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## ARTICLE XVI

### Gilcrest Plan

#### Sec. 19-16-10. Introduction.

This Coordinated Planning Agreement is made and entered into effective as of the 4<sup>th</sup> day of April, 2005, A.D. between the County of Weld, State of Colorado, whose address is 915 10th Street, P.O. Box 758, Greeley, CO 80632, hereinafter called the "COUNTY," and the TOWN OF GILCREST, a Colorado Municipality, whose address is 304 Eighth Street, P.O. Box 128, Gilcrest, CO 80623, hereinafter called the "MUNICIPALITY." (Weld County Code Ordinance 2005-2)

#### Sec. 19-16-20. Recitals.

A. The COUNTY exercises governmental authority regulating land use, growth and development in its unincorporated areas, which areas include lands surrounding the MUNICIPALITY; and

B. The MUNICIPALITY exercises governmental authority over the same matters within its municipal boundaries, and annexations, and is able to provide municipal services and facilities for efficient and desirable urban development; and

C. In Title 29, Article 20, C.R.S., the General Assembly of the State of Colorado has granted broad authority to local governments to plan for and regulate the development and use of land within their respective jurisdictions; and

D. In said Title 29, Article 20, C.R.S., the General Assembly has further authorized and encouraged local governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by the joint and coordinated exercise of planning, zoning, subdivisions, building and related regulatory powers; and

E. Existing and anticipated pressures for growth and development in areas surrounding the MUNICIPALITY indicate that the joint and coordinated exercise by the COUNTY and the MUNICIPALITY of their respective planning, zoning, subdivision, building and related regulatory powers in such areas will best promote the objectives stated in this Agreement. (Weld County Code Ordinance 2005-2)

#### Sec. 19-16-30. Purposes and objectives.

The purpose of this Agreement is to establish procedures and standards pursuant to which the parties will move toward greater coordination in the exercise of their land use and related regulatory powers

within unincorporated areas surrounding the MUNICIPALITY. The objectives of such efforts are to accomplish the type of development in such areas which best protects the health, safety, prosperity and general welfare of the inhabitants thereof by reducing the waste of physical, financial and human resources which results from either excessive congestion or excessive scattering of population, and to achieve maximum efficiency and economy in the process of development. However, any action taken pursuant to this Agreement that pertains to any land within the municipality, for incorporated areas, and within the county, for unincorporated areas, is subject to final approval by the governing body of the municipality or county, respectively. (Weld County Code Ordinance 2005-2)

**Sec. 19-16-40. Definitions.**

For the purposes of this Agreement, the following terms shall be defined as set forth herein:

*Development.* Any land use requiring regulatory approval by the elected governing body of the applicable party in the Urban Growth Area except for an amendment to a plat or a down-zoning, neither of which creates any additional lots and except for a Recorded Exemption or Subdivision Exemption. Existing agricultural uses, which are lawful uses, either as uses by right under Chapter 23 of this Code, or as legally existing nonconforming uses, are also exempt from the definition of *Development*.

*MUNICIPAL Referral Area.* The area located outside of but within three (3) miles of the MUNICIPALITY's municipal boundaries.

*Non-Urban Development.* Developments comprised of nine (9) or fewer residential lots, located in a Non-Urban Area as defined in Chapter 22 of this Code, not adjacent to other PUDs, subdivisions, municipal boundaries or urban growth corridors. *Non-Urban Development* shall also include land used or capable of being used for agricultural purposes, including development which combines clustered residential uses and agricultural uses in a manner that the agricultural lands are suitable for farming and ranching operations for the next forty (40) years. Non-Urban Development on public water and septic systems may have a minimum lot size of one (1) acre and an overall gross density of two and one-half (2½) acres per septic system. Non-Urban Development proposing individual, private wells and septic systems shall have a minimum lot size of two and one-half (2½) acres per lot.

*Urban Development.* Developments exceeding nine (9) lots and/or located in close proximity to existing PUDs, subdivisions, municipal boundaries or urban growth corridors and boundaries. All Urban Development shall pave the internal road systems of the developments. Urban Development requires services such as central water, sewer systems (including permitted septic systems), road networks, park and recreation facilities and programs, and storm drainage.

The *Urban Growth Area* is hereby established and shall consist of all so designated on the map at Appendix 19-P of this Chapter, EXCEPTING those lands located within the MUNICIPALITY's municipal boundaries. The map depicted in Appendix 19-P supersedes that which was attached to the original Agreement. (Weld County Code Ordinance 2005-2)

**Sec. 19-16-50. Planning coordination.**

This Agreement is intended to be a Comprehensive Development Plan adopted and implemented pursuant to Section 29-20-105(2), C.R.S. Following the execution of this Agreement by both parties, COUNTY Development approvals in the MUNICIPALITY's Referral Area will be processed and determined in accordance with the following:

A. Referral. The COUNTY will refer all proposals for Development within the MUNICIPAL Referral Area to the MUNICIPALITY for its review and recommendation. Such referral will include at least a copy of the written Development proposal and preliminary COUNTY staff summary of the case. The COUNTY will allow not less than twenty-one (21) days for the MUNICIPALITY to review the same and furnish its recommendations to COUNTY staff prior to formulation of the COUNTY staff recommendation. If the MUNICIPALITY does not respond within such time, COUNTY staff may proceed with its recommendation, but any MUNICIPALITY comment or recommendation received on or before the Thursday next preceding the meeting of the Board of County Commissioners or Planning Commission at which the matter will be considered will be transmitted to the Board or Commission. If the MUNICIPALITY submits no comment or recommendation, the COUNTY may assume it has no objection to the proposal. If the MUNICIPALITY submits recommendations, the COUNTY will either include within its written decision the reasons for any action taken contrary to the same or furnish such reasons to the MUNICIPALITY by a separate writing.

B. Development outside Urban Growth Area. To the extent legally possible, the COUNTY will disapprove proposals for Urban Development in areas of the MUNICIPAL Referral Area outside the Urban Growth Area. In reviewing proposals for Non-Urban Development in such areas, the COUNTY will apply its Comprehensive Plan and zoning and subdivision ordinances and, where appropriate, the RUA Plan.

C. Development in Urban Growth Area. The following shall apply to proposed Development in the Urban Growth Area:

1. Upon receipt of any proposal for Development of property then currently eligible for voluntary annexation to the MUNICIPALITY, the COUNTY will, in writing, notify the proponent of the opportunity for annexation and notify the MUNICIPALITY of the proposal. The COUNTY will not consider such proposal for Development unless the applicant or its predecessor has submitted a complete annexation petition and been denied said annexation by the MUNICIPALITY Board or electorate for a substantially similar development on the same property within the preceding twelve (12) months. The COUNTY may consider such a proposal if, after a period of seven (7) months from the date of filing of a complete annexation petition pursued in good faith by the applicant or its predecessor, the MUNICIPALITY has failed to approve or deny such annexation.

2. The MUNICIPALITY will consider extension of sanitary sewer service to property in the Urban Growth Area, subject to its rules and regulations, which include provisions requiring a written contract for extraterritorial service and the construction of new mains and other facilities necessary to serve the property with costs assessed in accordance with the MUNICIPALITY's rules and regulations. The MUNICIPALITY agrees to give notice of any proposed change in said rules and regulations to the COUNTY twenty-one (21) days prior to adoption.

3. If The MUNICIPALITY provides municipal water service to property within its boundaries, subject to its current rules and regulations, it will provide water under provisions similar to those indicated above for sewer service. Where water furnished by the MUNICIPALITY is received in whole or in part from an outside water provider such as a water district, the MUNICIPALITY shall exercise its obligations under this Agreement consistent with the terms of any such agreement. The Developer shall be responsible for constructing any infrastructure necessary to serve the property with municipal water service. The MUNICIPALITY will negotiate in good faith with the water provider to explore ways in which the extension of water service outside MUNICIPALITY boundaries can be coordinated so as to

achieve the purposes stated in Section 19-16-30 above while still recognizing the rights and obligations of the water provider and its constituents.

4. In recognition of the availability of public water within the Urban Growth Area as indicated in Paragraph 3 above, the COUNTY will require public water as a condition of approval of any subdivision, rezoning or planned unit development and will not approve such Development until the applicant obtains a written contract for the same with the MUNICIPALITY, or water service from a water district, if the MUNICIPALITY cannot provide water. This Agreement shall be *prima facie* evidence of the availability of municipal water within the meaning of Section 32-1-203(2.5)(a), C.R.S.

5. The COUNTY will not grant any waiver of current Municipal street standards for any Development without the consent of the MUNICIPALITY and will consider identifiable impacts on the MUNICIPALITY's road system resulting from such Development on the same basis as in-COUNTY impacts.

6. To the extent legally possible, as determined by the COUNTY, the COUNTY will deny proposals for Non-Urban Development in the Urban Growth Area. Nothing in this Subsection shall restrict the COUNTY from approving the division of ownership parcels located in the Urban Growth Area having residential improvements served by septic systems, regardless of the size of resulting lots. Furthermore, the County shall not be restricted from allowing the expansion of legally existing non-urban uses, provided that adequate protection for future urban uses is included in any such approval.

7. If any MUNICIPALITY recommendation of disapproval of a Development proposal is based upon a conflict or incompatibility between proposed uses in the Development and anticipated MUNICIPALITY zoning classification for the property, the COUNTY will not approve the same unless the applicant demonstrates: (a) that no such conflict or incompatibility will reasonably occur, (b) that suitable mitigation measures to be imposed by the COUNTY as conditions of approval will eliminate or adequately mitigate adverse consequences of incompatibility or conflict, or (c) that the MUNICIPALITY's anticipated zoning classification of the property is unreasonable because of existing or planned uses of adjacent property. The MUNICIPALITY shall be given notice of, and may appear and be heard at, any hearing or other proceeding at which the COUNTY will consider such issues.

8. The parties anticipate that Paragraphs 5 through 7 above will be addressed in more detail if a Mutually Acceptable Plan is considered and adopted for the UGA or the Referral Area.

9. The COUNTY shall require that all stormwater detention facilities in subdivisions approved within the UGA shall be designed to detain the stormwater runoff from the fully developed subdivision from a one-hundred-year storm and release the detained water at a quantity and rate not to exceed the quantity and rate of a five-year storm falling on the undeveloped site.

D. Mutuality of Impact Consideration. The parties recognize that decisions by one (1) party regarding development may impact property outside of each particular jurisdiction. The parties agree that those jurisdictional boundaries will not be the basis for giving any greater or lesser weight to those impacts during the course of deliberations.

E. Referrals to County. The MUNICIPALITY will refer proposals for Development which lie within five hundred (500) feet of any property in unincorporated Weld County to the COUNTY for its

review and recommendation. Such referral will include at least a copy of the written Development proposal. The MUNICIPALITY will allow not less than twenty-one (21) days for the COUNTY to review the same and furnish its recommendations to the MUNICIPALITY. If the COUNTY submits no comment or recommendation, the MUNICIPALITY may assume it has no objection to the proposal. If the COUNTY submits recommendations, the MUNICIPALITY will either include within its written decision the reasons for any action taken contrary to the same or furnish such reasons to the COUNTY by a separate writing. Where the Development is proposed as part of an annexation of more than ten (10) acres, the provisions of this Section shall be deemed satisfied by compliance by the MUNICIPALITY with the Notice and impact statement provisions of the most current version of the Municipal Annexation Act then in effect. If any COUNTY recommendation of disapproval of a Development proposal within five hundred (500) feet of any property in unincorporated Weld County is based upon a conflict or incompatibility between proposed uses in the Development and existing or anticipated zoning classification for the property, to the extent legally possible, the MUNICIPALITY will not approve the same unless the applicant demonstrates (1) that no such conflict or incompatibility will reasonably occur, or (2) that suitable mitigation measures to be imposed by the MUNICIPALITY as conditions of approval will eliminate or adequately mitigate adverse consequences of incompatibility or conflict. The COUNTY shall be given notice of, and may appear and be heard at any hearing or other proceeding at which the MUNICIPALITY will consider such issues. (Weld County Code Ordinance 2005-2; Weld County Code Ordinance 2009-8)

**Sec. 19-16-60. Annexation.**

A. The MUNICIPALITY will give serious consideration to all petitions for annexation of lands within the Urban Growth Area and will consider, in any determination to annex such properties, without limitation, the following factors: (1) the extension of one (1) or more municipal services to the area would place an unreasonable economic burden on the existing users of such services or upon the future residents or owners of property in the area itself; (2) the area is not reasonably contiguous in fact to the MUNICIPALITY's existing boundaries, and its annexation would result in disconnected municipal satellites. Nothing stated herein required the MUNICIPALITY to annex any property.

B. The MUNICIPALITY will not annex properties located outside the Urban Growth Area unless such property is both eligible for annexation and the MUNICIPALITY'S Board of Trustees determines that it is necessary to the MUNICIPALITY for municipal purposes such as utilities.

C. To the extent legally possible, the MUNICIPALITY will annex the full width of each COUNTY road right-of-way contiguous to newly annexed property unless such road serves primarily COUNTY properties rather than existing or newly annexed Municipal properties, in which case the MUNICIPALITY will annex none of such COUNTY road rights-of-way. Nothing in this Subsection shall require the MUNICIPALITY to annex any unplatted COUNTY road right-of-way which the owners of such property do not desire to be annexed.

D. Notwithstanding any provision hereof to the contrary, the MUNICIPALITY is not obligated to annex any property within a Development approved by the County after the execution of this Agreement by both parties which does not conform to the County Urban Growth Standards, unless a waiver or modification of such standards was granted by the COUNTY and approved by the MUNICIPALITY.

E. Nothing in this Section shall be construed to limit the MUNICIPALITY from annexing any land within the Urban Growth Area, regardless whether such annexations are involuntary or result in disconnected municipal satellites.

F. In determining off-site improvements to be constructed by proponents of in-MUNICIPALITY Development, the MUNICIPALITY will consider identifiable impacts on the COUNTY road system resulting from such Development on the same basis as in-MUNICIPALITY impacts. (Weld County Code Ordinance 2005-2)

**Sec. 19-16-70. Implementation of Agreement.**

Following the mutual execution of this Agreement, each party will promptly enact and implement such amendments to its existing regulations as may be necessary to give effect to the provisions of Sections 19-16-50 and 19-16-60 above. Each party shall have sole and exclusive discretion to determine such measures and any new ones enabling it to perform this Agreement. Each party's land use regulations as referred to herein are ordinances whose amendment requires certain formalities, including notice and public hearings. The mutual covenants in this Section and elsewhere to implement this Agreement promptly are given and received with mutual recognition and understanding of the legislative processes involved, and such covenants will be liberally construed in light thereof. (Weld County Code Ordinance 2005-2)

**Sec. 19-16-80. Miscellaneous provisions.**

A. Severability. Should any one (1) or more sections or paragraphs of this Agreement be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intention being that the various sections and paragraphs are severable; provided, however, that the parties shall then review the remaining provisions to determine if the Agreement should continue as modified, or if the Agreement should be terminated.

B. Enforcement. Either party may seek specific performance or enforcement of this Agreement in a Court of competent jurisdiction, but neither party shall have any claim or remedy for damages arising from an alleged breach hereof against the other, nor shall this Agreement confer on either party standing to contest a land use decision or action of the other except as a breach of this Agreement. This Agreement is not intended to modify the standing the parties may possess independent of this Agreement. This Agreement is between the MUNICIPALITY and the COUNTY and no third party rights or beneficiaries exist or are created hereby.

C. Termination. This Agreement will continue in effect until July 31, 2005, and shall be renewed automatically thereafter for successive one-year periods. Notwithstanding the foregoing, however, either party may terminate this Agreement by giving at least sixty (60) days' written notice thereof to the other party.

D. Amendment. Upon the request of either party, this Agreement shall be subject to amendment according to the same procedures as the original adoption (requiring the written consent of the amendment by both parties); provided, however, that changes in the Urban Growth Area defined in Section 19-16-40 herein may occur by resolution of the MUNICIPALITY concurred in by the COUNTY when the change is a deletion to the UGA or an addition of property which: (1) was in common ownership and contained within a common legal description with property previously included in the UGA; or (2) directly adjacent to and contiguous with property previously contained within the UGA and capable of being served by MUNICIPAL services, including water or sewer, within a reasonable period of time. (Weld County Code Ordinance 2005-2)