

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

## AGENDA

Regular Meeting  
July 21, 2015 - 7:30 p.m.

City Council meeting packets are prepared several days prior to the meetings. This information is reviewed and studied by the Councilmembers, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. An informational packet is available for public inspection on our website at [www.cityofevans.org](http://www.cityofevans.org) and posted immediately on the bulletin board adjacent to the Council Chambers.

1. CALL TO ORDER

2. PLEDGE

3. ROLL CALL

Mayor:	John Morris
Mayor Pro-Tem:	Jay Schaffer
Council:	Laura Brown
	Mark Clark
	Sherri Finn
	Lance Homann
	Brian Rudy

4. RECOGNITIONS

A. July Yard of the Month

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 concerning issues not on the agenda, this is the time for you to do so. When you are recognized, please step to the podium, state your name and address then address City Council. Your comments will 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

- A. Approval of Minutes of the Special Meeting of July 7, 2015
- B. Approval of Minutes of the Regular Meeting of July 7, 2015
- C. Ordinance No. 625-15 ARB Amended Annexation Agreement (2<sup>nd</sup> Reading)

8. NEW BUSINESS

- A. Resolution No. 20-2015 – Highway 34 Coalition
- B. 36<sup>th</sup> Street Storm Sewer (37<sup>th</sup> Street Storm Sewer Project – Phase II Change Order)
- C. Preliminary Budget Revision – Union Colony Pedestrian Crossing
- D. 2015 Asphalt Patch Bid Award

9. REPORTS

- A. City Manager
- B. City Attorney

10. AUDIENCE PARTICIPATION (general comments)

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

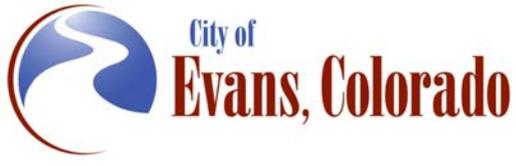
11. EXECUTIVE SESSION

- A. For the purpose of discussing matters that may be subject to negotiations pursuant to C.R.S. 24-6-402(4)(e)

12. ADJOURNMENT

**CITY OF EVANS – MISSION STATEMENT**

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



Community Development

Kyle Fehr | 970.475.1115 | kfehr@evanscolorado.gov

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July 16, 2015

Trella Bradley  
3229 Pheasant St.  
Evans, CO 80620

Re: City of Evans Yard of the Month

Congratulations!

On behalf of the City of Evans, we are pleased to announce that your yard has been selected as the July, Evans Yard of the Month!

The Evans Yard of the Month program recognizes outstanding and beautiful homes and businesses throughout the city. One lucky and deserving winner is selected by Neighborhood Services staff each month and an overall winner will be chosen at the end of the year.

For being July's Yard of the Month winner, we have a \$25 gift certificate to Happy Life Gardens located at 2000 37<sup>th</sup> Street in Evans. Your prize can be picked up at the Evans City Council meeting on July 21, 2015 at 7:30pm in the council chambers, located at 1100 37<sup>th</sup> Street.

Once again, congratulations and thank you for taking pride in your home and in Evans!

Sincerely,





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## COUNCIL COMMUNICATION

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**DATE:** July 21, 2015

**AGENDA ITEM:** 7.A and 7.B

**SUBJECT:** Approval of the Minutes of July 7, 2015 City Council Meetings

**PRESENTED BY:** 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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**MINUTES**  
**EVANS SPECIAL CITY COUNCIL MEETING**  
July 7, 2015

**CALL TO ORDER**

Mayor Morris called the meeting to order at 7:00 p.m.

**ROLL CALL**

Present: Mayor Morris, Mayor Pro-Tem Schaffer, Council Members Brown, Clark, Finn, Homann, and Rudy

**EXECUTIVE SESSION**

- A. For the discussion of a personnel matter (for the performance evaluations of Municipal Judge and Prosecuting Attorney's) pursuant to C.R.S. 24-6-402(4)(f).**

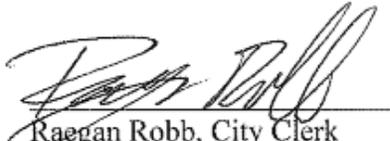
Mayor Pro-Tem made the motion, seconded by Council Member Clark, to adjourn into executive session for the discussion of a personnel matter pursuant to C.R.S. 24-6-204(4)(f). The motion passed with all voting in favor thereof.

The City Council adjourned into executive session at 7:03 p.m.

The executive session concluded at 7:26 p.m.

**ADJOURNMENT**

The special meeting adjourned at 7:30 p.m.

  
Raegan Robb, City Clerk

**MINUTES**  
**EVANS CITY COUNCIL**  
July 7, 2015

**CALL TO ORDER**

Mayor Morris called the meeting to order at 7:31 p.m.

**PLEDGE**

**ROLL CALL**

Present: Mayor Morris, Mayor Pro-Tem Schaffer, Council Members Brown, Clark, Finn, Homann, and Rudy

**RECOGNITIONS**

**A. Flood Recovery Task Force**

Mayor Morris spoke about the formation of the Flood Recovery Task Force and the important contribution of the Task Force members to the City of Evans. Mayor Morris distributed awards to the members of the Task Force and thanked them for their service.

**APPOINTMENTS**

**A. Evans Zoning Board of Appeals Appointment**

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Homann, to appoint Mr. Daniel Utery to the City of Evans Zoning Board of Appeals for a term to expire on July 7, 2020.

The motion passed with all voting in favor thereof.

**B. Evans Planning Commission Appointment**

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy to appoint Mr. Billy Castillo to the City of Evans Planning Commission for a term to expire on July 7, 2020.

The motion passed with all voting in favor thereof.

**AUDIENCE PARTICIPATION**

Dawn O'Keefe, from the Nevilles Crossing sub-division, addressed City Council to express concerns about her building permit that expired with the City. Ms. O'Keefe explained her situation that caused her building permit to expire.

## Evans City Council

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Mayor Morris asked City staff to follow-up with Ms. O'Keefe.

Dolores Hagel, 3600 Montrose Street, Evans, addressed City Council to express concerns about fireworks in Evans and the negative impact that fireworks may have on animals, war veterans, and refugees in the community. She asked about what types of fireworks the City allows and how the regulations are communicated with residents and made some suggestions to mitigate illegal fireworks during the July 4<sup>th</sup> weekend.

Mayor Morris agreed that the fireworks were problematic over the July 4<sup>th</sup> weekend.

Aden Hogan, City Manager explained that the fireworks ordinance was on the website and discussed problems with illegal fireworks sold outside of city limits. Mr. Hogan also suggested that the Citizen's Police Task Force address this issue and asked Ms. Hagel to follow-up with City staff.

Bill Sheel, 27 Dos Rios, Greeley, addressed Evans City Council to discuss frustration with his residential development in Driftwood Plaza, which was approved by City Council on July 1, 2014. Mr. Sheel discussed the City's requirements for this project and explained that there have been several obstacles to getting the project approved.

Wynona Sheel, 27 Dos Rios, Greeley, discussed her own frustration with getting the Driftwood Plaza development completed. Ms. Sheel talked about the benefits that the development will bring to the City and spoke about her frustrations with the project being delayed.

Ms. Sheel also discussed problems with the recent weeds and mosquitos around the City. She asked who to contact about mosquito spraying and asked the City to mow their own weeds if the City is citing property owners for weeds.

Mayor Morris thanked her for her time, and talked about the schedule for the Driftwood Plaza development.

### **APPROVAL OF AGENDA**

Raegan Robb, City Clerk, amended the agenda to move agenda item 8.B concerning an agreement with Avi Rocklin and the City Code Fee, to item 9.D under New Business.

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

**CONSENT AGENDA**

**B. Approval of Minutes of the Regular Meeting of June 15, 2015**

**~~C. Code Fee Agreement with Avi Roeklin~~**

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy to approve the Consent Agenda, as amended.

The motion passed with all voting in favor thereof.

**NEW BUSINESS**

**A. Public Hearing- Ordinance No. 625-15 ARB Amended Annexation Agreement**

Mayor Morris opened the public hearing at 7:58 p.m.

Fred Starr, Evans Public Works Director, explained that the amendment annexation under Ordinance No. 625-15 changes a previous annexation originally approved for the Great Western Ethanol LLC facility in 2004, and subsequently modified in 2007.

Mr. Starr discussed the reasons for the amendment since the project proposed by ARB is different that the ethanol plant. He referred to the site development master plan, which has been used as a conceptual plan and attached to the Ordinance under Exhibit B.

Mayor Morris asked about the agreement requiring road maintenance for the access roads that will be used for the project.

Mr. Starr explained that the agreement requires road maintenance by ARB, but will not require that the section of road be paved until future development in the area requires paving.

Mayor Morris asked how the City will ensure that road maintenance occurs.

Mr. Starr explained that the City engineer will complete site visits to ensure that the road is being maintained on a regular basis according to the agreement.

Adam Bedard, Vice President, ARB Midstream, discussed the benefits of the project and asked Council to support the project through the approval of the annexation request.

Mayor Morris thanked Mr. Bedard for their patience with the phases of the project and asked for any testimony in support or against the annexation agreement—there was none.

Mayor Morris closed the public hearing at 8:05 p.m. and discussed his support for the annexation agreement and the ARB Midstream project.

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Rudy, to adopt the annexation agreement and Ordinance No. 625-15 on first reading. The motion passed with all voting in favor thereof.

**B. Resolution No. 19-2015 - Authorizing the Mayor's Signature on a Grant Contract with CDOT for the US Hwy 85 Access Control at 31<sup>st</sup> Street Project**

Mr. Starr, explained that the City applied for federal STP-METRO grant funds through the North Front Range Metropolitan Planning Organization (NFRMPO) for the design and construction of access control improvements at US HWY 85, the West Service Road, and 31<sup>st</sup> Street. Mr. Starr explained why the project was now being funded when it was originally approved in 2012 and asked for Council to approve the grant contract.

Mayor Morris asked if this project was part of the 2015 budget and clarified that these were the grant funds received through the NFRMPO.

Mr. Starr confirmed that these were funds received through the NFRMPO and were part of the 2015 budget.

Mayor Morris discussed his support for the project.

Council Member Clark made the motion, seconded by Council Member Rudy, to adopt Resolution No. 19-2015. The motion passed with all voting in favor thereof.

**C. Adoption of Evans Riverside Area Master Plan**

Sheryl Trent, City Economic Development Director, explained that the City applied to the Department of Local Affairs (DOLA) to develop a master plan for the Riverside area of Evans following the Flood Disaster of 2013. Ms. Trent discussed the history of the City of Evans and the early growth in the east side of the City. Lastly, she explained that the master plan was not unanimously adopted by the Flood Task Force due to some different opinions on the Task Force.

Ms. Trent introduced Matrix Design Group and talked about all of the work that has gone into the Riverside Area Master Plan by Matrix and the Flood Recovery Task Force. She introduced Bill Cunningham, with Ricker Cunningham who completed the economic study and why this was an important component of the master plan. Ms. Trent also introduced Mark Landess, from Matrix, who discussed the following components of the Master Plan: the project boundaries, the original project goals, the process, analysis, public outreach, plan alternatives, the preferred plan, and the final master plan document.

## Evans City Council

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Mr. Cunningham spoke to City Council about the market and economic analysis of the Riverside Area, ideal conditions for revitalization, and the regional market in relation to the East Evans neighborhood.

Mr. Landess, discussed the public input process achieved through a survey that was conducted, comment cards, and several open forums where the public provided input. He summarized the factors that people liked most and least about the area. He also discussed the plan alternatives that were considered in the Riverside area and reviewed the features of the preferred vision. Mark Landess summarized the plan objectives to address each core issue of the project: implementation, financing techniques, and summarized the implementation by Matrix. Lastly, Mr. Landess summarized the catalyst areas identified in the master plan and discussed reinvestment challenges and reinvestment truths in relation to this area.

Mayor Morris expressed his support for land use planning and the value of the Evans Riverside Master Plan for the east side of the City.

Mayor Morris asked for any public comments regarding the Master Plan—there was none.

Council Member Homann asked why the Task Force was unable to develop a consensus on the Master Plan.

Ms. Trent explained that the Task Force had varying concerns about four areas of the master plan, including: sidewalks, an amphitheater in City Park, affordable housing, and residential commercial (RC) zoning in the area. She discussed the definition of RC zoning and the possible need to update the definition of RC zoning in City code.

Mayor Morris discussed the definition of affordable housing and the challenges for different communities to provide affordable housing. Mayor Morris also talked about the issue of sidewalks in the East Evans Neighborhood.

Laura Speer, Flood Recovery Task Force member, addressed City Council to explain why the members of the task force did not unanimously adopt the Master Plan. Ms. Speer explained that the Task Force did not have a chance to review the final Master Plan from Matrix.

The City Council Members discussed their support for the Master Plan.

Mayor Morris asked for a motion.

Council Member Clark made the motion, seconded by Council member Homann, to adopt the Evans Riverside Area Master Plan.

The motion passed with all voting in favor thereof.

**D. Code Fee Agreement with Avi Rocklin**

Scott Krob, City Attorney, discussed the code update project and the need for a separate contract with Avi Rocklin for her services beyond her duties as the municipal prosecuting attorney.

Mayor Morris discussed his support for a separate contract with Ms. Rocklin.

Council Member Clark made the motion, seconded by Council Member Rudy, to approve and authorizing the mayor's signature on the code fee agreement with Avi Rocklin. The motion passed with all voting in favor thereof.

**REPORTS**

**A. City Manager**

Mr. Hogan talked about the recent mosquito problems in Weld County and provided an update about mosquito spraying in the City and mitigating mosquito-infested areas near standing water.

**B. City Attorney**

Scott Krob, City Attorney, stated that he would save his comments for the executive session.

**AUDIENCE PARTICIPATION**

There was no audience participation.

**EXECUTIVE SESSION**

- A. For the discussion of a personnel matter (City Attorney's performance evaluation) pursuant to C.R.S. 24-6-402(4)(f)**
- B. For the purpose of discussing matters that may be subject to negotiations pursuant to C.R.S. 24-6-402(4)(e)**

Mayor Pro-Tem Schaffer made the motion, seconded by Council Member Clark to go into executive session for the discussion of a personnel matter, pursuant to C.R.S. 24-6-402(4)(f), and for the discussion of matters subject to negotiations, pursuant to C.R.S. 24-6-402(4)(e).

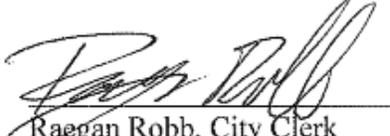
The motion passed with all voting in favor thereof.

At 9:23 p.m. the City Council adjourned into executive session.

The executive session concluded at 10:43 p.m.

**ADJOURNMENT**

The regular meeting adjourned at 10:43 p.m.

  
Raegan Robb, City Clerk

DRAFT

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**CITY COUNCIL COMMUNICATION**

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**DATE:** July 21, 2015

**AGENDA ITEM:** 7.C

**SUBJECT:** Ordinance No. 625-15 ARB Amended Annexation Agreement

**STAFF CONTACT:** Sean Wheeler, City Planner

**ACTION:** Determination by Council

**APPROVED BY:** Fred Starr, Public Works Director/Community Development Director

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<b>Location:</b>		7300 47th Avenue; on the east side of Weld County Road #33 (See Attached Map)
<b>Applicant:</b>		ARB Niobrara Connector LLC, Larry Stockton Hi-Crush LC, William Barker
<b>Existing Land Use:</b>		Undeveloped Agricultural Land
<b>Proposed Land Use:</b>		Crude Oil Trans-Load Rail Terminal
<b>Surrounding Land Uses:</b>	North	Envirotech Services Site, Undeveloped
	South	Weld County, Agricultural
	East	Weld County, Agricultural
	West	Weld County, Agricultural
<b>Existing Zoning:</b>		I-2 Industrial
<b>Proposed Zoning:</b>		I-2 Industrial
<b>Surrounding Zoning:</b>	North	City of Evans, I-2 Industrial
	South	Weld County, AG Zoning
	East	Weld County, AG Zoning
	West	Weld County, AG Zoning
<b>Future Land Use Designation:</b>		Industrial

**PROJECT  
DESCRIPTION:**

**Second Amendment to the Annexation Agreement, Great Western Ethanol  
LLC**

Attached for consideration is a proposed amendment to an Annexation Agreement, originally approved for the Great Western Ethanol LLC facility in 2004, and subsequently modified in 2007. The current proposal thus represents the second amendment to the original agreement.

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**ANALYSIS /ISSUES:**

The proposed amendment to the Annexation Agreement has been reviewed by staff and legal counsel for both the City and the ARB Niobrara Connector to the satisfaction of both. Staff recommends approval of the Second Amendment to the Annexation Agreement as presented.

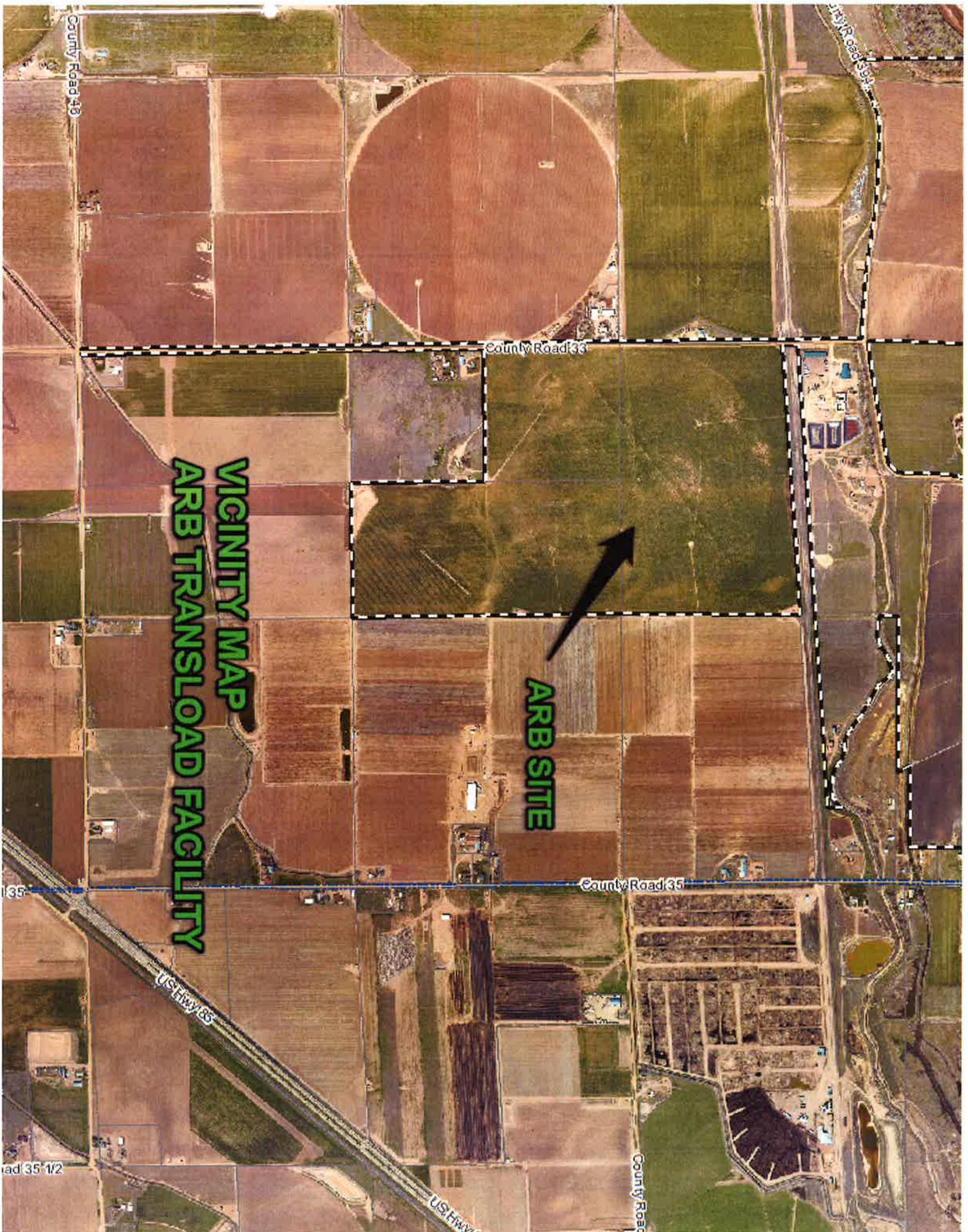
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**MOTIONS:**

1. "Mr. Mayor, on the issue of the Second Amendment to the Annexation Agreement, Great Western Ethanol LLC, Nowarb Niobrara Connector LLC, I move that the City Council approve the second amendment to the Annexation Agreement as presented."
  
  2. "Mr. Mayor, on the issue of the Second Amendment to the Annexation Agreement, Great Western Ethanol LLC, Nowarb Niobrara Connector LLC, I move that the City Council deny the second amendment to the Annexation Agreement as presented."
- 

**Attachment  
s:**

Vicinity Map  
Amended Annexation Agreement,  
Exhibits  
Ordinance



**VICINITY MAP**  
**ARB TRANSLOAD FACILITY**

**ARB SITE**



County Road 43

County Road 33

County Road 35

35

US Hwy 165

ad 35 1/2

County Road

US Hwy

**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 \_\_\_\_ day of \_\_\_\_\_, 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

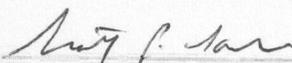
the ordinance subject to such referendum, and this Amended Agreement shall be suspended pending the outcome of the referendum. If the result of the referendum election is to reject such Amended Annexation Agreement, all of the provisions contained herein shall be null and void and of no effect, but shall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

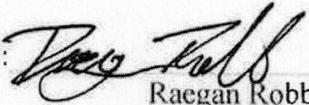
By:   
John Morris, Mayor

**APPROVED AS TO FORM:**

  
Scotty P. Krob, City Attorney

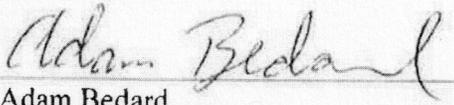


**ATTEST:**

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.

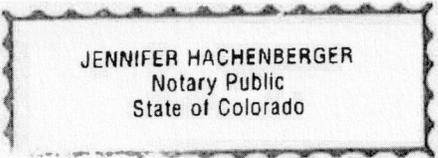
SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of June, 2015 by

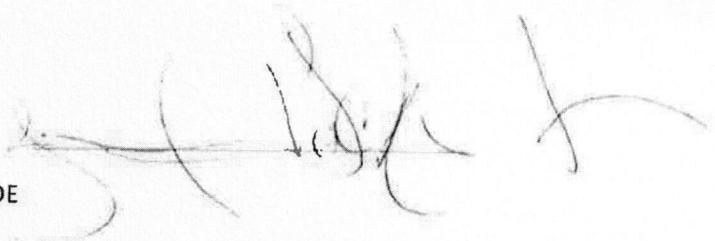


WITNESS my hand and official seal.

My commission expires: Nov 2016

Second Amended Annexation Agreement - 6.26.15 - COE





**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  
Adam Bedard  
Chief Executive Officer

STATE OF COLORADO

COUNTY OF Denver ss.

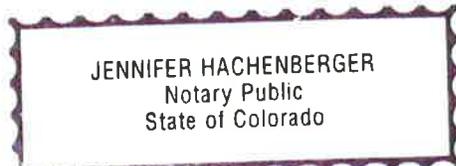
SUBSCRIBED AND SWORN to before me this 29<sup>th</sup> day of June, 2015 by

Adam Bedard

WITNESS my hand and official seal.

My commission expires: Nov 2016

Second Amended Annexation Agreement – 6.26.15 - COE



Notary Public

(SEAL)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**ARB MIDSTREAM RAIL TERMINAL SITE**

A TRACT OF LAND BEING ALL OF THE SOUTHWEST ONE-QUARTER OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 66 WEST, OF THE 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;

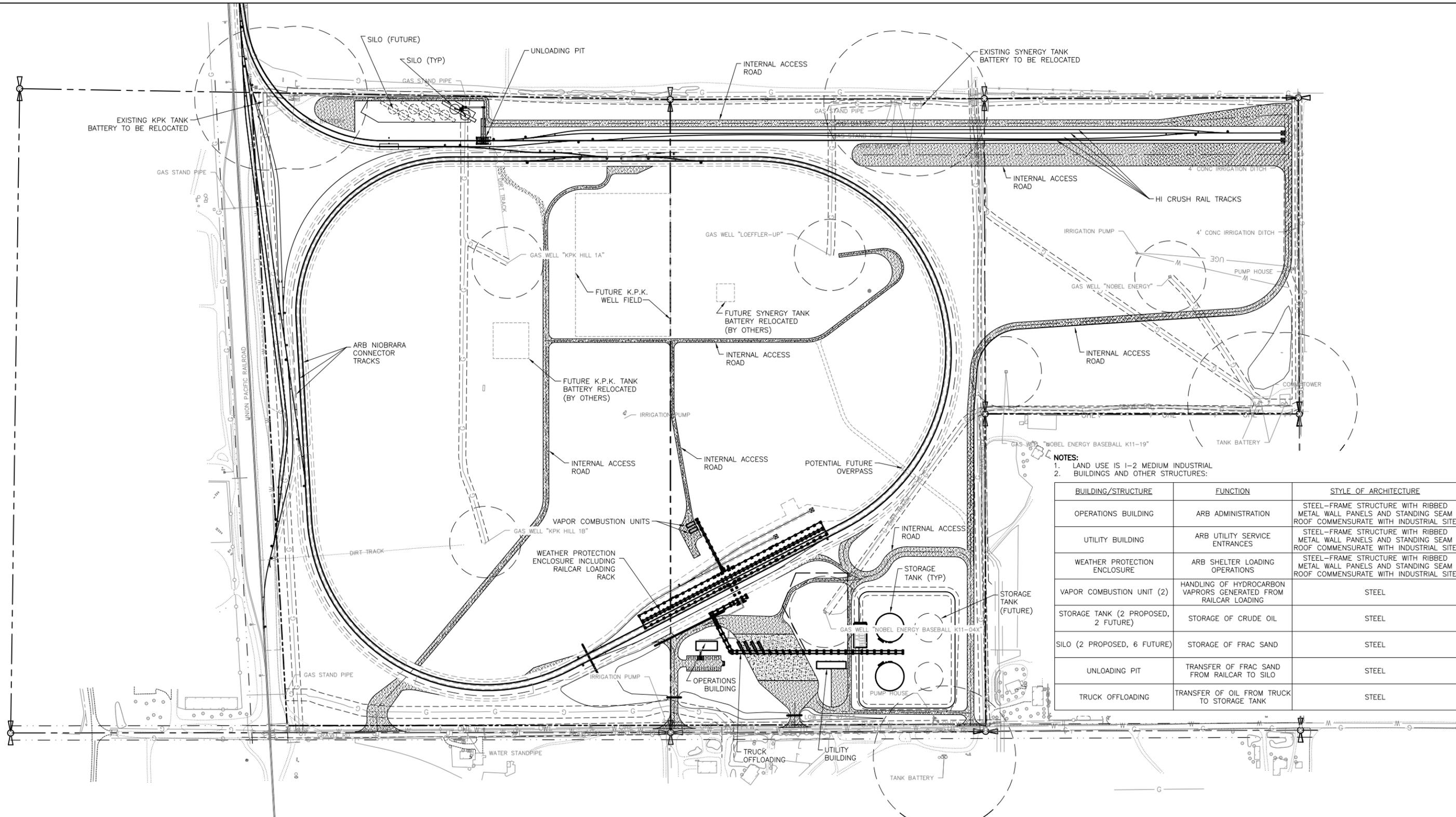
THENCE ALONG SAID RIGHT-OF-WAY LINE PARALLEL TO THE WEST LINE OF SAID SECTION 11 NORTH 00°34'01" WEST, 1,327.66 FEET;

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.

**EXHIBIT "B"**  
**MASTER SITE DEVELOPMENT PLAN**

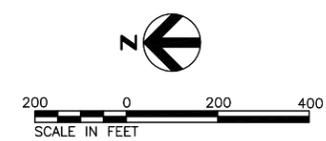
C:\pwworking\omald1683607\FB Package\_017\_EXHIBIT B - CONCEPTUAL DEVELOPMENT PLAN.dwg, OVERALL SITE PLAN, 5/28/2015 3:07:04 PM



- NOTES:**  
 1. LAND USE IS 1-2 MEDIUM INDUSTRIAL BUILDINGS AND OTHER STRUCTURES:  
 2.

BUILDING/STRUCTURE	FUNCTION	STYLE OF ARCHITECTURE
OPERATIONS BUILDING	ARB ADMINISTRATION	STEEL-FRAME STRUCTURE WITH RIBBED METAL WALL PANELS AND STANDING SEAM ROOF COMMENSURATE WITH INDUSTRIAL SITE
UTILITY BUILDING	ARB UTILITY SERVICE ENTRANCES	STEEL-FRAME STRUCTURE WITH RIBBED METAL WALL PANELS AND STANDING SEAM ROOF COMMENSURATE WITH INDUSTRIAL SITE
WEATHER PROTECTION ENCLOSURE	ARB SHELTER LOADING OPERATIONS	STEEL-FRAME STRUCTURE WITH RIBBED METAL WALL PANELS AND STANDING SEAM ROOF COMMENSURATE WITH INDUSTRIAL SITE
VAPOR COMBUSTION UNIT (2)	HANDLING OF HYDROCARBON VAPORS GENERATED FROM RAILCAR LOADING	STEEL
STORAGE TANK (2 PROPOSED, 2 FUTURE)	STORAGE OF CRUDE OIL	STEEL
SILO (2 PROPOSED, 6 FUTURE)	STORAGE OF FRAC SAND	STEEL
UNLOADING PIT	TRANSFER OF FRAC SAND FROM RAILCAR TO SILO	STEEL
TRUCK OFFLOADING	TRANSFER OF OIL FROM TRUCK TO STORAGE TANK	STEEL

0	5/29/15			90% CLIENT SUBMITAL			
REV	DATE	AMR	PROJ. ENGR.	DESCRIPTION	BY	CKD	APP



**NOT FOR CONSTRUCTION**

**DRAWN BY:** EJO  
**CHECKED BY:** KB  
**DATE:** 04/22/2015  
**SHEET NUMBER:**

**LOCATION & DESCRIPTION:**  
 ARB NIOBRARA CONNECTOR  
 7300 47TH AVENUE  
 EVANS, COLORADO, 80645

**SHEET TITLE:**  
 EXHIBIT B - MASTER SITE DEVELOPMENT PLAN

CITY OF EVANS, COLORADO

ORDINANCE NO. 625-15

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

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

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

WHEREAS, a First Amendment to Annexation Agreement was approved and accepted by the City on 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:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Raegan Robb, City Clerk

BY: \_\_\_\_\_  
John Morris, Mayor

**PASSED AND ADOPTED ON A SECOND READING THIS 21<sup>ST</sup> DAY OF JULY, 2015.**

**ATTEST:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Raegan Robb, City Clerk

BY: \_\_\_\_\_  
Jay Schaffer, Mayor Pro-Tem

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# COUNCIL COMMUNICATION

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**DATE:** July 21, 2015

**AGENDA:** 8.A

**SUBJECT:** Resolution No. 20-2015 – Supporting the Creation of the U.S. Highway 34 Coalition

**PRESENTED BY:** Aden Hogan, City Manager

---

## AGENDA ITEM DESCRIPTION:

Recently several local governments have been discussing creating a coalition to discuss issues as it relates to Highway 34 between Greeley and Loveland. Those involved in these discussions are Weld County, City of Greeley, City of Loveland, City of Evans, Town of Windsor, and the Town of Johnstown. These local governments all recognize and value the US 34 corridor as a regional economic development center for our area and would like to formalize a coalition at this time. This coalition would be similar to others in Northern Colorado that exist for highways such as I-25, US 85, and US 287 and meet monthly to discuss corridor issues and help to create a common vision for the corridor and tackle issues as a group.

The US 34 Coalition would help with regional coordination and planning and ensure the vitality of the corridor can be preserved for future improvements, economic development opportunities, aesthetic enhancements, and safety improvements. A Council member would be appointed to this group and meetings are expected to occur monthly. Staff from each community would support the group as appropriate. Funding support may occur as projects and/or grant opportunities arise. At this time no obligation of funds is being considered.

---

## FINANCIAL SUMMARY:

Does this item create a fiscal impact on the City of Evans? No

Is there grant funding for this item? No, however, the ability to receive future grant funding will increase by having an organized coalition working together on solving problems along the US 34 Corridor.

---

## RECOMMENDATION:

Staff recommends that City Council adopts Resolution No. 20-2015 for the creation of the Highway 34 Coalition.

---

**SUGGESTED MOTIONS:**

*“I move to adopt Resolution No. 20-2015.”*

*“I move to deny the adoption of Resolution No. 20-2015.”*

---

CITY OF EVANS, COLORADO

RESOLUTION NO. 20-2015

A RESOLUTION OF THE EVANS CITY COUNCIL  
SUPPORTING THE CREATION OF THE  
U.S. HIGHWAY 34 COALITION

WHEREAS, the Evans City Council pursuant to Colorado Statute and Home Rule Charter is vested with the authority of administering the affairs of City of Evans, Colorado.

WHEREAS, the Evans City Council recognizes and values U.S. Highway 34 as a significant transportation corridor in northern Colorado; and

WHEREAS, the Evans City Council has a desire to work with municipalities and other counties to address safety and transportation; and

WHEREAS, the Evans City Council desires to send a strong message to our elected officials and to state and federal agencies that U.S. Highway 34 is important to the long-term health and economic development to our region; and

WHEREAS, the Evans City Council supports the formation of the U.S. 34 Coalition (the "Coalition"); and

WHEREAS, in order to improve qualify for funding to improve safety, access, economic development opportunities, long range planning and other efforts along the U.S. Highway 34 Corridor, the Coalition will advocate for funding and assist local entities to apply for grants; and

WHEREAS, it is in the best interests of the citizens of the City of Evans and the region to have a coalition to represent the U.S. Highway 34 corridor; and

WHEREAS, it is in the best interests of the City of Evans to be a member of the Coalition;

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

Section 1. The Evans City Council resolves to provide its' full support and encouragement to the formation of the U.S. 34 Coalition and the City Council agrees to have a City Council member available to attend Coalition meetings.

Section 2. The Evans City Council resolves that as part of its' budget process, the Council will consider matching funds for grants identified by the Coalition as beneficial to the U.S. 34 corridor.

Section 3. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS 21<sup>ST</sup> DAY OF JULY,  
2015.

ATTEST:

THE CITY OF EVANS, COLORADO

---

City Clerk

---

Mayor Pro-Tem

---

## COUNCIL COMMUNICATION

---

**DATE:** July 21, 2015

**AGENDA ITEM:** 8.B

**SUBJECT:** 36<sup>th</sup> Street Storm Sewer (37<sup>th</sup> Street Storm Sewer Project – Phase II Change Order)

**PRESENTED BY:** Dawn Anderson, City Engineer

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### AGENDA ITEM DESCRIPTION:

This project is to improve storm drainage conveyance and will consist of the installation of 900 linear feet of new storm sewer pipe, and the improvements of two detention ponds. This storm sewer work is needed in advance of the Hwy 85 Access Control Project at 37<sup>th</sup> Street. Overall this project is an extension of the 37<sup>th</sup> Street Storm Sewer Project – Phase II currently being constructed by Coyote Ridge Construction. A proposed change order is being presented and consists of the following:

- Changes incurred on the current phase of the project - \$67,245.00
- Addition of approximately 900 linear feet of storm drain pipe as well as surface improvements - \$284,645
- Improvements to the Idaho Street Detention Pond - \$139,089.00
- Improvements to the Denver Street Detention Pond - \$40,672.00

The 37<sup>th</sup> Street Storm Drain Project – Phase II was bid per the City’s purchasing policies. The project was advertised in the Greeley Tribune, on the City of Evans website and Rocky Mountain Bid System. Coyote Ridge Construction was awarded this project on May 5, 2015 at the base bid cost of \$790,921.00. Due to timing of the project as well as the satisfactory job by Coyote Ridge, reasonable and adequate unit prices as determined by the low bid award of the original project and their ability to complete the work ahead of schedule staff has presented this as a change order to the current project.

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### FINANCIAL SUMMARY:

The 2015 Storm Drainage- Fund had \$802,000 budgeted for the original project.

Additional change order amounts would be necessary as a preliminary budget revision as follows:

- \$272,359 expense to the Storm Drainage Fund. If approved the projected cash balance in the Storm Drainage Fund at the end of 2015 would be \$286,623.
  - \$259,292 expense to the CIP Streets Fund. If approved the projected cash balance in the CIP Streets Fund at the end of 2015 would be \$853,484.
-

**RECOMMENDATION:**

Staff recommends that City Council award the 36<sup>th</sup> Street Storm Sewer change order to Coyote Ridge Construction in the amount of \$531,651.00 and approve a preliminary budget revision in the amount of \$272,359 expense to the Storm Drainage fund and \$259,292 of expense to the CIP Streets fund.

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**SUGGESTED MOTIONS:**

*“I move to award the 36<sup>th</sup> Street Storm Sewer change order to Coyote Ridge Construction, and to authorize the Mayor Pro-Tem to sign the change order in the amount of \$531,651.00 and approve a preliminary budget revision in the amount of \$531,651 expense.”*

*“I move to deny award of the 36<sup>th</sup> Street Storm Sewer change order and preliminary budget revision”*

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## COUNCIL COMMUNICATION

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**DATE:** July 21, 2015

**AGENDA ITEM:** 8.C

**SUBJECT:** Preliminary Budget Revision – Union Colony Pedestrian Crossing

**PRESENTED BY:** Dawn Anderson, City Engineer

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### AGENDA ITEM DESCRIPTION:

This project is to upgrade the current pedestrian crossing flashers from the current Carmanah System to a more current and efficient RRFB System. The current Carmanah system has had issues the last several months and continues to cost the City money for maintenance. After further discussion regarding safety correlated with this item it is apparent that we need to move to a more reliable system.

Installation of the new system has been quoted by our current traffic signal maintenance contractor, W.L. Contractors, at \$14,142.00. In order to fund this item a preliminary budget revision would be needed to transfer money from the Traffic Calming Funds. Both the Public Works and Police Departments agree that use of traffic calming funds to complete this project would be beneficial.

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### FINANCIAL SUMMARY:

The Traffic Calming fund balance is currently \$242,298.

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### RECOMMENDATION:

Staff recommends that City Council award the Union Colony Pedestrian Crossing upgrade to W.L. Contractors in the amount of \$14,142.00 and approve a preliminary budget revision from the traffic calming fund balance.

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### SUGGESTED MOTIONS:

*“I move to award the Union Colony Pedestrian Crossing Upgrade to W.L. Contractors in the amount of \$14,142, and approve a preliminary budget revision in the amount of \$14,142 from the traffic calming funds.”*

*“I move to deny award of the Union Colony Pedestrian Crossing Upgrade and preliminary budget revision”*

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## COUNCIL COMMUNICATION

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**DATE:** July 21, 2015

**AGENDA ITEM:** 8.D

**SUBJECT:** Award of Bid; 2015 Asphalt Patch Service Contract

**PRESENTED BY:** Dawn Anderson, City Engineer

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### AGENDA ITEM DESCRIPTION:

The 2015 Capital Improvement Program (CIP) Budget includes funding for asphalt patching of streets within the community. The areas identified for maintenance under this program are recommended by the City's pavement management program and the street maintenance personnel.

This annual maintenance contract was bid as a service contract per the City's purchasing policies in 2014. The 2014 contract was awarded to Martin Marietta Materials. Per the service contract the City has the right to request costs and award the 2015 contract to Martin Marietta based on successful completion of the 2014 contract. Staff sent the 2015 service contract and bid schedule to Martin Marietta Materials with results as follows:

<u>Contractor</u>	<u>Bid Amount</u>
Martin Marietta Materials, Inc.	\$118,009.20

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### FINANCIAL SUMMARY:

The 2015 CIP budget includes \$75,000 (34-40-4100-8334) for asphalt patching.

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### RECOMMENDATION:

The total bid by Martin Marietta Materials, Inc. is over the asphalt patching budget. Staff recommends that, due to the price quoted in the bid, the project be awarded on a not to exceed amount. Staff recommends that City Council award the 2015 Asphalt Patch Service Contract to Martin Marietta Materials, Inc. and authorize the Mayor's signature on a service agreement not to exceed the amount of \$75,000.00.

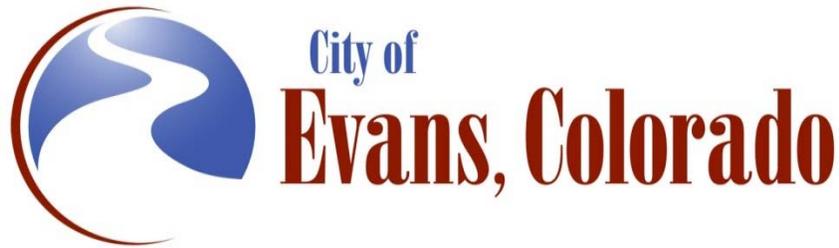
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### SUGGESTED MOTIONS:

*"I move to award the 2015 Asphalt Patch Service Contract to Martin Marietta Materials, Inc. and to authorize the Mayor Pro-Tem to sign the agreement in the amount not to exceed \$75,000.00."*

*"I move to deny award of the 2015 Asphalt Patch Service Contract."*

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## City Manager - Monitoring Report

July 21, 2015

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*Below is a compellation of updates and projects that are either new or have changed since the last City Council meeting.*

➤ **Communications**

- Work is continuing on getting on line submissions set up for the Town Hall Meeting (Tentatively scheduled for August 12)
- The Council-sponsored National Night Out event will be held at the Evans Municipal Pool, August 4

➤ **CSU** – No updates

➤ **Recreation**

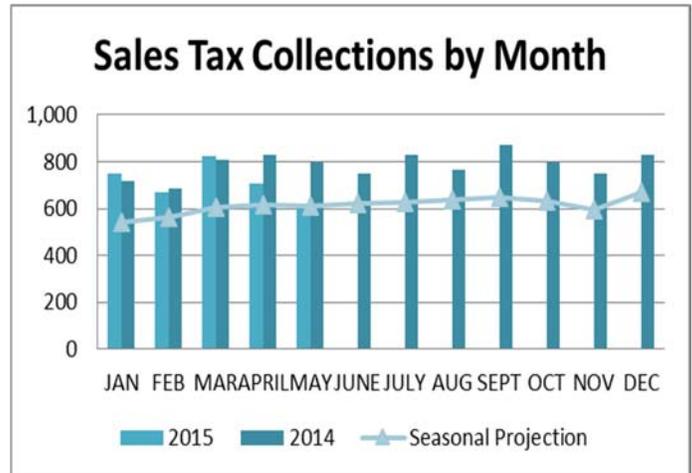
- **Our annual golf tournament was held on Friday, July 17. We had 97 golfers participate and monies raised are put towards keeping our program costs low for the youth in our community.**
- **Our second movie night at Riverside Library was also held on July 17. The movie of the month was Annie (2014).**
- **We are just about finished with our summer t-ball, coach pitch, and softball league. We had 228 participants within our agency participating and 100 kids from outside agencies.**
- **Day Camp finishes up on August 7. This year we had 50 children ages 5-11 years old with us throughout the 11 weeks.**

➤ **Finance**

The final version of the 2014 audited financial report is available on the finance department section of our website.

Please find the May sales tax update below:

As far as the monthly projection goes, we are \$7,695 ahead of what we needed to collect this month to meet our annual budget.



➤ **Public Works**

- **Engineering:** 37<sup>th</sup> Street Storm Sewer Project is progressing. Contractor is ahead of schedule and should be complete by end of July.
- The annual concrete replacement project is underway.
- **Wastewater:** The project to repair the Lab/Office and other plant repairs that were damaged from the 2013 Flood is underway.
- Begun the annual preventive maintenance cleaning of the collection system.
- Working on recruitment for an open WW Tech position.
- **Building:** Kelli Schaefer received her certification for Building Permit Tech 6/23/15.

## Building Department

May 2015			
Category	2014 YTD	2015 YTD	% Change
Base	867,783	1,018,342	17%
Commercial	802,061	798,198	0%
Industrial	1,225,287	844,455	-31%
Utilities	309,253	333,209	8%
Motor Vehicle	636,699	571,000	-10%
<b>Total</b>	<b>3,841,083</b>	<b>3,565,203</b>	<b>-7%</b>
May 2015			
Lodging	33,307	39,124	17%

## Construction Activity Comparative Analysis

		June 2015	June 2014	YTD 2015	YTD 2014
New Single Family Dwelling Units	# of Permits	9	3	20	17
	Valuation	1,902,978	457,533	3,736,221	2,626,859
Single Family Footing & Foundation Only	# of Permits	2	1	8	4
New Multi-Family Dwellings Units	# of Permits	0	0	0	4
	Valuation				1,374,268

<b>Multi-Family Footing &amp; Foundation Only</b>	<b># of Permits</b>	0	0	0	0
	<b>Valuation</b>				
<b>Residential Additions and Remodels</b>	<b># of Permits</b>	26	11	102	82
	<b>Valuation</b>	139,120	101,226	725,309	704,697
<b>New Commercial Projects</b>	<b># of Permits</b>	0	1	0	8
	<b>Valuation</b>		109,263		6,259,386
<b>Commercial Footing &amp; Foundation Only</b>	<b># of Permits</b>	0	0	0	0
	<b>Valuation</b>				
<b>Commercial Additions and Remodels</b>	<b># of Permits</b>	4	1	16	20
	<b>Valuation</b>	39,400	900	1,280,116	2,015,183
<b>Miscellaneous Permits</b>	<b># of Permits</b>	26	55	100	321
	<b>Valuation</b>	60,735	292,719	356,907	1,846,029
<b>Mobile Home Permits</b>	<b># of Permits</b>	8	26	33	29
	<b>Valuation</b>				
<b>TOTALS</b>	<b># of Permits</b>	75	98	279	485
	<b>Valuation</b>	2,142,233	1,066,641	6,098,553	14,826,422

## Non-Residential Construction Projects In Progress

	<b>Project</b>	<b>Type</b>	<b>Location</b>	<b>Description</b>	<b>Stage</b>
A	CDOT	Commercial	1004 42 <sup>nd</sup> St (Lot to the south)	Park n Ride	Under Construction
B	Prairie Heights Middle School	Commercial	3737 65 <sup>th</sup> Ave.	New Middle School to replace John Evans	Under Construction
C	America's Best Value Inn	Remodeling Bar/Restaurant area into 8 hotel rooms	800 31 <sup>st</sup> St.	New Hotel Rooms	Pending Approval of Fire Sprinkler System
D	Envirotech Services	Electrical Installation	6850 47 <sup>th</sup> Ave.	Electrical Service for modular office building/scale house and lighting for Fracking Sand Unloading Facility	Under construction
E	Moser Funeral Home	Building Addition	3501 11 <sup>th</sup> Avenue	Addition to existing commercial building	Under construction
F	El Toro Bravo	Tenant Finish	2911 37 <sup>th</sup> Street	Grocery Store	Under construction
G	Colorado Access	Tenant Finish	3001 8 <sup>th</sup> Avenue #120	Office Space	Under construction, pending approval of fire alarm system
H	Evans VFW	Building Addition	3501 State Street	1200 Sq. Ft. Shed	Permit has been picked up

## ➤ **Economic Development**

### **Highway 85 Corridor**

We continue to work with various developments in the Corridor, including Kum & Go and Rush Trucking. We are also working on the ROW and closures of the access roads at 37<sup>th</sup> (complete this year) and 31<sup>st</sup> (design complete this year). We have had a lawsuit against the City by a land owner regarding the legal non-conforming issues in the Corridor. One of our main goals is to remind CDOT that we are a retail corridor and need to preserve stop lights and lower speeds through Evans to support our retail.

### **The Junction at Evans**

You probably have seen the new signs on the property from our development partner New Mark Merrill. We are continuing to work with our major retail interests and with CDOT on access issues along Highway 85.

### **Farmer's Market**

The Farmer's Market is a great success, and we continue to add vendors (including peaches and cherries)! We will be every Thursday night from 4-7 until October 8<sup>th</sup>. Please come by and support your local businesses and keep the Farmer's Market going!

### **Fun Flicks**

This year Economic Development is funding 5 family movies to be held outdoors at the RLCC. In the case of bad weather, there is more than enough room indoors. We have held two so far and they have been well received. This is another way to enhance the community gathering aspect of the Library building.

### **Evans Riverside Area Master Plan**

The final plan was adopted and we are now working on the implementation schedule. We are fixing a few typographical errors but will publish the plan on line in the next few weeks. The capital projects will have to become a part of our budget process and we see the need for a few more studies. The economic development piece is attached for your review.

### **Riverside Park Master Plan**

(No update from last time) This plan was adopted by the City Council last year, and the City has a team working on the engineering work necessary to make the plan a reality. In the best scenario, it would be 2018 before any sections of the park would reopen. Some trails may be open prior to that date depending on funding and design.

### **Stormwater Master Plan**

The stormwater master plan process will begin shortly. It will be City wide but focus on current issues and capital infrastructure necessary to make the system function, especially on the east side.

### **Code Update**

Work is underway on the code update and set to be completed by October. Aden Hogan is heading up the land use section.

### **Strategic Planning**

Attached is the rough vision and final priorities for the City Council.

### **Prairie View School**

The will host a community open house, so keep your eyes open for that announcement. It will be open this fall for students but is generally fully complete internally. There remain some significant road construction options to complete, but they were dependent upon grant funding and so will happen this year and next.

### **Business Ombudsman**

We have selected a consultant to help us with these services and he will begin work at the end of July with personal visits to our business owners asking them how the City can help them enhance and grow their businesses. Those answer will tie directly into our update of the Economic Development Incentives Policy, which will be completed this year.

### **Landscaping in Corridor**

No Update

### **Shop Local**

It is our intent to ask both of our Chamber partners if they would be interested in contracting for the Shop Local program. Our City Council is supportive of this approach and letters will go out at the end of July indicating our approach and a sample scope of services.

### **Economic Development Incentives**

As mentioned above, we are updating our economic development incentive policies. The goal is to make them performance oriented, business driven, and customized to the needs of the business owner. We have attached a draft application as well. They will be policies (like the Financial Policies) that can be updated as needed by the City Council. We intend to have specific incentives for the Highway 85 Corridor, the Riverside Area, and possibly the Corridors of Evans.

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## COUNCIL COMMUNICATION

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**DATE:** July 21, 2015  
**AGENDA ITEM:** 12.A  
**SUBJECT:** Adjournment to Executive Session

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**AGENDA ITEM DESCRIPTION:**

City Council will adjourn into an Executive Session for the discussion of matters subject to negotiations.

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**FINANCIAL SUMMARY:**

N/A

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**RECOMMENDATION:**

N/A

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**SUGGESTED MOTIONS:**

*“I move to go into Executive Session for the discussion of matters subject to negotiations, pursuant to C.R.S. 24-6-402(4)(e)”.*

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# City Council Calendar July 2015

## JULY 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

July	Event	Location	Time
4	Independence Day	City Offices Closed July 3rd	All Day
7	City Council Work Session & Regular City Council Meeting	Evans City Complex	6:00 PM - 8:30 PM
9	85 Coalition Meeting	TBA	Begins at 6:30 PM
16	Government Agencies Meeting	Weld County Admin Bldg, Events Center Room, 1150 O Street, Greeley, CO	Begins at 7:00 AM
16	Prairie Heights Middle School Grand Opening	Prairie Heights Middle School, Evans, CO	Begins at Noon
17	<a href="#">Free Outdoor Movie Night</a>	Riverside Library	Begins at Dusk
21	City Council Work Session & Regular City Council Meeting	Evans City Complex	Begins at 6:00 PM