

**AGENDA**  
**TOWN OF HUDSON - BOARD OF TRUSTEES**  
**REGULAR MEETING**  
**August 5, 2015 - 6:00 P.M.**

**PLEDGE OF ALLEGIANCE**

**CALL TO ORDER AND ROLL CALL**

**ADDITIONS TO AGENDA**

**CITIZEN'S COMMENTS**

**1) CONSENT AGENDA**

(Consent Agenda Items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member or Citizen so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Regular Agenda.)

- a. Board of Trustees Minutes – Regular Meeting, July 15, 2015
- b. Payment of Bills

**2) GENERAL BUSINESS**

- a. Resolution No. 15-25, Site Plan, Lloyd Land Private Target Shooting Range
- b. Ordinance 15-11, Second Reading, An Ordinance approving the sale of Town-Owned property known as Lot 7A, Hudson Industrial Park Filing No. 1 (continued from July 15, 2015)
- c. Resolution No. 15-23, annual Three Mile Annexation Plan
- d. Resolution 15-24, A Resolution approving an Intergovernmental Agreement between the Town and Weld County regarding the conduct of the Coordinated Election to be held with Weld County on November 3, 2015
- e. Discussion: Amended intergovernmental agreement with Weld County regarding the WCR49 Access Control Plan.

**3) STAFF REPORTS**

**EXECUTIVE SESSION:**

- a. To determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 246-402(e) – negotiations for proposed annexation

**4) ADJOURNMENT**

MINUTES  
TOWN OF HUDSON - BOARD OF TRUSTEES  
REGULAR MEETING  
July 15, 2015 - 6:00 P.M.

PLEDGE OF ALLEGIANCE

CALL TO ORDER AND ROLL CALL

Mayor Patch called the meeting to order at 6:00 p.m.

ROLL CALL

Mayor, Raymond Patch - Present  
Trustee, Matt Cole – Present  
Trustee, Laura Hargis - Present  
Trustee, Christine Hamilton – Present  
Trustee, Tiffany Sanders – Absent  
Trustee, Terri Davis – Present  
Trustee, Maria Chavez - Present

Town Clerk/Treasurer, Linnette Barker took roll call, and a quorum of the Mayor Pro-Tem and (5) Trustees were present.

Town Staff Present:

Town Administrator – Joe Racine  
Town Attorney – Corey Hoffmann  
Town Clerk//Treasurer – Linnette Barker  
Economic Development Director – Dan Hamsmith  
Public Works Director – Ron Allen  
Utility Director – Hunter Fobare

ADDITIONS TO AGENDA

2.m. Letter of Engagement approval for Hudson Comprehensive Plan to Sbrand

CITIZEN'S COMMENTS

**1) CONSENT AGENDA**

(Consent Agenda Items are considered routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member or Citizen so requests, in which case the items may be removed from the Consent Agenda and considered at the end of the Regular Agenda.)

- a. Board of Trustees Minutes, Regular Meeting, July 1, 2015
- b. Payment of Bills
- c. Escrow Disbursement from Colorado Municipal Lease to Mountain States Pipe in the amount of \$96,624.50 for the new water meters

Trustee Hargis made a motion, seconded by Trustee Hamilton to approve the Consent Agenda.

The vote was as follows:

Aye: Trustees Hargis, Hamilton, Chavez, Cole, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

## 2) PUBLIC HEARING

- a. Ordinance 15-10, An Ordinance amending the Hudson Municipal Code concerning modification to existing wireless telecommunications facilities.

Mayor Patch opened the Public Hearing for the purpose of considering Ordinance No. 15-10, amending Chapter 16 of the Hudson Municipal Code concerning modifications to existing wireless telecommunication facilities at 6:07 pm.

Corey Hoffmann, Town Attorney, reported that the amendments address modifications to existing wireless telecommunication facilities and add definitions for various components and standards, and sets standards for applications to modify existing facilities.

No public comment.

Mayor Patch closed the Public Hearing at 6:10 pm.

- b. Ordinance 15-12, An Ordinance vacating portions of Fir Street, Second Avenue, and the alley in Block 74, Town of Hudson

Mayor Patch opened the Public Hearing for the purpose of considering Ordinance 15-12, An Ordinance vacating portions of Fir Street, Second Avenue, and the alley in block 74 at 6:11 pm.

Joe Racine, Town Administrator, reported that these segments of street and alley right-of-way probably should have been vacated in 1993 when Third Avenue was vacated through the Mobile Home Park. These small segments of right-of-way are of no use to the Town of Hudson and they are currently occupied by mobile home and other structures.

Gordon Weedin recent owner of the Mobile Home Park was present to answer questions.

No public comment.

Mayor Patch closed the Public Hearing at 6:15 pm.

## GENERAL BUSINESS

- a. 2014 Audit Presentation, Swanhorst & Company

Wendy Swonhorst, from Swanhorst & Company was present and reported that the amounts in the financial statements are fairly stated. The weakness in control is the water and wastewater rates do not cover the costs, and the Town has been transferring funds to cover these costs. The accounting records are in good condition.

aa. Resolution 15-20, A Resolution in support of responsible energy development

Dan Hamsmith, Economic Development Director, reported that Mayor Bonnie Dunston of Platteville made a presentation to the Board regarding the activities of a committee of concerned citizens who support the responsible development of energy resources in the area.

Jenny Lee was present, she helps Mayor Dunston with the Energy Council.

Trustee Cole made a motion, seconded by Trustee Davis to approve Resolution 15-20, A Resolution in support of responsible energy development.

The vote was as follows:

Aye: Trustees Cole, Davis, Hamilton, Chavez, Hargis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

b. Interview Jennifer Root for a Planning Commission position

Jennifer Root, Hudson Resident, was present and reported her interest in being a Hudson Planning Commissioner.

c. Resolution 15-19, A Resolution appointing Jennifer Root to the Planning Commission

Trustee Hamilton made a motion, seconded by Trustee Hargis to approve Resolution 15-19, A Resolution appointing Jennifer Root to the Hudson Planning Commission for the remainder of a four-year term.

The vote was as follows:

Aye: Trustees Hamilton, Hargis, Cole, Chavez, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

d. Ordinance 15-10, Second Reading, An Ordinance amending the Hudson Municipal Code concerning modification to existing wireless telecommunication facilities

Trustee Hargis made a motion, seconded by Trustee Cole to approve Ordinance 15-10, second reading, An Ordinance amending the Hudson Municipal Code concerning modification of existing wireless telecommunication facilities.

The vote was as follows:

Aye: Trustees Hargis, Cole, Davis, Chavez, Hamilton and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

- e. Ordinance 15-11, Second Reading, An Ordinance approving the sale of Town-Owned property known as Lot 7A, Hudson Industrial Park Filing No. 1

Joe Racine, Town Administrator, reported that this would approve the sale of surplus property to BNSF in accordance with the letter of intent that was approved at an earlier meeting. The ordinance acknowledges that the property was originally dedicated to the Town as a site for a wastewater treatment facility. In 2010 the Town and the developer agreed that the limitation to the site's use for a wastewater facility would be removed, enabling the Town to sell the site for other industrial purposes. BNSF has not approved the amendments to the purchase agreement at this time.

Trustee Cole made a motion, seconded by Trustee Hargis to continue Ordinance 15-11, second reading, An Ordinance approving the sale of Town-owned property known as Lot 7A, Hudson Industrial Park Filing No. 1 until the next Regular Board of Trustees Meeting.

The vote was as follows:

Aye: Trustees Cole, Hargis, Chavez, Hamilton, Davis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

- f. Ordinance 15-12, Second Reading, An Ordinance vacating portions of Fir Street, Second Avenue, and the alley in Block 74, Town of Hudson

Trustee Cole made a motion, seconded by Trustee Chavez to approve Ordinance 15-12, second reading, An Ordinance Vacating Portions of Fir Street, Second Avenue, and the Alley in Block 74, Town of Hudson.

The vote was as follows:

Aye: Trustees Cole, Chavez, Davis, Hamilton, Hargis and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

- g. Ord. 15-13, Emergency Ordinance initiating the proceedings to adopt a Home Rule Charter for the Town of Hudson and calling a Special Election for Tuesday, November 3, 2015

Corey Hoffmann, Town Attorney, reported that Ordinance 15-13 begins the process for a Home Rule Charter. Mr. Hoffmann explained that this initiates the home rule process, sets November 3, 2015 as the date of an election, sets a mail ballot election, provides the language for the ballot question, and provides for adoption of an emergency ordinance. Weld County has been contacted and a Intergovernmental Agreement has been received for the coordinated election on November 3, 2015.

Trustee Hargis made a motion, seconded by Trustee Davis to approve Ordinance 15-13, Emergency Ordinance initiating the proceedings to adopt a Home Rule Charter for the Town of Hudson and calling a Special Election for Tuesday, November 3, 2015.

The vote was as follows:

Aye: Trustees Hargis, Davis, Chavez, Cole, Hamilton and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

h. Wu Property Site Plan and Waiver

Joe Racine, Town Administrator, reported that a site plan application was received from Rock & Company, the tenant of the Wu Property located at 450 Date Street. The property was leased for storage of industrial equipment in violation of the permitted uses in the C-1 zoning district. The Hudson Planning Commission recommended approval of the waiver and site plan with five conditions:

1. Occupancy of the existing structures on the property be limited to storage of materials and equipment and no human related activities such as office or manufacturing be permitted within the existing buildings.
2. The storage yard be screened with an opaque fence not less than 6' in height. Security fence and covering surrounding the property be kept in good condition and that rips, tears or deterioration be repaired in a timely manner.
3. No advertising or identification signs or exterior lighting will be provided on the site. Any on-site lighting be directed in such a way as to avoid glare onto surrounding properties.
4. Any activity involving relocation or moving of equipment or supplies be limited to normal business hours of between 7:00 A.M. and 6:00 P.M., Monday thru Saturday.
5. Any on-street activity associated with the operation, such as parking or temporary storage be limited to the above business hours and no overnight parking be permitted.

Mr. Racine reported that property is leased to Rock & Company for three years and recommended the waiver be granted for the three-year period.

Trustee Cole made a motion, seconded by Trustee Hargis to approve the Wu Property site plan and waiver for three years, subject to the listed conditions.

The vote was as follows:

Aye: Trustees Cole, Hargis, Davis, Chavez, Hamilton and Mayor Patch

Nay - None

Mayor Patch declared the motion carried.

I. Resolution 15-21, A Resolution approving an application for an Energy and Mineral Impact Assistance Grant for a new Town Hall.

Joe Racine, Town Administrator, reported that the Board and staff have been working with Humphries Poli Architects for a preliminary design. A design concept and cost estimate is needed for a grant application to the Colorado Department of Local Affairs for a matching grant funds. The Resolution indicates the Board's support for the project, and its commitment to provide the required matching funds in next year's budget if the grant is approved. The grant application must be submitted by August 1, 2015. The estimated costs of the project have not been finalized.

Trustee Cole made a motion, seconded by Trustee Hargis to approve Resolution 15-21, A Resolution approving an application for an Energy and Mineral Impact Assistance Grant for a new Town Hall subject to the amount to be determined during the work session.

The vote was as follows:

Aye: Trustees Cole, Hargis, Hamilton, Chavez and Mayor Patch

Nay – Trustee Davis

Mayor Patch declared the motion carried.

k. Resolution 15-22, A Resolution amending the personnel manual

Linnette Barker, Town Clerk/Treasurer, reported that this Resolution amends the Personnel Manual from a semi-monthly to a two-week schedule, with payroll being paid a week in arrears. The payroll period will begin on Sunday and end on Saturday at midnight. It will improve bookkeeping with each pay period having 14 days rather than the variable, semi-monthly system we are currently using.

Trustee Cole made a motion, seconded by Trustee Hargis to approve Resolution 15-22, A Resolution amending the Personnel Manual.

The vote was as follows:

Aye: Trustees Cole, Hargis, Hamilton, Davis, Chavez and Mayor Patch

Nay – None

Mayor Patch declared the motion carried.

l. Discussion: Board annual retreat agenda

Joe Racine, Town Administrator, reported that the Board Retreat is scheduled on August 1, 2015. Mr. Racine requested ideas for Retreat discussion items. Goals from last year's retreat, Christmas bonus procedure, Trash contract, Personnel needs, Town Marshal rules and regulations, Recreation programs, Systematic Street Maintenance program, and Hudson vision for the next 10 years.

m. Letter of Engagement approval for Hudson Comprehensive Plan to Sbrand

Mayor Patch made a motion, seconded by Trustee Cole to approve the \$5,000.00 Letter of Engagement with Sbrand for consulting services on the Comprehensive Plan project.

The vote was as follows:

Aye: Trustees Cole, Chavez, Hamilton, Davis, Hargis and Mayor Patch

Nay – None

Mayor Patch declared the motion carried.

### **3) STAFF REPORTS**

Corey Hoffmann, Town Attorney, reported that he is reviewing the comments from the County Attorney regarding the CR 49 IGA with Weld County.

Corey Hoffmann, Town Attorney, provided a memo regarding the recent Supreme Court decision that is consistent with the Town of Hudson policy, which prohibits off-duty use of marijuana.

Corey Hoffmann, Town Attorney, reported that this Friday he will be on a conference call regarding the Library Litigation.

Linnette Barker, Town Clerk, requested approval to open a small checking account for Municipal Court Restitution payments. The Board consensus was to approve the opening of this account.

Ron Allen, Public Works Director, reported that he picked up the Town Marshal car from the Town of Silverthorne. The Public Works Department has been working on installing the new water meters.

Hunter Fobare, Utility Director, reported that he will be getting bids to replace the roofs at Sparboe and the park pavilion and the security light at the RO site. CIRSA has determined that the hail damage is enough and they will honor a claim.

Dan Hamsmith, Economic Development Director, reported that has received complaints regarding semi-trucks continuing to travel through neighborhoods.

Dan Hamsmith, Economic Development Director, reported that the Library has requested starting some senior programs such as BINGO. The Board of Trustees consensus was to discuss at the Retreat.

**ADJOURNMENT**

The meeting adjourned at approximately 7:20 p.m.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Town Clerk

## Report Criteria:

Report type: GL detail  
Check.Type = {<-} "Adjustment"

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
07/31/2015	50837	1049	Allwater Supply LLC	3529	RO System Housing end cap assembly	70-68-6652	133.36
Total 50837:							133.36
07/31/2015	50838	886	At Your Service Electric	15193	New Light at Park Pavillion	10-69-6633	583.57
Total 50838:							583.57
07/31/2015	50839	45	AT&T	0202674225	Phone Service	10-64-6410	42.80
07/31/2015	50839	45	AT&T	0202674225	Phone Service	10-68-6410	21.41
07/31/2015	50839	45	AT&T	0202674225	Phone Service	70-64-6410	21.41
07/31/2015	50839	45	AT&T	0202674225	Phone Service	70-68-6410	21.39
Total 50839:							107.01
07/31/2015	50840	2	Atmos Energy	3014595288	Natural Gas Utility - 557 Ash Street	10-64-6412	17.05
07/31/2015	50840	2	Atmos Energy	3014595288	Natural Gas Utility - 557 Ash Street	70-64-6412	17.04
07/31/2015	50840	2	Atmos Energy	3014699345	Natural Gas Utilities - 509 Cherry Street	10-68-6412	42.74
Total 50840:							76.83
07/31/2015	50841	1208	BBR	02771	15 Yard Dumpster	10-68-6633	250.00
Total 50841:							250.00
07/31/2015	50842	683	Bratton's Office Equipment Inc.	009336	Canon Contract / Meter Charge	10-64-6633	841.38
Total 50842:							841.38
07/31/2015	50843	386	Brighton Lock & Key Service	36971	Spare Keys	75-68-6710	48.00
Total 50843:							48.00
07/31/2015	50844	1148	CDPHE	900024858	Drinking Water Fee - CO0162359	70-64-6415	310.00
Total 50844:							310.00
07/31/2015	50845	30	Century Link	3035369311	Telephone Service - 303-536-9311	70-64-6410	87.20
07/31/2015	50845	30	Century Link	3035369311	Telephone Service - 303-536-9311	10-64-6410	87.19
Total 50845:							174.39
07/31/2015	50846	108	CIRSA	150643	Vehicle Change - 1st Quarter	10-68-6310	641.24
07/31/2015	50846	108	CIRSA	150643	Vehicle Change - 1st Quarter	10-67-6310	18.86
07/31/2015	50846	108	CIRSA	150643	Vehicle Change - 1st Quarter	10-69-6310	94.30
07/31/2015	50846	108	CIRSA	150643	Vehicle Change - 1st Quarter	70-68-6310	141.45
07/31/2015	50846	108	CIRSA	150643	Vehicle Change - 1st Quarter	75-68-6310	47.15
07/31/2015	50846	108	CIRSA	151002	Library @ 100 S. Beech Street	25-64-6310	2,810.00
07/31/2015	50846	108	CIRSA	W15185	WC Claim 5025060	10-68-6035	17.11
07/31/2015	50846	108	CIRSA	W15185	WC Claim 5025060	10-67-6035	.51
07/31/2015	50846	108	CIRSA	W15185	WC Claim 5025060	10-69-6035	2.52

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
07/31/2015	50846	108	CIRSA	W15185	WC Claim 5025060	70-68-6035	3.78
07/31/2015	50846	108	CIRSA	W15185	WC Claim 5025060	75-68-6035	1.24
Total 50846:							3,778.16
07/31/2015	50847	36	Colorado Analytical Laboratories I	150630031	WW Samples	75-68-6633	111.60
07/31/2015	50847	36	Colorado Analytical Laboratories I	150701058	Water Samples	70-68-6633	135.00
07/31/2015	50847	36	Colorado Analytical Laboratories I	150701059	WW Samples	75-68-6633	209.70
07/31/2015	50847	36	Colorado Analytical Laboratories I	150702009	Water Samples	70-68-6633	135.00
07/31/2015	50847	36	Colorado Analytical Laboratories I	150707064	WW Samples	75-68-6633	111.60
07/31/2015	50847	36	Colorado Analytical Laboratories I	150709074	WW Samples	75-68-6633	23.40
07/31/2015	50847	36	Colorado Analytical Laboratories I	150714071	Water Samples	75-68-6633	111.60
Total 50847:							837.90
07/31/2015	50848	836	Colorado Water Well Pump Svc &	20150708	Well Repairs - Pond	70-68-6633	2,205.00
07/31/2015	50848	836	Colorado Water Well Pump Svc &	20150708A	Wells Repair - Pond	70-68-6633	6,567.00
Total 50848:							8,772.00
07/31/2015	50849	37	Coren Printing Inc.	18161	Yard of the Months Signs/Stakes	10-69-6730	90.00
07/31/2015	50849	37	Coren Printing Inc.	18218	AP Checks	10-64-6710	170.00
Total 50849:							260.00
07/31/2015	50850	212	Dana Kepner Company Inc.	1411935-00	Meter Sensorsrisers for New Meters	70-68-6710	205.98
Total 50850:							205.98
07/31/2015	50851	1228	Denver Industrial Pumps Inc.	75543	Booster Pump Install	70-68-6652	6,956.00
Total 50851:							6,956.00
07/31/2015	50852	504	Eastgate Engraving & Awards LLL	4057	Name Plates, Name Tag	10-66-6415	16.00
Total 50852:							16.00
07/31/2015	50853	53	Farm & Home Lumber	13265	New Public Works Facility HVAC	22-71-7713	18,715.00
07/31/2015	50853	53	Farm & Home Lumber	13266	New Public Works Facility Plumbing	22-71-7713	14,535.00
07/31/2015	50853	53	Farm & Home Lumber	13267	New Public Works Facility Electric Interior	22-71-7713	23,560.00
07/31/2015	50853	53	Farm & Home Lumber	13286	New Public Works Facility Second Installment	22-71-7713	13,091.95
Total 50853:							69,901.95
07/31/2015	50854	54	Fort Lupton City of	FIN2015187	O&M for Joint Water Treatment Facility	70-68-6515	4,882.14
Total 50854:							4,882.14
07/31/2015	50855	396	Gator Rubbish	292108	Trash Service - WW Treatment Plant	75-68-6633	48.00
07/31/2015	50855	396	Gator Rubbish	296541	Trash Service - Lagoon Sewer	75-68-6633	100.00
07/31/2015	50855	396	Gator Rubbish	297013	Trash Service - 258 Fifth Avenue	10-68-6633	48.00
07/31/2015	50855	396	Gator Rubbish	297052	Trash Service - 509 Cherry Street	10-68-6633	48.00
07/31/2015	50855	396	Gator Rubbish	298121	Trash Service - 557 Ash Street	10-64-6633	38.00
07/31/2015	50855	396	Gator Rubbish	298127	Trash Service - WW Treatment Plant	75-68-6633	48.00

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
07/31/2015	50855	396	Gator Rubbish	298339	Portable Toilet - May 2015 - PW Shop	10-68-6633	330.00
07/31/2015	50855	396	Gator Rubbish	298344	Portable Toilet - Jul/Aug 2015 - Park and Pond	10-69-6633	380.00
Total 50855:							1,040.00
07/31/2015	50856	19	Grainger	9787487041	Supplies	75-68-6710	158.59
Total 50856:							158.59
07/31/2015	50857	1045	Green Mountain Lawn & Tree Car	150644	Fertilize Trees	10-69-6633	285.75
Total 50857:							285.75
07/31/2015	50858	1249	Hydro Resources	IN001670	Cla-Value Rebuild Parts	70-68-6652	346.00
Total 50858:							346.00
07/31/2015	50859	115	International Institute of Mun. Cler	RENEW 201	Annual Membership	10-64-6211	250.00
Total 50859:							250.00
07/31/2015	50860	276	Joe Racine	07292015	Computer, Camera Phone	10-64-6633	50.00
07/31/2015	50860	276	Joe Racine	07292015	Medicare Reimbursement	10-64-6110	149.90
Total 50860:							199.90
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Town	10-64-6640	2,440.11
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Library Beech Street	10-64-6640	1,508.95
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Water	70-64-6640	358.25
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Skoglund	10-65-6640	1,598.30
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-001/00	Engineering - Love's Hotel	10-65-6640	3,500.50
07/31/2015	50861	840	Ketterling Butherus & Norton Engi	1131-003/00	Engineering - BNSF Feasibility Study	10-64-6640	116.25
Total 50861:							9,522.36
07/31/2015	50862	1255	Long, Lawrence	072815	Park Pav Rental Refund	10-45-4513	25.00
Total 50862:							25.00
07/31/2015	50863	84	Mountain States Pipe & Supply	340529-01	Meter sets	70-68-6710	207.96
07/31/2015	50863	84	Mountain States Pipe & Supply	340529-02	Meter Risers for New Meters	70-68-6710	2,342.01
07/31/2015	50863	84	Mountain States Pipe & Supply	340529-03	Meter Risers for New Meters	70-68-6710	525.46
Total 50863:							3,075.43
07/31/2015	50864	466	Professional Management Solutio	83993	Financial Consulting	10-64-6632	360.00
Total 50864:							360.00
07/31/2015	50865	348	Prospect Implement Inc.	R53184	Mower Maint - Brush Hog	10-69-6633	1,958.53
Total 50865:							1,958.53
07/31/2015	50866	509	Quill Corporation	5558201	Copy Paper, Coffee, Paper Towels, Trash Bags	10-64-6720	81.90

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
07/31/2015	50866	509	Quill Corporation	5558201	Copy Paper, Coffee, Paper Towels, Trash Bags	10-64-6710	45.81
Total 50866:							127.71
07/31/2015	50867	1234	Redman Pothole Service LLC	071215TH	Culvert Cleaning Maint.	70-68-6633	6,250.00
Total 50867:							6,250.00
07/31/2015	50868	1115	Rudy's GTO Prospect Valley	P-18879	Tire Repair	75-68-6633	15.06
Total 50868:							15.06
07/31/2015	50869	49	SAFEbuilt Inc	0020461-IN	Code Enforcement Services - June 2015	10-66-6632	893.73
07/31/2015	50869	49	SAFEbuilt Inc	0020516-IN	Building Permits and Plan Review Services	10-65-6642	1,294.00
Total 50869:							2,187.73
07/31/2015	50870	1212	Santander Leasing LLC	1698681	Street Sweeper Payment	10-68-7734	9,348.10
Total 50870:							9,348.10
07/31/2015	50871	285	Town of Hudson	7162015	Yard of the Month Winners - July 2015	10-69-6730	60.00
Total 50871:							60.00
07/31/2015	50872	800	Treatment Technology	170335	WW Chemicals	75-68-6710	2,240.57
Total 50872:							2,240.57
07/31/2015	50873	131	Tribune The	4192436	Ordinance Publishing - 15-12	10-64-6620	149.85
07/31/2015	50873	131	Tribune The	4192437	Ordinance Publishing - 15-11	10-64-6620	52.38
07/31/2015	50873	131	Tribune The	4192438	Ordinance Publishing - 15-10	10-64-6620	184.11
Total 50873:							386.34
07/31/2015	50874	5	United Power	1519101071	Street Lights	10-68-6414	1,142.99
07/31/2015	50874	5	United Power	1519101071	Ball Park Lights - 650 Cherry Street	10-69-6413	18.12
07/31/2015	50874	5	United Power	1519101071	Ball Park Lights - 650 Cherry Street	10-69-6413	16.00
07/31/2015	50874	5	United Power	1519101071	Electric - 22900 Service Rd.	70-68-6413	155.94
07/31/2015	50874	5	United Power	1519101071	Electric - 509 Cherry	10-68-6413	105.33
07/31/2015	50874	5	United Power	1519101071	Electric - 1100 5th Ave.	70-68-6413	30.65
07/31/2015	50874	5	United Power	1519101071	Water Pump Station	70-68-6413	123.33
07/31/2015	50874	5	United Power	1553401071	Town Hall	10-64-6413	145.13
07/31/2015	50874	5	United Power	1553401071	Town Hall	70-64-6413	145.13
07/31/2015	50874	5	United Power	1553401071	Town Hall	70-64-6413	.01
07/31/2015	50874	5	United Power	1690130107	Electric - 21507 Hwy 52	75-68-6413	1,109.74
07/31/2015	50874	5	United Power	8669700071	Electric - 1175 6th Ave	70-68-6413	2,144.67
07/31/2015	50874	5	United Power	9314600071	Electric - 5594 WCR 47	70-68-6413	266.43
Total 50874:							5,403.45
07/31/2015	50875	99	USA BlueBook	685934	Training	75-68-6710	167.48

Check Issue Date	Check Number	Vendor Number	Payee	Invoice Number	Description	Invoice GL Account	Check Amount
Total 50875:							167.48
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	10-64-6411	17.13
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	10-68-6411	46.11
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	70-68-6411	46.08
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	75-68-6411	46.08
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	10-66-6411	32.04
07/31/2015	50876	536	Verizon Wireless	9748744115	Cell Phone Service	70-64-6411	46.08
Total 50876:							233.52
07/31/2015	50877	293	Virulent Solutions Inc.	H150721	Computer, Server Updates and Maintenance	10-64-6633	855.00
07/31/2015	50877	293	Virulent Solutions Inc.	H150723OC	Computer Servicing	10-64-6633	380.00
Total 50877:							1,235.00
07/31/2015	50878	13	Weid County Sheriff's Office	07072015	Patrol Time	10-66-6632	13,082.13
Total 50878:							13,082.13
Grand Totals:							156,093.32

Report Criteria:

Report type: GL detail  
 Check.Type = {<>} "Adjustment"

**ESCROW AGREEMENT - SCHEDULE 1**  
COLORADO MUNICIPAL LEASE-PURCHASE AGREEMENT No.6911 (THE "AGREEMENT")  
BY AND BETWEEN  
**Lessor**, Government Capital Corporation and **Lessee**, Town of Hudson  
Dated as of April 15, 2015

**ESCROW DISBURSEMENT REQUEST FORM**

American National Bank, acting as escrow agent (the "Agent") under the Escrow Agreement dated as of April 15, 2015 (Escrow Date) by and among the Agent, Government Capital Corporation as Lessor and Town of Hudson as Lessee, is hereby requested to pay to the person or corporation designated below as Payee the sum set forth below in payment of the acquisition and installation costs of the equipment described below. The amount shown below is due and payable under the invoice of Payee with respect to the described equipment and has not formed the basis any prior request for payment.

PAYEE: Mountain States Pipe

AMOUNT: \$23,798.46

DESCRIPTION OF EQUIPMENT: Water Meters

INVOICE #337850-01

DATED: 7-21-15

Indicate Method for Payment Disbursement:

Regular Mail Check

Mailing Address: Remit to address on invoice

Lessee: Town of Hudson

By: X \_\_\_\_\_  
Raymond Patch, Mayor

Lessor: Government Capital Corporation or its Assigns

By: \_\_\_\_\_  
Authorized Signer

**ACCEPTANCE CERTIFICATE**

Town of Hudson as Lessee under that certain Municipal Lease-Purchase Agreement dated as of April 15, 2015 ("Agreement Date") (the "Lease"), hereby acknowledges receipt in good condition of all the equipment described on the attached Vendor Invoice(s) hereby accepts such equipment and hereby certifies that Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under the Lease with regard to such equipment, that such equipment is fully insured in accordance with Section 10 of the Lease and that such equipment constitutes all or a portion of the Equipment as that term as defined in the Lease.

Date: \_\_\_\_\_, 2015.

By Lessee: Town of Hudson

For Lessee: X \_\_\_\_\_  
Raymond Patch, Mayor



MOUNTAIN STATES PIPE & SUPPLY  
 111 WEST LAS VEGAS STREET  
 COLORADO SPRINGS, CO 80903  
 719-634-5555 FAX 719-634-5551

# INVOICE

INVOICE DATE	INVOICE NO.
07/21/15	337850-01
P.O. NO.	PAGE #
Ron Paul	1

SHIP TO: TOWN OF HUDSON  
 557 ASH STREET  
 HUDSON, CO 80642

BILL TO: TOWN OF HUDSON  
 P O BOX 351  
 HUDSON, CO 80642-0351

**REMIT TO:**  
 Mountain States Pipe & Supply, Co.  
 PO Box 174449  
 Denver, CO 80217-4449

**TECH ISSUES WITH EMAIL PROCESSING \*\*MAILING**

112094

337850-01

23798.46



PLEASE RETURN THIS PORTION  
 WITH YOUR REMITTANCE

Please Cut

INSTRUCTIONS			
SHIP POINT	SHIP VIA	SHIPPED	TERMS
** Drop Ship **	BEST WAY POS	07/21/15	NET 30 DAYS

LINE NO.	PRODUCT AND DESCRIPTION	QUANTITY ORDERED	QUANTITY B.O.	QTY. SHIPPED	QTY. U/M	UNIT PRICE	AMOUNT (NET)
2	0302-E1-E02 Octave 2 DI 6 WHL OSI+ 20' XTR	14	0	14	each	1699.89	23798.46
3	199-007-13 1" 3G Interpreter Register : : Interpreter Reg to be retrofitted to B16-A11-A03-0101A-1 :	1	1	0	each	128.00	0.00
4	00-020-010 MasterLink Drive-by Reading System : Includes: 1-MasterLink DCS & VRS Software 1-Microsoft MapPoint software license 1-Panasonic Toughbook Model 53 Laptop 1-Vehicle Power Supply, Hard Shell Carrying Caes, GPS Receiver 1-Dialog 3G DMMR RF Transceiver, Cigarette DC Power Supply, 1-External Magnetic Mount Antenna, 3G Tech Programming Software : 2 day on-site installation and training, all expenses 1 year Phone support :	1	1	0	each	22205.00	0.00
3	Lines Total			14		Total Invoice Total	23798.46

Town of Hudson Accounts Payable  
 Description: \_\_\_\_\_  
 Account# \_\_\_\_\_  
 Approved by: \_\_\_\_\_

Cash Discount 0.00 If Paid By 07/21/15

No merchandise returned for credit will be accepted without our approval. If we approve the return, a restocking charge will be made and purchase invoice number must be given. All returned merchandise must be unused and in 100% saleable condition. 1 1/2% per month interest (18% APR) will be charged on balance in excess of 30 days past due. In compliance with OSHA Hazard Communications Standard MSD Sheets are available upon request for any hazardous material purchased.

## MEMORANDUM

**TO:** Board of Trustees  
**FROM:** Roy Fronczyk, Town Planner  
**DATE:** August 5, 2015  
**SUBJECT:** Resolution No. 15-25, Site Plan Review, Land Target Range

### ATTACHMENTS

#### I. BACKGROUND

The Town of Hudson adopted Ordinance No. 15-02 which repeals and reenacts Section 10-55 of the Hudson Municipal Code. The modification to the code relevant to this memo is in Section (b) (4) (a) which states:

*a. It shall be unlawful for any owner or operator of a private shooting range or gallery to allow or permit the discharge of a firearm at such range or gallery without having first received approval of a site plan by resolution from the Board of Trustees. Such approval shall include as a condition of such approval that the Town is authorized to conduct reasonable inspections of any such range or gallery to determine it is being operated and maintained in a safe manner consistent with the site plan approval.*

#### II. REQUEST:

Mr. Lloyd Land has submitted a request for approval of a site plan for a Target Range on his property located on Lot "B", Parcel 147506200047 in Sec. 6, T 1N, R 64W. The site is approximately ¼ mile north of State Highway 52 and adjacent to the East bank of Ireland Reservoir #5.

Resolution No. 15-25 would approve the site plan. The 2-page site plan, attached as an exhibit to the resolution, shows the Firing Line to be located at a covered structure on the property with the range facing West. The Target Line is located approximately 40' from the Firing Line and a 10' high Impact Berm/Backstop is located another 10' beyond the Target Line. The site will be accessed from the north via a private road.

#### III. EXISTING CONDITIONS:

The site is currently classified as agricultural by the Weld County Assessor. The nearest activity to the site is a home located +/- 970 feet North and East owned by Mr. Samuel Covarrubias and another homestead approximately +/- 1,725 feet South and West of the site owned by Mr. Richard Mettler.

The shooting range faces West and the firing line is approximately +/- 1,920 feet from County Road 49 which runs along the West side of Ireland Reservoir #5.

#### IV. FINDINGS and CONCLUSIONS

Staff researched and consulted with other staff with experience in target ranges to examine any issues with the plan that would jeopardize the health, safety and welfare of users of the range and adjacent properties. No major issues were identified, however there are a few recommendations that came out of the review:

- The impact berm should be free from rocks, stones or objects that may tend to increase the possibility of ricochets.
- The surface of the entire range should be relatively clear of any objects, stones or excessive growth that may tend to enhance the possibility of ricochets, or create bad footing conditions. The entire range shooting area should be relatively flat and level.

The recent tragedy associated with a camper in the Pike National Forest who was struck by a stray bullet of

unknown origin caused staff to take a look at the impact area of various ammunition that may be used at the target range are as follows:

12 Gauge Shotgun, riot 00 buckshot – 1,968 feet

.22 Long Rifle – 4,593 feet

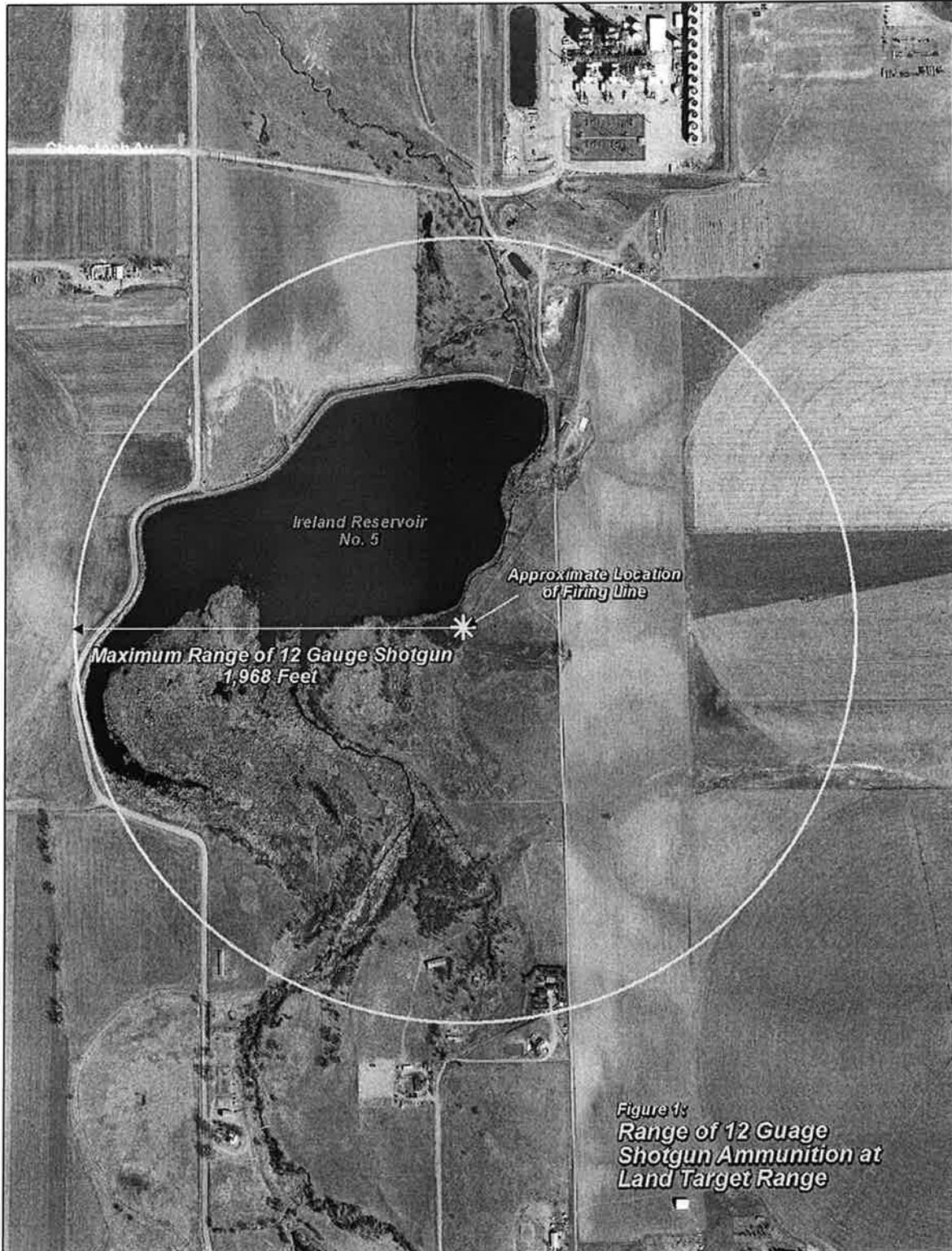
.45 Pistol – 5,706 feet

(Source: Table 1: Maximum Range of Small Arms Ammunition, Range Design Criteria, US Department of Energy, Office of Health, Safety and Security, June, 2012)

The attached Figure 1 shows the range of a fired 12 Gauge Shotgun. Not shown is the maximum range of a .22 long rifle would extend to Chem-tech Drive on the East, down to State Highway 52 on the South and into the Excel Power Plant on the North.

The proposed target range proposed by Mr. Land is for use by himself, his family and friends. We have assumed the responsible use by the owner and his guests and that the use would not pose a threat to the health, safety and welfare of residents and properties in the vicinity of the target range.

Staff recommends approval of the site plan for a Target Range and that the Town be permitted reasonable inspections of the property consistent with the intent of the Ordinance referenced above.



Lloyd Land Target Range

Additional comments from the applicant, received August 3<sup>rd</sup>.

*The target range is for private use only, by owner, family, and an occasional invited guest. The firearms to be used for target practice would be considered recreational, and to consist primarily of hand-held pistols and small caliber rifles. Rarely, there may be a need to "sight-in" a hunting rifle, but the backstop of railroad ties and earth berm should be more than adequate to contain any discharged projectiles. The firing alignment from shade structure to target zone is actually downhill with a private lake just beyond the earth berm target backstop.*

*Historically, the target range was used on occasion while the property was in still the county, prior to the recent annexation into Hudson. Most of the adjacent neighbors were aware of it's use and have not expressed any objection that we are aware of.*

RESOLUTION NO.

15-25

Series of 2015

**TITLE: A RESOLUTION APPROVING A SITE PLAN FOR THE USE OF PROPERTY AS A TARGET RANGE PURSUANT TO SECTION 10-55 OF THE HUDSON MUNICIPAL CODE**

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees hereby approves the Site Plan for the use of the property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, as a target range, based on the Site Plan submitted as **Exhibit B**, attached hereto and incorporated herein by this reference. Said approval is contingent on satisfaction of the following conditions:

- The impact berm should be free from rocks, stones or objects that may tend to increase the possibility of ricochets; and
- The surface of the entire range should be relatively clear of any objects, stones or excessive growth that may tend to enhance the possibility of ricochets, or create bad footing conditions. The entire range shooting area should be relatively flat and level.

Section 2. Pursuant to Section 10-55 of the Hudson Municipal Code, the approval of the Site Plan is further contingent on the Town being authorized by the property owner to conduct reasonable inspections of the target range to determine it is being operated and maintained in a safe manner consistent with this site plan approval.

INTRODUCED, READ and PASSED this 5th day of August, 2015.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Raymond Patch, Mayor

ATTEST:

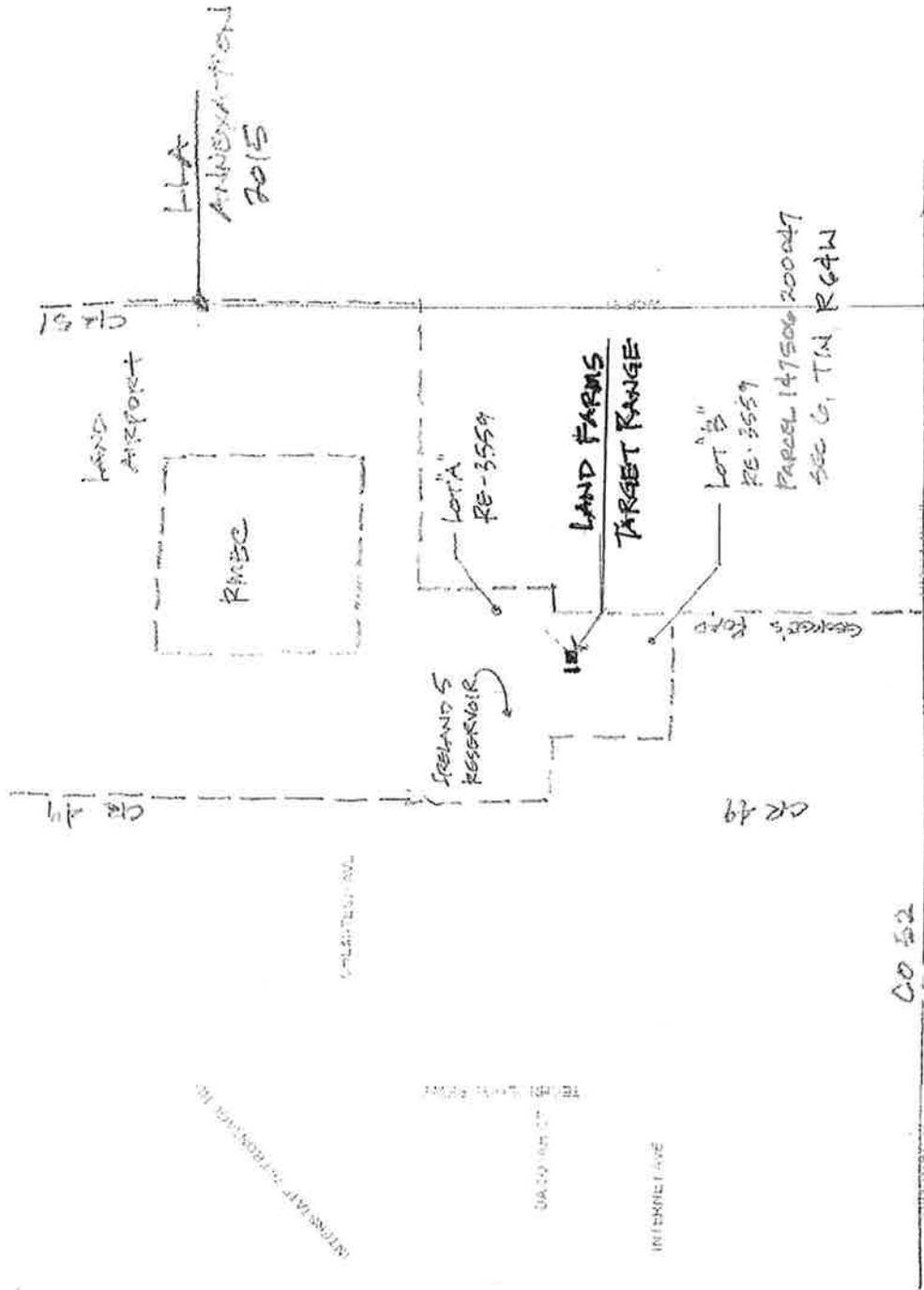
\_\_\_\_\_  
Linnette Barker, CMC, Town Clerk

**Exhibit A**  
Property Description

Lot B, Weld County Recorded Exemption RE3559



Exhibit B (continued)



LAND FARMS - TARGET RANGE  
 KEY PLAN  
 6/29/15

## Joe Racine

---

**From:** Barry Kramer <BKramer@safebuilt.com>  
**Sent:** Thursday, July 02, 2015 12:10 PM  
**To:** Joe Racine  
**Subject:** RE: electrical service to maintenance building

Joe

Please make sure this service has a one line drawing prepared and sent to us for review. Ideally this should be engineer designed for the loads, disconnects and wire sizes.

Barry Kramer  
Building Official  
SAFEbuilt.  
11409 Business Park Cir STE #350  
Firestone, CO 80504  
303.774.1388 x 103  
303.774.0455 Fax  
[bkramer@safebuilt.com](mailto:bkramer@safebuilt.com)  
[www.SAFEbuilt.com](http://www.SAFEbuilt.com)

**From:** Joe Racine [<mailto:Manager@hudsoncolorado.org>]  
**Sent:** Thursday, July 02, 2015 11:42 AM  
**To:** Ron Allen; Ray Patch; Jason Roberts; Jay Mendoza; Bob Aspey; Barry Kramer  
**Subject:** electrical service to maintenance building

This is to follow up on this morning's meeting with United Power.

1. Service to the building will be underground from the pole in the alley south of the shop that has the existing transformer.
2. We will pay for 80' of additional wire and conduit. Bob will leave sufficient wire coiled at the base of the pole for United Power to make the connection to the new transformer when it's installed.
3. The electrical service to the building will be upgraded from the planned 200 amp to 320 amp.
4. We will pay the difference for the net increase in wire size for the full run from the transformer pole to the meter, likely an upgrade from the planned 250 MCM to 350 MCM. Bob will consult on the electrician regarding the proper wire sizing for the 320 amp service. The meter base will need to be upgraded for the 320 amp service, but this should be a minimal cost swap-out.
5. We will stay with the 200 amp lighting panel as originally planned, and the Town can get permits and add a second panel at a later date after occupancy when needed.
6. The existing United Power transformer will have to be upgraded to accommodate the shop with the 320 amp service. The Town will pay United power for the cost of the new transformer.
7. The town will be able to occupy the shop with the existing temporary service, just for the initial move-in. United Power will initiate the design for the upgraded transformer and get the design and cost info to the Town asap.

Please let me know if I missed or mis-stated anything.

Thanks.

Joe

**MEMORANDUM**

**2.b.**

**To:** Board of Trustees  
**From:** Joe Racine, Town Administrator  
**Date:** August 5, 2015  
**Subject:** Ordinance No. 15-11, Second Reading, Approving and ratifying the sale of town-owned property, Lot 7A, Hudson Industrial Park Filing No. 1

**Attachments**

Ordinance No. 15-11, presented on second reading, approves the sale of surplus property to BNSF in accordance with the letter of intent as presented to the Board on May 6<sup>th</sup>. At that time the consensus of the Board was to proceed with the negotiation of a sale of Lot 7A, Hudson Industrial Park. The ordinance acknowledges that the property was originally dedicated to the Town as a site for a wastewater treatment facility, an idea that is long since abandoned. The Town and the developer agreed that the limitation to the site's use for a wastewater facility would be removed, enabling the Town to sell the site for other industrial purposes.

This second reading consideration was tabled at the July 15<sup>th</sup> meeting.

The action proposed for the Board at this meeting does not serve to sell the property, only to meet the statutory requirement that property be surplus in order to enable the sale without an election and to approve the purchase agreement.

The proposed ordinance acknowledges that original purpose for the site. In view of that, I recommend that should the sale be closed the revenue be posted to the wastewater fund so that the proceeds from the sale go into the fund for which it was originally intended and provide some much-needed fund balance in the utility's fund.

Corey Hoffmann has reviewed a draft purchase agreement from the buyer and offered suggestions for a few amendments. Corey's revised draft, attached, was approved by the buyer.

ORDINANCE NO.

15-11  
Series of 2015

**TITLE: AN ORDINANCE APPROVING THE SALE OF TOWN-OWNED  
PROPERTY KNOWN AS LOT 7A, HUDSON INDUSTRIAL PARK  
FILING NO. 1**

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON,  
COLORADO, THAT:

Section 1. The Board of Trustees hereby approves the Purchase and Sale Contract – Unimproved Property attached hereto as **Exhibit A**, between the Town and BNSF RAILWAY COMPANY, a Delaware corporation, of the Town-owned property known as Lot 7A, Hudson Industrial Park Filing No. 1 (the “Property”), and authorizes the Mayor to execute any necessary documents regarding said sale.

Section 2. The Board of Trustees further finds pursuant to C.R.S. § 31-15-713(1)(b) that the Property can no longer be held for a valid governmental purpose, in this case as a Town wastewater facility site, and thus the Town is authorized to sell the property pursuant to C.R.S. § 31-15-713(1)(b) "upon such terms and conditions as the governing body may determine."

Section 3. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 5. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Raymond Patch, Mayor

ATTEST:

\_\_\_\_\_  
Linnette Barker, CMC, Town Clerk

PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_, 2015, AND ORDERED PUBLISHED ONCE IN FULL.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Raymond Patch, Mayor

ATTEST:

\_\_\_\_\_  
Linnette Barker, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, Town Attorney

**EXHIBIT A**  
**PURCHASE AND SALE CONTRACT**  
**UNIMPROVED PROPERTY**

THIS PURCHASE AND SALE CONTRACT ("Contract") is entered into as of the Effective Date (defined below) by and between Town of Hudson ("Seller"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("Purchaser").

In consideration of the mutual covenants set forth in this Contract and for other valuable consideration, which the parties acknowledge receiving, Seller and Purchaser agree as follows:

**Section 1.        Sale and Purchase.**

(a) Subject to the terms and conditions set forth in this Contract, Seller agrees to sell and convey to Purchaser (or its designee), and Purchaser (or its designee) agrees to purchase and accept from Seller, for the Purchase Price (defined below):

(1) That certain tract of land (the "Land") in Weld County, Colorado, commonly known as HUDSON INDUSTRIAL PARK LOT 7A BEING THAT PART OF THE SW ¼ OF THE NE ¼ OF THE SE ¼ OF SECTION 36, TOWNSHIP 02 NORTH, RANGE 65 WEST consisting of approximately 5.05 acres in Weld County, Colorado more particularly described in the attached **Exhibit "A"**, together with all strips and gores, easements, rights-of-way, licenses, interests, rights, and appurtenances appertaining to the Land, if any.

(2) All rights, titles, and interests of Seller in and to any easements, rights-of-way, or other interests in, on, or to any alley, highway, or street in, on, across or adjoining the Land.

(3) All site plans, surveys, soil and substrata studies, environmental assessments, plans and specifications, engineering plans and studies, landscape plans, and other plans, studies or reports of any kind in Seller's or its contractors' or agents' possession that relate to the Property ("Plans and Studies").

(4) Any and all other rights, titles, interests, privileges, and appurtenances owned by Seller and in any way related to, or used in connection with, the ownership of the Land; provided that Purchaser desires to receive assignment of the same.

(b) The above listed items are collectively called the "Property." The Property must be conveyed, assigned, and transferred to Purchaser (or its designee) at the Closing (defined below) free and clear of all liens, claims, easements, covenants, conditions, rights-of-way, reservations, restrictions,

encroachments, tenancies, mineral interests, royalty interests, oil, gas or mineral leases, and any other type of encumbrance (collectively, the "Encumbrances"), except the Encumbrances appearing in the Title Commitment (defined below) that either are not objected to, or, if objected to, are not cured and that are subsequently waived in accordance with Section 3 ("Permitted Encumbrances").

**Section 2. Purchase Price and Earnest Money.**

(a) The purchase price ("Purchase Price") for the Property is Two Hundred Fifty Thousand and 00/100 (\$250,000.00) payable in cash at closing.

(b) The Purchase Price is payable in cash at the Closing (defined below).

(c) Within three (5) business days after the Effective Date, Purchaser shall deliver to Title Company (defined below) (\$10,000.00) ("Earnest Money"), either by wire transfer or by a certified or cashier's check payable to the order of Title Company. The Earnest Money will be held in escrow in an interest-bearing account in a financial institution acceptable to Purchaser accruing to the benefit of the party entitled to the Earnest Money under this Contract. Delivery of the Earnest Money is a condition precedent to the effectiveness of this Contract. If the contemplated transaction is consummated in accordance with this Contract, the Earnest Money (and all accrued interest) will be applied to the Purchase Price at the Closing. If the transaction is not so consummated, the Earnest Money (and all accrued interest) will be held and delivered by the Title Company as provided below.

**Section 3. Title Commitment and Survey.**

(a) As soon as practicable, but no later than twenty-five (25) days after the Effective Date, Purchaser, at its expense, will deliver or cause to be delivered to Purchaser the following:

(1) An ALTA Owner's Commitment for Title Insurance (or other comparable form if the Land is located in a jurisdiction which does not employ ALTA standards ("Title Commitment") from Chicago Title ("Title Company"). The Title Commitment will set forth the status of title to the Property and will show all Encumbrances and other matters, if any, relating to the Property.

(2) Legible copies of all documents referred to in the Title Commitment, including but not limited to lien instruments, plats, reservations, restrictions, and easements.

(3) Copies of the tax statements covering the Property.

(b) Within twenty-five (25) days after the Effective Date, Purchaser, at its expense, will deliver to Purchaser a survey ("Survey") consisting of a plat and to the extent available, field notes describing the Property. The Survey must be a current, on-the-ground, staked survey performed by a registered public surveyor or engineer satisfactory to Purchaser and Title Company. The Survey must **comply with the standards of an ALTA survey** and must (i) reflect the actual dimensions of the Land and the number of gross square feet and net square feet contained in it; (ii) identify any rights-of-way, easements, or other Encumbrances by applicable recording reference; and (iii) include the surveyor's registered number and seal, the date of the Survey, and a narrative certificate acceptable to Purchaser in favor of Purchaser, Title Company and if Purchaser requests, Purchaser's lender.

(c) Purchaser must give Seller written notice of any objections ("Objections") to the Title Commitment or the Survey (including, but not limited, to the legal description) within fifteen (15) business days after receiving the Title Commitment, the Survey, and all documents referred to in the Title Commitment and the Survey. At the Closing, Seller will provide releases for any deed-of-trust liens, judgment liens, mechanic's liens, delinquent taxes, or any other monetary liens encumbering the Property; provided, however, that if any such liens also encumber other property owned by Seller, Seller will not be required to obtain releases as to such other property, so long as Seller appropriately subdivides such other property from the Property.

(d) If Purchaser gives notice of the Objections, then Seller may (i) cure the Objections; (ii) cause the Title Commitment and the Survey to be amended to reflect cured matters; and (iii) give Purchaser a written response concerning the Objections within five (5) business days after receiving the notice from Purchaser. If Seller does not respond as described, then Purchaser is entitled either:

(1) To terminate this Contract by written notice to Seller and Title Company at any time within ten (10) business days after receipt of written notice from Seller stating that Seller will not or cannot cure the Objections. Upon termination, Purchaser will be entitled to the return of the Earnest Money,

and neither party will have any further rights or obligations under this Contract; or

(2) To waive the Objections that Seller will not or cannot cure and consummate the purchase of the Property subject to those Objections, which will be deemed to be Permitted Encumbrances.

(3) Notwithstanding the foregoing Sections, if Seller has commenced curing the Objections and is diligently prosecuting the same, as determined by Purchaser in Purchaser's sole discretion, then Purchaser in Purchaser's sole discretion may extend the Feasibility Period for an amount of time Purchaser deems necessary for Seller to cure the Objections.

(e) In the event the Title Commitment and/or Survey are revised after Purchaser's initial receipt of the same so as to include any additional exemptions or Encumbrances not shown on the initial Title Commitment and Survey ("New Encumbrances"), the provisions above shall be applicable to any such New Encumbrance and Purchaser shall have the right to deliver Objections with respect thereto in the same manner as Objections to the initial Title Commitment and Survey except that (i) the Objection Period with respect to any such New Encumbrance shall terminate ten (10) days after Purchaser's receipt of the revised Title Commitment or Survey which first refers to or discloses such New Encumbrance and (ii) the Cure Period with respect to such New Encumbrance shall terminate five (5) days after Seller's receipt of Purchaser's Objections with respect thereto.

#### **Section 4. Feasibility Period.**

(a) As used in this Contract, "Feasibility Period" means the period beginning on the Effective Date and ending at 6:00 p.m. Central Time, one hundred and twenty (120) days from the effective date. Purchaser may, at Purchaser's sole discretion, extend the Feasibility Period for an additional ninety (90) days by providing Seller written notification on or before the expiration date of the Feasibility Period, as it may be extended.

(b) At the commencement of the Feasibility Period, Seller will deliver to Purchaser copies of all Plans and Studies.

(c) Purchaser may terminate its obligation to purchase the Property at any time during the Feasibility Period in its sole discretion. Purchaser must exercise its termination rights under this Section 4(b) by delivering written notice to Seller at any time during the Feasibility Period. Upon

termination of this Contract during the Feasibility Period, Title Company shall -- and is authorized and instructed to -- promptly deliver the Earnest Money to Purchaser without the need for any further instruction or authorization from Seller, and neither party will have any further rights or obligations under this Contract. If Purchaser does not send such a notice during the Feasibility Period, it will be deemed to have elected to proceed with purchasing the Property.

(d) During the Feasibility Period, Purchaser may apply with the appropriate governmental authorities to obtain necessary governmental approvals, variances, or permits for Purchaser's contemplated use. Seller will cooperate with Purchaser's efforts to obtain these approvals.

(e) During the Feasibility Period, Seller will permit Purchaser and its contractors and agents to enter the Property to inspect and test the Property (including systems and structural inspections, soil borings, and environmental tests) as Purchaser deems necessary or desirable. Seller will cooperate with Purchaser in arranging the inspections and tests. Purchaser must repair any damages to the Property resulting from any inspection or testing conducted by it or at its direction, and will hold Seller harmless from any and all activities of Buyer, its agents or contractors for such inspections or testing.

(f) Notwithstanding anything herein to the contrary, in the event that Seller does not obtain and deliver either the Survey or the Title Commitment within the time periods specified above, the Feasibility Period shall be automatically extended (unless Purchaser gives notice otherwise) for the number of days that Seller is so delayed in delivering the Survey or the Title Commitment.

(g) As consideration for Seller's holding the Property available for purchase during the Feasibility Period, Purchaser has paid Seller \$100 ("Independent Contract Consideration"), which Seller may retain even if this Contract is terminated. The Independent Contract Consideration does not apply to the Purchase Price.

#### **Section 5. Termination, Default and Remedies.**

(a) Purchaser will be in default under this Contract if (i) it fails or refuses to purchase the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing, and such failure is not cured within five (5) business days after written notice of default from Seller. Purchaser will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Seller

fails to perform its obligations under this Contract. If Purchaser is in default, then Seller, as its exclusive remedy, is entitled to terminate this Contract by giving written notice to Purchaser before or at the Closing. Following the termination notice, neither party will have any further rights or obligations under this Contract. Title Company will then deliver the Earnest Money to Seller as liquidated damages, free of any claims by any person, including Purchaser. The Earnest Money to which Seller may be entitled is the parties' reasonable forecast of just compensation for the harm that Purchaser's breach would cause, which is otherwise impossible or very difficult to estimate accurately.

(b) Seller will be in default under this Contract if (i) it fails or refuses to sell the Property at the Closing, or (ii) it fails to perform any of its other obligations either before or at the Closing and such failure is not cured within five (5) business days after written notice from Buyer. Seller will not be in default, however, if it terminates this Contract when it has an express right to terminate or when Purchaser fails to perform its obligations under this Contract, and such failure is not cured within the cure period described above. If Seller is in default, then Purchaser is entitled to terminate this Contract by giving written notice to Seller before or at the Closing, whereupon neither party will have any further rights or obligations under this Contract and Title Company will then deliver the Earnest Money to Purchaser, free of any claims of any person, including Seller. Nothing herein shall limit any remedy at law, in equity or otherwise that Purchaser may have against Seller in the event of a breach by Seller of (a) any warranty of Seller set forth herein that is first discovered by Purchaser after the Closing, or (b) an obligation to be performed by Seller after Closing.

(c) If either Seller or Purchaser becomes entitled to the Earnest Money upon termination of this Contract, Purchaser and Seller shall deliver an instruction letter to the Title Company directing disbursement of the Earnest Money to the entitled party, but this joint instruction will not be necessary if Purchaser terminates this Contract before the end of the Feasibility Period. If either party fails or refuses to sign or deliver such an instruction letter, the refusing party shall pay all reasonable attorneys' fees and court costs incurred by the party so entitled to the Earnest Money.

**Section 6.      Closing.**

(a) The closing ("Closing") of the sale of the Property by Seller to Purchaser will occur in the Title Company's office on or before sixty (60) days following the end of the Feasibility Period ("Closing Date"). Purchaser may, at Purchaser's sole discretion, extend the Closing Date up to 1 time for 30 days by providing Seller written notification on or before the then-scheduled Closing Date.

(b) At the Closing, all of the following must occur, all of which are concurrent conditions:

(1) Seller, at its expense, shall deliver or cause to be delivered to Purchaser the following:

(i) A Special Warranty Deed ("Deed") in the form attached hereto as Exhibit "C" and incorporated herein by reference.

(ii) An **ALTA** Owner's Extended Coverage Policy of Title Insurance with all endorsements required by Purchaser ("Owner Policy") issued by Title Company to Purchaser for the Purchase Price insuring that, upon Closing, Purchaser is the owner of good and marketable fee simple title to the Property subject only to the Permitted Encumbrances, and to the lien of current, non-delinquent real property taxes and assessments for the year in which the Closing occurs.

(iii) Evidence satisfactory to Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power, and authority to do so.

(iv) Seller's affidavit setting forth its U.S. Taxpayer Identification Number, its office address, and its statement that it is not a "foreign person" as defined in Internal Revenue Code §1445, as amended.

(v) The original of each statement for current real estate and personal property taxes that Seller possesses, together with proof of payment of taxes.

(vi) Any other document or instrument that may be necessary or reasonably required by Purchaser or the Title Company to consummate the transaction.

(2) Purchaser, at its expense, shall deliver or cause to be delivered to Seller the following:

(i) Immediately available funds via wire transfer in an amount equal to the Purchase Price less the Earnest Money.

(ii) Evidence reasonably satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power, and authority to do so.

(3) Seller and Purchaser shall each pay their respective attorneys' fees, and all escrow and recording fees must be paid according to the custom for commercial real estate closings in the jurisdiction of the Property. If no custom predominates, then Seller and Purchaser shall each pay one-half (1/2) of all escrow and recording fees.

(c) Ad valorem and similar taxes and assessments relating to the Property will be prorated between Seller and Purchaser as of the Closing Date, based on estimates of the amount of taxes and assessments that will be due and payable for the Property during the year in which the Closing Date occurs. As soon as the amount of taxes and assessments on the Property for such year is known, Seller and Purchaser will readjust the amount of taxes and assessments due from each party with the result that Seller is responsible for those taxes and assessments applicable to the Property before the Closing Date and Purchaser is responsible for those taxes and assessments applicable to the Property on and after the Closing Date. All prior years' taxes and assessments will be Seller's obligations. This Section 7(c) will survive the Closing.

(d) Any taxes levied as a result of a change in land usage or ownership by virtue of the Property having received any agricultural, open-space or other special use valuation (such taxes being referred to herein as "Roll-Back Taxes") shall be the sole responsibility of Seller. Purchaser may change the use of the Property at any time and shall have no obligation to continue any existing special use valuation for any period of time. At the Closing, if Purchaser so requests, Seller shall execute written requests to the appropriate taxing authorities notifying such authorities that a change in use and ownership has occurred as of the Closing Date and requesting that such Roll-Back Taxes be calculated and a statement delivered therefor. The parties shall reasonably estimate the amount of Roll-Back Taxes which will become due and payable as a result of a change in use and ownership of the Property on the Closing Date ("Estimated Amount"). At the Closing,

the Estimated Amount shall be withheld from the sales proceeds and held in an escrow account with the Title Company ("Escrow Account"). The Escrow Account shall be an interest bearing account, and all interest accrued thereon shall become a part of the Escrow Account. When the tax statements for the Roll-Back Taxes are received from the appropriate taxing authorities, the party receiving the same shall promptly forward the same to Title Company and Title Company shall promptly pay the same from the Escrow Account and send copies of paid receipts to Seller and Purchaser. Any amounts remaining in the Escrow Account after the Roll-Back Taxes have been paid in full shall be promptly released to Seller. In the event that the amounts in the Escrow Account are not sufficient to pay such Roll-Back Taxes, Seller shall be responsible for any deficiency. At the Closing, the parties shall execute a mutually agreeable escrow agreement evidencing the above-described rights and obligations relative to the Escrow Account. Purchaser may assign its rights under this Section and such escrow agreement as security to any lender providing financing with respect to the Property and/or Purchaser's development thereof.

(e) All utility charges and the charges under any service contracts or insurance premiums that Purchaser elects to assume will be prorated between the parties as of the Closing Date.

(f) Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property free and clear of all tenancies and parties in possession.

(g) The provisions of Sections 6(c) and (d) above shall survive Closing.

**Section 7. Seller's Covenants, Representations and Warranties.**

(a) Seller covenants and agrees with Purchaser that:

(1) At all times before Closing, Seller shall maintain in force property and liability insurance with respect to damage or injury to person or property occurring on the Property.

(2) At all times before Closing, Seller shall maintain the Property in as good a condition and repair as exists on the Effective Date, except for normal wear and tear. Seller shall advise Purchaser of any significant repair or improvement it makes to keep the Property in such condition.

(3) Before Closing, Seller may not create -- or voluntarily permit to be created -- any liens, easements or

other conditions affecting all or part of the Property without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion.

(b) Seller represents and warrants to Purchaser that:

(1) Seller is a Colorado statutory municipality \_\_\_\_\_ duly organized, validly existing, and in good standing under Colorado law.

(2) Seller has all requisite power and authority to own the Property, enter into this Contract, and consummate the transaction contemplated in this Contract. Seller has duly authorized the execution and delivery of this Contract such that all documents to be executed by Seller are its valid, legally binding obligations and are enforceable against it in accordance with their terms.

(3) The persons executing this Contract and any and all documents on behalf of Seller have the legal power, right, and actual authority to bind Seller.

(4) Seller has the full right to sell the Property in accordance with this Contract.

(5) Seller has no notice and to the best of Seller's knowledge, there are no actions, suits, or proceedings pending, threatened or asserted against Seller or the Property, before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality.

(6) Seller has no notice and to the best of Seller's knowledge, there are no pending or threatened condemnation actions, special assessments, or increases in assessed valuation with respect to the Property.

(7) Seller has not received any notice that, and to the best of its knowledge there are no, ordinances, regulations, laws, or statutes of any governmental agency pertaining to the Property which the Property violates.

(8) At Closing, there will be no unpaid bills or claims in connection with any work performed or material purchased in connection with the Property.

(9) No person, firm, corporation or other entity has or at the Closing shall have (i) any right or option to acquire the Property, or any part thereof, from Seller, or (ii) have

any leasehold, tenancy, or other possessory rights or interests in the Property, or any part thereof.

(10) Seller has not, and at the Closing will not have, entered into any agreement affecting the Property, other than this Contract.

(11) Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing Date will not, breach any agreement or constitute a default or a condition that would ripen into a default under any agreement to which Seller is a party or by which all or part of the Property is bound. Furthermore, Seller's execution of this Contract and its consummation of the transaction do not, and at the Closing will not, violate any order, rule, or regulation applicable to Seller or the Property of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.

(12) No permission, approval, or consent by third parties or governmental authorities is required for Seller to consummate this transaction.

(13) No representation, warranty, or statement of Seller in this Contract or in any document or Information to be furnished to Purchaser misstates or omits any material fact necessary to make the statements or facts contained therein not materially misleading. Seller knows of no situation on or about the Property not disclosed to Purchaser in writing which Seller reasonably should know would affect Purchaser's consideration of the Property.

(14) (A) Seller has no notice and to the best of Seller's knowledge, no material amount of Hazardous Substances has been disposed of, released, or identified on, under, in the vicinity of, or at the Property.

(B) Seller has no notice and to the best of Seller's knowledge, neither the Property nor any occupant using it is in violation of any Environmental Laws relating to the Property, including, but not limited to, soil and surface and ground water conditions or the manufacture, generation, or storage of Hazardous Substances on the Property.

(C) Seller has no notice and to the best of Seller's knowledge, there are no asbestos-containing materials, underground storage tanks, above-ground storage tanks, or other containers of Hazardous

Substances located on the Property. The Property is not now--and has not been--used as a landfill.

(D) Seller has no notice and to the best of Seller's knowledge, no actions, suits, proceedings, orders, inquiries, or investigations are pending or are threatened against, involving, or affecting the Property, at law or in equity, or before or by any federal, state, municipal, or other governmental department, court commission, board, bureau, agency, or instrumentality, alleging the violation of any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Matters or the release of any Hazardous Substances.

(E) (i) "Environmental Laws" means all applicable laws (including regulations, by-laws, codes, international treaties, and agreements) with respect to the Property, now or hereafter in existence, relating to the environment, health and safety matters, Hazardous Substances, pollution, or protection of the environment.

(ii) "Environmental Matters" means matters relating to the generation, manufacture, use, storage, handling, transportation, and/or disposal of Hazardous Substances, or conditions with respect to the atmosphere, soil, surface and ground waters, wetlands, stream sediments, vegetation, endangered species, and stormwater runoff or discharge.

(iii) "Hazardous Substances" means any substance that is -- or is deemed under Environmental Laws to be, alone or in any combination -- hazardous, hazardous waste, toxic, radioactive, a pollutant, a deleterious substance, a contaminant, a dangerous good, or a source of pollution or contamination, or which, when released into the environment, is likely to cause, at some immediate or future time, material harm or degradation to the environment or material risk to human health, whether or not such substance is defined as "hazardous" under Environmental Laws.

(c) Seller's representations, warranties, and covenants in this Contract are subject to the following terms and conditions:

(1) Seller's representations, warranties, and covenants are (i) material and being relied upon, and (ii) continuing,

made both as of the Effective Date and as of the Closing Date, except to the extent that Seller otherwise notifies Purchaser in writing at or before Closing. If Seller so notifies Purchaser in writing at or prior to Closing -- or if Purchaser independently discovers on or prior to the Closing -- that any material representation, warranty, or covenant is no longer true, Purchaser may either (i) terminate this Contract by written notice to Seller, and neither party will have any further rights or obligations under it, and the Title Company will deliver the Earnest Money to Purchaser; or (ii) waive the representation, warranty, or covenant and close the purchase of the Property. If Purchaser discovers after the Closing that any representation or warranty was not true when made then Purchaser shall be entitled to any remedy available at law or in equity.

(2) Seller's representations, warranties, and covenants will survive the Closing for a period of two (2) years.

**Section 8. Conditions to Closing.**

(a) Notwithstanding anything to the contrary in this Contract, until Closing the following matters are conditions precedent to Purchaser's obligations under this Contract.

(1) All of Seller's representations and warranties must be true and correct as of Closing in all material respects.

(2) Seller must deliver, perform, observe, and comply with all of the items, instruments, documents, covenants, agreements, and conditions required of it by this Contract.

(3) Seller must not be in receivership or dissolution, nor have made any assignment for the benefit of creditors, nor admitted in writing its inability to pay its debts as they mature, nor have been adjudicated a bankrupt, nor have filed a petition in voluntary bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors under state or federal bankruptcy law or any other similar law or statute, nor may any such petition have been filed against it.

(b) Purchaser may waive any of the conditions set forth in Section 9(a) in its sole discretion, at or before Closing. If any of the conditions are not satisfied or waived, Purchaser may terminate this Contract by giving written notice to Seller at or before Closing, and neither party will have any further rights or obligations under this Contract, and Title Company will deliver the Earnest Money to Purchaser.

**Section 9. Brokers.** Each Party represents and warrants to the other that it has not engaged, or become liable to, any agent, broker, or other similar party in connection with this transaction.

**Section 10. Notices.**

(a) Any notice under this Contract must be written. Notices must be either (i) hand-delivered to the address set forth below for the recipient; or (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient as specified below; (iii) deposited with an overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that the transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received.

(b) Seller's address for all purposes under this Contract is:

\_\_\_\_\_  
\_\_\_\_\_

Attention:

\_\_\_\_\_  
Telephone:

\_\_\_\_\_  
Telecopy:

\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Attention:

\_\_\_\_\_  
Telephone:

\_\_\_\_\_  
Telecopy:

\_\_\_\_\_

(c) Purchaser's address for all purposes under this Contract is:

BNSF RAILWAY COMPANY  
2301 Lou Menk Drive, GOB-3W  
Fort Worth, Texas 76131-2830  
Attention: James A. Ball  
Telephone: (817) 352-6459

with a copy to:

Shanna Cargill  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828  
Telephone: (817) 352-3304

(d) Either party may designate another address for this Contract by giving the other party at least five (5) business days' advance notice of its address change. A party's attorney may send notices on behalf of that party, but a notice is not effective against a party if sent only to that party's attorney.

**Section 11. Entire Agreement.** This Contract (including its exhibits) contains the entire agreement between Seller and Purchaser. Oral statements or prior written matter not specifically incorporated into this Contract has no force or effect. No variation, modification, or change to this Contract binds either party unless set forth in a document signed by the parties or their duly authorized agents, officers, or representatives.

**Section 12. Assigns.** This Contract inures to the benefit of and binds the parties and their respective legal representatives, successors, and permitted assigns. Purchaser may assign its rights or obligations under this Contract without Seller's consent, but with notice to Seller. Purchaser may assign its rights or obligations under this Contract to its 1031 Tax Exchange Entity without the consent of Seller.

**Section 13. Effective Date.** The date on which the last of Seller and Purchaser signs this Contract is the "Effective Date" of this Contract.

**Section 14. Time of the Essence.** Time is of the essence in this Contract. Whenever a date specified in this Contract falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

**Section 15. Destruction, Damage, or Taking Before Closing.**

If, before the Closing, the Property or any substantial portion of it is damaged or destroyed or becomes subject to a taking by eminent domain, Purchaser may either (i) terminate this Contract and receive back the Earnest Money, and neither party will have any further rights or obligations under this Contract; or (ii) proceed with the Closing of the Property, and Seller will assign to Purchaser all condemnation or insurance proceeds available as a result of such damage, destruction, or taking.

**Section 16. Tax-Deferred Exchange Under I.R.C. § 1031.**

Buyer may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Buyer to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Buyer shall provide Seller with a "Notice of Assignment," attached hereto as Exhibit "B", and Seller shall execute an acknowledgement of receipt of such notice. Seller may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Seller to effect an exchange under Section 1031 of the Internal of Revenue Code. Seller agrees to fully cooperate with Buyer to permit Buyer to accomplish a tax-deferred exchange, but at no additional expense or liability to Seller for such tax-deferred exchange, and with no delay in the Closing. Seller's cooperation will include, without limitation, executing such supplemental documents as Buyer may reasonably request. Seller agrees that Buyer may use its standard form of "Assignment of Rights," attached hereto as Exhibit "C", in connection with any tax deferred exchange.

**Section 17. Terminology.** The captions beside the section numbers of this Contract are for reference only and do not modify or affect this Contract. Whenever required by the context, any gender includes any other gender, the singular includes the plural, and the plural includes the singular.

**Section 18. Governing Law.** This Contract is governed by and must be construed in accordance with Colorado law.

**Section 19. Severability.** If any provision in this Contract is found to be invalid, illegal, or unenforceable, its invalidity, illegality, or unenforceability will not affect any other provision, and this Contract must be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**Section 20. Rule of Construction.** Each party and its counsel have reviewed and revised this Contract. The parties agree that the rule of construction that any ambiguities are to be

resolved against the drafting party must not be employed to interpret this Contract or its amendments or exhibits.

**Section 21. Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret this Contract, the prevailing party will be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

**Section 22. Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each part, or that the signature of all persons required to bind any party or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

EXECUTED as of the Effective Date.

**SELLER**

\_\_\_\_\_

a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER**

BNSF RAILWAY COMPANY,

a Delaware corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ (Title Company) acknowledges receipt of this Contract on \_\_\_\_\_, 2015. Upon receipt of the Earnest Money provided for in the Contract, the Title Company agrees to notify Seller and Purchaser, to hold the Earnest Money in accordance with the Contract, and to abide by and perform in accordance with the escrow provisions contained in this Contract.

\_\_\_\_\_

a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A"

Legal Description of Property

AN APPROXIMATELY 550' X 450' STIP OF LAND CONSISTING OF +/- 247,500 SQUARE FEET OR 5.015 ACRES ON THE EAST SIDE OF THE BNSF RAILWAY COMPANY RIGHT OF WAY IN WELD COUNTY, CO WITHIN CERTAIN PROPERTY KNOWN AS THAT PART OF THE SW 1/4 OF THE NE 1/4 OF THE SE 1/4 OF SECTION 36, TOWNSHIP 02 NORTH, RANGE 65 WEST

To be further defined by an Alta Survey



	Owner:	Town Of Hudson	<ul style="list-style-type: none"> <li> RR Station</li> <li> BNSF RR Crossing</li> <li> BNSF Milepost</li> <li> Impact Area</li> <li> Impacted Parcel</li> <li> BNSF ROW   Parcel</li> </ul>
	Parcel ID:	130736001013	
	Proposed Impact:	5.051 ac (+/-)	
* Shapes are irregular and dimensions approximated. To be further defined by survey.		<small>The information displayed on this screen is provided for informational purposes only and does not constitute a contract. It is intended to be used as a guide only and should not be relied upon for legal, engineering, or planning purposes.</small>	

**EXHIBIT B**

***Goldfinch Exchange Company LLC***  
***A Delaware limited liability company***  
***40 Lake Bellevue Drive, Suite 101***  
***Bellevue, WA 98005***  
***425-646-4020***  
***425-637-2873 fax***

**NOTICE OF ASSIGNMENT**

TO: Town of Hudson and any assignees or exchange intermediaries  
of Seller

You and BNSF Railway Company ("BNSF") have entered into a Purchase and Sale Contract, dated \_\_\_\_\_ for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Buyer, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of completing a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and you will deed the property directly to BNSF.

**ACKNOWLEDGED :**

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

Its: \_\_\_\_\_

Name: \_\_\_\_\_

**EXHIBIT "C"**

**ASSIGNMENT OF RIGHTS UNDER PURCHASE AND SALE CONTRACT**

(Please see attached)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

## MEMORANDUM

**2.c.**

**To:** Board of Trustees  
**From:** Joe Racine, Town Administrator  
**Date:** July 1, 2015  
**Subject:** Resolution No. 15-23, annual 3-mile Annexation Plan

### **Attachment**

Each year the Town is required by statute to adopt a 3-mile plan showing an area within which the Town can annex properties in a calendar year. Hudson has adopted its plan in August of each year.

The attached Resolution No. 15-23 adopts an attached map showing a line that is 3 miles distant from the current boundary of the Town, excluding areas currently within the boundaries of Keenesburg and Lochbuie. The resolution is not an expression of intent to annex any particular land. Rather it is simply a map showing land that would be eligible for annexation.

RESOLUTION NO.

15-23

**TITLE: A RESOLUTION ADOPTING A THREE-MILE PLAN FOR THE TOWN OF HUDSON.**

WHEREAS, C.R.S. § 31-12-105(1)(e)(I) requires that the Town of Hudson adopt a three-mile plan for purposes of considering an annexation proposal; and

WHEREAS, the Town desires to adopt said three-mile plan

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. For purposes of C.R.S. § 31-12-105(1)(e)(I), the Town hereby adopts the map attached as Exhibit A as the Town of Hudson three-mile plan.

INTRODUCED, READ and PASSED this 5th day of August, 2015.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Raymond Patch, Mayor

ATTEST:

\_\_\_\_\_  
Linnette Barker, Town Clerk

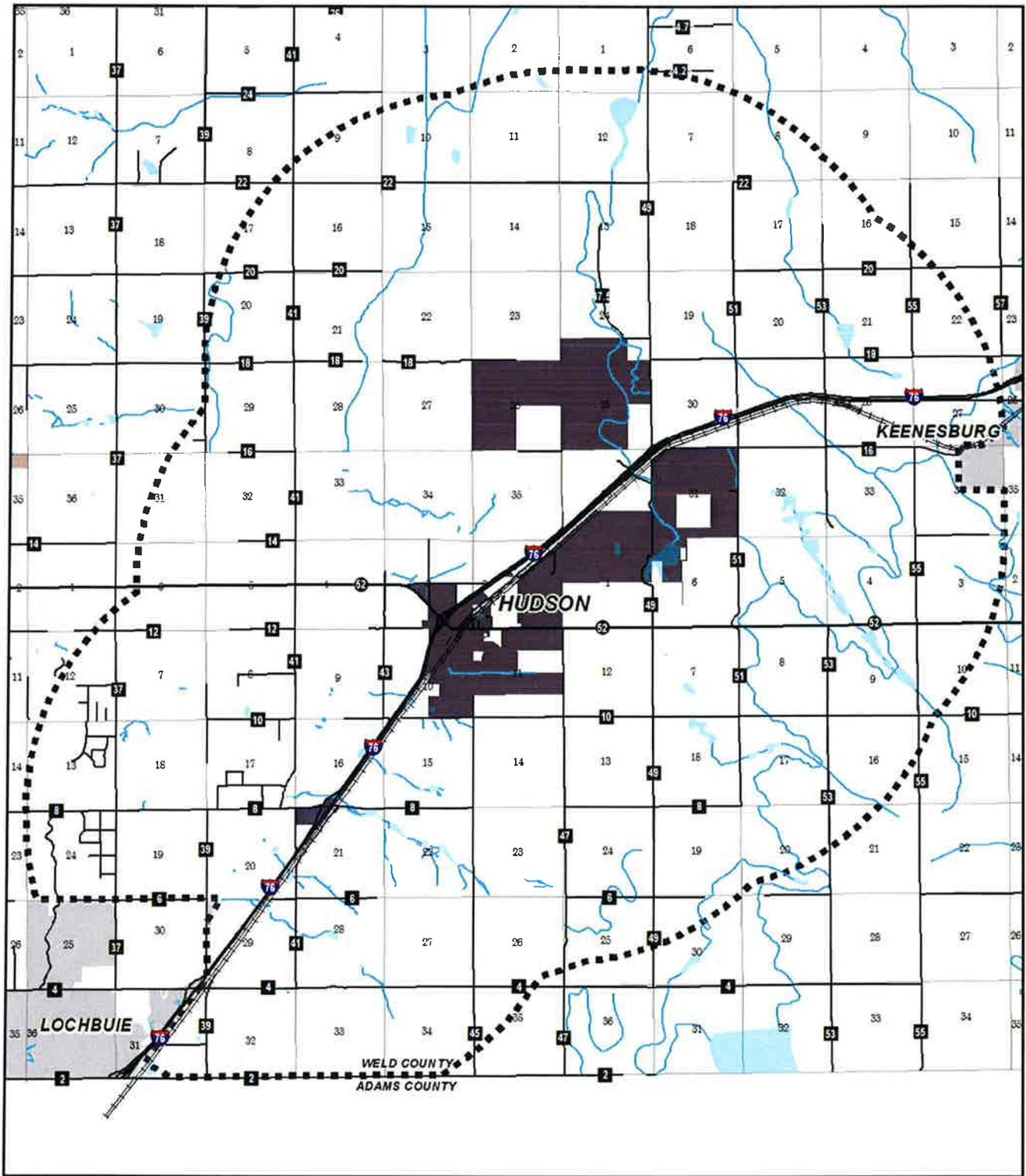


Exhibit A:  
Three Mile Annexation Area



-  Three Mile Annexation Buffer
-  Town of Hudson Municipal Boundary

-  Weld County Road
-  State Highway
-  Interstate Highway
-  Section Line



Each Section is  
Approximately  
One Square Mile

**MEMORANDUM**

**2.d.**

**To:** Board of Trustees  
**From:** Joe Racine, Town Administrator  
**Date:** July 1, 2015  
**Subject:** Resolution No. 15-24, election intergovernmental agreement

**Attachment**

The Town anticipates an election in November 2015 for the election of a charter commission. The commission will draft a home rule charter for consideration by voters at a future election.

To participate in a coordinated election with Weld County the Town needs to approve an intergovernmental agreement (IGA) by resolution. The attached Resolution No. 15-24 approves the IGA.

## 2015 COORDINATED ELECTION IMPORTANT DATES



Weld County will conduct a Mail Ballot election on November 3, 2015. The Intergovernmental Agreement (IGA) for this election is enclosed. Please sign and return it to the Weld County Clerk & Recorder by August 25, 2015.

Please submit your ballot content, candidates and questions, and ballot issue information on hard copy and one of the following (your information will be directly loaded onto the ballot from one of these):

1. as an E-Mail attachment ([agonzales@weldgov.com](mailto:agonzales@weldgov.com))
2. on disk

We can accept the **BALLOT** and **TABOR** information in **WORD** format.

**The following is a calendar of important dates for you to remember this year:**

- |          |   |
|----------|---|
| July 24  | Last day to notify the County Clerk that you will be participating in the General Election C.R.S. 1-7-116(5); 1-1-106(5)                          |
| Aug. 25  | Last day to sign IGA for Coordinated Election C.R.S. 1-7-116(2)   |
| Sept. 4  | Last day for each Political Subdivision to certify ballot order and content to County Clerk C.R.S. 1-5-203(3)(a)                                  |
| Sept. 22 | Final day for Designated Election Official (DEO) to submit ballot issue (pros/cons) information to County Clerk C.R.S. 1-7-904                    |
| Oct. 2   | Last day for County Clerk to Mail ballot issue information to all registered voters Article X Section 20(3)(b), C.R.S. 1-7-116, C.R.S. 1-1-106(5) |
| Oct. 12  | First day ballots may be mailed to voters, expect UOCAVA voters. C.R.S. 1-7.5-107(3)(a)   |
| Oct. 14  | Last day for County Clerk to publish legal notice. C.R.S. 1-7.5.107(2.5)(a)(I)  |
| Oct. 26  | First day Voter Service and Polling Centers must be open C.R.S. 1-7.5-107(4.5)(c)   |
| Oct. 30  | First day Drop-off locations must be open C.R.S. 1-7.5-107(4.3)(b)  |
| Nov. 3   | <b>ELECTION DAY!!!!!!</b> (Service Centers and Drop Off locations open 7am-7pm)   |

Unofficial election results will be available election night on our website – <http://www.weldgov.com>. If you have any questions, please do not hesitate to call.

RESOLUTION NO.

15-24

**TITLE: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN AND WELD COUNTY REGARDING THE CONDUCT OF THE COORDINATED ELECTION TO BE HELD WITH WELD COUNTY ON NOVEMBER 3, 2015**

WHEREAS, pursuant to C.R.S. § 29-1-203, governments are authorized to cooperate or contract with one another to provide any function, service, or facility that each is lawfully authorized to do; and

WHEREAS, the Town has called a special election to take place at the same time as the State's general election and wishes to coordinate its election with the County by agreement.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. The intergovernmental agreement between the Town of Hudson and Weld County attached hereto as **Exhibit 1** and incorporated herein by this reference (the "IGA") is hereby approved, and the Mayor is hereby authorized to execute the IGA on behalf of the Town.

Section 2. The Town hereby adopts the Uniform Election Code of 1992, C.R.S. Title 1, for use in the November 3, 2015, election.

INTRODUCED, READ and PASSED this 5th day of August, 2015.

TOWN OF HUDSON, COLORADO

\_\_\_\_\_  
Raymond Patch, Mayor

ATTEST:

\_\_\_\_\_  
Linnette Barker, Town Clerk

## EXHIBIT 1

### Memorandum of Intergovernmental Agreement For Conduct of Coordinated Elections

Town of Hudson, hereinafter referred to as "Jurisdiction," does hereby agree and contract with the Board of County Commissioners of the County of Weld, hereinafter referred to as "Commissioners," and the Weld County Clerk and Recorder, hereinafter referred to as "County Clerk," concerning the administration of the November 3, 2015, Coordinated Election conducted pursuant to the Uniform Election Code of 1992 as amended (hereinafter "Code"), and the rules and regulations promulgated thereunder, found at 8 C.C.R. 1505-1. This Agreement is not intended to address or modify statutory provisions regarding voter registration, nor to address or modify the County Clerk's duties thereunder.

WHEREAS, the Jurisdiction desires to conduct an election pursuant to its statutory authority or to have certain items placed on the ballot at an election pursuant to its statutory authority, such election to occur via mail ballot on November 3, 2015; and

WHEREAS, the Jurisdiction agrees to conduct a Coordinated Election with the County Clerk acting as the Coordinated Election Official; and

WHEREAS, the County Clerk is the "Coordinated Election Official," pursuant to § 1-7-116(1), C.R.S., and is to perform certain election services in consideration of performances by the Jurisdiction of the obligations herein below set forth; and

WHEREAS, such agreements are authorized by statute at §§ 1-1-111(3), 1-7-116, 22-30-104(2), 22-31-103, and 29-1-203, et seq., C.R.S.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

1. The Jurisdiction encompasses territory within Weld County and \_\_\_\_\_ County. This Agreement shall be construed to apply only to that portion of the Jurisdiction within Weld County.
2. Term of Agreement: This Agreement is intended only to deal with the conduct of the November 3, 2015, Coordinated Election.
3. The Jurisdiction agrees to perform the following tasks and activities:
  - a. Conduct all procedures required of the clerk or designated election official for initiatives, referenda, and referred measures under the provisions of §§ 31-11-101 through 31-11-118 and 22-30-104(4), C.R.S.
  - b. To do all tasks required by law of designated election officials concerning nomination of candidates by petition, including, but not limited to: issue approval as to form, where appropriate, of nominating petition; determine candidate eligibility; receive candidate acceptance of nominations; accept notice of intent, petitions for nomination, and affidavits of circulators; verify signatures on nominating petitions; and hear any protests of the nominating petitions, as said tasks are set forth in any applicable provisions of Title 1, Article IV, Parts 8 and 9, and §§ 1-4-501, 22-31-103, and 22-31-107, C.R.S., and those portions of the Colorado Municipal Election Code of 1965, Article X of Title 31, as adopted by reference pursuant to § 1-4-805, C.R.S.
  - c. Establish order of names and questions for Jurisdiction's portion of the ballot and submit to the County Clerk in final form. The ballot content, including a list of

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candidates, ballot title, and text, must be certified to the County Clerk no later than 60 days before the election, pursuant to § 1-5-203(3)(a), C.R.S.

- d. Accept written comments for and against ballot issues pursuant to §§ 1-7-901 and Article 10, Section 20(3)(b)(v), C.R.S. Comments to be accepted must be filed by the end of the business day on the Friday before the 45<sup>th</sup> day before the election. Preparation of summaries of written comments shall be done by the Jurisdiction but only to the extent required pursuant to § 1-7-903(3), C.R.S. The full text of any required ballot issue notices must be transmitted to and received by the County Clerk no later than 42 days prior to the election pursuant to § 1-7-904, C.R.S. No portion of this Subsection 3(d) shall require the County Clerk to prepare summaries regarding the Jurisdiction's ballot issues.
- e. Collect, prepare, and submit all information required to give notice pursuant to Colorado Constitution Section 20, Article 10(3)(b), the Taxpayer's Bill of Rights. Such information must be received by the County Clerk no less than 42 days prior to the election to give the County Clerk sufficient time to circulate the information to voters.
- f. Accept affidavits of intent to accept write-in candidacy up until close of business on the 64<sup>th</sup> day before the election, and provide a list of valid affidavits received and forward them to the County Clerk pursuant to § 1-4-1102(2), C.R.S.
- g. Pay the sum of \$1.00 per registered elector eligible to vote in the Jurisdiction's election as of November 3, 2015, with a \$200 minimum, within 30 days of billing, regardless of whether or not the election is actually held. If the Jurisdiction cancels the election before its Section 20, Article X, the Taxpayer's Bill of Rights, notices are due to the County, and prior to the County Clerk incurring any expenses for the printing of the ballots, the Jurisdiction shall not be obligated for any expenses under this Subsection 3(g) (h). The Jurisdiction shall also be responsible for costs of recounts pursuant to §§ 1-10.5-107, 1-10.5-104, or 1-11-215 C.R.S., except for costs collected from an "interested party" pursuant to § 1-10.5-106 which shall be collected by the entity conducting the recount.
- h. Designate an "election official" who shall act as the primary liaison between the Jurisdiction and the County Clerk and who will have primary responsibility for the conduct of election procedures to be handled by the Jurisdiction hereunder.
- i. By approval of this Agreement, any municipality thereby resolves to not use the provisions of the Colorado Municipal Election Code, except as otherwise set forth herein or as its use is specifically authorized by the Code.
- j. Mail ballot issue notices pursuant to § 1-7-906(2) for active registered electors who do not reside within the county or counties where the political subdivision is located.
- k. Carry out all action necessary for cancellation of an election including notice pursuant to § 1-5-208, C.R.S., and pay any costs incurred by the County Clerk within 30 days of receipt of an invoice setting forth the costs of the canceled election pursuant to § 1-5-208(5), C.R.S.



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election; except that voter service and polling centers are not required to be open on Sundays. §§ 1-7.5-107(4.5)(II)(C)(c), C.R.S

- g. After Election Day, bill Jurisdiction for number of registered electors within the Jurisdiction as of Election Day; identify the members of the Board of Canvassers eligible for receiving a fee; and bill the Jurisdiction for the fees.
- h. Designate Adam Gonzales, Weld County Election Manager, to act as a primary liaison or contact between the County Clerk and the Jurisdiction (see contact information in 5(g)).
- i. The County Clerk shall appoint and train election judges and this power shall be delegated by the Jurisdiction to the County Clerk, to the extent required or allowed by law.
- j. Select and appoint a Board of Canvassers to canvass the votes, provided that the Jurisdiction, at its option, may designate one of its members and one eligible elector from the jurisdiction to assist the County Clerk in the survey of the returns for that Jurisdiction. If the Jurisdiction desires to appoint one of its members and an eligible elector to assist, it shall make such appointments, and shall notify the County Clerk in writing of such appointments not later than 15 days prior to the election. The County Clerk shall receive and canvass all votes, and shall certify the results in the time and manner provided and required by the Code. The County Clerk shall perform all recounts required by the Code.

5. Additional Provisions

a. Time of the Essence.

Time is of the essence in this Agreement. The statutory time frames of the Code shall apply to the completion of the tasks required by this Agreement.

b. Conflict of Agreement with Law.

This Agreement shall be interpreted to be consistent with the Code, provisions of Titles 31 and 22 applicable to the conduct of elections, and the Colorado Election Rules contained in 8 C.C.R. 1505-1. Should there be an irreconcilable conflict between the statutes, this Agreement and the Colorado Election Rules, the statutes shall first prevail, then this Agreement and lastly the Colorado Election Rules.

c. Liquidated Damages.

In the event that a Court of competent jurisdiction finds that the election for the Jurisdiction was void or otherwise fatally defective as a result of the sole negligence or failure of the County Clerk to perform in accordance with this Agreement or laws applicable thereto, then the County Clerk shall, as liquidated damage, not as a penalty, refund all payments made, pursuant to Subsection 3(g) of this Agreement and shall, if requested by the Jurisdiction, conduct the next Coordinated Election which may include any election made necessary by a defect in the election conducted pursuant to this Agreement with no fee assessed to the Jurisdiction. This remedy shall be the sole and exclusive remedy for damages available to the Jurisdiction under this Agreement.

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d. No Waiver of Privileges or Immunities.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§ 24-10-101 et seq., as applicable now or hereafter amended, or any other applicable privileges or immunities held by the parties to this Agreement.

e. No Third Party Beneficiary Enforcement.

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

f. Entire Agreement, Modification, Waiver of Breach.

This Agreement contains the entire Agreement and understanding between the parties to this Agreement and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, novation, renewal, or other alteration of or to this Agreement and any attached exhibits shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the undersigned parties. No breach of any term, provision, or clause of this Agreement shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of, a breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other, or subsequent, breach.

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- g. Notice provided for in this Agreement shall be given by the Jurisdiction to Adam Gonzales of the Weld County Clerk and Recorders Office by phone:

Phone: (970) 304-6525, Extension 3178

Additional Contact Information:

Fax: (970) 304-6566

E-mail: [agonzales@weldgov.com](mailto:agonzales@weldgov.com)

Address: PO Box 459, Greeley, CO 80632

**Notice provided for in this Agreement shall be given to the Jurisdiction election official referred to in Subsection 3(h) of this Agreement by phone:**

Designated Election Official for Jurisdiction: \_\_\_\_\_

Phone: \_\_\_\_\_

Additional Contact Information:

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WELD COUNTY CLERK AND RECORDER

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF WELD COUNTY

\_\_\_\_\_  
Carly Koppes, Clerk and Recorder

\_\_\_\_\_  
Barbara Kirkmeyer, Chair

APPROVED AS TO FORM:

ATTEST: \_\_\_\_\_  
Clerk to the Board of County Commissioners

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
Deputy Clerk to the Board

Town of Hudson

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Attorney for Jurisdiction (Signature)

\_\_\_\_\_  
Designated Election Official for Jurisdiction  
(Signature)

## MEMORANDUM

2.e.

**To:** Board of Trustees  
**From:** Joe Racine, Town Administrator  
**Date:** July 1, 2015  
**Subject:** Discussion, WCR49 DRAFT intergovernmental agreement

### Attachment

Weld County is moving ahead with its plans to widen CR49 north of I-76 to a five lane concrete arterial street. The pavement section would provide two lanes in each direction and a continuous center turn lane. In addition to the pavement, the project includes acquisition of additional right of way along the entire length of the roadway.

In order to better manage accesses and traffic controls on the new road, Weld County, Hudson, Keenesburg and Kersey developed an access control plan for the entire corridor.

As we discussed earlier at the joint meeting with the County Commissioners, staff has been working with the County Attorney on the text of a revised intergovernmental agreement (IGA) that would address the concerns of all parties relative to implementation of the County Road 49 Access Control Plan. The attached DRAFT includes redlined revisions that are being proposed for consideration by the four parties to the agreement.

In summary, the agreement provides the following:

- Access to the new road will comply with the “policies, goals, objectives and technical standards” of the Plan.
- Without depriving access in violation of state law, existing accesses and accesses for which a change of use is proposed must comply with the Plan.
- If there is a proposed new or change of use of an access or traffic signal on a segment of the road is within a municipality, that municipality will:
  - Consult with the other parties to the Plan about the proposal.
  - Request approval of the proposal by the County.

The County will:

- Review the request and consider approval based on the Plan and engineering recommendations.
- Approval will not be unreasonably withheld.
- If the County acquires additional ROW adjacent to a road segment that is in a town, the County “may...consider” petitioning to annex the additional ROW if there is a pre-annexation agreement requiring the town to maintain the new ROW.
- Provides for amendment to the Plan by the four parties.
- Protects individual jurisdictions’ police powers.

MEMORANDUM

August 5, 2015

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- Provides for termination of the agreement by any party with 90 days notice. However, upon termination the party (town) terminating the agreement would owe the County the depreciated cost of the road, the cost of ROW acquisition, and maintenance for that jurisdiction's segment.

This meeting is not for the purpose of approving the IGA. Rather, it is to see if there is consensus on the terms of the agreement that could be communicated to the other parties. When all four parties have similarly considered the agreement, then all four can proceed to approval. We do not have any feedback from the other parties.

**WCR 49 ACCESS CONTROL PLAN  
INTERGOVERNMENTAL AGREEMENT  
AMONG  
THE TOWN OF HUDSON,  
THE TOWN OF KEENESBURG,  
THE TOWN OF KERSEY,  
AND  
WELD COUNTY**

**THIS AGREEMENT** is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and among the County of Weld, State of Colorado, by and through the Board of County Commissioners of the County of Weld ("County"), whose address is 915 Tenth Street, Greeley, Colorado 80631; the Town of Hudson, Colorado ("Hudson"), whose address is 557 Ash Street, Hudson, Colorado 80642; the Town of Keenesburg ("Keenesburg"), whose address is 140 South Main, Keenesburg, Colorado 80643, and the Town of Kersey ("Kersey"), whose address is 332 3<sup>rd</sup> Street, Kersey, Colorado 80644 all of said parties being referred to collectively herein as the "Agencies."

**WITNESSETH:**

**WHEREAS**, the Agencies are authorized by the provisions of Article XIV, Section 18(2)(a), Colorado Constitution, and Sections 29-1-201, *et. seq.*, C.R.S., to enter into contracts with each other for the performance of functions which they are authorized by law to perform on their own; and

**WHEREAS**, each Agency is authorized by Section 43-2-147(l) (A), C.R.S., to regulate access to public roadways within its jurisdiction; and

**WHEREAS**, the Agencies entered into an Intergovernmental Agreement dated June 29, 2011 for the purpose of developing a comprehensive and mutually acceptable Access Control Plan for the section of Weld County Road 49 between Interstate 76 and US Highway 34 (hereafter referred to as the "Segment"); and

**WHEREAS**, said Access Control Plan has been adopted by each Agency by Resolution; and

**WHEREAS**, the coordinated regulation of vehicular access to public roadways is necessary to maintain the efficient and smooth flow of traffic, to reduce the potential for traffic accidents, to protect the functional level and optimal traffic capacity, to provide an efficient spacing of traffic signals, and to protect the public health, safety and welfare; and

**WHEREAS**, the Agencies desire to provide for the coordinated regulation of vehicular access for the Weld County Road (WCR) 49 Corridor from I-76 to US 34; and

**WHEREAS**, the Agencies are authorized, by the respective governing body, to achieve written agreement among themselves by adopting and implementing a comprehensive and mutually acceptable Access Control Plan for the Corridor for the purposes above recited.

**NOW THEREFORE**, for and in consideration of the mutual promises and undertakings herein contained, the Agencies agree as follows:

1. The Agencies shall regulate access to the Segment in compliance with the Weld County Road 49 Access Control Plan (the "Access Control Plan") attached hereto and incorporated herein by reference. Vehicular access to the Segment shall be permitted only when such access is in compliance with the policies, goals, objectives and technical standards set forth in the Access Control Plan and this Agreement.
2. Existing accesses which were in existence prior to the adoption of the Access Control Plan and this agreement may continue in existence if the access point complies with the Access Control Plan. If there is a change of use of an existing access point the Agencies may require closure, consolidation, modification, or relocation of an access point in accordance with the Access Control Plan and this Agreement. Provided however, nothing in this Section 2 shall be deemed to authorize the Agencies to deprive access to a property in violation of Colorado law.
3. Actions taken by any Agency with regard to transportation planning and traffic operations within the Corridor shall be in conformity with the Access Control Plan.
4. When any determination is required by the Agencies in accordance with the Access Control Plan, which determinations include, but are not limited to, consideration of new access points, changes of use or access, or traffic signals, such consideration by the Agencies shall be accomplished as follows:
  - a. If the determination involves property located within a municipality that is a party to this Agreement, consideration of approval shall be accomplished by the governing body of the municipality making a request of the County, after consultation with the other Agencies to this Agreement. Consideration of such approval by the County shall not be unreasonably withheld, and shall be based on application of the technical standards in the Access Control Plan and/or on the basis of written and stamped recommendations of a Colorado licensed professional engineer. Such considerations by the municipality and by the County shall be based upon an application of the goals, objectives, policies and technical standards in the Access Control Plan, which may include consideration of stamped recommendations of a Colorado licensed professional engineer.
  - b. Any request made for an approval under this Agreement shall require consideration by the governing body of the respective Agency, and such consideration shall occur within thirty (30) days of a written request for such a determination by the Agency having jurisdiction over the segment for which an approval is sought. Such approval shall not be unreasonably withheld, and determinations hereunder shall be based on application of the goals, objectives, policies and technical standards in the Access Control Plan, which may include consideration of stamped recommendations of a Colorado licensed professional engineer and/or on the basis of written and stamped recommendations of a Colorado licensed professional engineer. The failure to act by an Agency within thirty (30) days of the written request shall be deemed an approval. The failure to act by an Agency within thirty (30) days of the written request shall be deemed an approval.

~~3.~~ c. If the determination involves property in the unincorporated area of Weld County, such determinations shall be made in accordance with the Access Control Plan.

5. Parcels of real property created after the effective date of this Agreement, which adjoin the Corridor, shall not be provided with direct access unless the location, use and design thereof conform to the provisions of the Access Control Plan.

4.6. In the event the County acquires for the purpose of widening or realignment, additional rights-of-way that are contiguous to any section of WCR 49 that is within the boundaries of a municipality that is a party to this Agreement, the County shall may, within thirty (30) days of completing said acquisition, consider petitioning to annex such rights-of-way to the municipality in order to avoid the creation of enclaves or slivers of unincorporated right-of-way contiguous to the municipalities hereto. Such consideration by the County shall not occur without the prior completion of a pre-annexation agreement with the municipality requiring the municipality to assume all maintenance and operations costs associated with the right-of-way to be annexed by the municipality.

~~5.7.~~ This Agreement is based upon and is intended to be consistent with the Access Control Plan as now or hereafter constituted. Any amendments to the Access Control Plan will be in accordance with Exhibit A of this Agreement.

8. Should any one or more sections or provisions of this Agreement be judicially determined to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intention being that the various provisions hereof are severable.

~~6.9.~~ This Agreement is intended to be in furtherance of the exercise of the general police power of each Agency hereto, and nothing herein shall be construed to be a waiver by the Agencies of their respective police power.

7.10. This writing supersedes and controls all prior written and oral agreement and representations of the Agencies and constitutes the whole agreement between them with respect to the subject matter of this instrument. No additional or different oral representation, promise or agreement shall be binding on any Agency. This Agreement may be amended only in writing executed by all Agencies on express authorization from their respective governing bodies. While the Access Control Plan recommends updating the Plan every five years, the Agencies agree to meet annually and discuss whether a necessity exists to amend an access or termination of this Agreement. Notwithstanding the foregoing, however, this Agreement shall remain in force until terminated by written agreement of all the Agencies.

~~8.11.~~ By signing this Agreement, the Agencies acknowledge and represent to one another that all procedures necessary to contract and execute this Agreement have been performed, and that the persons signing for each Agency have been duly authorized by such Agency to do so.

9.12. No portion of this Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.

13. It is expressly understood and agreed the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

14. Any Agency hereto may terminate this Agreement with or without cause upon ninety (90) days prior written notice to each of the other Agencies to this Agreement. However, upon termination, the terminating Agency shall be obligated to pay to the County the costs incurred (depreciated) by the County (through the intended date of termination) for the acquisition of right-of-way, construction and maintenance of the roadway located within the terminating Agency's jurisdiction. In the event of such a termination, to the extent permitted by law, the remaining Agencies hereto shall retain the ability to enforce the provisions of the Access Control Plan.

~~10.~~ 15. In the event of an inconsistency in the provisions of the Access Control Plan and those of this Agreement, then the provisions of this Agreement control.

**IN WITNESS WHEREOF,** The Agencies have executed this Agreement effective as of the day and year first written.

**Weld County, Colorado**

**ATTEST:**

\_\_\_\_\_  
Weld County, Chair

\_\_\_\_\_  
Clerk to the Board of County Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

**Town of Hudson, Colorado**

ATTEST:

\_\_\_\_\_  
Mayor, Town of Hudson

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

**Town of Keenesburg, Colorado**

**ATTEST:**

\_\_\_\_\_  
Mayor, Town of Keenesburg

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

**Town of Kersey, Colorado**

**ATTEST:**

\_\_\_\_\_  
Mayor, Town of Kersey

\_\_\_\_\_  
Town Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney

## Exhibit A

### Plan Amendment Process

Since conditions may change over time, it is important to specify a process for modifying the access control plan (ACP). The ACP recommends creation of a Plan Advisory Committee (PAC) comprised of one elected official representative from each of the signatories on the Intergovernmental Agreement (IGA).

This group would meet, as needed, to process any ACP amendment requests. ACP amendment requests will be submitted to and processed by Weld County to be reviewed by the PAC. ACP amendments shall be presented to the PAC within 60 days of submittal.

Community applications should include a letter explaining why an access amendment is being requested and what the proposed changes would be, which shall be supported with engineering solutions. Approval of any plan amendment shall require three quarter (3/4) majority votes to be approved. The PAC agrees that any inadvertent access mislabeling or typos can be fixed by Weld County without needing a vote of the PAC.

It is recommended the PAC update the Access Control Plan every five years, but the PAC meet annually to discuss whether any amendments are warranted. Most importantly, this process would ensure continuing coordination between the corridor agencies.