CITY OF EVANS, COLORADO

ORDINANCE NO. 721-20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. The Amended Smart Chem Site Plan was approved by the City of Evans on October 12, 2018 through File #17-SP-07.
ii. The Variance to allow crude oil storage tanks at a height not to exceed 83', a Vapor Combustion Unit tower to not exceed 50' in height, and the height of Frac Sand Storage Silos to not reach more than 179' in height, was approved by the Board of Zoning Appeals through File #15-VAR-01 on April 8, 2015 and by City Council on April 15, 2015 by Resolution 12-2015.
iii. The ARB 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 7 DAY OF JULY, 2020.

ATTEST: **CITY OF EVANS, COLORADO**

Karen Frawley, City Clerk

CITY OF EVANS SEAL COLORADO

BY: _____
Brian Rudy, Mayor

PASSED AND ADOPTED ON A SECOND READING THIS 21 DAY OF JULY, 2020.

ATTEST: **CITY OF EVANS, COLORADO**

Karen Frawley, City Clerk

CITY OF EVANS SEAL COLORADO

BY: _____
~~Brian Rudy~~, Mayor Pro Tem
Marie Clark

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.