

AMENDMENT TO 1988 ANNEXATION AND INTERGOVERNMENTAL AGREEMENTS ON A NEW AIRPORT

Final Term Sheet

June 3, 2015

I. Approval process and timing

- A. An Amendatory IGA reflecting the terms set forth herein will be approved by the governing bodies of Denver and Adams County, with the current municipal members of the Airport Coordinating Committee (the “ACC”) also approving the Amendatory IGA as third-party beneficiaries, no later than *July 1, 2015*. The current municipal members of the ACC are: Aurora, Commerce City, Brighton, Thornton and Federal Heights. The Amendatory Agreement will, in one document, modify or supplement certain provisions of both the “Intergovernmental Agreement on Annexation” and the “Intergovernmental Agreement on a New Airport” dated April 21, 1988 (herein collectively referred to as the “1988 Agreements.”)
- B. The Amendatory IGA will be referred to the voters of both Denver County and Adams County at the *November 3, 2015* state coordinated election. In the event the voters in either or both counties disapprove the agreement on that date, the Amendatory IGA may be re-submitted at the *November 8, 2016* state general election for voter approval in the county or counties where the measure was previously defeated.
- C. The ballot questions submitted to the voters in Adams County and Denver County will be compatible, with the voters in each county being asked to approve the Amendatory IGA. The ballot question in Denver County will additionally include language binding the city to a “multiple fiscal year financial obligation” to share tax revenue as described below.
- D. Upon approval by the voters in both Denver County and Adams County, the Amendatory IGA will become effective on the January 1 following the approval in both counties.

II. Preservation of the existing 1988 Agreements

Except as specifically set forth below, all the terms and conditions of the 1988 Agreements (including by way of example but not limitation, the noise provisions, restrictions on residential development, the hotel formula, restrictions on land use in relation to the Scenic Buffer, and provisions related to access roads) will remain in full force and effect. Denver will retain the authority to develop Accessory Uses and natural resources located anywhere on the New Airport Site to the extent allowed by the 1988 Agreements and all other rights it has those agreements.

III. Amendments regarding land use restrictions

The 1988 Agreements will be amended as follows:

- A. Fifteen-hundred acres located on the New Airport Site or in the Transportation Corridor north of 72nd Ave. will be released in perpetuity from the land use restrictions contained in the 1988 Agreement. Denver will exercise sole discretion to determine when and where to utilize the fifteen-hundred acres and create Development Parcels at DIA, subject only to the following restrictions: (1) residential development will be prohibited on this acreage; (2) businesses that would potentially compete with current and future business and institutional land uses at the Anschutz Medical Campus and the Fitzsimmons Life Science District in Aurora will be

prohibited on this acreage; (3) to the extent any hotels are located on this acreage, the limitation on number of hotel rooms in the 1988 IGA will continue to apply.

- B. Adams County on behalf of the ACC may negotiate and agree with Denver at any time to release additional acreage from the land use restrictions contained in the 1988 Agreements and allow for the creation of additional Development Parcels, either: (1) on a site-specific or project-specific basis; or (2) by releasing an additional amount of acreage.
- C. Restrictions on land use in the Clear Zones as set forth in the 1988 Agreements will be released entirely. Land use in the Clear Zones will remain subject to federal regulations on use and development. The parties will cooperate to modify zoning and other land use laws as necessary to allow development within the Clear Zones. Taxes derived from commercial development in the Clear Zones in Adams County will be retained entirely by the applicable governing Adams County jurisdiction(s).
- D. Denver will promptly notify the ACC jurisdictions of any proposed leasing and concessions activity at DIA (outside of the terminal complex area) when and to the extent such information has been made available to the general public. For example, Denver will provide notice when a request for proposals is published in regard to new leases and concessions, and when a specific lease or concession is submitted to the Denver City Council for approval.
- E. Adams County will sign the Amendatory IGA as a party. Aurora and Commerce City will remain third-party beneficiaries to the applicable provisions of the 1988 Agreements. Aurora and Commerce City will be third-party beneficiaries to the Amendatory IGA. The remaining ACC municipal members will be third party beneficiaries to the revenue sharing obligations. .
- F. Consistent with the 1988 Agreements, only those ACC municipalities with contiguity to the New Airport site (currently Aurora and Commerce City) will be treated as a third-party beneficiaries in regard to the land use provisions of the Amendatory IGA.

IV. Financial terms in consideration for release of land use restrictions

- A. Upon the effective date of the Amendatory IGA, Denver will transmit to Adams County a one-time cash payment of \$10 million, for distribution as determined by the ACC. No additional cash payment will be required for the discretionary release of additional acreage for Development Parcels as provided in III (B) of this Term Sheet.
- B. Beginning on the effective date and continuing in perpetuity, Denver will share with the ACC jurisdictions fifty percent (50%) of all Denver tax revenue derived from either the development or use of the Development Parcels, with the following exceptions: (1) revenue derived from any Denver tax or tax rate which, as of the effective date of the Amendatory Agreement, was obligated by voter-approval, bond covenant, or any other form of contract to be spent for a particular purpose, for as long as such revenues remain so obligated; (2) revenue derived from any voter-approved new, increased or extended Denver tax adopted after the effective date of the Amendatory Agreement and obligated for a particular purpose; or (3) revenue derived from Denver's debt service mill levies. If Denver ever allows a tax-exempt entity to develop or use any Development Parcel and negotiates a payment in lieu of taxes with such an entity, Denver will share with the ACC jurisdictions fifty percent (50%) of any such payment in lieu of taxes.
- C. The Amendatory IGA will contain procedures for documenting Denver's draws upon the 1500-acre "bank" for the establishment of Development Parcels; for documenting and remitting tax

revenue generation and sharing from the Development Parcels on no less than an annual basis; and for audit rights that may be exercised by the ACC jurisdictions in regard to the tax revenue sharing.

- D. Denver tax revenue shared with Adams County will be distributed as determined by the ACC. Any arrangement the ACC jurisdictions may negotiate among themselves for allocation of the Denver shared tax revenue will be reflected in a separate agreement between the ACC members and will not be a component of the Amendatory IGA. All current municipal members of the ACC will be treated as third-party beneficiaries in regard to the tax revenue sharing provisions of the Amendatory IGA.
- E. To the extent Denver offers tax incentives to commercial developers and tenants to induce businesses to locate or remain upon a Development Parcel, tax revenues that Denver is obligated to share with Adams County will *not* be utilized for such incentives, *unless* Adams County on behalf of the ACC agrees. Denver will not approve any form of tax increment financing resulting in a reduction in the amount of tax revenue from the Development Parcels that Denver is obligated to share with Adams County, unless Adams County on behalf of the ACC agrees.
- F. Denver will reserve the right to modify, decrease or eliminate Denver taxes that are subject to sharing under the Amendatory Agreement; however, Denver will not, without the consent of Adams County on behalf 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.

V. Regional planning and marketing entity

The Amendatory IGA will provide that, via a separate agreement to be negotiated between the parties, Denver and the ACC jurisdictions will form a new regional entity to promote and market development opportunities on and around DIA and assist in coordinating land use and infrastructure planning efforts by the respective jurisdictions on and around DIA. However, the entity will have no authority to regulate or otherwise control land use or development within any of the jurisdictions. The entity will be governed by a board consisting of equal representation by Denver appointees and ACC appointees.

VI. Miscellaneous contract terms

- A. The parties will agree to mutually defend the Amendatory IGA in the event of a challenge by any party who is not a third-party beneficiary to the Amendatory IGA.
- B. The parties' rights and remedies under the 1988 Agreements will remain in place outside of the Development Parcels for disputes that arise in the future about whether development falls within the range of land uses allowed upon the New Airport Site under the original 1988 Agreements. In the event of an alleged breach by Denver of the land use restrictions contained in the 1988 Agreements, as modified by the Amendatory IGA, the ACC party will provide written notice to Denver and the parties will attempt to resolve the dispute informally. Prior to either party filing suit over such a dispute, the parties will enter into formal non-binding mediation in an attempt to resolve the dispute. In the event the parties proceed to litigation and achieve a final judgment, the prevailing party will be awarded its attorney's fees and costs incurred in the litigation, and a prevailing ACC party will be awarded any withheld tax revenue sharing plus interest at the statutory rate. 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, the ACC party will be awarded one-half of its attorney's fees and costs incurred to date in the case.

- C. The Amendatory IGA will also function as a settlement agreement in which Adams County, Aurora, Brighton, Commerce City, Federal Heights, and Thornton will waive any claims they may have against Denver regarding an alleged breach, or anticipatory breach, of the land use provisions in the 1988 Agreements based on the following: (1) any use or development of the New Airport Site, completed or in process (as demonstrated by the issuance of certificate of occupancy or building permit), that occurred prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people; or (2) Denver's land use planning or marketing activities for the New Airport Site that occurred prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people, but such planning or marketing efforts do not meet the requirements of waiver (1) unless a building permit or certificate of occupancy has been issued prior to the date upon which Adams County referred the Amendatory IGA to a vote of the people. This waiver will not be construed as changing in any manner the land use provisions of the 1988 Agreements to the extent those provisions will continue to govern the use of the New Airport Site in the future, nor will the waiver prevent the parties from enforcing those provisions in regard to any use or development of the New Airport Site established after the date upon which Adams County referred the Amendatory IGA to a vote of the people or from enforcing the 1988 Agreements in the future.

- D. At any time under the Amendatory Agreement, Denver may decide to locate a land use which Denver considers to be an Accessory Use in a Development Parcel. No such decision on Denver's part will be considered a waiver or admission by Denver that the land use in question or any similar land use may not qualify as an Accessory Use in the future.

This Term Sheet shall not be considered a binding contract, but is intended solely to serve as the basis for drafting the Amendatory IGA. Each party and third-party beneficiary agrees to submit to their respective governing bodies the Amendatory Agreement for approval by the governing body as a whole (either as a primary party or a third-party beneficiary), subject to ultimate approval by the voters before the Amendatory IGA will be executed or go into effect.