

**LYONS PLANNING AREA
COMPREHENSIVE DEVELOPMENT PLAN
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement ("IGA") by and between the Town of Lyons, a Colorado statutory municipal corporation ("Lyons" or the "Town"), and the County of Boulder, a body politic and corporate of the State of Colorado ("Boulder County" or the "County") (collectively, the "Parties") is made to be effective on the Effective Date as defined on the signature page of this IGA.

RECITALS

WHEREAS, the Parties are authorized by § 29-20-101 et seq., C.R.S. as amended, to enter into intergovernmental agreements to plan for and regulate land uses in order to minimize the negative impacts on the surrounding areas and to protect the environment, and specifically to cooperate and contract with each other for the purposes of planning and regulating the development of land by means of a "comprehensive development plan;" and

WHEREAS, § 29-1-201, et seq., C.R.S., as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

WHEREAS, the functions described in this IGA are lawfully authorized to each of the Parties which perform such functions hereunder, as provided in Article 20 of Title 29; Part 1 of Article 28 of Title 30; Part 1 of Article 12 of Title 31; and Parts 2 and 3 of Article 23 of Title 31, C.R.S., as amended; and

WHEREAS, in December 2002, the Parties entered into a Comprehensive Development Plan Intergovernmental Agreement (the "Original IGA") for a period of ten years which, among other things, defined the Lyons Planning Area as the area the Town may annex and develop. The Original IGA was amended to add certain additional properties to the LPA in 2005 and again in 2011; and

WHEREAS, the term of the Original IGA as amended ends in December 2012, and the Parties believe it is in the best interests of the citizens of the Town and the County to enter into a new Intergovernmental Agreement with the goal of continuing the spirit of collaboration that was established by the Original IGA and demonstrated through the Parties' course of dealing throughout the term of the Original IGA; and

WHEREAS, in October 2003, the Parties entered into the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (the "Super IGA") which is designed to coordinate all of Boulder County's comprehensive development plan IGAs, to recognize and protect each municipality's planning area, and to preserve the rural character of the land outside of each community's respective planning areas; and

WHEREAS, the Parties believe that it is in the best interest of the residents of both communities to enter into a new IGA in order to preserve Lyons' unique and individual character through the orderly development within a newly defined Lyons Planning Area (the "LPA"). The LPA contains a Primary Planning Area ("PPA") where annexation and development may occur in accordance with the provisions of this IGA. It also includes areas designated as Lyons Interest Area/Rural

Preservation Area (LIA/RPA”) where the Parties’ intent is to preserve the rural quality of the land; and

WHEREAS, the Parties have contemporaneously with this agreement entered into the CEMEX Area Comprehensive Development Plan Intergovernmental Agreement (“CEMEX Area IGA”), a complementary IGA that addresses development and preservation issues for the portions of the Lyons Comprehensive Plan as adopted in 2010 (“LCP”) area not contained within this IGA. For the purposes of this IGA, LPA refers to all portions of the overall Lyons Planning Area that are not separately addressed in the CEMEX Area IGA. This IGA and the CEMEX Area IGA together represent a shared vision of appropriate development for the areas covered by the IGAs for their respective durations; and

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this IGA and the adoption of a comprehensive development plan for the subject lands; and

NOW THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the Parties agree as follows:

1.0 PURPOSE AND INTENT

This IGA is intended to protect and enhance the Town's ability to coordinate its future growth into the PPA, and specifically for the following purposes:

- 1.1 Implementing Comprehensive Plans. This IGA is designed to implement the goals and policies set forth in the Parties’ respective comprehensive plans.
 - 1.1.1. The LCP emphasizes that in order for Lyons to become economically sustainable, it must transition from a residential development-based economy to a commercial-based, localized economy. To this end, Lyons will strive to preserve and expand employment opportunities, reduce retail leakage, attract visitors and encourage new commercial, light-industrial and mixed-use development in the PPA while concentrating any significant additional housing within its current Town limits or within mixed-use areas with commercial being the predominant land use in these areas.
 - 1.1.2. The LCP adopts as one of its guiding principles articulating the Town’s interests in expanding the development potential in the area by proactively engaging with private and government stakeholders to make collaborative land use decisions.
 - 1.1.3. The LCP emphasizes proactively planning for the future and balancing the demands of environmental and economic sustainability with community character, historical preservation and property owners’ rights.
 - 1.1.4. The Boulder County Comprehensive Plan, as amended from time to time, (the “BCCP”) seeks to protect agricultural lands, channel growth to municipal planning areas and consider environmental and natural resources in land use decisions.
- 1.2 Recognizing Future Urban Development is Appropriate in the LPA. This IGA intends to direct future urban development within the PPA to: avoid sprawl, ensure the provision of adequate urban services, maximize the utility of funds invested in public facilities and services, distribute fairly and equitably the costs of government services among those persons who benefit therefrom, extend government services and facilities in an efficient, logical fashion, simplify the governmental structure of the affected areas, and reduce and avoid, where possible, conflict between the Parties.

- 1.3 Maintaining Community Buffer. This IGA is intended to keep the LIA/RPA and the land outside the LPA rural in character to preserve a community buffer.
- 1.4 Protecting View Corridors and Allowing Only Compatible Development in the LPA. This IGA acknowledges the importance to both Parties of protecting sensitive natural areas, maintaining view corridors, enforcing nuisance ordinances and ensuring that new development is compatible with the character of both Lyons and adjoining County properties.
- 1.5 Fostering Intergovernmental Cooperation. This IGA encourages the Parties to collaborate to achieve common goals, including becoming more socially, economically and environmentally sustainable and supporting the public and private provision of cultural, educational, social and healthcare services in the LPA.
- 1.6 Encouraging Transparent and Timely Decisions. This IGA is intended to encourage transparent, open communication between the Parties and to ensure that decisions pertaining to this IGA are made in a timely and efficient manner.

2.0 LYONS COMPREHENSIVE DEVELOPMENT PLAN (IGA Plan).

- 2.1 IGA Plan Defined. This IGA, including the Map attached hereto as Exhibit A, is hereby adopted by the Parties as the Lyons Comprehensive Development Plan, and shall be known herein as the IGA Plan (as distinguished from the Lyons Comprehensive Plan, referred to herein as the LCP). The IGA Plan shall govern and control the LPA, which is defined as the unincorporated area of Boulder County as shown on Exhibit A, or as subsequently amended in accordance with this IGA. With the exception of the Super IGA and the CEMEX Area IGA, this IGA Plan replaces and supersedes any and all previous agreements between the Parties concerning the LPA.
- 2.2 Lyons Planning Area Designations. The Map identifies, designates and defines the land to be known as the LPA, which consists of the Primary Planning Area (the “PPA”) and the Lyons Interest Area/Rural Preservation Area (the LIA/RPA). The Map indicates four portions of the PPA that are designated as “No Development Areas.”
 - 2.2.1 The PPA is the land that is planned for the next phase of expansion of the Town limits and which the Parties recognize is appropriate and intended for urban development.
 - 2.2.2 The No Development Areas are a subset of the PPA, but are too steep or otherwise inappropriate for development.
 - 2.2.3 The LIA/RPA represents areas that are expected to remain rural for the duration of this IGA, unless otherwise agreed to by the Parties.

3.0 ANNEXATION AND DEVELOPMENT OF PROPERTY.

- 3.1 Land Within the Primary Planning Area.
 - 3.1.1 The Town may annex into its corporate boundaries any and all property located within the PPA, including the No Development Areas, in accordance with state and local laws governing annexation. The Town agrees that it will only annex parcels in their entirety, not portions of a parcel, into the Town, unless mutually agreed to by the Parties. By executing this IGA, the County finds and declares that a community of interest exists between the Town and all property located

within the PPA. The County will cooperate with Town efforts to annex land in the PPA.

- 3.1.2 When parcels are annexed which contain No Development Areas, the Town, prior to final plat recordation or other final approval for any development on those parcels, will ensure that the owner of the properties grant to the County and to the Town of Lyons a Conservation Easement pursuant to Article 30.5 of Title 38 of the Colorado Revised Statutes, in a form acceptable to both the County and the Town, which prohibits structures or development in the preserved area of the properties.
 - 3.1.3 Any property that is disconnected from the Town after the Effective Date of this IGA (whether currently located within the municipal limits of the Town or later annexed into the Town after the Effective Date of this IGA) shall continue to be within the PPA for purposes of this IGA unless it is specifically excluded by a duly executed amendment to this IGA.
 - 3.1.4 The Parties agree that two parcels in the PPA (County Assessor Parcel Number 120320000007, currently owned by the Loukonen family and County Assessor Parcel Number 120320000006, currently owned by CEMEX) may not be zoned (currently zones E-1, EC, R-1, R-2, R2A and R-3) or developed by the Town for residential uses.
 - 3.1.5 The Town and the County acknowledge and agree that the property within the LIA/RPA is intended to remain in the County's regulatory jurisdiction and shall not be annexed or developed by the Town during the duration of this IGA, unless mutually agreed to by the Parties.
 - 3.1.6 The Town agrees that if it annexes any part of a County road it will annex the entirety of that road.
- 3.3 Land Outside of the LPA.
- 3.3.1 Excepting the area covered by the CEMEX Area IGA, which is addressed in a separate IGA, the area outside the LPA is intended to remain in the County's regulatory jurisdiction for the term of this IGA, unless otherwise provided herein or by a duly executed amendment to this IGA.
 - 3.3.2 The Town may annex lands outside of the PPA and expand the LPA only in accordance with Section 4 of this IGA.
- 3.4 Developing Areas with Constraints. When evaluating development applications within their respective areas of responsibility, both Parties will consider the impact of proposed development on the floodway, natural areas, wildlife habitat, steep slopes, and historically- and archaeologically-significant areas, and will require impacts to be reasonably mitigated.
- 3.5 Promote Quality Design and Development. The Town is pursuing adoption of design standards to promote quality architecture and landscaping that is done in an environmentally sensitive manner within 12 months of the Effective Date of this IGA.
- 4.0 EXPANSION OF THE LPA**

- 4.1 Mutual Agreement. During the term of this IGA, the Town may expand the LPA within Boulder County only with the mutual agreement of the Parties and the corresponding amendment of Exhibit A in accordance with this IGA.
- 4.2 Lyons Comprehensive Plan Amendment. Any request for expansion of the LPA must be a reflection of community consensus, as documented in a duly-adopted amendment to the LCP and its Land Use Map.

5.0 OPEN SPACE.

- 5.1 Acquisitions within the LPA. The County agrees that for the term of this IGA it will not purchase or otherwise acquire any land within the LPA for open space purposes, including conservation easements and transfer of density right sending sites without the approval of the Town, excepting only an L-shaped parcel of land currently owned by CEMEX (County Assessor Parcel Number 120317000046) located between the Loukonen-Hill Open Space Property and the Southdown Indian Mountain Open Space Property.

6.0 COMMUNITY BUFFER.

The County agrees not to allow more intensive zoning classifications for lands remaining in the County's regulatory jurisdiction within the PPA and LIA/RPA, unless mutually agreed to by the Parties.

7.0 TOWN OF LYONS UTILITIES.

- 7.1 Lyons Service Area. It may be necessary for the Town to seek additional water supplies, water storage, and water and wastewater treatment and delivery facilities, both within and outside the LPA. The areas designated in the Map portion of Exhibit A as the LPA shall constitute the Town's "Service Area" for all purposes, including but not limited to the County's Regulations of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code.
- 7.2 1041 Permits. To the extent such supplies and facilities are necessary to serve development within the LPA that is consistent with the provisions of this IGA, the County agrees to use its best efforts and to act in good faith on Town permit applications and imposing permitting requirements without undue delay, recognizing applications for such permits as being in conformance with this IGA. Specifically, the County agrees that the Town, in applying for such permits under the provisions of the Regulation of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code, shall not be required to demonstrate compliance with the following provisions of said Regulation, where the proposed utility development will serve only lands within the LPA:
- Section 8-511B.3, 10, 11, 12, 13 and 14, C.1 and C.2.a, D and E.
 - Sections 8-511 B.5 c and d shall only be applicable to sanitary sewage facilities.
 - Sections 8-511 B.5.b, e, f and g, B.6, 7 and 8 shall apply to site location, construction and operations of facilities within areas designated on Maps 2, 3 and 4 of the Boulder County Comprehensive Plan, and with respect to other areas shall be limited in its application to construction and operation of such facilities.
 - The application of Section 8-511 B.7 concerning archaeological resources shall be limited to a determination whether archaeologically significant resources will be

negatively impacted by the proposed project, and if so, provide for mitigation of those impacts.

- The application of Section 8-511 B.5.h concerning geologic hazards shall be limited to resolution of floodplain issues.
- The remaining portions of Section 8-511 shall only be applicable to the direct, site-specific impacts of the proposal.
- Section 8-407 shall exempt all upgrades to existing facilities that are required maintenance or otherwise required by federal, state or County regulations, including repairing and/or replacing old or outdated equipment, or installing new equipment, provided the improvements do not expand levels of service beyond the design capacity, and provided further that the upgrade does not alter the location of the existing facility.

8.0 IMPLEMENTATION PROCEDURES.

8.1 Plan Amendment Required. A Plan amendment, agreed to by both the Town and the County, must occur in order to annex, allow any use or development, or acquire for open space any parcel within the LPA where such annexation, use or development, or acquisition does not comply with the IGA Plan. The provisions of Section 11.0 of this IGA shall apply to any such Plan amendment.

8.2 Notice Required. The Parties each agree to undertake all steps necessary to adopt procedures, plans, policies, and ordinances or other regulations as may be necessary to implement and enforce the provisions of this Plan. The Parties agree that in adopting such procedures, plans, policies, ordinances or regulations, each will give the other Party sufficient notice of such action as will enable such Party, if it so desires, to comment upon the planned actions of that Party. Sufficient notice shall generally mean notice delivered to the other Party at least fifteen (15) days before the date of any public hearing or, where no public hearing will be conducted, before any deadline for the submission of public comment.

8.3 County Zoning Changes within the LPA. Where the County seeks to approve zoning changes within the LPA after referral as provided herein, the Board of Trustees shall respond by resolution, approving or disapproving such change or suggesting conditions of approval.

9.0 REFERRALS

9.1 Lyons Referrals to Boulder County. The Town shall refer in writing to the County:

9.1.1 Any application for annexation;

9.1.2 Any proposed amendment to the LCP affecting any lot, tract, or parcel within the LPA; and

9.2 Boulder County Referrals to Lyons. The County shall treat the Town as a formal referral agency and shall refer in writing to the Town:

9.2.1 Any application for zoning, rezoning, subdivision, PUD, replat, special use, limited impact special use, vacation, transfer of development rights, conservation easement or development (including site plan reviews) for any lot, tract, easement, rights-of-way or parcel within the LPA;

9.2.2 Any proposed map amendment to the BCCP affecting any lot, tract, or parcel within the LPA; and

- 9.2.3 In addition to referring the foregoing applications and proposals to the Town, the County agrees to advise any applicant owning land in the PPA during the pre-application process (i.e., prior to formal application submittal) for any of the categories of development listed in Section 9.2.1 of the possibility of annexation into the Town, to encourage any such applicant to contact the Town concerning possible annexation, and to provide such applicants with the Town's appropriate contact information.
- 9.3 Waiver of period for response to referrals. Either Party may, for any given referral, elect to waive or reduce the period of time it requires to submit a response, and such election shall be made by written letter or electronic mail.
- 9.4 Failure to respond to referrals. Failure by either Party to respond to a referral shall entitle the referring Party to assume that the receiving Party has no comment concerning the application or proposal.
- 9.5 Communication with referral party. For any application or proposal required to be referred by Section 9.1 or 9.2, the referring Party shall use its best efforts to keep the other Party apprised of the status of each application or proposal, including but not limited to, mailing to the other Party notices of public hearings and meetings, staff reports, non-confidential memoranda concerning the status of the application or proposal, and notification of other activities and events associated with the processing of the application or proposal. Upon any final decision concerning the application or proposal, the referring Party shall notify the other Party in writing of the final decision including a general summary of any terms, conditions, or other details of the decision.

10.0 PARTNERSHIPS

- 10.1 Intergovernmental Cooperation. The Parties recognize and acknowledge the need for intergovernmental cooperation on important local and regional land use matters and to achieve common goals. In accordance with the LCP, the Town and the County agree to cooperate in good faith in:
- 10.1.1 Forming a St. Vrain River Task Force to improve the health of the riparian corridor, achieve sustainability goals, improve recreational opportunities, enhance fish and wildlife habitat, create economic benefits and construct the St Vrain Greenway trail system;
- 10.1.2 Collaborating to design, fund and construct regional trails that connect Lyons to Boulder County open space and other municipalities including the Boulder County River Corridor Legacy Project;
- 10.1.3 Working with the Colorado Department of Transportation, the Regional Transportation District and the Denver Regional Council of Governments to improve Lyons' multimodal transportation system, including continuing to explore ways to improve bus service between the Town, its neighboring communities, and Boulder County destinations and to reduce emissions;
- 10.1.4 Continuing to freely share geographic information system data, maps and expertise;
- 10.1.5 Identifying and implementing programs to enhance opportunities for senior housing and affordable housing within the Town and the LPA; and

- 10.1.6 Cooperating in the identification of sites to provide more efficient governmental services, including but not limited to a recycle and composting facility, and solar or other forms renewable energy generation facilities.
- 10.1.7 Cooperating in determining efficient, effective and equitable options for providing library services to citizens in both incorporated and unincorporated areas of Boulder County, including residents of Lyons and surrounding areas.
- 10.1.8 Enforcing nuisance ordinances to improve the appearance of properties in the LPA.
- 10.1.9 Implementing the Boulder County Sustainable Energy Plan, which Lyons has formally adopted.
- 10.1.10 Cooperating on joint ventures to finance and provide for cultural and recreational opportunities for Town residents and people living in the LPA and surrounding neighborhoods.
- 10.1.11 Collaborating to construct a cost effective, highly diverse, and resilient wastewater treatment system to serve that LPA that is both environmentally beneficial and aesthetically pleasing and that protects the St. Vrain watershed.
- 10.1.12 Facilitating the transfer of ownership of the 10-acre Olson property to the Town of Lyons to expand the recreational opportunities offered in the LPA.
- 10.1.13 Cooperating on the provision of water and sewer services to properties in the LIA/RPA by the Town.

11.0 AMENDMENTS.

- 11.1 Entire Agreement. This IGA contains the entire agreement between the Parties and, with the exception of the Super IGA and the CEMEX Area IGA, supersedes and replaces any other or prior agreements concerning the same subject matter.
- 11.2 Changes to IGA. Any proposed amendment to the IGA affecting the jurisdiction over lands or the development regulation of lands must be referred to the other Party by the Regulatory Party. The "Regulatory Party" shall mean the Party having final land use or annexation approval jurisdiction, as the context requires. Amendment of the IGA shall take place only upon approval by resolution or ordinance adopted by the governing body of both of the Parties, after notice and hearing as may be required by law. The Regulatory Party shall not approve nor permit any development or change of use of any parcel within the LPA by any means in a manner inconsistent with this IGA until and unless the IGA has been amended so that the proposed development or use of such parcel is consistent with the IGA.
- 11.3 Timely Decisions on Amendments to IGA. The Parties agree and acknowledge that time is of the essence when either Party seeks an amendment to this IGA. The Parties further agree and acknowledge that the length of time necessary to process and act upon any proposed amendment may vary depending on the complexity of the particular request and on other factors and other responsibilities facing the Parties at any given time. Nevertheless, the Parties each agree to give high priority to any proposal by the other Party to amend this IGA and to act on any such proposal without due delay. In addition, the Parties agree that within thirty (30) days after receipt by one Party of an amendment proposed by the other Party, the Parties will agree on and establish a firm schedule for processing and taking final action upon the amendment proposal.

12.0 NON-SEVERABILITY.

If any portion of this IGA is held by a court of competent jurisdiction in a final, non-appealable decision to be *per se* invalid or unenforceable as to any Party, the entire IGA shall be terminated, it being the understanding and intent of the Parties that every portion of the IGA is essential to and not severable from the remainder.

13.0 BENEFICIARIES.

The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the IGA, and no other person or entity is so intended.

14.0 ENFORCEMENT.

Either or both of the Parties may enforce this IGA by any legal or equitable means including specific performance, declaratory relief, and injunctive relief. No other person or entity shall have any right to enforce the provisions of this IGA. The Parties agree to discuss and attempt to resolve any dispute in the interpretation or application of this IGA, including but not limited to any dispute regarding a request to terminate this IGA, but if they are unable to do so, either Party may request that the matter be presented to a mediator selected and paid for jointly by the Parties.

15.0 DEFENSE OF CLAIMS/INDEMNIFICATION

If any person allegedly aggrieved by a provision of this IGA who is not a party to the IGA asserts or attempts to assert any claim against any Party concerning such IGA provision, the County shall, and the Town may, defend such claim upon receiving timely and appropriate notice of the pendency of such claim. Defense costs shall be paid by the Party providing such defense. In the event that any person not a party to the IGA should obtain a final money judgment against the Town for the diminution in value of any regulated parcel resulting from regulations in the IGA or regulations adopted by the Town implementing the IGA, the County shall, to the extent permitted by law, indemnify the Town for the amount of said judgment.

16.0 GOVERNING LAW AND VENUE

This IGA shall be governed by the laws of the State of Colorado and venue shall lie in the appropriate court(s) for Boulder County, Colorado.

17.0 TERM AND TERMINATION

17.1 This IGA shall remain in effect for a period of ten (10) years from the effective date, unless otherwise terminated earlier by mutual agreement of the Parties. With the execution of this IGA, the Town agrees that it has waived its right to opt out of the SuperIGA, as that right is set forth in the SuperIGA.

18.0 PARTY REPRESENTATIVES

Referrals made under the terms of this IGA shall be sent to the Parties' representatives as follows:

County of Boulder
Director, Land Use Department
P.O. Box 471
Boulder, Colorado 80306

Town of Lyons
Town Administrator
P.O. Box 49
432 Fifth Avenue
Lyons, Colorado 80540

Name and address changes for representatives shall be made in writing and mailed to the other representatives at the then current address.

19.0 COUNTERPART.

This IGA may be executed in any number of counterparts which together shall constitute the agreement of the Parties.

20.0 EFFECTIVE DATE.

The effective date of this IGA shall be the date on which both Parties have approved and executed the IGA by signing where indicated below.

TOWN OF LYONS:

Board of Trustees

By: _____
Mayor or Mayor Pro Tem

Date: _____, 2012

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

COUNTY OF BOULDER:

BOARD OF COUNTY COMMISSIONERS

By: _____
Chair

Date: _____, 2012

ATTEST:

Clerk to Board

APPROVED AS TO FORM:

County Attorney