315	-10%
<b>Utilities</b>	287,058	316,006	10%
<b>Motor Vehicle</b>	746,349	609,560	-18%
<b>Use</b>	9,123	10,980	20%
<b>General Fund Subtotal</b>	<b>3,279,937</b>	<b>2,921,337</b>	<b>-11%</b>
<b>Food Home</b>	446,815	591,734	32%
<b>Total</b>	<b>3,726,752</b>	<b>3,513,072</b>	<b>-5.7%</b>
<b>Lodging</b>	26,596	17,026	-36%
<b>Greeley IGA</b>	501,743	519,323	4%

### Recreation

- Staff has been working on creating health and safety protocols for the upcoming fall season of sports.
- There continues to be an increase in visits to the workout facilities (pushing 100!) and in the SilverSneakers classes.
- There are 25 children participating in summer baseball. What a great sight to see at City Park.

## Planning

### City of Evans Land Use Applications

Name	Case #	Acres	Location	Brief description	Planning Commission	City Council	City Council
<b>Submitted Applications</b>							
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 (Hojo)	20-SP-02	<1	industrial Park	Site plan for business/storage	TBD	TBD	NA
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 exceptions	6/23 for COZ	7/7/2020	7/21/2020
Jr's Trucking	To be set up after completeness review	<1	1240 43rd Street	Truck Parking in the Industrial Park	Administrative		
<b>Approved, pending recording, Development Agreement, Etc.</b>							
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 approved	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
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 Rvers Parkway & 37th	1097 Res, 20 Acres C, 50 acres OS; Final Plat approved by CC; Awaiting finalization of DA			
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 RFP for the Master Plan is due on July 24, 2020.
- Planning Commission will be appointed to the Zoning Board of Appeals by City Council on July 21.
- The last of the voting events for the Arrowhead and Tract O open spaces has been completed and the projected amenities have been determined.

## Neighborhood Services

- The Riverside Park open space restoration project is nearly complete with approximately one week of work remaining.



- WCYCC toured the wastewater treatment plant on Tuesday as part of the educational requirement of the GOCO grant.
- Staff coordinated with Volunteers for Outdoor Colorado to plan multiple volunteer events in 2020, and into 2021. Volunteers will assist in spreading any remaining wood mulch as a result of the project, reseeding disturbed areas with native grasses, and returning next spring to continue with the management of noxious weeds in the area.
- Code Enforcement completed 106 activities between Thursday, July 9 and Wednesday, July 15 including the issuance of 18 citations. In addition to qualitative statistics, code enforcement also provides customer service through phone calls, emails, and in person meeting with residents at their properties. Multiple calls for building violations and permitting questions were referred to the building department. The photos below are examples of a weed violation cited this week, and a large dead tree in progress of being removed.



- Code Enforcement assisted with multiple parking violation complaints related to abandoned vehicles. Without the Community Service Technician position, Neighborhood Services staff are tagging abandoned vehicles, and if they are not removed from the street within 72 hours, they are reported to the Police Department for towing.
- Staff contacted residents who had set up and filled a large above ground swimming pool in the street and the pool was successfully removed from the street within 24 hours.

- Staff has attended multiple sessions of the virtual 2020 Esri User Conference, learning more about the possibilities of GIS in Neighborhood Services.
- Courtesy letters were mailed to the remaining six property owners in the industrial park who are using land without a land use permit. These property owners are being provided a voluntary compliance period through the remainder of 2020 to work with Community and Economic Developments to bring their properties into compliance before Code Enforcement initiates the formal enforcement process.
- Staff is reviewing the ability for staff to work remotely including verifying access through a virtual private network, improvements to mobile printing processes, and looking into options for cell phone number masking. This will allow staff to make calls from cell phones that appear to come from the City of Evans, instead of appearing as a private cell phone number, or blocked phone number.
- Staff is working on the early stages of revising the sign code by identifying portions of the existing code that are problematic.
- Staff is working with legal staff to address section 1.17 of the code, identifying procedural and substantive changes that should be made to make the code more effective and clarify ambiguities.
- Staff attained quotes for stone benches for the open spaces at Arrowhead and Tuscany as part of preparations for a GOCO grant application.
- Preparations are being made for the Fall Cleanup Event taking place on October 3-4, and 10-11. Staff is preparing options for the structure and operation of the fall event, and for the future of the program.
- Staff is communicating with representatives for Laserfiche to explore potential software solutions for Neighborhood Services that integrate with GIS, and financial software programs.
- Staff prepared reports and met with finance staff regarding code enforcement revenues and 2021 budgeting.
- Documents were prepared for an appeal hearing scheduled for August 13.

## Engineering

- 2020 Asphalt Patch Project – Work is progressing in East Evans and should be wrapping up in the next couple of weeks.
- 2020 Surface Treatment Project - Staff received two bids for the project and are preparing staff reports for the 08/04 City Council meeting.
- 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.
- Traffic Signal 34<sup>th</sup> Street / 35<sup>th</sup> Avenue – Staff along with Morton Electric are working with XCEL to schedule the caisson and pole installation on the northeast corner of the intersection for sometime in September. Morton will have to coordinate this installation with XCEL so that XCEL can shut down the power in the lines during each installation.

- XCEL 35<sup>th</sup> Avenue – XCEL has connected the power to the irrigation system on 35<sup>th</sup> Avenue. Additional work is needed by the contractor before we can test the irrigation system. This is scheduled to happen in the next few weeks.
- XCEL 23<sup>rd</sup> Avenue – XCEL is working on scheduling the relocation of the poles in the proposed 23<sup>rd</sup> Avenue to happen concurrently with our road / waterline construction.
- XCEL 47<sup>th</sup> Avenue – XCEL is completing the design to underground the distribution lines so that these power lines along with Century Link lines can be removed from the poles and placed underground ahead of the road construction in 2021. The transmission poles will also be moved out of the future roadway.
- XCEL 11<sup>th</sup> Avenue – Staff has instructed the XCEL to proceed with the undergrounding of the distribution lines along 11<sup>th</sup> Avenue from 32<sup>nd</sup> Street north to 30<sup>th</sup> Street.
- East Side Storm Sewer – Staff has submitted several letters and other documentation to CDOT requesting a variance to open cut the storm sewer under Highway 85 rather than tunnel. The open cut method can potentially save the City money and reduce the risk of settlement or other issues under the roadway.
- Lagoon Decommissioning – Staff & our consultant are working on the decommissioned grading plan for approval by CDPHE.
- Staff continues to work on development reviews and development agreements as they are received.
- 23rd Ave – Staff received a few questions as of the deadline on 07/16 and will issue an addendum on 07/17. Bid opening is scheduled for 07/23/2020
- East Side Storm Sewer Environmental Assessments – Staff is done with this project unless we receive any further comments from CDPHE.
- Evans Ditch flume project- Staff is waiting to hear from the River Commissioners staff for approval of our proposed metering technology.
- Neville's Crossing Non-Potable Direct Supply – The system is currently using non-potable water. Maintenance work is in progress on the pump backwash valve and piping.
- 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 customers along 49<sup>th</sup> St. Planning on meeting to finalize the water exchange in the next week or so.
- Water Efficiency Plan – Staff will present the Draft report to the Water & Sewer Board on July 16. Following approval of the Board, the WEP will be presented to City Council for preliminary approval.
- 17th Avenue Waterline – Global Underground will complete the project on July 17. A punch list walk through is scheduled for July 20 with project closeout to follow.
- Prairie Heights Middle School - Staff is nearing completion of an analysis to consider granting credit for unused, dedicated water in compliance with the IGA.
- 37th St. Overlay Project – The project is advertised on bidnet and the City website as of 07/15. A pre bid is scheduled for 07/22. Bid are scheduled to be received on 08/05.

	<ul style="list-style-type: none"> <li>• Tuscany Non-Pot/Tract O – Staff has received bids for the pump station pump skid and is reviewing the quotes. Staff is reviewing references and preparing Staff Report for 07/21/2020 City Council meeting.</li> <li>• Staff is working with CDOT to close out 31st Street and 35th Avenue projects.</li> <li>• 47th Avenue –Bid opening occurred on Thursday 07/02/2020. DeFalco construction was the low bidder. Staff is preparing a staff report for the 07/21/20 City Council meeting.</li> <li>• 37<sup>th</sup> Street Widening – Staff is working with the RockSol team to start putting the plans together for the phased construction of this project. Staff is working with the team to define ROW along the corridor to determine how much ROW will need to be acquired.</li> <li>• 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.</li> <li>• Willowbrook NP System Purchase – The City attorney has completed a review of the draft Sales Agreement and has forwarded to the Sellers attorney.</li> <li>• EQR dedication requirements - Staff is working with several developments to determine the EQR dedication requirements.</li> <li>• Inspection and Testing Services contract for 23rd and 47th Avenue - Staff is working on staff report to recommend Geocal to provide these services. They were the lowest qualified proposer of the 8 firms that submitted proposals.</li> </ul>
<p><b>Economic Development/ ERA</b></p>	<ul style="list-style-type: none"> <li>• This week, staff met with representatives from Innovative Foods to discuss their plans to raze and rebuild at 4320 Industrial Parkway. We will work closely with them to ensure the project moves as quickly as possible.</li> <li>• The Greeley Area Recovery Fund is launching a second phase today, limited for now to businesses that were previously turned down for a grant. This \$50,000 round is intended specifically for marketing needs and grants will range from \$500 - \$1000. Marketing grants are open to all Greeley area businesses, including companies in Evans.</li> </ul>
<p><b>Parks</b></p>	<ul style="list-style-type: none"> <li>• Staff replaced the 12-foot spiral slide at Ridge Park.</li> </ul>



- Staff located and opened a space for an interment on July 17, 2020.
- Staff awarded the 11<sup>th</sup> Avenue Landscaping Improvement Project to Integrated Site Services.
- Weed spraying continues as weather allows.



### PW Operations

- Staff are grading dirt roads. This week Trinidad & Pueblo Street as well as 54<sup>th</sup> Street Road were done.
- Staff swept West Service Road, 11<sup>th</sup> Avenue, 34<sup>th</sup> Street and the Ridge Subdivision.
- Staff performed 64 water shut offs to delinquent accounts.
- Staff have been performing utility locates this week.
- Staff continue to fill potholes, this week the emphasis was on 49<sup>th</sup> Street.
- Staff completed 14 work orders and responded to 10 phone inquiries for items related to water meters, high usage, and new meter installation.

### Wastewater Operations

- Staff assisted in the wasting pond liner instillation and repairs.
- Staff started filling the wasting pond and began working air pockets out from underneath the liner.
- Staff has been performing locate services this week.
- Staff performed preventative maintenance on the HVAC units at the plant.
- Seasonal grounds maintenance is ongoing.

