

**AN INTERGOVERNMENTAL AGREEMENT
REGARDING LAND USE, GROWTH BOUNDARIES, AND
FUTURE ANNEXATIONS
BETWEEN KERSEY, EVANS, AND GREELEY**

This Agreement is made this ___ day of _____, 2018, by and between **The Town of Kersey**, Colorado, a statutory municipality, (“Kersey”), **The City of Evans**, Colorado, a home rule municipality, (“Evans”), AND **The City of Greeley**, Colorado, a home rule municipality, (“Greeley”), establishing the terms and conditions for land uses, building and design standards within a Cooperative Planning Area, and setting forth an agreement to develop a plan for future land use and urban development that each municipality may consider adopting, and that may, if agreed upon, form the basis for amending this agreement.

Whereas, Kersey, Evans, and Greeley recognize the high natural, aesthetic, and wildlife value of the South Platte River Corridor, and

[Whereas, Kersey, Evans, and Greeley recognize and wish to support the Comprehensive Plans, and Parks and Recreation Master Plans that each has adopted and that these plans recognize and build upon the high natural values of the South Platte River Corridor, and](#)

[Whereas, Kersey, Evans, and Greeley wish to cooperate on joint funding and resource opportunities along the South Platte River Corridor, and](#)

Whereas, Kersey, Evans, and Greeley recognize each other’s adopted long range growth management boundaries, and

Whereas, Greeley, Evans, and Kersey wish to cooperatively plan this area for their mutual benefit, and

Whereas, Kersey, Evans, and Greeley wish to avoid annexation, land use, and environmental conflicts which could potentially degrade the high natural, aesthetic, and wildlife values of the South Platte River Corridor,

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES MADE HEREAFTER SET FORTH, IT IS MUTUALLY AGREE BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Kersey, Evans, and Greeley Cooperative Planning Area.

There is hereby established a Kersey, Evans, and Greeley Cooperative Planning Area (CPA). Said Cooperative Planning Area is shown on Exhibit A.

2. Annexation

Kersey, Evans, and Greeley each agree that within the Kersey, Evans, and Greeley Cooperative Planning Area, they will not annex outside their adopted Growth Management Areas as they exist at the time of this Agreement except when it is necessary to annex the remainder of a parcel that is more than 50% contained within said existing growth management area.

Overlapping Adopted Growth Management Areas

Where two or more municipalities include a parcel within their respective growth management areas, ~~that is proposed to be annexed to a municipality~~, the municipality initiating the annexation or in receipt of ~~an application~~ an Annexation Petition ~~to annex~~ shall promptly notify the other municipalities to ~~negotiate~~ consider who would have first priority to annex the property. The parties acknowledge that the landowner initiating the request for annexation shall have the right to petition to annex to the municipality of their choice within areas that lie within overlapping adopted growth management areas.

Commented [JB1]: Does the submittal of an annexation petition include a requirement for an annexation plat?

Growth Management Areas not included in more than one adopted Growth Management Area

If any party to this agreement is presented with a petition for annexation of land located in the ~~agreed upon annexation adopted growth management~~ boundary of another party to this agreement, they shall direct the petitioner to the municipality within which the land is planned for annexation in accordance with this agreement. Only upon the written notice that the denial of the proposed annexation of the proposed annexation petition will not be accepted by the municipality within which the land is planned for annexation may another municipality consider any such annexation, and then only upon the written ~~amendment~~ of this agreement agreement of the parties to this agreement.

3. Land Uses

Each municipality agrees to permit only those land uses as set forth in its duly adopted Comprehensive Plan, as it exists at the time of this Agreement.

Land Use, Site, and Building Standards

~~(Discuss specifies unacceptable uses,~~

Notwithstanding any other provisions of this agreement, the following uses shall not be permitted within the Joint Planning Area: adult business, auto dismantling, junk & salvage yards, bulk storage of flam. liquids & gases - LP tanks as per Fire Code, chemical manufacturing plants, co-generation & power plants, concrete, asphalt batch plants, crematoriums, food & beverage processing facility (major), foundries, recycling centers, refuse transfer stations, rendering plants, slaughterhouse, meat processing, packaging plants, water & waste water treatment plants, or outdoor storage facilities.

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(Discuss specifics: gravel mining, existing urban areas, other)

Public Improvement Standards

4. Required Notices for Development

Each party will notify the other parties of all intended development within ½ mile of or within that party's growth boundary not less than 4 weeks prior to the first official consideration of the land use matter by the municipality reviewing the intended development. All notifications shall be in writing and shall include the complete submittal package for review and consideration by the reviewing municipalities. The reviewing party shall review the documents and respond in writing with its comments to the reviewing municipality in a timely manner. For purposes of this agreement, these submittal packages, notices, and comments may be digital or hard copy. The parties agree that all such information, documents, and communication is a courtesy and any oversight, for any reason, of any referral shall not require delay of a decision by the reviewing municipality.

However, when making any land use decisions, any municipality agrees that it may not approve any land use not in conformance with its comprehensive plan or annex outside its growth area without prior written notification to the other affected municipalities.

Each party shall provide the other parties with a designated point of contact for the transmission of all communications and documentation contemplated and described in this paragraph.

5. Release and hold harmless

Each municipality is a public entity as that term is defined by the Colorado Governmental Immunity Act, Rev. Sta. SS 24-10-101, et seq. The parties to this agreement have the benefits and responsibilities enumerated in the Colorado Governmental Immunity Act. Each party shall defend any and all claims for injuries and damages

6. No beneficiaries other than the signers

It is expressly understood and agreed that the terms and the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, are strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that no person and/or entity, other than the undersigned parties, receiving services or

benefits under this Agreement shall be deemed any more than an incidental beneficiary only.

7. Non-Compliance

Notwithstanding any other provision in this Agreement, if either party fails to comply with the provisions of this Agreement, the other party, after providing written notification to the noncomplying party and upon the failure of the noncomplying party to achieve compliance within a reasonable time after such notice under the circumstances, or ninety (90) days, whichever is less, may bring an action in a court of competent jurisdiction in Weld County for specific performance, injunctive, or other relief against the non-complying party. In the event of such litigation, the prevailing party shall be entitled to payment by the defaulting party, of its actual attorney's fees and costs incurred.

8. Amendments

This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the parties hereto.

9. Additions and Modifications

The parties hereto agree that they shall cooperate with one another and Weld County in making such additions and modifications to this Intergovernmental Agreement as may be necessary to effectuate its purposes.

10. Terms and Termination

This Agreement shall remain in effect for a period of ~~twenty (20)~~ five (5) years from its effective date. Thereafter, it shall be automatically renewed for successive five (5) year terms unless at least ~~five (5) years- 120 days~~ prior to the scheduled expiration, either party notifies the other party of its decision that the Agreement shall not be renewed.

OR

~~Any party to this Agreement may withdraw by issuing a 90 day written notice to the other remaining parties.~~

12. Colorado Laws

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado with venue in Weld County.

13. Wavier of Breach

A waiver of a breach of any of the provisions of this Agreement shall not constitute waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

14. Notices

All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

TO KERSEY

TO EVANS

TO GREELEY

15. Effect of Invalidity

If any portion of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both parties, the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the entirety of this Agreement. If any portion of any other paragraph of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to any party or parties, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other party shall be deemed invalid.

16. Reliance by the Parties

Kersey, Evans, and Greeley understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees (i) not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement; (ii) to promptly notify the other party of any legal action which might affect this Agreement; (iii) to allow the other party to participate in such legal action as the other party deems appropriate; and (iv) to defend this Agreement in such legal action.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement the day and year first written above.

TOWN OF KERSEY

CITY OF EVANS

CITY OF GREELEY

Exhibit A Cooperative Planning Area Map

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