

**RESOLUTION 2019-029
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY AND THE CITY OF LOVELAND FOR
THE USE OF CERTAIN REAL PROPERTY AT THE NORTHERN COLORADO
REGIONAL AIRPORT FOR A REGIONAL TRAINING CAMPUS**

WHEREAS, in 2015, the City and the City of Loveland (collectively, the "Cities") entered into an intergovernmental agreement that has been amended from time to time (the "Airport IGA"), whereby the Cities agreed, in part, to the joint operation of Northern Colorado Regional Airport (the "Airport"); and

WHEREAS, pursuant to the Airport IGA, the Airport is operated jointly by the Cities, with each City retaining a 50% ownership interest, sharing equally in policy-making and management, and each assuming responsibility for 50% of the Airport's capital and operating costs; and

WHEREAS, the City and the City of Loveland are currently designing and intend to construct a jointly-owned police regional training campus (the "Training Campus") to be constructed at the Airport in Loveland; and

WHEREAS, the Cities intend to utilize an available portion of Airport real property for the construction and operation of the Training Campus; and

WHEREAS, the United States of America, acting through the Federal Aviation Administration, released certain Airport real property from the requirement that it be used for aeronautical development purposes under certain grant agreements by an Instrument of Release from Aeronautical Use, dated July 28, 2015 (the "FAA Release"); and

WHEREAS, the Cities agreed in the FAA Release to lease the released property in accordance with the FAA Release and other FAA requirements, including leasing the released property at fair market value and ensuring the proceeds are reinvested back into the maintenance and operation of the Airport; and

WHEREAS, the Cities jointly own the Airport real property and will use the released property for the Training Campus; and

WHEREAS, since 2013, the Cities have each contributed a minimum of \$177,500 per year to the Airport operating fund to cover the expense of operating and maintaining the Airport as a public asset; and

WHEREAS, the Cities desire to treat the annual \$177,500 equal contribution to the Airport as a fair market value rental rate for purposes of the requirement of the FAA Release with the intent that amount will be reinvested into the maintenance and operation of the Airport; and

WHEREAS, the annual \$177,500 equal contribution results in a total rental rate of approximately \$0.18 per square foot per year; and

WHEREAS, the Cities, in consultation with the Director of the Airport, have determined that the rental rate of \$0.18 per square foot for the Training Campus, subject to an annual escalator, is an appropriate fair market value rental rate, equivalent to the rental rate for other portions of the Airport property; and

WHEREAS, the Cities' staffs have proposed an Intergovernmental Agreement, attached as Exhibit "A" and incorporated by reference (the "Lease IGA"), which will act as the lease for FAA purposes; and

WHEREAS, the Lease IGA is a for a term of fifty (50) years beginning upon the date last signed; and

WHEREAS, the Lease IGA sets the rental rate of \$0.18 per square foot for an annual cost of \$174,880.08, subject to an annual rent escalator tied to the Consumer Price Index, which shall be paid to the Airport in equal quarterly payments; and

WHEREAS, the Cities have obtained approval from the FAA of the IGA as a means of contractually arranging for use of the released property to comply with the express language of the FAA Release; and

WHEREAS, the City Council has determined that it is in the best interests of the City that the City agree to the Lease IGA to allow the Cities to construct the Training Campus at the Airport, and that the Mayor be authorized to execute the Lease IGA between the City and the City of Loveland.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:


Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals above.

Section 2. That the Mayor is hereby authorized to enter into the Lease IGA, in substantially the form attached hereto as Exhibit "A," together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 19th day of February, A.D. 2019.


Mayor

ATTEST:


City Clerk



**INTERGOVERNMENTAL AGREEMENT FOR THE USE OF CERTAIN REAL
PROPERTY AT THE NORTHERN COLORADO REGIONAL AIRPORT FOR A
REGIONAL TRAINING CAMPUS**

THIS INTERGOVERNMENTAL AGREEMENT FOR THE USE OF CERTAIN REAL PROPERTY AT THE NORTHERN COLORADO REGIONAL AIRPORT FOR A REGIONAL POLICE TRAINING CAMPUS (the "Agreement") is made and entered into this ___ day of _____, 2019, between THE CITY OF LOVELAND, COLORADO, a municipal corporation ("Loveland") and THE CITY OF FORT COLLINS, COLORADO, a municipal corporation ("Fort Collins") (each referred to as a "City and collectively referred to as "Cities").

WITNESSETH:

WHEREAS, the Cities entered into an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport, dated January 22, 2015, as amended by the First Amendment thereto dated June 7, 2016 (the "First Amendment") (the Amended and Restated Intergovernmental Agreement and the First Amendment are collectively the "Airport IGA"), whereby the Cities agreed, in part, to the joint operation of the Northern Colorado Regional Airport (the "Airport"); and

WHEREAS, pursuant to the Airport IGA, the Airport is operated jointly by the Cities, with each City retaining a 50% ownership interest, sharing equally in policy-making and management, and each assuming responsibility for 50% of the Airport's capital and operating costs; and

WHEREAS, since 2013, the Cities have each contributed a minimum of \$177,500 per year to the Airport operating fund to cover the expense of operating and maintaining the Airport as a public asset; and

WHEREAS, the Cities each maintain police departments that provide law enforcement services to their respective citizens and employ police employees who participate in ongoing training regarding projectile weapons and vehicle use to maintain and improve skills necessary to perform their police functions; and

WHEREAS, the Cities intend to construct a jointly-owned training facility where each City's police employees can conduct projectile weapons training and vehicle/driver training (the "Training Campus"); and

WHEREAS, it is the Cities' intent that the Training Campus will serve as a regional training facility for several other governmental agencies in and around Colorado's Northern Front Range, including the Larimer County Sheriff, the Weld County Sheriff, the Greeley Police Department, the Windsor Police Department, the Colorado State University Police Department, and others; and

WHEREAS, pursuant to Section 29-1-203 of Colorado Revised Statutes, the Cities are authorized by law to contract with one another to provide for the joint exercise of any function, service, or facility lawfully authorized to each of the Cities if such contracts are approved by their governing bodies; and

WHEREAS, the Cities intend to utilize an available portion of Airport real property for the construction and operation of the Training Campus; and

WHEREAS, the United States of America, acting through the Federal Aviation Administration, released certain Airport real property from the requirement that it be used for aeronautical development purposes under certain grant agreements by an Instrument of Release from Aeronautical Use, dated July 28, 2015 (the "FAA Release"), attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Cities agreed in the FAA Release to lease the released property in accordance with the FAA Release, FAA Policy and Procedures Concerning the Use of Airport Revenue, as well as the airport's FAA Grant Assurances (less the aeronautical use requirements), to include leasing the released property at fair market value and ensuring the proceeds are reinvested back into the maintenance and operation of the Airport; and

WHEREAS, the Cities jointly own the Airport real property and will use the released property for the Training Campus, and intend this Agreement as their means to comply with the express language of the FAA Release; and

WHEREAS, the Cities desire to treat the annual \$177,500 equal contribution to the Airport as a fair market value rental rate for purposes of the requirement of the FAA Release with the intent that amount will be reinvested into the maintenance and operation of the Airport; and

WHEREAS, the annual \$177,500 equal contribution results in a total rental rate of approximately \$0.186 per square foot per year; and

WHEREAS, the standard rental rate for unimproved, small tracts at the Airport is \$0.28 per square foot and the standard rental rate for unimproved, large tracts at the Airport is at or below the rate identified herein for the Training Campus; and

WHEREAS, as evidence of the fair market value of the rental rate in this Agreement, the Cities recently executed a lease agreement with Discovery Air, LLC ("Discovery Air Lease") for a large tract of unimproved land on Airport property. The annual rental rate for the Discovery Air Lease is \$0.15 per square foot for ten (10) years and \$0.25 per square foot for years eleven (11) and onward, after an initial 24-month due diligence period; and

WHEREAS, the Cities, in consultation with the Director of the Airport, have determined that the rental rate of \$0.186 per square foot for the Training Campus is an appropriate fair market value rental rate, equivalent to the rental rate for other portions of the Airport property.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, IT IS AGREED by and between the parties hereto as follows:

1. Use of Released Property. The Cities agree that the real property, more particularly described in the legal description attached as **Exhibit B** (“the Released Property”), shall be used and occupied for the construction and operation of the Training Campus, as detailed in the design documents, attached hereto as **Exhibit C** and incorporated herein by this reference. The Released Property contains 44.068 acres or approximately 1,906,867 square feet. The use permitted herein shall be limited to uses related to the Training Campus in accordance with the Intergovernmental Agreement for the Construction, Ownership, Operation, Maintenance and Management of the Regional Training Campus executed between the Cities, as may be amended from time to time. Any other uses of the Released Property must be in accordance with the Requirements for the FAA Release.

2. No Interference. The Cities agree that the use of the Released Property will be limited as necessary to eliminate construction, use, and operations of the Training Campus that interfere with (1) the right of flight for the passage of aircraft in the airspace above the surface of the Airport real property; (2) the right to cause such noise in the airspace as is inherent in the operation of aircraft now or hereafter used for navigation of or flight in the said airspace; (3) the right to use said airspace for landing on, taking off from, or operating on the Airport. No use shall be permitted on the Released Property that otherwise constitutes an airport hazard.

3. Fair Market Value Rental Rate.
 - A. As the fair market value referenced in the FAA Release, the Cities agree that the rental rate shall be \$0.186 per square foot per year, in the total amount of Three Hundred Fifty-Four Thousand Six Hundred Seventy-Seven Dollars and 26/100 (\$354,677.26), fifty percent (50%) of which (\$177,338.63) shall be paid to the Airport by each City in equal payments on a quarterly basis no later than March 31, June 30, September 30, and December 31 annually, subject to the escalator provided in subsection B of this Section 3.

 - B. Commencing on the first day of the month following the first anniversary of the Effective Date (defined below), and each year thereafter during the remainder of the term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. The term “C.P.I.” as used herein shall mean the Consumer Price Index for all Urban Consumers (CPI_U), All Items, for Denver-Aurora-Lakewood, CO as published by the Bureaus of Labor Statistics of the United States Department of Labor, 1982-84 base =

100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to publish the C.P.I., an equivalent or comparable economic index shall be used.

C. In addition to any other remedies provided in this Agreement, in the event that a City does not pay its contribution to the Airport within ten (10) days of the due date, that City agrees to pay a late charge of \$50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve (12%) per annum.

D. The rent, and any late charges and interest, shall be applied to the maintenance and operation of the Airport. This payment shall be separate from, and in addition to, any other funding obligations the Cities may have under the Airport IGA, as amended. The Cities intend that this Agreement and the Cities' payment of the rent to the Airport for its use shall be in accordance with and satisfy the FAA Policy and Procedures Concerning the Use of Airport Revenue and the Airport's FAA Grant Assurances (less the aeronautical use requirements), to the extent applicable.

4. Term of Agreement; Modification; Extension. This Agreement shall take effect at 12:01 a.m. on the date last signed below (the "Effective Date") and expire at 11:59 p.m. on the last date of the calendar month in which occurs the day immediately preceding the fiftieth (50th) anniversary of the Effective Date, unless earlier terminated as provided herein. This Agreement may be modified only by the written agreement of the parties hereto. If the Cities desire to continue to use the Released Property for the Training Campus at the expiration of the initial term, the Cities may execute a new agreement of no more than fifty (50) years.
5. Termination for Aviation Development Purposes. The Cities agree that, in the event the Released Property shall be needed for aviation development purposes as contemplated in the FAA Release, the Cities shall terminate this Agreement, and all aeronautical terms, conditions, reservations and restrictions identified in FAA Grant Agreements numbered FAAP 9-05-016-801 and 9-05-038-C501, ADAP 7-08-0023-01 and 5-08-0023-02 through 5-08-0023-05, and AIP 3-08-0023-01 through AIP 3-08-0023-34 shall be reinstated.
6. Status as Governmental Entities. The parties are governmental entities; therefore, all direct and indirect financial obligations of each party under this Agreement shall be subject to annual appropriation pursuant to Article X, Section 20 of the Colorado Constitution, the parties' respective charters and ordinances, and applicable law. This Agreement and the obligations of the parties hereunder do not constitute a multi-year fiscal obligation and are expressly contingent upon the parties' respective governing bodies budgeting and

appropriating the funds necessary to fulfill the parties' respective obligations. If a party does not appropriate funds sufficient to meet its obligations under this Agreement, such non-appropriation will constitute a termination by such party, effective on January 1 of the party's fiscal year for which the funds are not appropriated regardless of any notice period required under this Agreement. The non-appropriating party shall give written notice of such non-appropriation of funds to the other party not later than thirty (30) days after the non-appropriating governing body approves its annual appropriation ordinance for any calendar year for which the ordinance does not include funding to meet its financial obligations for the ensuing fiscal year.

7. Notices. Any notice, request, demand, consent, or approval, or other communication required or permitted hereunder, shall be in writing and shall be deemed to have been given when personally delivered, faxed, emailed, or deposited in the United States mail with proper postage and addressed as follows:

If to Loveland:

Chief of Police
Loveland Police Department
810 E. 10th Street
Loveland, CO 80537

City Manager
with a copy to: Loveland City Attorney
City of Loveland
500 E. 3rd Street
Loveland, CO 80537

If to Fort Collins:

Chief of Police
Fort Collins Police Services
2221 S. Timberline Road
Fort Collins, Colorado 80525

City Manager
with a copy to: Fort Collins City Attorney
City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522

8. Relationship of the Parties; Non-liability of individuals; Benefit; No Assignment. The parties enter into this Agreement as separate, independent governmental entities and maintain such status throughout. No officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his, her or their execution or attempted execution of the same. This Agreement is made for the sole and exclusive benefit of the Cities, any permitted successors and assigns. The parties covenant and agree that they will not assign this Agreement, any interest or part thereof or any right or privilege pertinent thereto, without (1) written consent of the other party first having been obtained;

(2) satisfaction of any and all grant assurances; and (3) compliance with all applicable federal and state regulations related to the operation of the Airport.

9. Liability. Each party shall be responsible for any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any action or omission of such party or its respective officers, employees and agents in connection with such party's performance of this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing herein shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations of liability the parties and their respective officers, directors, councilors, employees, volunteers, and agents may have under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., or to any other defenses, immunities, or limitations of liability available to the parties by law.
10. Entire Agreement/Ambiguities. This Agreement embodies the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and executed by both parties. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
11. Applicable Law; Severability. The laws of the State of Colorado shall be applied in the interpretation, execution and enforcement of this Agreement, and venue for any action arising hereunder shall be Larimer County, Colorado. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.
12. No Third-Party Beneficiaries. This Agreement is made for the sole and exclusive benefit of the parties hereto and shall not be construed to be an agreement for the benefit of any third party or parties and no third party shall have a right of action hereunder for any cause whatsoever.
13. Counterpart Signatures. The parties agree that counterpart signatures of this Agreement shall be acceptable and that execution of the Agreement in the same form by each and every party shall be deemed to constitute full and final execution of the Agreement.

IN WITNESS HEREOF, this Intergovernmental Agreement has been executed that day and year first above written.

THE CITY OF LOVELAND, COLORADO

A Municipal Corporation

ATTEST:

By: _____

Stephen C. Adams, City Manager

City Clerk

APPROVED AS TO FORM:

Loveland City Attorney

THE CITY OF FORT COLLINS, COLORADO

A Municipal Corporation

ATTEST:

City Clerk

By: _____

Mayor

Printed name

APPROVED AS TO FORM:

Assistant City Attorney

Printed name