

**IMPROVEMENTS AGREEMENT
JR'S TRUCKING**

THIS AGREEMENT is entered into between the City of Evans, a Colorado home rule municipality ("the City") and JR's Trucking, LLC, a Colorado Limited Liability Company "the Owner") effective the ___ day of _____, 2021.

WHEREAS, the Owner is the owner of the real property described on Exhibit A, attached, (hereinafter referred to as "the Property");

WHEREAS, the City has approved the Site Plan Permit of the Property in accordance with the provisions of the Evans City Code (the "Site Plan Permit");

WHEREAS, the Owner intends to develop the Property, the effect of which will be to directly impact and generate the need for on-site and off-site improvements. The Owner acknowledges that the exactions set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate;

WHEREAS, the City has approved the Site Plan and associated Construction Drawings prepared by _____ dated _____, 2021 for the Property (the "Site Plan Permit" and "Construction Drawings");

WHEREAS, the parties desire to provide for the construction of the improvements described in the Construction Drawings that are required to serve the Property (the "Improvements") as set forth herein;

NOW, THEREFORE, in consideration of the premises, the Parties hereto agree as follows:

1. Improvements Required

Owner agrees to make, construct and install (or cause to be made, constructed or installed) the improvements set forth in Exhibits B and C attached hereto and incorporated herein by reference (the "Owner Improvements"). Such improvements shall be made, constructed and installed in accordance with the Construction Drawings. Any and all costs of City inspection of improvements shall be borne solely by the Owner. The extent of the Owner's compliance with this Agreement shall be determined solely by the City and its duly authorized agents and employees. Prior to commencement of work on the Property, the Owner shall obtain all necessary permits to complete the Improvements. In addition, Owner shall fully comply with all terms and conditions of any such permits.

2. Phasing of Improvements. The Owner will phase the improvements found in Exhibit B as set forth in the phasing plan found in Exhibit C.

a. Engineering Services

The Owner shall at its sole expense procure all engineering and landscaping services necessary and appropriate in conjunction with the development of the Property, which shall fully conform to the City's applicable ordinances, standards and specifications. Professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed by the State of Colorado as may be appropriate. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.

b. Review

The Site Plan Package has been approved and referenced in Exhibit B.

c. Inspection

At all times during construction of the Improvements, and until final approval thereof by the City, the City shall have the right, but not the duty, to inspect materials and workmanship in order to ascertain conformance with the Construction Drawings and all applicable standards and specifications. Owner shall reasonably cooperate and assist the City to gain appropriate access to the areas designated for inspection. It shall also be the duty of the Owner to notify the City upon discovery of any nonconformance with the said plans, standards and specifications. Inspection and approval of work by City personnel shall not relieve the Owner of any responsibility.

d. Street access

Owner shall, at its own expense, be responsible for keeping off-site streets and rights-of-way clean of mud, rocks, and debris at all times during said construction. All work shall conform to the requirements for erosion control as described in statutes, ordinances, or regulations. Should the Owner fail to meet said requirements, the City may take corrective action and invoice the Owner at the City's prevailing rate.

e. Warranty

(1) For a period of two (2) years from the date of approval of the Owner Improvements by the City, Owner warrants that all Owner Improvements hereunder will be free from defects, including but not limited to defects in materials, workmanship, design, construction and installation, and that the Owner Improvements otherwise fully comply with all applicable standards and specifications.

(2) In the event the City notifies the Owner in writing of the need for any substantial repair or replacement of any of the Owner Improvements during the warranty period it shall be the sole responsibility of the Owner to make such repairs or replacements within 10 days or such longer time as the City agrees to in writing. If such repair or replacement is not made within the required time period, or in any event before the expiration of the warranty period, the City may

elect to, but shall not be obligated to order denial or suspension of Owner's business license or the Special Use Permit until repair or replacement of the Owner Improvements have been completed by Owner and inspected and approved by the City. Owner shall bear all costs associated with such repairs or replacements of Owner Improvements.

3. Procedure for Approval of Improvements

a. Within the time period specified in the Phasing Plan attached as Exhibit C for completion of the Improvements, the Owner shall submit a written request for Approval of the Improvements, and within ten (10) days of such request the City shall conduct a final inspection of the Improvements, unless precluded from doing so by weather or natural conditions. If the Improvements subject to the inspection request fully conform to this Agreement and all applicable standards and specifications, and/or all repairs, if any are needed, have been made to bring same into such conformance, then the City shall issue a Certificate of Approval.

b. If Owner fails to have Improvements approved by the City as provided in this Section, the Owner shall be in default of this Agreement and the City may exercise its rights to secure performance as provided herein. Nothing herein shall be construed or deemed as requiring the City to finally approve any Improvements that are defective or damaged.

4. Liability Limitations

a. Indemnification

The Owner agrees to indemnify and hold harmless the City, and its officers, agents and employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arises out of or is in any manner connected with the work to be performed under this Agreement, if such injury, loss, or damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident or other fault of the Owner, any Subcontractor of the Owner, or any officer, employee, or agent of the Owner, contractor or subcontractor. The obligations of this Section shall not apply to damages for which the City shall become liable by final judgment to pay a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City.

(1) Owner shall insure that all contractors and subcontractors providing services provide Workers' Compensation as required by the Labor Code of the State of Colorado and Employers' Liability Insurance;

(2) If approved by the City in its sole discretion, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

(3) Owner shall at a minimum procure and maintain insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Owner pursuant to retroactive dates, and extended reporting periods shall be procured to maintain such continuous coverage.

(4) A Certificate of Insurance shall be completed by the Owner's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(5) Failure on the part of the Owner to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material Breach of Agreement and, if said breach is not cured within ten (10) days of written notice by City to Owner, City may immediately terminate this Agreement, or at its discretion, City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith and all monies so paid by City shall be repaid by the Owner to City upon demand, or City may offset the cost of the premiums against any monies due to Owner from City, or the City may cease to issue building permits or certificates of occupancy, or to provide utility services until the defect has been remedied.

(6) The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Owner agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this particular job.

(7) The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$387,0000 per person and \$1,093,000 per occurrence where multiple persons are injured) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, agents or employees.

b. Nonliability

Owner acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare, and that no specific relationship with, or duty of care to the Owner or third parties is created or assumed by such review approval, or is any immunity waived, as is more specifically set forth at Section 24-10-101, et seq. C.R.S., Colorado Governmental Immunity Act.

No one, individually or otherwise, other than the parties hereto, shall acquire, as a result of this Agreement, any rights, claims or obligations from or against the City, its agents, employees or officers. Actions by the City against Owner to enforce any provision of this Agreement shall be at the sole discretion of the City Council of the City. No third parties shall have any right to require any action by the City pursuant to this Agreement; and this Agreement shall not create a liability on the part of or be a cause of action against the City for any personal or property damage that may result to any third parties from the failure of Owner to perform or construct the improvements herein specified.

5. Enforcement and Remedies

a. Breach of Agreement by Owner

In the event the Owner fails to timely comply with any of the terms, conditions, covenants and undertakings hereof, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the Owner by the City, unless the City in writing designates a longer cure period reasonably requested by the Owner, then the City may revoke or refuse to renew Owner's Business license and/or Special Use Permit until Owner complies with its obligations under this Agreement.

b. Breach of Agreement by City

In the event the City fails to comply with any of the terms, conditions, covenants and undertakings hereof, and such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the City by the Owner, unless the Owner in writing designates a longer cure period reasonably requested by the City, then the Owner may pursue specific enforcement against the City, but in no event shall Owner be entitled to pursue any type of monetary award or other monetary relief against the City. Notice by the Owner to the City shall specify the conditions of default.

6. Non-Waiver

The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Owner, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

7. Binding Effect

This Agreement shall be binding on the parties hereto, their respective successors and assigns, and shall be deemed to constitute a covenant running with the land. The Owner and any such successor and assign shall be jointly and severally liable for performance of this Agreement; provided, however, that no individual lot that has been sold to an individual lot owner shall have any obligation or liability of any kind under this Agreement.

8. Entire Agreement

This Agreement shall constitute the entire agreement between the parties. No subsequent amendment hereto shall be valid unless made in writing and properly executed by the parties hereto.

9. Notice

Any notice given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other, and unless amended by written notice, to the following:

City Manager
City of Evans
1100 31st Street
Evans, Colorado 80620
With a copy to:

Rosario Yanez
7500 20th Street Road
Greeley, CO 80634

10. Applicable Law, Jurisdiction, Venue and Severability

This Agreement is to be governed and construed according to the laws of the State of Colorado. Any action or claim filed to enforce this Agreement or relating directly or indirectly to the provisions, performance or enforcement of this Agreement shall be filed in the District Court of Weld County, State of Colorado. In the event that any provision of this Agreement is held to be in violation of the City's ordinances or the laws of the State of Colorado or the United States and thereby rendered unenforceable, such unenforceable provision shall be severable and ineffective without invalidating the remaining provisions of this Agreement

IN WITNESS WHEREOF, 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

JR's TRUCKING, LLC

By: _____
Brian Rudy, Mayor

By: _____

ATTEST:

Julie Kamka, City Clerk

NOTARY BLOCK FOR THE APPLICANT'S SIGNATURE

STATE OF COLORADO)
) ss
COUNTY OF _____)

Acknowledged before me this _____ day of _____, 2021 by _____,
as _____, of _____ a _____.

Witness my hand and official seal.

My commission expires: _____

(Seal)

Notary Public

Exhibits

A – Legal Description

B – Special Use Permit

C – Owner Improvements

 C-1 – Description of Improvements

 C-2 – Engineer’s estimate of probable costs of Improvements

 C-3 – Schedule of completion of Improvements

EXHIBIT A: LEGAL DESCRIPTION

LOT 32, BLOCK 5, EVANS INDUSTRIAL PARK, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO AS PER THE MAP RECORDED MAY 22, 1975 UNDER RECEPTION NO. 1660971 IN THE OFFICE OF THE WELD COUNTY RECORDER.

THE PARCEL OF LAND DESCRIBED ABOVE CONTAINS 25,533 SQUARE FEET (0.59 ACRES), MORE OR LESS, AND IS SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.

EXHIBIT B: SITE PLAN PERMIT

The Site Plan has been approved by the City of Evans and recorded at Reception _____
with the Weld County Clerk and Recorder. A copy of the recorded Site Plan is on file with the
City of Evans.

EXHIBIT C: OWNER IMPROVEMENTS

C-1 – Description of Improvements

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

D – Performance Guarantee

Exhibit C-1 Description of Improvements

Fence Relocation: The improvements for this site begin with the relocation of the existing fence. The current fence is in the right-of-way of 43rd Street, and will be removed and relocated as shown on the approved Site and Grading Plan. The relocated fence shall be installed just inside the landscaping area, which occupies the first ten (10) feet of the property along the frontage of both Brantner Road and 43rd Avenue, with no landscaping occupying the area where the proposed entrance will be constructed.

Landscaping Area: The landscaping area will have 3 inches of River Rock installed, and will be planted with five (5) American Linden trees, five (5) Imperial Honeylocust trees, twenty five (25) Dwarf Fragrant Sumac shrubs, and twenty five (25) Lead Plant shrubs. The location and approximate spacing of the landscaping plants are shown on the approved Landscaping Plan.

Irrigation Installation: The landscaping will have drip irrigation installed by using a ¾” perma-loc tubing adapter connecting ¾” PVC sch. 40 ultra flexible pipe to the proposed water hydrant. Water service for this property will be connected via the existing water line in Brantner Road.

Curb stop and water meter: A curb stop and water meter will be installed on the water service, and an RPZ-style backflow preventer will be installed between the meter and the frost-proof yard hydrant.

Rain Garden: A “rain garden” shall be constructed in the southeast corner of the site. The rain garden shall have a minimum surface area of 235 square feet (SF), shall have side slopes at a minimum of 4(H):1(V), and one (1) foot of total depth. 18 inches depth of growing medium will be provided underneath the surface area of the rain garden, as shown by the typical cross section on the approved Site and Grading Plan. Six (6) inch depth of class 6 aggregate base shall be installed within the fenced area of the site.

Exhibit C-2 Engineer's estimate of probable costs of Improvements

ENGINEER'S ESTIMATE OF PROBABLE COST OF IMPROVEMENTS					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	6" DEPTH CLASS 6 AGGREGATE	445	TON	\$12.00	\$5,340.00
2	BACKFLOW PREVENTER	1	EA	\$300.00	\$300.00
3	WATER METER	1	EA	\$150.00	\$150.00
4	FROST-PROOF YARD HYDRANT	1	EA	\$275.00	\$275.00
5	3/4" PVC	290	LF	\$1.00	\$290.00
6	RIVER ROCK	90	TON	\$220.00	\$19,800.00
7	LANDSCAPING PLANTS	1	LS	\$2,850.00	\$2,850.00
8	3/4" COPPER PIPE	22	LF	\$2.50	\$55.00
				TOTAL	\$29,060.00

Exhibit C-3 Schedule of Improvements

The improvements described by Exhibit C-1 shall be constructed or installed within one (1) year after the completion of the construction of the 43rd Street improvements or when water and sewer connection is required.