

RESOLUTION NO.

07-23C
Series of 2007

TITLE: A RESOLUTION GRANTING A LIMITED WAIVER OF THE SITE PLAN AND GRADING PERMIT REQUIREMENTS OF THE TOWN OF HUDSON LAND DEVELOPMENT CODE, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Colorado Interstate Gas ("CIG") desires to use certain portions of the Hudson Industrial Park as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Subject Property") for the unloading off of rail, subsequent storage, and ultimate loading on to semi-trucks of pipe necessary for its construction of a gas pipeline;

WHEREAS, CIG has indicated that the use of the Subject Property is necessary to accomplish a project CIG is constructing on behalf of Xcel Energy which includes the construction and installation of a gas pipeline in and through Weld County, Colorado, but not specifically including construction and installation of the pipeline within the corporate limits of the Town of Hudson (the "Project");

WHEREAS, CIG has obtained or is in the process of obtaining the necessary federal and state permits for the Project, but neglected to or was unaware of the need to obtain site plan approval from the Town of Hudson to use the Subject Property for the Project;

WHEREAS, CIG commenced certain site preparation work without receiving the requisite site plan and grading approvals, primarily consisting of grading the Subject Property, creating earthen berms upon which the pipe lengths will be stored, and addressing storm water drainage issues on the Subject Property;

WHEREAS, the Town became aware of the work occurring on the Subject Property in the absence of the required approvals, and issued a stop work order on October 22, 2007;

WHEREAS, CIG has complied with the stop work order, and now seeks the approval described below;

WHEREAS, CIG has submitted an application narrative for a limited waiver of the site plan approval and grading permit requirements of the Town of Hudson, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference, to allow grading and earth work to occur on the Subject Property to prepare the Subject Property for gas pipe storage, and to unload pipe off of rail cars and store the pipe on the Subject Property;

WHEREAS, Section 16-10 of the Town Hudson Land Development Code authorizes the Board of Trustees to waive provisions of the Land Development Code if the Board finds (1) that such a waiver is in the best interests of the public interest; and (2) that such a waiver does not impair the intent and purposes of the Hudson Land Development Code;

WHEREAS, CIG urges that the Board of Trustees grant a limited waiver which would only allow grading and earth work to occur on the Subject Property to prepare the Subject Property for gas pipe storage, and to unload pipe off of rail cars and store the pipe on the Subject Property, based on the following factors:

- (1) The Project is one of considerable magnitude and regional importance;
- (2) Due to world-wide material shortages, the order for the pipe to be stored on the Subject Property was made several months ago;
- (3) Shipments of the pipe have already begun, and are currently being transported by rail, with an anticipated arrival date to the Property on or about October 29, 2007;
- (4) Despite diligent efforts, no other suitable site exists for this component of the Project; and
- (5) Terminating the shipment of the pipe is not commercially or economically feasible.

WHEREAS, CIG understands and acknowledges that it will be required to submit a complete site plan application, and seek complete site plan approval for the use of the Subject Property, and that CIG bears the risk of not being able to transport the pipe off site by truck in the event it is unable to obtain site plan approval from the Town;

WHEREAS, the Town of Hudson staff has met with the CIG representatives, and explained the need to mitigate the potential traffic and other impacts associated with the temporary use of the site for the Project, and CIG understands and acknowledges the risk associated with obtaining the limited waiver sought herein;

WHEREAS, the storage of pipe on the Subject Property is a use by right within the applicable zoning designation for the Hudson Industrial Park, and thus the site plan approval and associated grading permit approval are the only approvals needed for CIG to use the Subject Property for the Project;

WHEREAS, the Town in striking a balance between protecting the public interest in off-loading and storing the pipe by granting a limited waiver, with the public interest of ultimately requiring that CIG obtain the necessary approvals to assure that the impacts of the use of the Subject Property are properly mitigated, believes that the limited waiver set forth herein, subject to the conditions set forth herein, is the most feasible solution, and does not impair the intent and purpose of the Hudson Land Development Code;

WHEREAS, Section 16-10(a) of the Hudson Land Development Code specifically allows the Board of Trustees to authorize waivers from the provisions of the Hudson Land Development Code, including Article 5 of the Hudson Land Development Code regarding Site Plan Standards and Procedures;

WHEREAS, due to the unique and extraordinary circumstances described herein, the Board of Trustees of the Town of Hudson believes that it is in the public interest to grant a

limited waiver pursuant to Section 16-10(a) of the Hudson Land Development Code of the requirements contained in Article 5 of Chapter 16, only insofar as allowing the final grading of the Subject Property and the storage of pipe on the Subject Property as described below; and

WHEREAS, the conditions for the waiver described herein are contained in this Resolution and the justification for granting this waiver are set forth in this Resolution.

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 grants a limited waiver of the requirements of Article 5 of the Hudson Land Development Code for the Project pursuant to Section 16-10(a) of the Hudson Land Development Code, and expressly subject to the conditions contained in Section 2 of this Resolution, and the following activities are therefore authorized without site plan approval, as follows:

- a. CIG is hereby authorized to conclude grading and earth work on the Subject Property in preparation for the storage of gas pipe on the Subject Property, and the stop work order issued by the Town on October 22, 2007 is hereby rescinded;
- b. CIG is hereby authorized to unload said pipe from rail cars on the Subject Property, and store said pipe on the Subject Property; and
- c. Any transport of the pipe off of the Subject Property or any other work on the Subject Property is expressly prohibited under this limited waiver.

Section 2. The Board of Trustees hereby imposes the following conditions on the approval of the limited waiver set forth in Section 1 of this Resolution, as agreed to by CIG based on the signature of a duly authorized representative of CIG set forth below:

- a. CIG shall submit a site plan application in accordance with Article 5 of the Hudson Land Development Code for the Project, and no further activity shall occur on the Subject Property, except as set forth in Section 1 above, until site plan approval is obtained by CIG pursuant to Article 5 of the Hudson Land Development Code;
- b. CIG expressly assumes and bears all risk associated with this limited waiver, and understands that in the event CIG is unable to obtain site plan approval from the Town, CIG will be responsible for removing the pipe from the Subject Property by rail, and restoring the Subject Property as determined by the Town Engineer;
- c. CIG shall obtain all necessary approvals from the Hudson Fire Protection District for the activities contemplated by this Resolution;
- d. CIG shall, prior to commencing any additional work on the Subject

Property, have executed or caused to be provided the following:

- i. The Charge Back Agreement attached hereto as **Exhibit C**, and incorporated herein by this reference, and
- ii. Cash or a Letter of Credit in the form attached hereto as **Exhibit D**, and incorporated herein by this reference, in an amount to be determined by the Town Engineer, to assure that any adverse drainage conditions or other damage associated with the use of the Subject Property pursuant to this limited waiver be remediated.
- e. CIG shall provide to the Town a Ground Lease or other document specifically providing that CIG is authorized to seek site development plan approval for the Project on the Subject Property, and that CIG is otherwise authorized by the owner(s) of the Subject Property to use the Subject Property for the uses contemplated by this Resolution.
- f. CIG specifically agrees that it shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of CIG, or of any other person or entity for whose act or omission CIG is liable, with respect to any activity undertaken pursuant to this limited waiver; and CIG shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

Section 3. The Board of Trustees of the Town of Hudson deems the waiver described herein to be in the public interest and does not impair the purposes of the Hudson Land Development Code. Provided, however, nothing in this Resolution shall be deemed or otherwise interpreted to limit the Town's legislative and quasi-judicial discretion in considering the site development plan for the Subject Property to be submitted by CIG.

INTRODUCED, READ and PASSED this _____ day of _____, 2007.

TOWN OF HUDSON, COLORADO

Neal Pontius, Mayor

ATTEST:

Judy Larson, Town Clerk

CONDITIONS AGREED TO AND ACCEPTED BY COLORADO INTERSTATE GAS THIS
25th DAY OF OCTOBER, 2007:

By: _____

Its: _____

FORM -- IRREVOCABLE LETTER OF CREDIT

[INSERT DATE]

Town of Hudson
557 Ash Street
Box 351
Hudson, Colorado 80642
Attn: Mayor and Town Attorney

Gentlemen:

We hereby establish our Irrevocable Letter of Credit in your favor in the amount of \$(total public improvements). The purpose of this Letter of Credit is to secure performance of and provide site remediation security for certain grading improvements that are the subject of a limited waiver pursuant to Town of Hudson Resolution No. _____, dated October 25, 2007, between the Town of Hudson and Colorado Interstate Gas (the "Developer").

You are hereby authorized to draw on sight on (name of financial institution), by drafts, up to the aggregate amount of (\$_____).

The sole condition for payment of any draft drawn against this Irrevocable Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Mayor or his designee, indicating one or more of the following conditions exist:

A) The Developer is in default of Developer's obligations or site remediation is necessary as a result of Developer's work pursuant to the limited waiver contained in Resolution No. _____, dated October 25, 2007 .

or

B) That the expiry date of this Irrevocable Letter of Credit is less than fourteen (14) days from the date of this certificate, and the applicant has not provided the Town with a replacement letter of credit for the remaining portion of the construction and/or warranty period prior to final inspection and final approval of the project.

We hereby agree with drawers and endorsers, and bona fide holders of drafts negotiated under this Irrevocable Letter of Credit, that the same shall be duly honored upon presentation and delivery of the documents as specified above. This Irrevocable Letter of Credit, as set forth above, will be duly honored if presented on or before _____, 2008 (one year), provided that (name of financial institution) has given the Town sixty (60) days' prior written notice of the impending expiration.

This credit is subject to the uniform customs and practice for documentary credits published by the International Chamber of Commerce, or any subsequent revision thereof.

Signed this _____ day of _____, 2008, on behalf of (name of financial institution).

By: _____

Title: (President or Vice President)

Facsimile



*Global Transaction Services
US Standby Operations*

To: Larry Hudson
Cc: El Paso Corporation
Attn: Cathey Wilson

Fax: F: (720) 904-6103

Fax: 713-420-2859

From: Sonja Hudson, CDCS

Date: 11/6/2007

Phone: (813) 604 - 7203

Re: El Paso / Town of Hudson

Fax: (813) 604 - 7187

No. of Pages (including cover): 4

ISSUED STANDBY LETTER OF CREDIT NO. 61670786
ON 11/06/07 PER ATTACHED

*This came to Knight Oil Tools in
error. Our fax is 720-904-3103
Resending to El Paso*

Note: This fax is confidential and may also be privileged. If you are not the intended recipient, please notify us immediately. You should not copy it or use it for any purpose, nor disclose its contents to any other persons.

07-23C Citibank, N.A.
Exhibit D

DATE: NOV. 06, 2007

IRREVOCABLE LETTER OF CREDIT NO. 61670786

BENEFICIARY:
TOWN OF HUDSON
557 ASH STREET
BOX 351
HUDSON, COLORADO 80642
ATTN: MAYOR AND TOWN ATTORNEY

APPLICANT:
EL PASO CORPORATION
ON BEHALF OF COLORADO INTERSTATE GAS COMPANY
1001 LOUISIANA STREET
HOUSTON, TX 77002

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. 61670786 IN YOUR FAVOR IN THE AMOUNT OF US\$ 20,000.00 (TWENTY THOUSAND U.S. DOLLARS). THE PURPOSE OF THIS LETTER OF CREDIT IS TO SECURE PERFORMANCE OF AND PROVIDE SITE REMEDIATION SECURITY FOR CERTAIN GRADING IMPROVEMENTS THAT ARE THE SUBJECT OF A LIMITED WAIVER PURSUANT TO TOWN OF HUDSON RESOLUTION NO. 07-23, DATED OCTOBER 25, 2007, BETWEEN THE TOWN OF HUDSON AND COLORADO INTERSTATE GAS COMPANY (THE "DEVELOPER").

YOU ARE HEREBY AUTHORIZED TO DRAW ON SIGHT ON CITIBANK, N.A. C/O ITS SERVICER CITICORP NORTH AMERICA, INC. BLDG B, 3RD FLOOR, 3800 CITIBANK CENTER, TAMPA, FL 33610, ATTN: U.S. STANDBY UNIT, BY DRAFTS, UP TO THE AGGREGATE AMOUNT OF (\$20,000.00).

THE SOLE CONDITION FOR PAYMENT OF ANY DRAFT DRAWN AGAINST THIS IRREVOCABLE LETTER OF CREDIT IS THAT THE DRAFT BE ACCOMPANIED BY A LETTER, ON THE TOWN'S LETTERHEAD, SIGNED BY THE MAYOR OR HIS DESIGNEE, INDICATING ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

A) THE DEVELOPER IS IN DEFAULT OF DEVELOPER'S OBLIGATIONS OR SITE REMEDIATION IS NECESSARY AS A RESULT OF DEVELOPER'S WORK PURSUANT TO THE LIMITED WAIVER CONTAINED IN RESOLUTION NO. 07-23, DATED OCTOBER 25, 2007.

OR

B) THAT THE EXPIRY DATE OF THIS IRREVOCABLE LETTER OF CREDIT IS LESS THAN FOURTEEN (14) DAYS FROM THE DATE OF THIS CERTIFICATE, AND THE APPLICANT HAS NOT PROVIDED THE TOWN WITH A REPLACEMENT LETTER OF CREDIT FOR THE REMAINING PORTION OF THE CONSTRUCTION

Citibank, N.A.

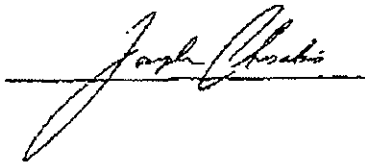
AND/OR WARRANTY PERIOD PRIOR TO FINAL INSPECTION AND FINAL APPROVAL OF THE PROJECT.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER THIS IRREVOCABLE LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS AS SPECIFIED ABOVE. THIS IRREVOCABLE LETTER OF CREDIT, AS SET FORTH ABOVE, WILL BE DULY HONORED IF PRESENTED ON OR BEFORE NOVEMBER 6, 2008.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

SIGNED THIS 6TH DAY OF NOVEMBER, 2008, ON BEHALF OF CITIBANK, N.A.

BY: JOSEPH CHESAKIS
VICE PRESIDENT

A handwritten signature in cursive script, appearing to read "Joseph Chesakis", is written over a horizontal line.

AUTHORIZED SIGNATURE(S)
CITIBANK, N.A.




UPS CampusShip: View/Print Label

- 1. Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed label at the dotted line.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
- 3. GETTING YOUR SHIPMENT TO UPS**
Customers without a Daily Pickup
 - o Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
 - o Hand the package to any UPS driver in your area.
 - o Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are accepted at Drop Boxes.
 - o To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

- o Your driver will pickup your shipment(s) as usual.

FOLD HERE

<p>SCHEA HUDSON 8136047203 CITY 3600 CITICORP CENTER TAMPA FL 33610</p> <p>SHIP TO: LARRY HUDSON 303-685-7403 GREENBERG TRAUIG, LLP 1200 17TH STREET, SUITE 2400 THE TABOR CENTER DENVER CO 80202-5858</p>	<p>LTR</p> <p>1 OF 1</p> <p>CO 802 9-51</p> 	<p>UPS NEXT DAY AIR</p> <p>TRACKING #: 1Z 50E 025 01 9618 1293</p> 	<p>BILLING: P/P</p> <p>Corporate/Exp.code: 0003100000135000 Reference #: 6166570786</p>  <p>CS 95116.0 NOV06/07 10:32 AM</p>
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MINUTES
TOWN OF HUDSON - BOARD OF TRUSTEES
SPECIAL MEETING
OCTOBER 25, 2007

CALL TO ORDER

Mayor Pontius called the meeting to order at 6:10 p.m.

ROLL CALL

Present:

Mayor - Neal Pontius

Trustees:

Judy Parker
John Honnold
Bob Lehl, Trustee
Barbara Baker
Tammy McCain
Dwayne Haynes

Town Administrator - Joe Racine

Town Clerk - Judy Larson

Deputy Clerk/Treasurer - Judith McGill

Absent:

Roll call was taken by Town Clerk Larson and a quorum of the Mayor and six (6) Trustees were present.

1. GENERAL BUSINESS

- a. **Resolution No. 07-23, Series of 2007** - A resolution granting a limited waiver of the Site Plan and Grading Permit requirements of the Town of Hudson Land Development Code, subject to certain conditions.

Larry Hudson, Attorney, for CIG apologized to the board for having to hold this extra meeting because they failed to follow procedures. Discussion followed with questions and answers.

Trustee McCain made a motion, seconded by Trustee Lehl "to adopt Resolution No. 07-23, Series of 2007". The vote resulted as follows:

*Found & made
copy of min.
for "07-23C"
RA
11-4-08*

