

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

This Agreement is made this ___ day of _____, 2019, 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”), (collectively, the “Parties,” and each individually, a “Party”), establishing the terms and conditions for land uses, 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.

RECITALS

WHEREAS, the Parties recognize the high natural, aesthetic, and wildlife value of the South Platte River Corridor, and

WHEREAS, the Parties recognize and wish to support in particular the Comprehensive Plans, and Parks and Recreation Master Plans that each has adopted, each of these plans recognizing and building upon the high natural values of the South Platte River Corridor, and

WHEREAS, the Parties wish to cooperate on joint funding and resource opportunities along the South Platte River Corridor; and

WHEREAS, the Parties recognize each other’s adopted long range growth management boundaries; and

WHEREAS, the Parties wish to cooperatively plan this area for their mutual benefit; and

WHEREAS, the Parties 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 herein, it is mutually agreed 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”), the boundaries and conditions of which are shown on Exhibit A.

2. ANNEXATION

A. Annexation Outside of Adopted Growth Management Areas. The Parties each agree that within the CPA, no Party will annex outside their adopted Growth Management Areas as such areas 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 the particular jurisdiction's existing Growth Management Area.

B. Overlapping Adopted Growth Management Areas. Where two or more municipalities include a parcel within their respective Growth Management Areas, the municipality initiating the annexation or in receipt of -an Annexation Petition shall promptly notify the other municipalities to 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.

C. Annexation requests 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 adopted Growth Management boundary of another Party to this agreement, that Party 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 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 agreement of the Parties to this agreement.

3. LAND USES

A. Allowed 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.

B. Prohibited Land Uses. Notwithstanding any other provisions of this agreement, the following uses shall not be permitted within the Cooperative Planning Area:

Adult businesses also known as sexually-oriented businesses; and

Industrial uses, such as: auto dismantling, bulk storage of flammable liquids & gases, chemical manufacturing plants, co-generation & power plants, concrete and asphalt batch plants, confined animal feeding operations and feedlots, crematoriums, dispensaries, food & beverage processing facility (major), foundries, junk & salvage yards, liquid propane tanks as per Fire Code, meat processing & packaging plants, outdoor storage facilities, recycling centers, refuse transfer stations, rendering plants, slaughterhouses, or truck or freight terminals.

If any Party to this Agreement believes a proposed land use, not listed above, is in conflict with the spirit/intent of the Agreement, said Party must provide written objection and just cause to the reviewing municipality. Said land use will only be allowed by a majority consent of all Parties.

4. REQUIRED NOTICE FOR DEVELOPMENT

Each Party will notify the other Parties of all intended development within one half-mile of or within that Party's Growth Management Area no less than four (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.

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.

When making any land use decisions in the CPA, each Party agrees that it may not approve any land use in contravention to the uses states in subsection 3.B, or any land use not in conformance with its Comprehensive Plan, or annex outside its Growth Management Area without prior written consent of the other Parties.

5. RELEASE AND HOLD HARMLESS

Each municipality is a public entity as that term is defined by the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., CRS. 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 or damages pursuant to and in accordance with the requirements and limitations of the Colorado Governmental Immunity Act occurring as a result of negligent or intentional acts or omissions of the Parties, their agents, employees and assigns.

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 any Party fails to comply with the provisions of this Agreement, any 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 five (5) years from its effective date. Thereafter, it shall be automatically renewed for successive five (5) year terms unless at least 120 days prior to the scheduled expiration, any Party notifies the other Parties of its decision that the Agreement shall not be renewed.

11. COLORADO LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action under this agreement must be filed in Weld County.

12. WAIVER 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.

13. NOTICE

All notices or other communications hereunder shall be sufficiently given and shall be deemed given upon (a) personal delivery to the recipient designated in this section; (b) date of signature on a certified mail receipt; or (c) after the lapse of ten business days following mailing by certified mail, postage prepaid, addressed as follows:

TO KERSEY:
Town of Kersey
332 3rd Street
Kersey, CO 80644

TO EVANS:
City of Evans
Community Development
1100 37th Street
Evans, CO 80620

TO GREELEY:
City of Greeley
Community Development – Planning Division
1100 10th Street
Greeley, CO 80631

14. EFFECT OF INVALIDITY

If any portion of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to any or all Parties such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other Parties under the invalidated portion shall also be deemed invalid.

15. RELIANCE BY THE PARTIES

The Parties 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:

Board of Trustees

By: _____ **Mayor**
Gary Lagrimanta, Mayor

CITY OF EVANS

City Council

By: _____ **Mayor**
Brian Rudy, Mayor

CITY OF GREELEY

By: _____ **Mayor**
John Gates, Mayor

Exhibits

Exhibit A: Cooperative Planning Area Map

Exhibit B: Definitions

Exhibit A: Kersey, Evans, and Greeley Cooperative Planning Area

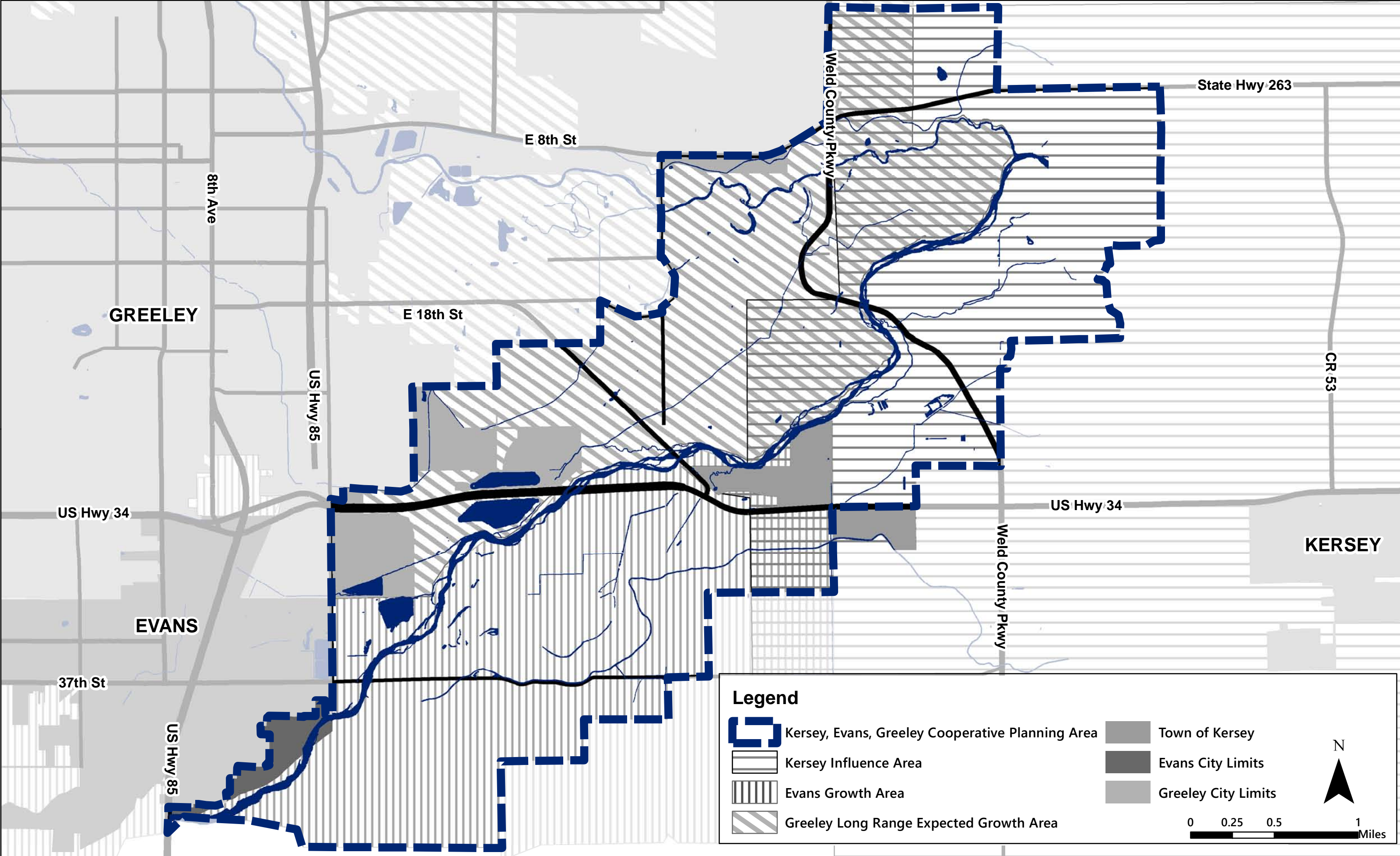


Exhibit B – DEFINITIONS

The terms used herein are defined as follows:

Adult business shall mean any store, establishment, tavern, club or theater having a substantial portion of its stock in trade, books, magazines or other periodicals; video movies, films, slides or photographs; instruments, devices or paraphernalia; or live performances, which are characterized by their emphasis on matters depicting, describing, or related to *specified anatomical areas* or *specified sexual activities*. For the purposes of this definition, a business shall not be considered an adult business if it carries less than twenty percent (20%) of its stock in adult materials and it prevents the public from viewing or observing merchandise or products that depict *specified anatomical areas* or *specific sexual activities*, as may be displayed by the products or on the packaging.

a. *Specified anatomical areas* means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast above or below a point which would expose any portion of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

b. *Specified sexual activities* means:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;
2. Human genitals in a state of sexual stimulation or arousal;
3. Sex acts, actual or simulated, including intercourse, oral copulation or sodomy;
4. Masturbation, actual or simulated; or
5. Excretory functions as part of or in connection with any of the activities set forth in Paragraphs 1 through 4 above.

Asphalt plant or asphalt batch plant shall mean a facility for the purposes of manufacturing asphalt and other forms of coated road stone, sometimes collectively known as blacktop or asphalt concrete.

Bulk storage shall mean an area or building where equipment and/or supplies are stored in large quantities.

Chemical plant or chemical manufacturing plant shall mean a facility for the purposes of manufacturing or otherwise processing chemicals.

Co-generation plant shall mean a facility for the purposes of producing power as a by-product of a manufacturing or power-producing process.

Concrete plant or concrete batch plant shall mean a facility for the purposes of manufacturing concrete.

Crematorium shall mean a place for the cremation of human or animal remains.

Dispensary shall mean a place in which a person can purchase cannabis and cannabis related items for medical or recreational use.

Feedlot or confined animal feeding operations shall mean an area or building where livestock are fed or fattened up prior to slaughter.

Food and beverage processing facility (major) shall mean a facility for the purposes of transforming raw agricultural commodities and semi-processed food products into a broad range of food and beverage products ready for consumption or for further processing.

Food and beverage processing facility (minor) shall mean a facility for the purposes of packaging, producing, or processing food or beverages that meets the definition of *Food and beverage processing (major)* but which dedicates a portion of the building, minimum ten percent [10%] of the building's footprint and up to fifty percent [50%] to sales of food, beverages, or other retail for on premise purchase or consumption; and which occupies a site of three (3) acres or less; and which cannot generate offensive odors, emissions, traffic or other off-site impacts.

Foundry shall mean a workshop or factory for casting metal.

Junk or refuse shall mean garbage and all other waste matter or discarded or unused material such as, but not limited to, salvage materials, scrap metal, scrap materials, bottles, tin cans, paper, boxes, crates, rags, used lumber and building materials; manufactured goods, appliances, fixtures, furniture, machinery, motor vehicles or other such items which have been abandoned, demolished or dismantled, or are in such a condition as to be unusable for their original use, but may be used again in present or different form for a new use; discarded or inoperable vehicles, machinery parts and tires; and other materials commonly considered to be refuse, rubbish or junk.

Junkyard or salvage yard shall mean an industrial use for collecting, storing or selling scrap metal or discarded material or for collecting, dismantling, storing, salvaging or demolishing vehicles, machinery or other material and including the sale of such material or parts.

Meat packing shall mean the business or industry of slaughtering cattle and other meat animals and processing the carcasses for sale, sometimes including the packaging of processed meat products.

Outdoor storage means storage of materials, supplies, parts, machines, equipment, containers, operable vehicles, tractor-trailers, unoccupied mobile homes and not kept in a permitted structure having at least four (4) walls and a roof. This definition shall not apply to items for sale to the general public such as new and used cars, recreational vehicles, boats and landscape and building materials; nor to parking of vehicles regularly used in connection with the operation of the primary business or parked for less than forty-eight (48) hours for maintenance service.

Power plant means any electrical generating facility with an energy generation capacity less than 50 megawatts, and any facilities appurtenant thereto, or any expansion, extension or enlargement thereof increasing the existing design capacity but still less than 50 megawatts.

Recycling and collection center shall mean a facility used for the collection and/or processing of reusable material, including but not limited to, metals, glass, plastic and paper.

Refuse transfer station shall mean a facility for the purposes of separation, aggregation and/or compaction of solid waste prior to delivery to a landfill.

Rendering plant shall mean a place that converts waste animal tissue into industrial fats, oils, and various other products.

Slaughterhouse shall mean a place where animals are slaughtered for food.

Truck or freight terminal shall mean an area and/or building where trucks load and unload cargo and freight and where such cargo and freight may be separated or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation and/or for storage.