



**ANNEXATION AGREEMENT
HUNT BROTHERS PROPERTIES, INC.**

THIS AGREEMENT is made and entered into this _____ day of April, 2022, by and between **Hunt Brothers Properties, Inc., a Colorado corporation, hereinafter referred to as "Owner", and the City of Evans, a municipal corporation of the State of Colorado, hereinafter referred to as "Evans" or "City."**

WITNESSETH

WHEREAS, Owner desires to annex to Evans the property more particularly described on Exhibit A, which is attached hereto, incorporated herein, and made a part hereof (hereafter referred to as "the Property"); and

WHEREAS, Owner has executed a petition to annex the Property, dated January 7, 2022 and submitted to the City on January 27, 2022, a copy of which is on file with the City Clerk; and

WHEREAS, Owner has prepared a Project Narrative, an Annexation Map, a Zoning Map, a Site Plan and a Reclamation Plan identifying and illustrating requested zoning, proposed land use and intended development of the Property more particularly described on Exhibit B, which is attached hereto, incorporated herein and made a part hereof; and

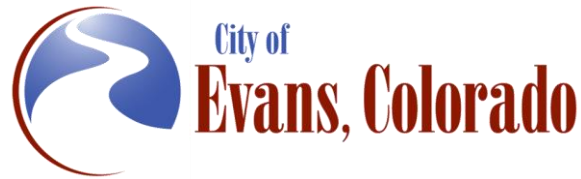
WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Agreement regarding annexation of the Property to the City and other matters as set forth herein; and

WHEREAS, Owner acknowledges that upon annexation, the Property will be subject to all ordinances, resolutions, and other regulations of the City of Evans, as they may be amended from time to time; and

WHEREAS, Owner acknowledges the need for conveyances and dedication of certain property, including but not limited to property for rights-of-ways and easements, to Evans as contemplated in this Agreement, which are directly related to and generated by development intended to occur within the Property.

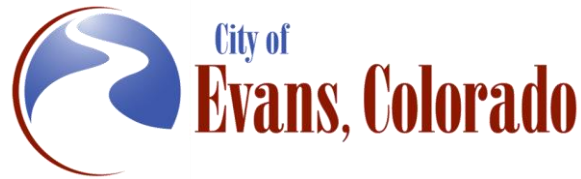
NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Confirmation of Recitals. The parties confirm and incorporate the foregoing recitals into this Agreement.
2. Purpose. The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the City. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to all requirements concerning annexation contained in the Evans Municipal Code, Development Regulations and Comprehensive Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 et seq.
3. Further Acts. Owner agrees to execute promptly upon request of Evans any and all surveys and other documents necessary to effect the annexation of the Property and the other provisions of this Agreement. Owner agrees not to sign any other petition for annexation of the Property or any petition



for annexation election relating to the Property, except upon request of Evans, unless and until Evans makes a final determination not to annex the Property.

4. Annexation Documents. Owner agrees to provide legal documents, surveys, engineering work, newspaper publications, maps and reports determined by Evans to be necessary to accomplish the annexation.
5. Public Use Land Dedication. As set forth in this Paragraph 5, Owner agrees to dedicate, as specified below by Special Warranty Deed or other appropriate instrument of conveyance acceptable to the City, or, at the request of the City, all of Owner's right, title and interest (subject to exceptions of record permitted by the City), in and to the applicable Property a portion of the territory to be annexed for public open space or other public purposes as directed by the City, in addition to easements and rights-of-way for streets and other public ways and of other public purposes, all as required by City ordinances and resolutions in effect at the time of the dedication. Owner shall have no obligation to dedicate any land for development of public improvements for the following: public school, sewer/water treatment facilities or related facility, power generation plant, library, police station or fire station.
 - A. A Trail easement that is thirty (30) feet in width shall be dedicated to the City for public access without further payment by the City as part of the consideration for the City agreeing to annex the Property. The location of this Trail easement shall be determined by the City in cooperation with the property owner and may run parallel with the South Platte River and one or both of the western and eastern property lines. A temporary construction easement in excess of the permanent thirty feet trail easement shall be provided during the construction of the trail. The dedication shall occur once the State Division of Reclamation, Mining and Safety has approved the reclamation plan proposed for the State Permit process and the City has determined the proposed location. The City shall prepare the necessary easement documents and any necessary land division application materials. The Owner, without delay, shall execute all necessary documents for the land transfer.
 - B. A Trail head shall be dedicated to the City for public access to the trail mentioned in the paragraph above. The size and location of the trail head shall be determined in the future. Access from Weld County 394 shall be provided. The Owner shall grade, apply road base or other parking surface material, and provide this trail head to the City without further payment by the City as part of the consideration for the City agreeing to annex the Property. The dedication shall occur once the State Division of Reclamation, Mining and Safety has approved the reclamation plan proposed for the State Permit process and the City has determined the proposed location. The City shall prepare the necessary land donation documents and any necessary land division application materials. The Owner, without delay, shall execute all necessary documents for the land transfer.
 - C. The Owner may consider dedicating all or some of those portions of the parcels in the floodway to the City for public access and use as either regional open space or park land without further payment by the City. Any such dedication shall occur once the State Division of Reclamation, Mining and Safety has approved the reclamation plan proposed for the State Permit process and the City has determined the proposed location. In the event of any such dedication, the City shall prepare the land division application and deed. The Owner, without delay, shall execute all necessary documents for the land transfer.
6. The portion of the future right-of-way for 35th Avenue may be considered by the City to be mined and reclaimed for future road construction. An agreement inclusive of reclamation standards for the right-of-way shall be agreed upon prior to any mining activities in the right-of-way.



7. Water and Wastewater Utilities. On-site and required off-site water and wastewater mains are not anticipated for the proposed use. Should the property develop beyond what is defined in Section 13 below, the off-site water and wastewater mains and appurtenances shall be constructed to City standards by Owner at Owner's expense. Owner may be eligible to seek reimbursement from other users of such mains and appurtenances for oversizing of any additional mains in accordance with Chapter 13.28 of the City Code. The water and sewer mains to be oversized shall be set forth in the Public Improvement Development Agreement.

8. Water Rights Dedication. There are no water rights required for dedication to the City for the development proposed as described in Section 13 below. The water associated with the property shall be conveyed to the City at no cost to the City after the land use described in Section 13 below has been completed. Owner shall dedicate water rights as required by Title 13.08 of the Evans Municipal Code.

9. Municipal Services. Evans agrees to make available to the Property all of the usual municipal services provided by the City, in accordance with the ordinances and policies of the City. The services provided by the City include, but are not limited to, police protection, water, wastewater, and storm water services. Owner acknowledges that City services do not include, as of the date of the execution of this Agreement, emergency medical services.

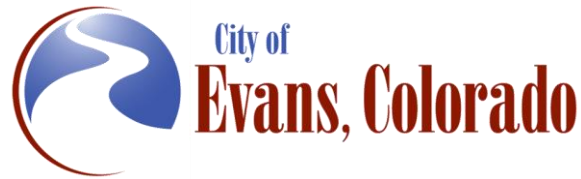
10. Public Improvements. Required public improvements shall be designed and constructed to City standards by Owner at Owner's expense as outlined in the Development Agreement associated with the Site Plan to allow the land uses described in Section 13 below. Owner further agrees to provide financial guarantees for construction of all required improvements as set forth in each phase of the development, and to dedicate to the City any or all of the improvements as required by City ordinances. The public improvements and financial guarantee shall be set forth in the Development Agreement between the City and Owner.

11. Streets and Arterial Roads. The right-of-way for the future expansion of 35th Avenue shall be preserved as reflected on the Annexation Map.

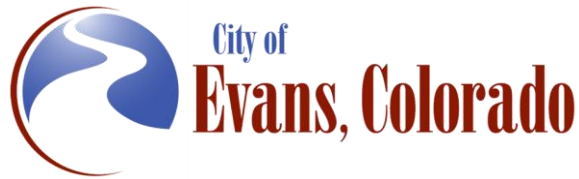
12. Reimbursements. To the extent water, sewer, storm drainage facilities or other public utilities are oversized or extended onto property by Owner or to the extent public improvements are built off-site of the Property by Owner, by any District or by the City (for which Owner/Developer pays), for benefit accruing to other parties, said improvements may be eligible for reimbursement as provided in Chapter 13.28 of the Evans Municipal Code.

13. Zoning and Land Use. The parties recognize that it is the intent and desire of Owner to develop the Property in a manner generally consistent with the definition of *Natural Resources Extraction and Treatment* in the current land use code, inclusive of mining sand and gravel, processing recycled asphalt and concrete on site, crushing materials on site, and batching asphalt on site. A ready mix concrete plant may be proposed in the future through a separate land use permit. The zoning and land use processes are presented in a subsequent paragraph below. Granting the zoning classification by the City of Evans is a material consideration of the Owner's agreement to annex the Property to the City. Owner shall take all action necessary to permit land use activities and zoning by Evans of the annexed Property within the time prescribed by state statute. In the event the City does not zone the land in accordance with the uses further described in this Agreement, then the City agrees not to oppose any disconnection by the Owner, subject to the requirements of state law.

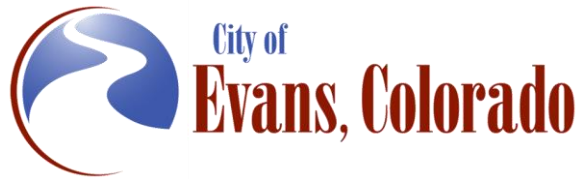
- (A) Conceptual Plan. Owner and City shall mutually agree upon a conceptual land use plan that is in accordance with the City's Comprehensive Plan. It is Owner's intent to develop and request zoning for the Property in accordance with the conceptual land use plan as shown in Exhibit **B**.
- (B) Owner agrees that the design, improvement, construction, and development of the Property described herein shall be in conformance with the City of Evans Design Guidelines, as those requirements exist at the time of site plan application.



- (C) Rezoning Process. Upon submittal of required materials, Owner's rezoning request shall be processed concurrently with the petition for annexation. This provision does not waive the authority of the Owner or the City of Evans to initiate rezoning of the land in accordance with the Charter and ordinances of the City of Evans. Land use is subject to the police power and legislative authority of the City of Evans.
 - (D) The Owner shall diligently pursue partial release of the State Division of Reclamation, Mining and Safety bond as these parcels become eligible for release.
14. Agricultural Use. The City agrees that Owner may continue the agricultural uses that are presently being conducted on the Property in the same manner as they have historically been performed until the development of the Property as proposed in the Conceptual Plan. The Owner understands and agrees that upon issuance of the first non-agricultural building permit for the Property, such agricultural activities shall cease, and any livestock, barbed wire, and/or electric fences shall be removed from the Property. The Owner understands that discharge of firearms is strictly prohibited in the City of Evans. Fencing materials shall be reviewed with the Site Plan application.
 15. Limitation on Fee Impositions by the City. The City agrees that the Property shall be subject to typical development fees similar to those that are imposed on other developments in the City pursuant to the City's regulations and ordinances unless otherwise mutually agreed upon by the Owner and the City.
 16. Development Agreement. In a form provided by the City, Owner and the City shall enter into a development agreement prior to operating the site and prior to recording the Site Plan. The final form of the development agreement shall be subject to mutual agreement of the parties on the terms and conditions of the same. The development agreement shall be signed prior to or upon approval of the Site Plan application.
 17. Conformity with Laws. Owner agrees that the design, improvement, construction, development, and use of the Property shall be in conformance with all applicable laws and ordinances and that Owner shall comply with all City ordinances, resolutions and regulations including without limitation, ordinances, resolutions, and regulations pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to City streets, and flood control.
 18. No Repeal of Laws. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the City of any tax or fee.
 19. Disconnection. Except as expressly provided in Section 13, no other basis, right or remedy of disconnection of the Property from the City shall accrue from this Agreement. In the event the Property or any portion thereof is disconnected, Evans shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.
 20. Fire Protection District Exclusion. Owner agrees to petition to exclude the Property from the LaSalle Fire Protection District and into the Evans Fire Protection District. This petition shall be filed within ninety (90) days of the acceptance of this Agreement by the Evans City Council.
 21. Water Conservancy Municipal Subdistrict Inclusion. Pursuant to CRS 37-45-136(3.6), Owner consents to inclusion of the property into the Municipal Subdistrict, Northern Colorado Water Conservancy District, when the annexation becomes effective.



22. Future Cooperation. The parties agree they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
23. No Joint Venture or Partnership/No Assumption of Liability. Nothing contained in this Agreement is intended to create a partnership or joint venture between the City and Owner or between the City and any one or more of the individual owners listed above, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function, or service, nor does it create a joint enterprise, nor does it constitute any party hereto as any agent of another party hereto for any purpose whatsoever. Except as specifically otherwise provided in this agreement, no party shall in any way assume any of the liability of any other party for any act or obligations of the other party.
24. Amendment. This Agreement may be amended only by mutual agreement of the City and Owner. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property and/or Water Rights subject to the amendment unless otherwise specified in the amendment.
25. Entire Agreement. This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written between the parties.
26. Owner. As used in the Agreement, the term "Owner" shall include any of the heirs, transferees, successors, or assigns of Owner, and all such parties shall have the right to enforce this Agreement, and shall be subject to the terms, conditions, and obligations of this Agreement, as if they were the original parties thereto. In the event of a transfer of all or any portion of the Property, provided the City approves such transfer, such approval not to be unreasonably withheld, the transferring Owner shall be relieved of any and all obligations under this Agreement that arise after the date of such transfer with respect to the transferred Property.
27. Amendments to Law. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, regulation, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, regulation, or policy, and the parties agree such amendments or revisions shall be binding upon Owner.
28. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk and Recorder of Weld County, Colorado, at Owner's expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.
29. Failure to Annex. This Agreement shall be null and void if the City fails to approve the annexation of the Property.
30. Breach of Agreement.
 - (A) Breach by Developer; City's Remedies. In the event of a default or breach by the Owner of any term, condition, covenant, or obligation under this Agreement, the City may take action, as it deems necessary to



protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the City from hardship. The City's remedies include:

- (1) The refusal to issue to the Owner any development permit, building permit, or certificate of occupancy. This remedy shall not affect sales to bona fide purchasers nor be applied to bona fide purchasers (i.e. purchasers of individual lots by persons unrelated to Owner);
- (2) The refusal to consider further development plans within the Property; and /or
- (3) Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the City or City residents, the City shall provide the Owner ten (10) days written notice of its intent to take any action under this Paragraph during which ten-day period the Owner may cure the breach described in said notice and prevent further action the City.

- (B) Breach by City. Parties agree that in the event of a breach by the City, Owner's sole remedy shall be to seek specific performance. Under no circumstances shall Owner be entitled to pursue any action at law or in equity or otherwise against the City that involves any claim of damages, equitable monetary relief, or any other type of monetary claim.

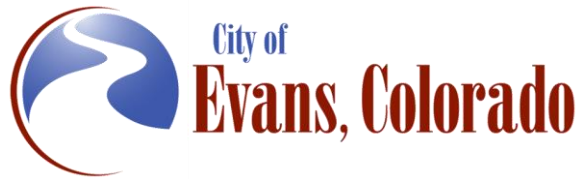
31. General Provisions. City shall:

- (A) Cause its staff to timely and promptly approve or disapprove written submittal by Owner of any plans, specifications, drawings, details or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage or other utility serving the Property or any improvements within any dedicated right-of-way on the Property. Any disapproval shall set forth the items disapproved together with the reasons for such disapproval.
- (B) Use reasonable efforts in securing, at Owner's expense and at no cost or expense to the City, construction and maintenance agreements from governmental or private entities in order to allow Owner to fulfill its obligations under this Agreement and to proceed with development of the Property.
- (C) Cooperate with Owner with any filings, applications, approvals, or other administrative procedures with governmental entities other than the City, which is necessary to allow Owner to fulfill its obligations under this Agreement and to develop the Property in a timely manner.
- (D) Provide police and other municipal services to the Property to the same extent as those services are provided by City throughout the balance of the City, pursuant to the City's uniform applied policies.
- (E) Not unreasonably withhold its consent or approval when any consent or approval is required.

Owner shall notify the City of assignments and the name of the assignee(s) upon the sale or other transfer of any portion of the Property. The transferor of such portion shall be released from all liability and obligation under this Agreement relating to such portion and all such liabilities and obligations shall be assumed by the transferee (unless transferee is a member of the home buying public or governmental entity).

Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes, ordinances or as a waiver of the City's legislative, governmental or police powers to promote and protect the health, safety, and general welfare of the City or its inhabitants; nor shall this agreement prohibit the enactment by the City of any fee which is of uniform or general application.

It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is by a court determined to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and



enforced as if the agreement did not contain that particular part, term, or provision held to be invalid. This Agreement may be enforced in any court of competent jurisdiction in Weld County, Colorado.

32. Notice. All notices required under this Agreement shall be in writing and shall be hand delivered, sent by facsimile transmission, or sent via registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt, provided a hard copy is mailed the same date. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party, by notice so given, may change the address to which future notices shall be sent.

Notice to City: City of Evans
 Attn: City Manager
 1100 37th Street
 Evans, CO 80620

With copy to: City Attorney
 City of Evans
 1100 37th Street
 Evans, CO 80620

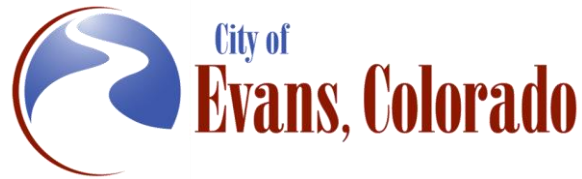
Notice to Owner: Hunt Brothers Properties, Inc.
 Daniel W Hunt, President
 10100 Dallas Street
 Henderson, CO 806408491

33. Election. Owner agrees that he/she/it is voluntarily entering into this Agreement. Owner represents and submits that to the extent an election would be required pursuant to C.R.S. §31-12-112, as amended, to approve the annexation or to impose terms and conditions upon the Property to be annexed, Owner owns 100 percent of the Property, excluding public streets and alleys, and would vote to approve the annexation and all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the annexation and the terms and conditions.

34. Legislative Discretion. The Owner acknowledges that the annexation and zoning of the Property are subject to the legislative discretion of the City Council of the City of Evans. No assurances of annexation, zoning, or special use permit approval have been made or relied upon by the Owner. In the event that, in the exercise of its legislative discretion, any action with respect to the annexation, zoning or special use approval for the Property, as contemplated herein and in the proposed Conceptual Development Plan for the Property, is not taken or if once taken and Owner is in full compliance with such annexation, zoning or special use approvals is not maintained, then the Owner may withdraw the petition for annexation and seek disconnection from the City in accordance with state law, as may be appropriate and City agrees not to oppose.

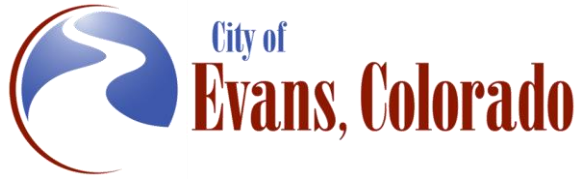
35. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

36. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.



- 37.** No Warranties by the City. The City is entering into this Agreement in good faith and with the present intention, on the part of the present City Council, that this Agreement will be complied with. However, because some of the provisions of this Agreement may involve areas of legal uncertainty, the City makes no representation as to the validity or enforceability of this Agreement and that no such warranty is made on the part of the City.
- 38.** Attorney's Fees. If any Party breaches this Agreement, the breaching party shall pay the non-breaching party's reasonable costs and attorney's fees incurred in the enforcement of the terms and conditions of this Agreement. The City shall, at all times, have control over the defense of the City in such matters and nothing herein shall be construed to require the City to assert any position which is inappropriate, in the sole judgment of the City. The City and Owner shall confer with each other concerning the defense and/or settlement of any such action.
- 39.** Cost Reimbursement to City. Developer shall reimburse City for outside professional consultants such as engineers, testing companies, and attorneys necessitated by processing and completion of this development.

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IN WITNESS THEREOF and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

DEVELOPER

Hunt Brothers Properties, Inc.

By: _____
Brian Rudy, Mayor

By: _____
Daniel W. Hunt, President

ATTEST:

Julie Kamka, City Clerk

NAME

By: _____

STATE OF COLORADO)
)
COUNTY OF _____)

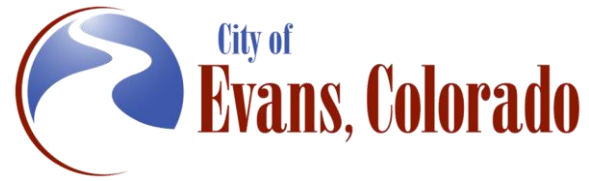
Acknowledged before me this _____ day of _____, 2022 by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

(Seal)

Notary Public



**ANNEXATION AGREEMENT
EXHIBITS**

- A. Legal Description
- B. Supporting Narrative and Map Products

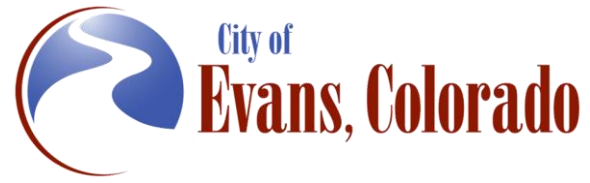


Exhibit A: Legal Description



Exhibit B: Project Details

- Project Narrative
- Annexation Map
- Zoning Map
- Site Plan
- Reclamation Plan