

**INTERGOVERNMENTAL AGREEMENT FOR
CONSTRUCTION OF ROADWAY
IMPROVEMENTS AT TWO RIVERS PARKWAY AND 37TH
STREET**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of -----, 2021, by and between the City of Greeley, Colorado (hereinafter referred to as "GREELEY,"), with offices located at 1000 10th Street, Greeley, Colorado 80631, and the City of Evans, Colorado (hereinafter referred to as "EVANS"), with offices located at 1100 37th Street, Evans, Colorado 80620, for roadway improvements at the intersection of 77th Avenue i.e. Two Rivers Parkway and 37th Street.

WITNESSETH:

WHEREAS EVANS AND GREELEY wish to make certain improvements to the Two Rivers Parkway and 37th Street intersection, with said improvements being hereinafter referred to as the "PROJECT;" and,

WHEREAS, GREELEY and EVANS each have jurisdiction of portions of this intersection as depicted on Exhibit "A; and,

WHEREAS, both parties hereto desire to enter into this Agreement for the purpose of defining their respective roles and responsibilities regarding the completion of this PROJECT; and

WHEREAS, GREELEY has agreed to be the lead agency on design, acquiring right-of-way, utility relocations, constructing, inspecting, and managing the PROJECT, and

WHEREAS each party wishes to make road improvements to the intersection in their respective jurisdiction as shown on Exhibit A – Site Plan, which is attached hereto and incorporated herein by this reference (hereafter referred to as the "PROJECT"); and

WHEREAS, both parties are authorized to enter into this Agreement by C.R.S. § 29-1- 203 and Colorado Constitution Article XIV, § 18(2) (1), for the purpose of achieving greater efficiencies for the provision of services to the public.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE ADEQUACY OF WHICH IS ACKNOWLEDGED BY AND BETWEEN THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. RECITALS: The Recitals are incorporated into the Agreement as if fully set forth herein.

1. PROJECT: Subject to the terms contained in this Agreement, GREELEY agrees to undertake and complete the PROJECT on or before July 31, 2022 and will notify EVANS of any delays as soon as practicable. Notice of any such delay may be provided by email to moberschmidt@evanscolorado.gov.
2. TERM: Unless GREELEY provides EVANS with sixty (60) days' notice, in writing, of its cancellation of the PROJECT, the term of this Agreement shall be from the date first written above to and until such time as EVANS makes the final payment described in Section 7 below and Final Acceptance has been issued.
3. DESIGN: GREELEY will complete and pay for the design and EVANS will provide design input. The Parties agree that the entire roadway shall meet or exceed City of Greeley construction standards.
4. RIGHT-OF-WAY & EASEMENTS: GREELEY shall acquire all necessary right-of-way and easements for the northern half of the PROJECT at GREELEY's sole cost. EVANS shall acquire all necessary right-of-way and easements for the southern half of the PROJECT at its' sole cost.
5. PROJECT COST ESTIMATE AND BIDDING AWARD: It is understood and agreed by both parties hereto that the total construction cost of the project is estimated at \$1,200,000.00 and is the best estimate available, and such cost is subject to revisions based upon bidding and actual construction costs. GREELEY agrees to obtain EVANS's approval in writing of agreement to award project after receipt of final bids.
6. UTILITY RELOCATION: Utility relocation costs will be a part of the total project costs and be paid according to Section 9.
7. CONSTRUCTION INSPECTION: GREELEY shall inspect the entire project with coordination with EVANS.
8. COST REIMBURSEMENT: Greeley shall be responsible for payment of all construction costs to the Contractor. EVANS agrees to reimburse GREELEY fifty (50%) percent of all actual construction costs of PROJECT. Greeley shall invoice Evans monthly, including copies of all invoices and supporting documentation associated with the invoice for the PROJECT. Subject to the approval of the invoice by EVANS, which approval will not be unreasonably withheld, EVANS shall reimburse Greeley within thirty (30) days of receipt of each invoice. Any change orders that arise will be approved in writing by both GREELEY and EVANS.
9. PROJECT SCHEDULE: GREELEY shall coordinate the PROJECT construction schedule with Contractor. Both Greeley and Evans shall both approve any changes to the schedule during construction.

10. TRAFFIC SIGNAL OWNERSHIP: GREELEY shall own the traffic signal equipment and be responsible for operation and maintenance of the traffic signal. Roadway improvements shall be maintained by each jurisdiction based on municipal boundaries.
11. APPROPRIATION OF FUNDS: This Agreement is contingent upon all funds designated for the PROJECT herein being made available from GREELEY and EVANS. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party upon written notice being delivered to the other party.
12. SEVERABILITY: If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent that this Agreement is then capable of execution within the original intent of the parties hereto.
13. MODIFICATION AND BREACH: No modification, amendment, notation, renewal, or other alteration of or to this Agreement shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the undersigned parties. No breach of any term, provision, or clause of this Agreement shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of, a breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
14. NO THIRD-PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in the Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.
15. JOINT RESPONSIBILITIES: The Parties shall be jointly responsible for the review and acceptance of the completed construction. Greeley shall coordinate with Evans prior to Final Acceptance of Project and shall not issue Final Acceptance without written approval of Project from EVANS.
16. ENTIRE AGREEMENT: This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

18. **PRESERVATION OF IMMUNITY:** Nothing in this agreement shall be construed as a waiver of immunity provided by common law or by state statute, including the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.; and further shall not be deemed as an assumption of any duty with respect to any non-party to this Agreement.
19. **REMEDIES:** This Agreement shall be governed by the laws of the State of Colorado. Any and all legal action necessary to enforce the Agreement will be held in Weld County, Colorado. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, including but not limited to specific performance. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
20. **NOTICES:** All notices required herein shall be mailed via First Class Mail to the parties' representatives at the addresses set forth below:

CITY OF GREELEY:

Tom Hellen, City Engineer
City of Greeley, Public Works Dept. 1001 9th Avenue
Greeley, CO 80631
Phone: 970-350-9793
tom.hellen@greeleygov.com

CITY OF EVANS

Mark Oberschmidt, City Engineer
Engineering Department
1100 37th Street
Evans, CO 80620-2036
Phone: 970-475-1110
moberschmidt@evanscolorado.gov

21. NO WAIVER OF GOVERNMENTAL IMMUNITY: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as applicable now or hereafter amended.

IN WITNESS WHEREOF, the parties have executed this agreement this ____ day of _____2021.

CITY OF GREELEY, COLORADO

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

AVAILABILITY OF FUNDS:

By: _____
Director of Finance

CITY OF EVANS, COLORADO

By: _____

Mayor

ATTEST:

By: _____

City Clerk

APPROVED AS TO LEGAL FORM:

By: _____

City Attorney

APPROVED AS TO SUBSTANCE:

BY: _____

City Manager

Exhibit A: Two Rivers Parkway & 37th St Site plan