

**LYONS CEMEX 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 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 new Intergovernmental Agreements 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**, the Parties have contemporaneously with this IGA entered into the Lyons Planning Area Comprehensive Development Plan Intergovernmental Agreement ("Lyons Planning Area IGA"), a complementary IGA that addresses development and preservation issues for all areas surrounding the Town not addressed by this IGA. This IGA and the Lyons Planning 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 believe that, in order to preserve Lyons' unique and individual character through the orderly development of land and to preserve the rural quality of other lands in the area, it is in the best interest of the residents of both communities to enter into an IGA that delineates the areas of the CEMEX Property that are appropriate for certain kinds of development and the areas of the CEMEX property that the Parties desire to preserve in a rural state; and

**WHEREAS**, the disturbed area of the CEMEX property where the current cement plan is located is important to the Town both as a current employment center and in the future as a redevelopment area focusing on such as green technology uses and low impact development; 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 as shown on the map attached as Exhibit A; and

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

**1.0 LYONS CEMEX AREA COMPREHENSIVE DEVELOPMENT PLAN (CEMEX AREA IGA PLAN).**

1.1 CEMEX Area IGA Plan Defined. This IGA, including the Map attached hereto as Exhibit A, is hereby adopted by the Parties as the Lyons CEMEX Area Comprehensive Development Plan, and shall be known herein as the CEMEX Area IGA Plan. The CEMEX Area IGA Plan shall govern and control the CEMEX Area. This IGA complements the Lyons Planning Area Comprehensive Development Plan IGA, but is independent from and not a part of it or any other Comprehensive Development Area IGAs between the Parties, except the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (“Super IGA”).

1.2 CEMEX Area IGA Map. The Map identifies, designates and defines the land to be known as the “CEMEX Area,” which consists of the CEMEX Primary Planning Area (the “CEMEX PPA”), the CEMEX Municipal Facility Area (the “CEMEX Municipal Facility Area”), the CEMEX Lyons Interest Area/Rural Preservation Area (the “CEMEX LIA/RPA”), and the CEMEX LIA/RPA GI Property.

1.2.1 The CEMEX 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.

1.2.2 The CEMEX Municipal Facility Area represents areas which Lyons may annex in order to develop municipal services facilities such as water and sewer plants and solar/electric facilities.

1.2.3 The CEMEX LIA/RPA represents areas that are expected to remain rural for the duration of this IGA.

1.2.4 The CEMEX LIA/RPA GI Property is the portion of the Lyons Interest Area/Rural Preservation Area that (a) currently has a County general industrial zoning designation; and (b) is the subject of negotiations toward a future land use plan, as addressed in Section 2.4 of this IGA.

**2.0 ANNEXATION AND DEVELOPMENT OF PROPERTY.**

2.1. CEMEX PPA. The Town may annex into its corporate boundaries any and all property located within the CEMEX PPA in accordance with state and local laws governing annexation. By executing this IGA, the County finds and declares that a community of interest exists between the Town and all property located within the CEMEX PPA. The County will cooperate with Town efforts to annex land in the CEMEX PPA. The County

will also cooperate and consult with Town and lend its expertise, if requested, on potential development proposals for the CEMEX PPA. The Town and the County recognize the importance of remediation of the CEMEX PPA property and will work together to encourage CEMEX and state regulators to ensure remediation efforts are complete.

- 2.2 CEMEX Municipal Facilities Area. The Town may annex into its corporate boundaries any and all property located within the CEMEX Municipal Facility Area in accordance with state and local laws governing annexation for the sole purpose of allowing the Town to develop municipal services of the following specific kinds: water or wastewater facility; renewable energy or electric distribution facility; emergency alert system; recycling collection facility; municipal service facility, if developed in conjunction with a water or wastewater facility; and such other municipal facilities as may be mutually agreed upon by the Parties. If the Town opts to develop water treatment or sewer facilities in the CEMEX Municipal Facility Area while the property is still in unincorporated Boulder County, the County agrees that this IGA shall serve in lieu of review, as to any wastewater treatment infrastructure projects, of any permit applications that would otherwise be required under Section 8 of the Boulder County Land Use Code concerning Areas and Activities of State Interest (“1041 Regulations”).
- 2.3 CEMEX LIA/RPA. The Town and the County acknowledge and agree that the property within the CEMEX 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 upon by both parties.
- 2.4 CEMEX LIA/RPA GI. The Parties further agree that within ten (10) years after execution of this IGA they will engage in good faith negotiations toward the adoption of a land use plan for the CEMEX LIA/RPA GI Property, taking into consideration input from the property owner (currently CEMEX), and to make such amendments to this IGA as are necessary to implement the land use plan if adopted..

2.5 Annexation of County ROW.

The Town agrees that if it annexes any part of a County road it will annex the entirety of that road.

**3.0 OPEN SPACE AND RURAL PRESERVATION**

- 3.1 Open space acquisitions within the CEMEX Area. The County agrees that for the term of this IGA it will not purchase or otherwise acquire any land within the CEMEX PPA or the CEMEX Municipal Facilities Area for open space purposes, including conservation easements. The Town agrees that land within the CEMEX Rural Preservation Area may be acquired by the County for open space purposes, including conservation easements.
- 3.2 Zoning and subdivision of land in the CEMEX LIA/RPA. The zoning classification of land within CEMEX LIA/RPA should remain agricultural and subdivision should be restricted to that which exists under the County's Land Use Code, including the creation of lots of a minimum of thirty-five (35) acres, a Non-Urban Planned Unit Development which may contain up to two units per 35 acres if approved and clustered so that at least 75% of the land is protected by a conservation easement, or other cluster development permissible under the County’s Land Use Code where gross density would not exceed one unit per 35 acres.

#### **4.0 REFERRALS**

- 4.1 Lyons Referrals to Boulder County. The Town shall promptly refer in writing to the County any application for annexation in the CEMEX Area.
- 4.2 Boulder County Referrals to Lyons. The County agrees that the Town shall be a formal referral agency for any application to the County 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, right-of-way or parcel within the CEMEX Area as well as any proposed map amendment to the Boulder County Comprehensive Plan affecting any lot, tract, or parcel within the CEMEX Area.

#### **5.0 AMENDMENTS**

- 5.1 Entire Agreement. With the exception of the Super IGA, this IGA contains the entire agreement between the Parties as to the CEMEX Area, and supersedes and replaces any other or prior IGAs as to the same geographic area.
- 5.2 Changes to IGA. Amendment of this 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.
- 5.3 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 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.

#### **6.0 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.

#### **7.0 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.

#### **8.0 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, 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.

#### **9.0 DEFENSE OF CLAIMS/INDEMNIFICATION**

If, notwithstanding the provisions of Sections 7.0 and 8.0 of this IGA, 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.

#### **10.0 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.

#### **11.0 TERM AND TERMINATION**

This IGA shall remain in effect through December 31, 2034, unless otherwise terminated earlier by mutual agreement of the Parties.

#### **12.0 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.

#### **13.0 COUNTERPART.**

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

**14.0 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