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AMENDATORY INTERGOVERNMENTAL AGREEMENT

This AMENDATORY INTERGOVERNMENTAL AGREEMENT is entered into by and between the CITY AND COUNTY OF DENVER (“Denver”), a home rule municipal corporation of the State of Colorado, and the COUNTY OF ADAMS (“Adams County”), a county of the State of Colorado, pursuant to Article XIV, Section 18(2)(a) and Article XX of the Colorado Constitution, and Sections 29-1-201, *et seq.* and 30-6-109.5 of the Colorado Revised Statutes, to be effective the January 1 immediately after this Amendatory Intergovernmental Agreement has been approved by the voters in both Denver and Adams County (“Effective Date”), which approval shall have been obtained no later than December 31, 2016.

RECITALS

- A. Denver and Adams County previously entered into an Intergovernmental Agreement on Annexation and an Intergovernmental Agreement on a New Airport, both dated April 21, 1988 (the “1988 Agreements”), providing for the detachment of territory from Adams County and the annexation of that land into Denver County pursuant to Section 30-6-109.5 of the Colorado Revised Statutes, which resulted in the construction, opening and operation of Denver International Airport (“DEN”) in Denver.
- B. Adams County voters approved the 1988 Agreements at a special election on May 17, 1988.
- C. The 1988 Agreements provided for, among other things, certain land use regulations on and around DEN.
- D. Certain municipalities located in Adams County are identified as third-party beneficiaries to the Intergovernmental Agreement on a New Airport.
- E. Denver and Adams County, with the consent of the third-party beneficiaries, have agreed to amend the land use regulations contained in the 1988 Agreements in order to provide greater opportunities for businesses to locate at DEN, in consideration for sharing a portion of the Denver tax revenue derived from such businesses, with the overall objective of promoting regional economic development on and around DEN and enhancing the global competitiveness of DEN, and voters in both Denver and Adams County have approved this Amendatory Intergovernmental Agreement.
- F. Except as specifically amended herein, the parties intend that the original provisions of the 1988 Agreements shall remain in full force and effect.

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NOW THEREFORE, the parties hereby amend the 1988 Agreements as follows:

1. Paragraph 5 of the Intergovernmental Agreement on Annexation is amended by adding the language underlined to read as follows:

5. The use of the property described in paragraph 2 of this Agreement shall be governed by the terms of the Intergovernmental Agreement on a New Airport between Denver and Adams County, dated April 21, 1988, incorporated herein by reference, a copy of which is filed in the office of the Clerk and Recorder of the City and County of Denver, *ex officio* Clerk of the City and County of Denver, City Clerk's filing number 88-296 and in the Office of the County Clerk and Recorder of Adams County, as modified by the Amendatory Intergovernmental Agreement between Denver and Adams County, a copy of which is filed in the office of the Clerk and Recorder of the City and County of Denver, *ex officio* Clerk of the City and County of Denver, City Clerk's filing number 2015-0264-A and recorded in the Office of the County Clerk and Recorder of Adams County, and any subsequent amendments to the land use provisions thereto as permitted by Section 11.5.3 of the Amendatory Intergovernmental Agreement.

2. Article II of the Intergovernmental Agreement on a New Airport entitled "DEFINITIONS" is amended by adding the following definitions:

2.45. ACC Municipality shall mean any of the municipalities of the Airport Coordinating Committee as of July 1, 2015, specifically and exclusively being the following municipalities: Aurora, Commerce City, Brighton, Thornton and Federal Heights.

2.46. Airport Coordinating Committee or ACC shall mean the committee formed by separate intergovernmental agreements, as amended, currently consisting of Adams County and the ACC Municipalities, but which may be modified by future amendments to its intergovernmental agreements, that exists for the purpose of formulating common positions between and among the County and the municipalities in regard to the New Airport and the relationship of those local government entities to the New Airport.

2.47. Amendatory Intergovernmental Agreement shall mean the agreement amending the original 1988 Intergovernmental Agreement on Annexation and the Intergovernmental Agreement on a New Airport, both dated April 21, 1988, and approved by the voters in both Adams County and Denver County no later than December 31, 2016, a copy of which is filed in the office of the Clerk and Recorder of the City and County of Denver, *ex officio* Clerk of the City and

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County of Denver, City Clerk's filing number 2015-0264-A and recorded in the Office of the County Clerk and Recorder of Adams County.

2.48. Denver Shared Tax Revenue shall have the meaning set forth in ~~Section~~ paragraph 8.9 and all subparagraphs thereto. The term shall not include any tax that is imposed by the State of Colorado or any local taxing entity other than Denver and collected by Denver on behalf of such taxing entity. The meaning of the word "tax" shall be as defined under Colorado law generally, and shall therefore not include any form of fee, assessment or any other governmental charge that is not a tax, nor shall it include lease revenue.

2.49. Development Parcel shall mean any acreage, whether contiguous or not, designated by Denver pursuant to paragraph 8.4 and all subparagraphs thereto anywhere on the New Airport Site or in that portion of the Transportation Corridor north of 72nd Avenue on which Denver may exercise perpetual authority to grant leases, licenses, or permits for any land use regardless of whether or not the land use qualifies as an Accessory Use, subject only to the restrictions set forth in paragraph 8.4 and all subparagraphs thereto.

2.50. Residential Land Use shall mean and include any type of dwelling including houses, apartments and condominiums, but shall not include Hotel Rooms, as defined in paragraph 2.26.

2.51. Terminal Complex Area shall mean that portion of the New Airport Site depicted on Exhibit M. To the extent the existing terminal and concourses, airline ramp and maintenance facilities, automobile parking, terminal curb front, access roadways, the existing hotel, and public transit facilities are expanded or moved in the future, Exhibit M may be modified as provided in paragraph 11.5.3, and without the need for any further voter approval.

3. Article III of the Intergovernmental Agreement on a New Airport concerning "LOCATION, RUNWAY CONFIGURATION AND FLIGHT CORRIDORS" is amended by deleting the language stricken and adding the language underlined in the following paragraphs to read as follows:

4.3.1. Permitted Uses. Denver may use the land in the Clear Zones ~~only~~ for installing, operating or maintaining navigation or other aids used by aircraft for landing at or taking off from the New Airport, aviation-related weather reporting equipment, noise monitoring equipment or other equipment required by the FAA for the safe operation of the New Airport. Denver may also lease land in the

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Clear Zones for agricultural use, for development of natural resources, or for any other form of development or use other than a Residential Land Use, so long as such use or development does not interfere with airport operations, or constitute an obstruction or hazard to air navigation or the use of any equipment located in the Clear Zones as permitted by this paragraph, and otherwise complies with all applicable FAA regulations and standards and local land use regulations.

4.3.2. ~~Other Uses~~ Easements in Clear Zones. Denver shall grant without additional consideration easements across its property in the Clear Zones to Adams County or any ~~city~~ ACC Municipality exercising land use jurisdiction over property in or abutting the applicable Clear Zone, to permit public rights-of-way for roads and trails; provided, however, that no road or trail shall be closer than 2700 feet from the end of any runway. ~~Denver shall permit the property in the Clear Zones to be used for passive uses (including but not limited to agriculture) which do not interfere with airport operations, clear aerial approaches, or use of any equipment located in the Clear Zones pursuant to paragraph 4.3.1, as mutually agreed between Denver and Adams County or any Adams County city within which a Clear Zone may lie.~~

4.3.3. Cooperation on Zoning and Annexation. ~~As part of the land use regulations required in paragraph 8.3, Adams County shall adopt or the city exercising land use jurisdiction over the applicable property shall adopt regulations which restrict the use of Clear Zones to only those uses described in paragraph 4.3.1 or 4.3.2. Adams County or the ACC Municipality exercising land use jurisdiction over the applicable Clear Zone property shall reasonably cooperate with Denver to modify zoning and other land use regulations to allow the leasing of Clear Zone property for development or use consistent with paragraph 4.3.1. Denver shall reasonably cooperate with any ACC Municipality seeking to annex any Clear Zone property. Final zoning, land use regulation, or annexation decisions, however, are subject to the approval of the respective jurisdictions.~~

4.4. Mitigation Payments. ~~Stapleton or the~~ Except as set forth in paragraph 4.4.2, the New Airport shall make annual mitigation payments as set forth in paragraph 4.4.1 for all real property in Adams County owned in fee simple by Denver for airport purposes, to Adams County, or to any incorporated city within which the property such real property is located, and to the applicable school district. The mitigation payments shall be made to compensate the applicable jurisdiction for the fact that property will be owned for airport purposes, but will not produce revenue for the jurisdiction so long as it is held by Stapleton or the New Airport.

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4.4.1. Calculation of Payments. ~~If Adams County, or any city within which the property owned by Denver is located, has restricted the use of the applicable Clear Zones for only those uses described in paragraphs 4.3.1 and 4.3.2, as required by 4.3.3, then the~~The mitigation payments to that jurisdiction required by paragraph 4.4 shall be equal to the property tax payments which would have been due for the property were it owned by a tax-paying entity, according to the mill levy schedule applicable at the time of the payment. ~~If the land use regulations required in paragraph 4.3.3 have not been adopted for the applicable Clear Zone, then the mitigation payments to the appropriate jurisdiction shall be equal to the property tax payments which would have been due for the property at the time it was acquired by Denver.~~

4.4.2. Higher Uses Tax Revenue Derived from Clear Zones. To the extent Denver develops the property to a higher use which would result in an increase in property taxes if the property were owned by a tax-paying entity, and which use is not included in paragraph 4.3.1 or 4.3.2, such payment shall be equal to the property taxes which would have been paid, based upon the new use, if the property were not owned by a tax-exempt entity leases any Clear Zone property for private development or use as permitted under paragraph 4.3.1, then, in lieu of mitigation payments associated with that property, the leasehold interest shall be subject to possessory interest taxation or any other tax imposed on a leasehold interest in real property under the constitution and laws of the State of Colorado, the revenue from which shall be retained entirely by Adams County, the applicable ACC Municipality, the applicable school district, and any other taxing entity imposing an *ad valorem* property tax on the leasehold interest. Adams County, the applicable Adams County city, and any other taxing entity shall collect and retain all local taxes they impose upon private use or development of Clear Zone property.

4. Article VII of the Intergovernmental Agreement on a New Airport concerning the “DENVER TRANSPORTATION CORRIDOR” is amended by deleting the language stricken and adding the language underlined in the following paragraph to read as follows:

7.2. Restrictions on Development. Residential, commercial or industrial development shall be permitted in that portion of the Transportation Corridor, as shown on Exhibit G, only south of 72nd Avenue and south and east of the Scenic Buffer. In that portion of the Transportation Corridor north of 72nd Avenue, but outside of the Scenic Buffer, development may occur only in a designated Development Parcel as provided in paragraph 8.4 and all subparagraphs thereto. Denver shall take whatever steps are necessary to ensure that no residential,

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commercial or industrial development occurs ~~in the Transportation Corridor north or west of or~~ within the Scenic Buffer.

5. Article VIII of the Intergovernmental Agreement on a New Airport concerning “NEW AIRPORT SITE LAND USES” is amended by deleting the language stricken and adding the language underlined in the following paragraph to read as follows:

8.1. Zoning of New Airport Site. Only those land uses which are Accessory Uses, which are related to development of natural resources located on the New Airport Site, or which are allowed by this Article VIII shall be permitted on the New Airport Site. Denver shall take whatever steps are necessary to ensure that no other use of the New Airport Site occurs, unless the use occurs in a designated Development Parcel as provided in paragraph 8.4 and all subparagraphs thereto. Any ~~Adams County City~~ ACC Municipality having a boundary line contiguous with the New Airport Site shall be a third-party beneficiary of this Article VIII.

6. Article VIII of the Intergovernmental Agreement on a New Airport concerning “NEW AIRPORT SITE LAND USES” is further amended by adding the following new paragraphs:

8.4. Development Parcels. Notwithstanding any restriction on land uses on the New Airport Site or in the Transportation Corridor north of 72nd Avenue as provided elsewhere in this Agreement, Denver may designate Development Parcels on which Denver, at its sole discretion, may allow any type of development or land use, with the following exceptions:

8.4.1. No Residential Land Use shall be allowed on any Development Parcel.

8.4.2. Any Hotel Rooms located on a Development Parcel shall be subject to the limitation on Hotel Rooms and associated conference and meeting space as set forth in paragraph 8.2.

8.4.3. Denver shall not designate or make use of Development Parcels for businesses or institutions that would compete with businesses or institutions located or potentially to be located at the University of Colorado Anschutz Medical Campus and the Fitzsimons Life Sciences District in Aurora (the “Fitzsimons Site”). Accordingly, Denver shall not allow any business or institution to be located on a Development Parcel if the business or institution is directly involved with or related to biotechnology, drug development, pharmaceuticals, vaccines, diagnostics, medical testing, therapies, medical devices, health, wellness, medical care, life sciences, digital health or healthcare information technology

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ranging from idea, research, discovery, invention, development, or manufacturing; *except* under the following circumstances:

8.4.3.1. Denver may propose to locate on a Development Parcel a business or institution as described in paragraph 8.4.3 pursuant to the following procedures: (A) Denver shall first submit the proposal in writing to Adams County and the ACC Municipalities. (B) Aurora shall promptly obtain a recommendation from the board of directors of the Fitzsimons Redevelopment Authority, or its successor (“FRA”), regarding whether or not the proposed business or institution should be allowed, based upon an evaluation of whether or not the business or institution would potentially compete with businesses or institutions located at the Fitzsimons Site. (C) Aurora shall promptly forward the recommendation of the FRA to Denver, Adams County, and the other ACC Municipalities. (D) After receiving the recommendation of the FRA, Adams County shall act on the proposal as follows: (i) if the FRA recommends that the proposed business or institution should be allowed, Adams County shall consent to the business or institution being allowed on a Development Parcel if a simple majority of the members of the ACC agree to grant such consent; or (ii) if the FRA recommends that the proposed business or institution should not be allowed, Adams County may reject the FRA’s recommendation and consent to the business or institution being allowed on a Development Parcel only with the consensus of the ACC. In accordance with paragraph 11.5.8, the consent of Adams County acting with the approval of the ACC under this paragraph 8.4.3.1 shall not be unreasonably withheld. Any dispute over whether or not such consent has been unreasonably withheld shall be subject to the dispute resolution procedures set forth in paragraphs 11.3.3 and 11.3.4.

8.4.3.2. The provisions of paragraph 8.4.3 and all subparagraphs hereto shall not apply to any business or institution that qualifies as an Accessory Use.

8.5. Designation of Development Parcels. Denver may designate Development Parcels anywhere on the New Airport Site or in the Transportation Corridor north of 72nd Avenue but outside the Scenic Buffer. In order to effect the designation,

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Denver shall deliver to Adams County, Aurora, and Commerce City a certificate of designation indicating that Denver has defined and created the Development Parcel, with the certificate including the following information: (A) the Denver County Assessor's parcel number; (B) a metes and bounds legal description of the Development Parcel and map of the location; (C) proposed leases and land uses to be located on the Development Parcel, if known at the time of designation; (D) acreage encompassed within the Development Parcel; and (E) total cumulative amount of acreage encompassed within all Development Parcels designated to date by Denver. Within thirty (30) days of receipt of a certificate of designation, Adams County or its designee shall return to Denver a countersigned copy of the certificate acknowledging receipt of the certificate. The countersigned certificates of designation shall constitute the official record of the location of all designated Development Parcels and the total amount of acreage therein; however, in the event Adams County ever fails or refuses to return a countersigned certificate designating a Development Parcel within thirty (30) days of receipt of the certificate as required by this paragraph, then the original certificate of designation as executed solely by Denver shall serve as the official record of the location and acreage of the Development Parcel.

8.6. Withdrawal of Designation. If Denver has designated acreage for a Development Parcel and no leasing, development or use of that parcel has occurred, Denver may, at its sole discretion and with written notice to Adams County, Aurora, and Commerce City, withdraw the designation in order to allow that amount of acreage to be designated for Development Parcels elsewhere in accordance with paragraph 8.5.

8.7. Limitation on Total Acreage in Designated Development Parcels; Additional Acreage. The total amount of acreage Denver may designate in Development Parcels shall not exceed fifteen hundred (1500) acres in the aggregate. Adams County, with the consent of the ACC, may agree to increase the number of acres available for designation as Development Parcels at any time by an amendment to the Agreement as provided in paragraph 11.5.3, and without the need for any further voter approval. Any increase in acreage for Development Parcels shall be subject to the provisions for tax revenue sharing as set forth in paragraph 8.9 and all subparagraphs thereto.

8.8. One-time Payment to Adams County. Denver shall pay to Adams County, on or before the Effective Date of the Amendatory Intergovernmental Agreement, the sum of Ten Million Dollars (\$10,000,000) to be shared among the ACC in accordance with its intergovernmental agreements as partial consideration for the modification of the land use regulations reflected in the Amendatory Intergovernmental Agreement, the authority granted to Denver to designate

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Development Parcels under the provisions of this Article VIII, as well as the increased opportunities for Denver to lease, develop and use land in the Clear Zones as provided in paragraph 4.3.1. No additional payment shall be required in the event Adams County, with the consent of the ACC, agrees in the future to additional acreage for Development Parcels as provided in paragraph 8.7.

8.9. Denver Shared Tax Revenue. Denver shall in perpetuity pay to Adams County on an annual basis an amount equal to fifty percent (50%) of the revenue derived from every Denver tax that is imposed upon the development or use of any Development Parcel (the “Denver Shared Tax Revenue”), to be shared among the ACC in accordance with its intergovernmental agreements, except the following revenues: (A) Revenue from any Denver tax or tax rate that, as of the Effective Date of the Amendatory Intergovernmental Agreement, is obligated by voter-approval, bond covenant, or any other form of contract to be reserved or spent for a specific purpose; (B) Revenue from any new, increased or extended Denver tax that is approved by Denver voters after the Effective Date of the Amendatory Intergovernmental Agreement and obligated by voter-approval to be spent for a specific purpose; or (C) Revenue from any city-wide Denver *ad valorem* property tax levy for Denver’s general obligation debt service. Denver irrevocably pledges and grants a first priority lien upon the Denver Shared Tax Revenue, when received by Denver, for the payment thereof to Adams County as provided herein.

8.9.1. Specifically Excepted Taxes. The specific taxes and tax rates excepted from Denver Shared Tax Revenue as provided in paragraph 8.9, clause (A), above are set forth in Exhibit L attached hereto and incorporated herein by this reference. Denver hereby represents and warrants that no taxes or tax rates other than those listed in Exhibit L are currently pledged or otherwise obligated as described in paragraph 8.9, clause (A), above, and that Denver’s perpetual pledge to share revenue as provided in paragraph 8.9 and all subparagraphs hereto does not result in a breach or violation of its Home Rule Charter, Municipal Code, any existing bond covenant, resolution, ordinance, trust agreement, indenture, mortgage, deed of trust, order, or other agreement to which Denver is a party or by which it or its revenues, property, or assets are bound. If, after the Effective Date of the Amendatory Intergovernmental Agreement, the revenue derived from any tax or tax rate listed in Exhibit L is no longer obligated by voter-approval, bond covenant, or any other form of contract to be

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reserved or spent for a specific purpose, then Denver shall notify Adams County of that fact and fifty percent (50%) of the revenue derived from that tax or tax rate shall be shared with Adams County in accordance with paragraph 8.9 on and after the date the obligation ceases to exist. Denver further represents and warrants that it has not included or allowed to be included in the past, and will not include or allow to be included in the future, any Denver Shared Tax Revenue, including but not limited to any property taxes or excise taxes included in Denver Shared Tax Revenue, in Gross Revenues, as defined in any of Denver's Airport Bond Ordinances presently in effect or as may be adopted in the future.

8.9.2. Reduction or Elimination of Taxes. Nothing in this paragraph 8.9 and all subparagraphs hereto shall limit the authority of Denver to reduce or eliminate any tax rate, or to adopt any exemption, credit or any other change in generally applicable tax policy that may have the effect of reducing the amount of revenue derived from the tax, except to the extent provided in paragraph 8.9.6 concerning site-specific tax incentives. Denver will not, however, without the agreement of Adams County with the consent of the ACC, take or approve any action that would have the effect of reducing or eliminating any shared Denver tax or tax rate specifically imposed in or on the Development Parcels or the New Airport Site.

8.9.3. Annual Remittance. Denver Shared Tax Revenue shall be remitted to Adams County once annually, by March 31 of each year, for any and all Denver Shared Tax Revenue collected in the prior year. The payment shall be accompanied by a statement itemizing, for each Development Parcel, the total amount of revenue attributable to all taxes, including but not limited to: *ad valorem* property taxes as applied to any possessory interest in the property; *ad valorem* property taxes as applied to business personal property; sales and use taxes; occupational privilege taxes; lodger's taxes; admissions taxes; and revenue derived from any other miscellaneous city taxes. Denver shall also provide an annual report to the ACC regarding land development and revenue generation at the New Airport.

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8.9.4. Reconciliation for Refunded Taxes. If, after any annual remittance as required in paragraph 8.9.3, Denver is required by a hearing officer, court, or independent agency to refund any Denver Shared Tax Revenue that is attributable to any Development Parcel, Denver may offset the next annual remittance to Adams County by an amount equal to the amount of the Denver Shared Tax Revenue previously remitted to Adams County that Denver was required to refund to the taxpayer.

8.9.5. Payments in Lieu of Taxes. If Denver allows an entity that is exempt from property taxation to develop or use any Development Parcel and negotiates a payment in lieu of property taxes with such an entity, Denver shall share with Adams County fifty percent (50%) of any such payment in lieu of property taxes, and all of the provisions of paragraph 8.9 and all subparagraphs hereto governing the remittance of Denver Shared Taxes shall likewise apply to the payment in lieu of taxes. Nothing herein shall be construed to require Denver to impose a payment in lieu of taxes in the event Denver allows an entity that is exempt from property taxation to develop or use any Development Parcel.

8.9.6. Tax Incentives. To the extent Denver offers rebates or other tax incentives to induce businesses or institutions to locate or remain on a Development Parcel, Denver Shared Tax Revenues shall not be used for such incentives, without the express written consent of Adams County acting with the consent of the ACC. Denver shall not approve any form of tax increment financing or tax allocation resulting in a reduction in the amount of Denver Shared Tax Revenues, without the express written consent of Adams County acting with the consent of the ACC.

8.9.7. Use of One-Time Payment and Shared Tax Revenue. This Agreement does not limit or restrict the manner in which the one-time payment provided for in paragraph 8.8 or Denver Shared Tax Revenue are spent or distributed by Adams County.

8.9.8. Audit Rights. Adams County or any third-party beneficiary to paragraph 8.9 and all subparagraphs hereto may, upon thirty (30) days advance written notice to Denver, audit

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Denver's records pertaining to the collection, calculation, and remittance of the Denver Shared Tax Revenue.

8.9.9. Multiple-fiscal Year Obligation. Denver's obligation to remit Denver Shared Tax Revenue shall be deemed a voter-approved multiple-fiscal year financial obligation within the meaning of Art. X, Section 20(4)(b) of the Colorado Constitution, and shall be and remain fully enforceable as such by Adams County and the third-party beneficiaries in perpetuity.

8.9.10. Third-party Beneficiaries. All of the ACC Municipalities shall be third-party beneficiaries to the provisions of paragraph 8.9 and all subparagraphs hereto.

8.9.11. Lien on Denver Shared Tax Revenue. By approving the Amendatory Intergovernmental Agreement, Denver agrees that the creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Denver Shared Tax Revenue shall be as set forth in the following sentences. The revenues pledged to pay the Denver Shared Tax Revenue, when due or as received by or otherwise credited to Denver, shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions in the Amendatory Intergovernmental Agreement shall have priority over any or all other obligations and liabilities of Denver, except as otherwise provided in the Amendatory Intergovernmental Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against Denver irrespective of whether such persons have notice of such lien.

7. Article XI of the Intergovernmental Agreement on a New Airport concerning "GENERAL PROVISIONS" is amended by the addition of the following new paragraphs:

11.2.1. Waiver of Certain Claims Arising Prior to Referral of Amendatory Intergovernmental Agreement. Adams County and the ACC Municipalities, as third-party beneficiaries to the Amendatory Intergovernmental Agreement, hereby waive any claims they may have against Denver regarding an alleged breach, or anticipatory breach, of the land use provisions contained in the

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Intergovernmental Agreement on Annexation or the Intergovernmental Agreement on a New Airport based on the following: (A) any development or use of the New Airport Site, completed or in process (as demonstrated by the issuance of building permit or certificate of occupancy), that occurred prior to July 1, 2015; or (B) Denver's land use planning or marketing activities for the New Airport Site that occurred prior to July 1, 2015, that did not yet result in any development or use of the New Airport Site, completed or in process (as demonstrated by the issuance of building permit or certificate of occupancy) prior to July 1, 2015. This waiver shall *not*: 1) be construed as changing in any manner the land use provisions of the Intergovernmental Agreement on Annexation or the Intergovernmental Agreement on a New Airport and those Agreements, as modified by the Amendatory Intergovernmental Agreement, will continue to govern the use of the New Airport Site in the future; 2) prevent the parties from enforcing those provisions in regard to any development or use of the New Airport Site established after July 1, 2015, or from enforcing those Agreements in the future; and 3) be deemed an admission, constitute precedent, or otherwise prevent Adams County or the ACC Municipalities from arguing that similar land uses do not qualify as an Accessory Use or development of natural resources.

11.2.2. Non-waiver in Regard to Use of Development Parcels for Accessory Uses. To the extent Denver may decide to locate a land use which Denver considers to be an Accessory Use or development of natural resources in a Development Parcel, no such decision shall be considered a waiver or admission by Denver that the land use in question or any similar land use does not qualify as an Accessory Use or development of natural resources capable of being located anywhere on the New Airport Site in the future.

8. Article XI of the Intergovernmental Agreement on a New Airport concerning "GENERAL PROVISIONS" is further amended by the addition of the following new paragraphs:

11.3.3. Third-Party Beneficiaries of the Amendatory Intergovernmental Agreement. Aurora and Commerce City shall be third-party beneficiaries of the Amendatory Intergovernmental Agreement. Brighton, Thornton and Federal Heights shall be third-party beneficiaries of the Amendatory Intergovernmental

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Agreement as stated in paragraph 8.9 and all subparagraphs thereto. Nothing in this paragraph shall be construed as altering any ACC Municipality's standing under the original 1988 Intergovernmental Agreement on Annexation or the original 1988 Intergovernmental Agreement on a New Airport, nor shall it alter any city's rights under paragraph 5.6.3 of the Agreement.

11.3.4. Special Provisions Regarding Disputes over Land Use. In the event of an alleged breach by Denver of the land use restrictions contained in the Intergovernmental Agreement on Annexation or the Intergovernmental Agreement on a New Airport Site, as modified by the Amendatory Intergovernmental Agreement, after the notice of default is delivered pursuant to paragraph 11.3.2, the parties and third-party beneficiaries will first make a good faith attempt to resolve the land use restriction dispute informally. Prior to either party or any third-party beneficiary filing suit over such a land use restriction dispute, the parties will enter into formal non-binding mediation as provided in paragraph 11.3.5 in an attempt to resolve the dispute. In the event the parties or third-party beneficiaries proceed to litigation over land use restrictions, ACC entities retain all available legal and equitable remedies. ACC entities may also elect to recover any withheld Denver Shared Tax Revenue, plus interest at the statutory rate, on behalf and for the benefit of the ACC. The prevailing party in litigation shall be awarded its attorney's fees and costs. If Denver decides, prior to final judgment in any such litigation, to render the case moot by locating the disputed land use in a Development Parcel, Denver shall pay the ACC entities one-half of their attorney's fees and costs incurred in the case through the date the case was mooted. This paragraph shall not alter the procedure or remedies available to enforce other provisions of this Agreement, including but not limited to, noise restrictions.

11.3.5. Mediation Procedures. When non-binding mediation is required under paragraph 11.3.4, the parties shall share equally in the costs of the mediation. The parties shall cooperate to select a mutually agreed upon neutral third-party mediator. If the parties are unable to agree upon a mediator, then the parties may petition the district court for the First Judicial District to appoint a mediator, and the mediation shall then be conducted in accordance with the Colorado Dispute Resolution Act, Sections 13-22-301, *et*

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seq., Colorado Revised Statutes, as amended. The mediation shall be held at a mutually agreeable location within either Adams County or Denver County.

11.3.6. Remedies for Default in Payment of Denver Shared Tax Revenue. Adams County shall have the right to take such action at law or in equity as may to it appear necessary to enforce the payment of the Denver Shared Tax Revenue whenever a default in the payment of the Denver Shared Tax Revenue shall have occurred and be continuing, including but not limited to a default resulting from any events, facts, or circumstances, the occurrence of which would constitute a breach of any duty, covenant, representation, or warranty in the Amendatory Intergovernmental Agreement.

9. Article XI of the Intergovernmental Agreement on a New Airport concerning “GENERAL PROVISIONS” is further amended by entirely replacing the current language in paragraph 11.4 with the following language:

11.4. Notice and Approvals. If any notice, approval or consent is to be given hereunder, such notice, approval or consent, or notice of its denial, must be given within thirty (30) days and be signed by a lawfully and duly authorized person, in writing, and either delivered by hand or mailed by certified mail, postage prepaid, return receipt requested, in which event the return receipt shall be deemed prima facie evidence of delivery on the date as shown on the return receipt.

The addresses for purposes of delivery or mailing shall be:

If to Denver: Mayor
City and County of Denver
Room 350
City and County Building
1437 Bannock St.
Denver, CO 80202

and

Attention Chief Executive Officer
Denver International Airport
Airport Office Building, 9th Floor
8500 Pena Boulevard

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Denver, CO 80249-6340

With a copy to: City Attorney
1437 Bannock St.
Room 353
Denver, CO 80202

If to Adams County: Adams County Commissioners
Adams County Government Center
4430 S. Adams County Pkwy.
5th Floor, Suite C5000A
Brighton, CO 80601-8204

With a copy to: County Attorney
Adams County Government Center
4430 S. Adams County Pkwy.
5th Floor, Suite C5000A
Brighton, CO 80601-8204

If to Aurora: Aurora City Manager
15151 E Alameda Parkway, 5th Floor
Aurora, CO 80012

With a copy to: Aurora City Attorney
15151 E Alameda Parkway, 5th Floor
Aurora, CO 80012

If to Commerce City: The City of Commerce City
City Manager
7887 E. 60th Ave.
Commerce City, CO 80022

With a copy to: City Attorney
7887 E. 60th Ave.
Commerce City, CO 80022

If to Brighton: City Manager
Brighton City Hall
500 South 4th Avenue
Brighton, CO 80601

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With a copy to: Brighton City Attorney
Brighton City Hall
500 South 4th Avenue
Brighton, CO 80601

If to Thornton: City of Thornton
City Manager
9500 Civic Center Drive
Thornton, CO 80229

With a copy to: City Attorney
9500 Civic Center Drive
Thornton, CO 80229

If to Federal Heights: Mayor
City of Federal Heights
2380 W. 90th Avenue
Federal Heights, CO 80260

With a copy to: City Manager
City of Federal Heights
2380 W. 90th Avenue
Federal Heights, CO 80260

10. Article XI of the Intergovernmental Agreement on a New Airport concerning “GENERAL PROVISIONS” is further amended to add a new paragraph as follows:

11.4.1. Notice of Leasing Activity. Whenever any new lease or concession is proposed on the New Airport Site but outside of the Terminal Complex Area, Denver shall notify Adams County, Aurora, and Commerce City of the proposed lease or concession concurrently with the submission of the lease or concession to the Denver City Council or Denver Mayor for approval.

11. Article XI of the Intergovernmental Agreement on a New Airport concerning “GENERAL PROVISIONS” is further amended by deleting the language stricken and adding the language underlined in the following paragraph to read as follows:

11.5.3. Amendment. This Agreement may be altered, amended, or modified by an instrument in writing executed and approved by Denver and Adams County in a manner consistent with section 29-1-203, Colorado Revised Statutes. Neither an amendment of the Intergovernmental Agreement on Annexation nor voter approval shall be required in order for the parties to effect an amendment to the

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land use provisions of this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by instrument in writing, and no subsequent oral Agreement shall have any validity whatsoever.

12. Article XI of the Intergovernmental Agreement on a New Airport concerning “GENERAL PROVISIONS” is further amended by deleting the language stricken and adding the language underlined in the following section, to read as follows:

11.5.5. Exhibits. Exhibits A through ~~Κ~~ L to this Agreement are incorporated herein by reference and made a part hereof.

13. Article XI of the Intergovernmental Agreement on a New Airport concerning “GENERAL PROVISIONS” is further amended by the addition of the following new paragraphs:

11.8. Regional Planning and Marketing Entity. Via a separate intergovernmental agreement to be negotiated between the parties and entered into no later than December 31, 2016, Denver and the ACC shall form a new regional entity to promote and market development opportunities on and around the New Airport and assist in coordinating land use and infrastructure planning efforts by the respective jurisdictions on and around the New Airport. However, the entity shall have no authority to regulate or otherwise control land use or development within any of the jurisdictions. The entity shall be governed by a board consisting of equal representation by Denver appointees and ACC appointees.

11.9. Mutual Defense of Agreement. Denver and Adams County shall mutually defend the Intergovernmental Agreement on a New Airport, as amended, in the event of a challenge by any party who is not a third-party beneficiary to this Agreement.

14. Except as amended in this Amendatory Intergovernmental Agreement, the Intergovernmental Agreement on Annexation and the Intergovernmental Agreement on a New Airport are affirmed and ratified in each and every particular.

15. Except as expressly stated otherwise, this Amendatory Intergovernmental Agreement is perpetual in term.

16. Each party and third-party beneficiary hereby represents that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution, or action passed or taken, to enter into this Amendatory Intergovernmental Agreement. The persons executing this Amendatory Intergovernmental Agreement on behalf of their respective entities hereby warrant and guarantee that the entity fully authorized her or him to execute the Amendatory Intergovernmental Agreement on its behalf and to validly and legally bind the entity to all terms,

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performances, and provisions in the Amendatory Intergovernmental Agreement applicable to the entity as a party or a third-party beneficiary.

17. This Amendatory Intergovernmental Agreement may be executed in seven (7) counterparts, each of which is an original of the Amendatory Intergovernmental Agreement and together constitute the same instrument.

IN WITNESS WHEREOF, the parties hereto and the third-party beneficiaries have executed this Amendatory Intergovernmental Agreement.

[SIGNATURE PAGES FOLLOW]

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CITY AND COUNTY OF DENVER

SEAL

BY _____
Michael B. Hancock, Mayor

ATTEST:

DEBRA JOHNSON, Clerk and
Recorder, Ex-Officio Clerk of
the City and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

D. SCOTT MARTINEZ, Attorney for
The City and County of Denver

BY _____
Cary Kennedy, Manager of Finance

BY _____
Kirsten J. Crawford, Assistant
City Attorney

BY _____
Timothy M. O'Brien, Auditor

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COUNTY OF ADAMS

Charles "Chaz" Tedesco, Chair
Adams County Board of Commissioners

ATTEST: Stan Martin, Clerk

BY _____

Approved as to form:

Heidi M. Miller, County Attorney

EXECUTION COPY

CITY OF AURORA

Stephen D. Hogan, Mayor

ATTEST: Janice Napper, City Clerk

BY _____

Approved as to form:

Michael Hyman, City Attorney

EXECUTION COPY

CITY OF BRIGHTON

Richard N. McLean, Mayor

ATTEST: Natalie Hoel, City Clerk

BY _____

Approved as to form:

Margaret R. Brubaker, City Attorney

EXECUTION COPY

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST: Laura J. Bauer, City Clerk

BY _____

Approved as to form:

Robert R. Gehler, City Attorney

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CITY OF FEDERAL HEIGHTS

Daniel Dick, Mayor

ATTEST: Patti Lowell, City Clerk

BY _____

Approved as to form:

William Hayashi, City Attorney

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CITY OF THORNTON

Heidi K. Williams, Mayor

ATTEST: Nancy A. Vincent, City Clerk

BY _____

Approved as to form:

Margaret Emerich, City Attorney

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EXHIBIT L

**Denver Taxes and Tax Rates Exempted from Revenue Sharing
Upon the Effective Date of the Amendatory Intergovernmental Agreement
(Per paragraph 8.9.1)**

Sales and use tax at the rate of .15% (Denver Preschool Program)

Special sales tax on prepared food and drink at the rate of .5% (Convention Center Bonds)

Special sales tax on short-term car rental at the rate of 3.75% (Convention Center Bonds)

Lodger's tax at the rate of 4.75% (Convention Center Bonds)

Lodger's tax at the rate of 2.75% (Visit Denver Contract)

Facilities development admissions tax ("seat tax") at the rate of 10% (Cultural Facilities Bonds and certificates of participation)

Ad valorem property taxes at the rate of 1 mill (Developmental disabilities levy)

Ad valorem property taxes at the rate of 2.5 mills (Capital maintenance levy)

Contract Control Number: PLANE-1988-0296-01

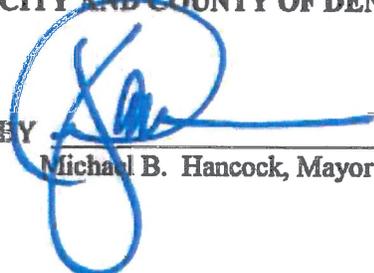
Contractor Name: Adams County

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

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CITY AND COUNTY OF DENVER

BY 
Michael B. Hancock, Mayor

ATTEST:

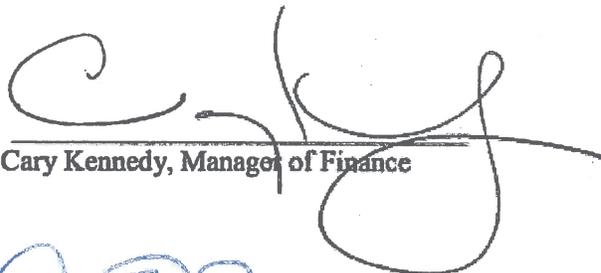

DEBRA JOHNSON, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver
Deputy Clerk & Recorder

APPROVED AS TO FORM:

D. SCOTT MARTINEZ, Attorney for The City and County of Denver

BY 
Kirsten J. Crawford, Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

BY 
Cary Kennedy, Manager of Finance

BY 
Timothy M. O'Brien, Auditor



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COUNTY OF ADAMS

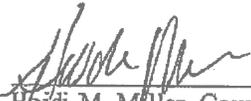


Charles "Chaz" Tedesco, Chair
Adams County Board of Commissioners

ATTEST: Stan Martin, Clerk

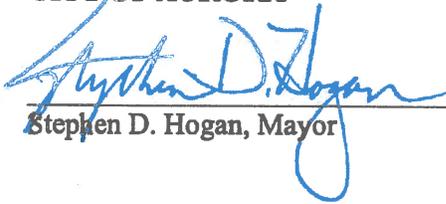
BY 

Approved as to form:


Heidi M. Miller, County Attorney

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CITY OF AURORA

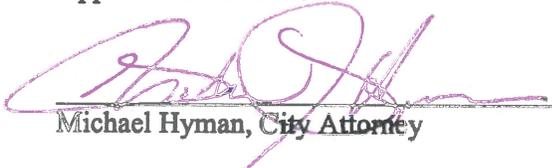


Stephen D. Hogan, Mayor

ATTEST: Janice Napper, City Clerk

BY Karen Goldman, Deputy

Approved as to form:



Michael Hyman, City Attorney



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CITY OF BRIGHTON


Richard N. McLean, Mayor

ATTEST: Natalie Hoel, City Clerk

BY 

Approved as to form:


Margaret R. Brubaker, City Attorney
BY CHRISTOPHER ERNST, ESQ.



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CITY OF COMMERCE CITY



Sean Ford, Mayor

ATTEST: Laura J. Bauer, City Clerk

BY 

Approved as to form:



Robert R. Gehler, City Attorney



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CITY OF THORNTON


Heidi K. Williams, Mayor

ATTEST: Nancy A. Vincent, City Clerk

BY  Deputy

Approved as to form:


Margaret Emerich, City Attorney

