

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
FOR ADAMS COUNTY AIRPORT COORDINATING COMMITTEE**

This Amended and Restated Intergovernmental Agreement ("Agreement") is made this ____ day of _____ 2015, between the COUNTY OF ADAMS, (the "County"); and the cities of AURORA; BRIGHTON; COMMERCE CITY; FEDERAL HEIGHTS; and THORNTON, all of which are Colorado municipal corporations (collectively, the "Cities").

RECITALS

WHEREAS, in 1988, the City and County of Denver ("Denver") annexed land in Adams County to construct what is now known as Denver International Airport ("DIA"); and,

WHEREAS, in 1988, Denver and the County entered into an Intergovernmental Agreement on Annexation and an Intergovernmental Agreement on a New Airport ("1988 Agreements") which set forth parameters and conditions on the annexation of the property for, and operation of the new airport; and,

WHEREAS, the Cities encouraged and endorsed the County entering into the aforementioned agreements in reliance upon Denver's representations at the time as to the impacts of a new airport, and upon the County's assurances that the interests of the Cities would be adequately represented and protected by the County in accordance with the terms and conditions of the aforementioned agreements; and

WHEREAS, the County and the Cities entered into an Intergovernmental Agreement dated November 14, 1988 ("1988 ACC Agreement") in order to provide for the protection by the County of the collective and individual interests of the Cities and County as they may be affected by the construction and operation of DIA; and,

WHEREAS, the Airport Coordinating Committee ("ACC") was formed to coordinate the efforts of the County and the Cities to monitor the implementation of the 1988 Agreements and advise the County; and

WHEREAS, the 1988 ACC Agreement was drafted to include the County of Adams and the Cities of Aurora, Brighton, Commerce City, Federal Heights, Northglenn, Thornton, and Westminster; and,

WHEREAS, the City of Northglenn did not enter into the 1988 ACC Agreement and the 1988 ACC Agreement was amended in August 1989 to revise the cost sharing responsibilities of

the parties to reflect non-participation by the City of Northglenn (First Amendment to Intergovernmental Agreement, not dated except for August 14, 1989 signature by Westminster City Council); and,

WHEREAS, the City of Westminster withdrew from the 1988 ACC Agreement and participation in the Airport Coordinating Committee via letter dated October 8, 2013; and,

WHEREAS, the County and the Cities have worked together through the ACC to ensure that the interests of the County and the Cities are protected and that the terms of the 1988 Agreements are enforced; and,

WHEREAS, as a result of more than two years of discussions and negotiations, the ACC agreed to amend certain terms of the 1988 Agreements, as set forth in the Amendatory Intergovernmental Agreement between Denver and Adams County dated _____ (“Amendatory IGA”); and,

WHEREAS, the parties hereto desire to enter into this Agreement to reflect: the current parties; their continued intent that the County protect their collective and individual interests in matters regarding the Airport Agreements; their funding obligations; and, the revenue sharing requirements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

I. DEFINITIONS

A. ACC DISCRETIONARY FUND shall mean 7.9% of those funds received from Denver as part of the revenue sharing agreement that are set aside for distribution by the ACC as agreed upon by the ACC. The percentage of revenue sharing funds set aside for this ACC Discretionary Fund are subject to modification by the ACC.

B. AIRPORT AGREEMENTS shall mean: 1) the Intergovernmental Agreement on Annexation entered into between Denver and the County on April 21, 1988 and ratified by the voters of Adams County in a special election held on May 17, 1988, regarding the terms and conditions for the annexation of certain lands located within Adams County into the City and County of Denver; and 2) Intergovernmental Agreement on a New Airport entered into between Denver and the County on April 21, 1988 and incorporated by reference into the first agreement

referenced herein, relating to the construction and operation of a new international airport within the annexed territory; and 3) the Amendatory Intergovernmental Agreement entered into between Denver and the County on _____ which amends certain provisions of the first two agreements referenced herein.

C. BEST EFFORTS shall mean efforts reasonably calculated to be sufficient to accomplish the desired goal within the desired period of time and timely made in accordance with such calculations.

D. CITY OR CITIES shall have the meaning set forth in this Agreement.

E. COMMISSIONERS shall mean the Board of County Commissioners of the County.

F. CONSENT shall mean any consent or approval, whether express or implicit by failure to object.

G. MODIFICATION shall mean any waiver or amendment of the Airport Agreements or any term of provision thereof.

H. DIA shall mean the major air carrier airport owned and operated by Denver, and its successors and assigns, which was contemplated as the "New Airport" in the Airport Agreements.

I. NEPS shall mean the noise exposure performance standards as set forth and established in the Airport Agreements.

II. UNDERSTANDINGS AND PURPOSES

A. The parties understand and agree that the noise to be generated by the aircraft flight operations at the DIA in the environs of DIA are of primary concern to the Cities and the County in their continued funding of and participation in the negotiations between Denver and the County regarding DIA. The parties further understand and agree that the County, in negotiating the Airport Agreements, faithfully and responsibly represented the interests and desires of the Cities in addition to the County's own interest and that the Airport Agreements satisfactorily protect the interests of both the Cities and the County.

B. The parties understand and agree that the land use restrictions contained in the 1988 Agreements, as modified by the Amendatory IGA, are also of primary concern to the

County and the Cities and agree that the County, in negotiating the Airport Agreements, faithfully and responsibly represented the interests and desires of the Cities in addition to the County's own interests and that the Airport Agreements satisfactorily protect the interests of both the Cities and the County with regard to land use restrictions.

C. The parties understand and agree that the revenue sharing agreement between Denver and the County, as set forth in the Amendatory IGA, is intended to benefit the County and the Cities.

D. The parties understand and agree that they will rely on the provisions of the Airport Agreements, and on the County's continued faithful and responsible protection of the Cities' collective and individual interests and desires within the terms and conditions established by the Airport Agreements, in making their important land use and transportation planning decisions, including decisions concerning the appropriate location of residential, commercial, and industrial development within the boundaries of the respective jurisdictions.

E. Without limiting the rights afforded the Cities under the Airport Agreements, the parties understand and agree that the cities of Aurora and Commerce City are third-party beneficiaries to the land use restrictions set forth in the Airport Agreements and that all of the Cities are third-party beneficiaries to the revenue sharing provisions of the Amendatory IGA.

F. The parties understand and agree that when Adams County acts to give consent "on behalf of the ACC" or "with the consent of the ACC," such consent shall only be given after the matter is presented to the ACC and the ACC votes unanimously to approve such action ("Consensus"). The parties understand and agree that all matters considered by the ACC shall be unanimously approved except as specifically provided in the Amendatory Agreement.

G. It is, therefore, the intent of the parties by entering into this Agreement:

1) to assure that their collective and individual interests, as they may relate to the construction and operation of, and development on, DIA and as they may be affected by the implementation of the Airport Agreements, are recognized and reasonably served by their collective and individual actions;

2) to establish and maintain clear lines of communication and to promote timely sharing of information and concerns with respect to airport and related matters;

3) to coordinate their participation in the continued planning and environmental review processes with respect to DIA;

4) to maintain preparation for and to undertake litigation or other actions that may be required in order to further the parties' common objectives regarding DIA, the terms of the Airport Agreements, or related matters;

5) to commission studies and to retain legal and other professional assistance necessary in connection with the foregoing; and,

6) to coordinate sharing of expenses and distribution of shared revenue as agreed upon by the parties.

III. AIRPORT COORDINATING COMMITTEE

A. An Airport Coordinating Committee ("ACC") is hereby formed for the purposes and with the authorities set forth below. The membership of the ACC shall be comprised of 1) the five Commissioners, or their designees, and 2) two elected officials, or their designees, from each of the Cities.

B. The ACC shall:

1) take all necessary and appropriate steps to ensure that the planning, construction and operation of DIA are consistent with the provisions of the Airport Agreements and other pertinent agreements and are in the best interests of the parties to this Agreement;

2) seek to maintain a united position among the parties regarding matters concerning DIA and enforcement of the Airport Agreements;

3) coordinate the participation of the parties hereto in the master planning process for DIA and surrounding areas;

4) advise the Commissioners regarding further negotiations with Denver concerning DIA and the implementation of the Airport Agreements and other pertinent agreements;

5) conduct meetings in order to maintain coordination, advise the parties concerning negotiations, receive progress reports, exchange information, ensure full communication among the participating jurisdictions, discuss expenses and incoming revenue, and for any other purpose related to the ACC's objectives;

6) evaluate and determine matters requiring consent or approval of the ACC as contemplated by the terms of the Airport Agreements;

- 7) establish a budget to provide for expenses and authorize the payment of professional, legal and other expenses;
- 8) seek appropriation by the governing body of each jurisdiction of a financial contribution to be made by that jurisdiction to pay for authorized expenses in accordance with the formula set forth in section VII below; and
- 9) authorize the expenditure of funds from the ACC Discretionary Fund.

IV. IMPLEMENTATION OF AIRPORT AGREEMENTS

A. The County agrees that it will enforce the terms of the Airport Agreements for the benefit of the County and the Cities in accordance with the consent and approval of the ACC as a whole.

B. The County agrees that it shall timely convey to the appropriate City or cities, upon receipt from Denver, any property interests, noise mitigation payments, revenue sharing payment, or other payments conveyed or made to it by or on behalf of Denver in accordance with the Airport Agreements and this Agreement.

C. The parties agree that they shall cooperate in the monitoring of the noise impacts of DIA, and the County agrees that it shall vigorously pursue on its own behalf and on behalf of the Cities the remedies provided in the Airport Agreements in the event of violations of the NEPS.

D. The County agrees that in the event that a meeting of DIA Consultation Committee (Section 11.7 of 1988 Agreement on a New Airport) is convened, Adams County representatives will include a representative from Adams County, a representative from the City of Aurora, and a representative from the City of Commerce City.

E. As contemplated at Section 11.8 of the Amendatory Intergovernmental Agreement between Denver and the County, the ACC shall participate in a Regional Planning and Marketing Entity to promote and market development opportunities around DIA and assist in coordinating land use and infrastructure planning efforts around DIA. The entity shall be governed by a board consisting of equal representation by Denver appointees and ACC appointees. The parties agree that appointment of ACC representatives to the entity and the determination regarding the role and powers of appointees shall be determined by consensus of

the ACC.

Comment [HM1]: New provision.

V. NEW AIRPORT MODIFICATIONS AND CONSENTS

A. Any party receiving from Denver any notice or any request for Modification or Consent shall provide to all other parties a copy of such notice or request within five business days of its receipt.

B. Prior to delivering to Denver any notice or request for Modification or Consent, the County shall provide to all the Cities a copy of such notice or request for Modification or Consent not less than fourteen (14) days prior to such intended delivery, unless the issues involved or the circumstances do not allow for a fourteen day notice; in which case a copy of such notice or request for Modification or Consent shall be provided to the Cities as soon as reasonably possible prior to delivery to Denver.

C. Prior to any Modification or Consent, where it has been asserted by one or more of the Cities that its or their vital interests would be affected by the Modification or Consent, the County shall neither agree to or propose such Modification nor provide or propose such Consent unless the Commissioners, after consultation with the appropriate City or cities, first find 1) in the case of a Modification or Consent assertedly affecting the vital interests of more than one city, that a consensus in favor of such Modification or consent exists among the interested parties, or 2) in the case of a Modification or Consent assertedly affecting the vital interests of only one City, that such Modification or Consent would be acceptable to such City.

D. The parties agree to employ their best efforts to resolve to their mutual satisfaction any differences concerning contemplated Modifications and Consents.

VI. PROFESSIONAL SERVICES

A. The ACC may, from time to time, retain legal or other professional assistance or contribute to the retention by one of the parties of legal or other professional assistance to carry out the purposes of this Agreement. A contract or engagement letter shall be entered into for each consultant so retained and a copy shall be provided to the parties. To the extent that the professional services are provided to the ACC as a whole, the County shall enter into such

contract or engagement on behalf of the ACC. The parties will be responsible for their respective contributions for those professional expenses as set forth in the formula in section VII below, or may agree to fund the payments out of the Discretionary Fund.

B. Information and materials developed by providers of professional services, who are retained and are compensated pursuant to the provisions of this Agreement, shall be made available to each party to this Agreement which has borne its share of the cost of providing such services in the manner provided herein.

VII. SHARING OF COSTS

A. In order to pay such fees, costs and other expenses as are incurred by or on behalf of the ACC, including costs incurred in connection with the retention of legal or other professional assistance, it is the intention of the parties to this Agreement that each party will make available to the County as paying agent, consistent with the provisions of section IX herein, funds as determined by the application of each of the following percentages to the total amount(s) of such fees, costs and other expenses:

Adams County: 27%

City of Aurora: 27%

City of Brighton: 5%

City of Commerce City: 27%

City of Federal Heights: 1.1%

City of Thornton: 5%

ACC Discretionary Fund: 7.9%

The above allocation is subject to review and modification upon consensus approval by the ACC. If there are insufficient funds available in the ACC Discretionary Fund to pay for the expenses, the parties may agree to a one time assessment or adjust the percentages to make up the difference and be reimbursed for these additional contributions until such time as there is adequate funding in the ACC Discretionary Fund to pay a share of the expenses.

B. Each party pledges its best efforts to enact resolutions of appropriations providing for the sharing of costs specified in this section VII, but no party shall be liable for any monetary

assessment unless and until the governing body of such party has appropriated funds for such specific purpose.

C. In the event that one or more of the parties to this Agreement fail to contribute to the sharing of costs in the amount determined by the percentages set forth above and in a manner consistent with the provisions of section IX of this Agreement:

1) the party shall be in default of the Agreement and shall refrain from further participation in the ACC business, and its rights pursuant to this Agreement shall be suspended; and

2) the non-defaulting party or parties shall be entitled to payment by the defaulting party or parties of all costs and reasonable attorney's fees incurred by the non-defaulting party or parties in the enforcement of the terms and conditions of this Agreement as a result of such default.

D. In the event that one or more parties fail to ratify this agreement or has initially ratified this agreement and thereafter defaulted or withdrew, the percentages set forth above shall be adjusted on a pro rata basis to total 100% following the elimination of the party or parties and such adjusted percentages shall apply to any outstanding or future costs and future revenue sharing.

E. In the event that the County defaults under this Agreement, it is expressly understood and agreed by the parties that:

1) The responsibilities and obligations of the County set forth in Sections IV, V and VIII of this Agreement shall remain in full force and effect as they may relate to or concern any and all cities which are members of the ACC at such time as the County defaults under this Agreement; and,

2) Any and all Cities which are members of the ACC at the time of the County's default under this Agreement shall expressly retain any and all rights and obligations granted to or imposed upon them pursuant to Sections IV and V of this Agreement. It shall not be necessary for any such City thereafter to remain a party to this Agreement or a member of the ACC in order to preserve and retain such rights and obligations.

VIII. REVENUE SHARING

A. The Amendatory IGA between Denver and the County provides for a lump sum payment and annual sharing of tax revenue generated from development at DIA.

1) The lump sum payment will be used first to reimburse the County and the Cities for funds contributed for ACC expenses in the following amounts:

Adams County: \$852,500

Aurora: \$280,500

Brighton: \$75,000

Commerce City: \$280,500

Thornton: \$75,000

Federal Heights: \$16,500

Comment [HM2]: Added \$80,000 expense for Eric Anderson's services as discussed at ACC meeting

2) The remainder of the lump sum payment and Adams County's ongoing revenue share, as set forth in the Amendatory IGA, shall be distributed between the County and the Cities according to the following percentages:

Comment [HM3]: Added language to clarify

Adams County: 27%

City of Aurora: 27%

City of Brighton: 5%

City of Commerce City: 27%

City of Federal Heights: 1.1%

City of Thornton: 5%

ACC Discretionary Fund: 7.9%

The above revenue share allocation is subject to review and modification upon consensus approval, in writing, by the ACC.

B. For purposes of this revenue sharing provision, Adams County shall establish an account to receive the funds designated for distribution to the ACC Discretionary Fund. The ACC will determine how the funds contained in the ACC Discretionary Fund will be spent. ~~These funds may be spent to benefit Adams County municipalities that are not a party to this agreement, to pay for infrastructure or projects that benefit Adams County as a whole, to pay for expenses of the ACC, or for any other need identified by the ACC.~~

Comment [HM4]: Suggest that we delete this language and leave it to the ACC's discretion.

IX. CONTRIBUTIONS FOR EXPENSES AND DISTRIBUTION OF REVENUE

A. It is the intention of the parties that the County shall be the paying agent for the ACC and that, as funds are needed to pay expenses, the Cities shall cause their share of the funds requested to be transferred to the County. The County shall provide an accounting of the funds expended and the amount requested and indicate the date by which the funds are to be received in order to ensure that the County has the funds in hand before required disbursement.

B. It is the intention of the parties that the County shall be the receiving agent for revenue sharing funds from Denver in accordance with the Amendatory IGA. The County shall disburse revenue sharing funds to the Cities in accordance with the formula set forth in section VIII above. The County will cause funds to be transferred to the Cities within 30 days after receipt of funds from Denver.

C. The County shall annually provide an accounting of the receipts and disbursements made as the receiving and paying agent for the ACC.

X. COOPERATION

The parties understand and agree that it is in the best interest of Adams County and its municipalities that the parties cooperate and work together to benefit the County as a whole.

XI. LEGISLATIVE ENABLEMENTS

A. This Agreement is made pursuant to Article XIV, section 18(2)(a) and Article XX of the Colorado Constitution, and Sections 29-1-201, *et seq.* and 30-11-101 *et seq.* of the Colorado Revised Statutes.

B. This Agreement is not intended to create a separate governmental entity as that term is defined in Article I, Title 29 of the Colorado Revised Statutes.

XII. MISCELLANEOUS PROVISIONS

A. This Agreement shall be effective upon execution by the County and the Cities. This Agreement may be amended only upon consent of all parties thereto. Any amendment shall not take effect until all parties have ratified and adopted such amendment.

B. The waiver by any party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term covenant, or condition of this Agreement.

C. Any party hereto shall have the right to enjoin any substantial breach or threatened breach of this Agreement by other party, and shall have the right to specific performance of this Agreement.

D. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder except as specifically provided herein.

E. If any provision of this Agreement or application thereof to any party or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

F. This Agreement hereby rescinds and replaces any previous agreements regarding the ACC.

XIII. DURATION OF AGREEMENT, WITHDRAWAL, AND ADDITION OF PARTIES

A. This Agreement shall remain in full force and effect during the term of the Airport Agreements and so long as such Airport Agreements remain in full force and effect. Any City may withdraw from this Agreement and may be discharged from its obligations hereunder, provided that it has paid all outstanding financial contributions for which it is liable, calculated on the basis of the costs incurred by the committee prior to the date of its withdrawal.

B. In the event that any City withdraws from this Agreement, such City may again become a party to this Agreement only with the unanimous consent of the parties to this Agreement, in writing, after satisfying all obligations for which it was liable upon the date of withdrawal, and subject to such further conditions as may be required by the parties.

C. The ACC reserves the right to reduce or eliminate any revenue sharing allocated to a City, as set forth in Section VIII, in the case that a City withdraws from, or defaults in its payment obligations to, the ACC.

D. Additional cities in Adams County not previously parties to this Agreement may

become parties to the Agreement with the unanimous consent of the parties, in writing, and subject to such conditions as may be required by the parties.

XIV. MEETING NOTICE

A. Written notice of all meetings of the ACC shall be given to each party not less than fourteen (14) days prior to the meeting, unless the issues involved or the circumstances do not allow time for a fourteen-day notice. If less than fourteen days notice is provided, the ACC may not take action without representation or consent from every ACC jurisdiction.

B. Meeting notice shall state the time and the place of the meeting and shall provide a brief description of any matter upon which the ACC will be requested to make a decision at the meeting.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____ 2015.

COUNTY OF ADAMS

BY _____
Adams County Board of Commissioners

Approved as to form:

Attorney

ATTEST: Stan Martin, Clerk

BY _____

CITY OF AURORA

Approved as to form:

Attorney

BY _____

ATTEST:

BY _____

CITY OF BRIGHTON

BY _____

Approved as to form:

Attorney

ATTEST:

BY _____

CITY OF COMMERCE CITY

BY _____

Approved as to form:

Attorney

ATTEST:

BY _____

CITY OF FEDERAL HEIGHTS

BY _____

Approved as to form:

Attorney

ATTEST:

BY _____

CITY OF THORNTON

BY _____

Approved as to form:

Attorney

ATTEST:

BY _____