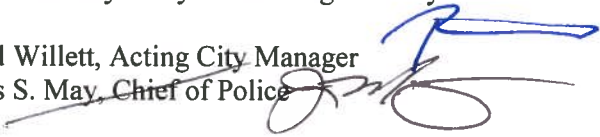


**NORTHGLENN POLICE DEPARTMENT  
COUNCIL MEMORANDUM #2015-14**

**DATE:** August 24, 2015

**TO:** Honorable Mayor Joyce Downing and City Council Members

**FROM:** David Willett, Acting City Manager  
James S. May, Chief of Police 

**SUBJECT:** CR #107 - Second Intergovernmental Agreement/Municipal Non-Domestic Violence Inmate Allocations and Per Diem Fee Assessment Process for the Adams County Detention Facility

**RECOMMENDATION:**

Staff recommends the approval of the attached Municipal Non-Domestic Violence Inmate Allocations and Per Diem Fee Assessment Process Agreement for the Adams County Detention Facility allowing the Mayor to sign the attached Intergovernmental Agreement between the cities of Northglenn, Aurora, Commerce City, Federal Heights and Thornton and Adams County Sheriff Michael McIntosh and the Board of County Commissioners of the County of Adams.

**BACKGROUND:**

In a Settlement Agreement (Exhibit A) approved by City Council on 07/27/2015, CR-104, it was agreed that a flexible 'soft' cap of 80 non-domestic violence related municipal inmates may be held in the Adams County Detention Facility. With the new Settlement Agreement, the City of Northglenn has seven (7) prisoner bed allocations. If we exceed our bed allocation, we may be subject to a per diem fee of up to \$45 for any municipal inmate held at the Adams County Detention Facility in excess of the 80-bed cap.

**BUDGET/TIME IMPLICATIONS:**

Funds to cover the expense are in the 2015-2016 Management Services/Court budget.

**STAFF REFERENCE:**

If Council Members have any comments or questions, they may contact Chief James S. May, Jr., at 303/450-8967, [jmay@northglenn.org](mailto:jmay@northglenn.org).

msn

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-107  
Series of 2015

\_\_\_\_\_  
Series of 2015

A RESOLUTION APPROVING THE SECOND INTERGOVERNMENTAL AGREEMENT REGARDING MUNICIPAL NON-DOMESTIC VIOLENCE INMATE ALLOCATIONS AND PER DIEM FEE ASSESSMENT PROCESS FOR THE ADAMS COUNTY DETENTION FACILITY BETWEEN THE CITIES OF ARVADA, AURORA, BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS, NORTHGLENN, THORNTON, AND WESTMINSTER, AS WELL AS THE TOWN OF BENNETT, COLORADO

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Second Intergovernmental Agreement Regarding Municipal Non-Domestic Violence Inmate Allocations and Per Diem Fee Assessment Process for the Adams County Detention Facility between the Cities of Arvada, Aurora, Brighton, Commerce City, Federal Heights, Northglenn, Thornton, and Westminster, as well as the Town of Bennett, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute the same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JOYCE DOWNING  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

**SECOND INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF  
ARVADA, AURORA, BRIGHTON, COMMERCE CITY, FEDERAL HEIGHTS,  
NORTHGLENN, THORNTON, AND WESTMINSTER, AS WELL AS THE TOWN OF  
BENNETT, COLORADO  
REGARDING MUNICIPAL NON-DOMESTIC VIOLENCE INMATE  
ALLOCATIONS AND PER DIEM FEE ASSESSMENT PROCESS  
FOR THE ADAMS COUNTY DETENTION FACILITY**

THIS SECOND INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the City of Arvada, City of Aurora, City of Brighton, City of Commerce City, City of Federal Heights, City of Northglenn, City of Thornton, and the City of Westminster, Colorado, all Colorado home rule municipalities, and the Town of Bennett, a Colorado statutory town, collectively sometimes referred to herein as the “Cities” or “Parties” and individually as “City or Party.”

WITNESSETH

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and C.R.S. § 29-1-201 authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, pursuant to C.R.S. § 31-15-401(k), municipalities may use the county jail for confinement or punishment of offenders “with the consent of the board of county commissioners”; and

WHEREAS, pursuant to a prior Settlement Agreement entered in connection with litigation pending in Adams County District Court captioned: *CITY OF AURORA; CITY OF COMMERCE CITY; CITY OF FEDERAL HEIGHTS; CITY OF NORTHGLENN; and CITY OF THORNTON, Colorado, municipal corporations, v. DOUGLAS N. DARR, in his official capacity as Adams County Sheriff, State of Colorado; and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS*, Civil Action No. 2014CV30353 (“Action”), the municipalities named in said litigation were subjected to a flexible (“soft”) cap of 65 non-domestic violence related municipal prisoners (aka “inmates”) who may be held at the Adams County Detention Facility (“ACDF”) solely for municipal charges; and

WHEREAS, pursuant to the Settlement Agreement, the Sheriff could have charged said municipalities in Adams County a per diem fee of up to \$45 for any such municipal inmate held at the ACDF in excess of the 65 cap; and

WHEREAS, pursuant to a new Settlement Agreement in the Action, the municipalities named in the Action are now subjected to a flexible (“soft”) cap of 80 non-domestic violence related municipal prisoners (aka “inmates”) who may be held at the ACDF solely for municipal charges; and

WHEREAS, pursuant to the new Settlement Agreement in the Action, the Sheriff may charge said municipalities in Adams County a per diem fee of up to \$45 for any such municipal inmate held at the ACDF in excess of the 80 cap; and

WHEREAS, the Sheriff and the Cities recognize that the Jail Cap applies to all the Cities; as such Cities are authorized to use the ACDF pursuant to C.R.S. §31-15-401(k); and

WHEREAS, it is in the best interests of the Cities to agree among themselves on a process for allocating the 80 beds available without charge in the ACDF for municipal inmates and for determining which of the Cities will be responsible for paying per diem fees the Sheriff may impose for their municipal inmates in the event the 80 cap is exceeded.

NOW, THEREFORE, in consideration of the promises and conditions contained herein the Cities hereto agree as follows:

**I. PROCESS FOR THE PAYMENT OF PER DIEM FEES WHEN MUNICIPAL INMATES EXCEED THE ABOVE 80 CAP AND THE ALLOCATION OF BED SPACE AMONGST THE CITIES.**

A. The Cities agree to the process for payment of fees as follows:

1. Each City must provide the Sheriff with the email address of each person to whom the Sheriff should send the daily municipal inmate count. The Sheriff has agreed to provide the Cities with the email address(es) to which the Sheriff wants the emails noted below to be sent.

2. The Sheriff will email the municipal inmate count by 9:00 a.m. each day of the week (including weekends and holidays) to the Cities.

3. Each City will review the list on at least each business day verifying its inmates listed are accurate in terms of names, holds, charges, and individual municipal inmate count. If any discrepancies are found, that City will notify the designated staff persons at the ACDF and all other Cities via email no later than 5:00 p.m. on the second business day following the Sheriff's publication of the list.

4. If the total number of municipal non-DV inmates is 80 or less, no additional action is necessary by any City.

5. If the total number of municipal non-DV inmates exceeds 80, any City that has not exceeded its individual allocation (as shown in Table A below) need not take any action and will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.). Each City must specify on all applicable paperwork (including but not limited to: in-custody booking forms, jail mittimus forms, warrants, and other correspondence) whether or not an inmate is being held on a DV charge. If any City's paperwork contains an error, that City will be responsible for any per diems assessed because of that error, unless such City notifies the Sheriff of such error by 5:00 p.m. on the second succeeding business day following the Sheriff's publication of the list of municipal inmates.

6. If the total number of municipal non-DV inmates exceeds 80, any City that has exceeded its individual allocation (as shown in Table A below) will have **12 hours from the time the Sheriff sent the daily email or 9:00 p.m., whichever is later**, to either release one or more of its non-DV inmates and/or risk being assessed a per diem fee for one or more of its non-DV inmates. If any such City's decision is to release one or more of its inmates, it must notify the Sheriff by email as noted above, to avoid any per diem liability for such inmate(s). Any such City's email should also be sent to all Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates.

a. If the total number of municipal non-DV inmates exceeds 80, the City that has exceeded its individual allocation by the greatest number of inmates will first be assessed a per diem fee if it has not released one or more inmates by the established deadline. In the event more than one City has exceeded their allocation by the same number of inmates, and a per diem fee results for such inmate(s), such fee will be split equally among these Cities.

b. Step "a" above will be repeated until the remaining municipal non-DV inmate count for that day either by release and/or by commitment to pay a per diem fee(s) is at or below 80. See examples below.

c. Any City that notifies the Sheriff to release all of its inmates that were over its individual allocation on any given day by the established deadline for such day will not ultimately be subject to any per diem fees for this day (see paragraph A.6.f.).

d. For any day for which a per diem is to be assessed, the Sheriff must be sent an email **by 5:00 p.m. on the second business day** following the Sheriff's email containing the daily municipal inmate count for that day by each City that details the amount to be billed for each such day(s). Any such City's email should also be sent to all Cities to ensure all are kept informed of each City's decisions regarding its municipal inmates. If the Cities fail to provide such information to the Sheriff by the established deadline, the Sheriff will bill the per diems for any excess inmates on a last-in, first-charged basis.

e. Adams County will bill the appropriate Cities monthly and payment is due to the County within 30 days of receipt of such invoice.

f. If a City fails to notify the Sheriff as provided for in paragraph A.6.d. above, and as a result the Sheriff assesses a per diem charge on a "last-in, first-charged" basis, the City assessed such per diem charge may invoice the City(ies) that failed to notify the Sheriff in a timely manner and such City(ies) shall reimburse the City charged on the "last-in, first-charged" basis for all such per diem charges within 30 days of receipt of such invoice.

B. The Cities agree to the following allocation of beds in ACDF for municipal inmates:

1. The Cities individual bed allocations are set forth below in Table A.

**TABLE A**

Municipality	80 Bed Allocation
Arvada	2
Aurora	14
Bennett	1
Brighton	7
Commerce City	12
Federal Heights	4
Northglenn	7
Thornton	21
Westminster	12
Total	80

2. The following reflect examples of how the above-stated process would work in practice.

**Example #1.** In the example below even though several Cities are over their allocation, since the total number of inmates is 80 or less, no action needs to be taken and no per diem fees will accrue.

Municipality	Proposed 80 Bed Allocation	# of Municipal Inmates at Count	# Over/Under Individual Allocation	Result
Arvada	2	1	-1	No Action Needed
Aurora	14	15	+1	No Action Needed
Bennett	1	0	-1	No Action Needed
Brighton	7	5	-2	No Action Needed
Commerce City	12	13	+1	No Action Needed
Federal Heights	4	4	0	No Action Needed
Northglenn	7	5	-2	No Action Needed
Thornton	21	23	+2	No Action Needed
Westminster	12	12	0	No Action Needed
Total	80	78	-2	Under Soft Cap

**Example #2.** In the example below the total number of inmates is over 80 by two inmates so those three Cities that are over their allocation may be at risk. Since Thornton is over its allocation the most (2 over) it would be the first to decide whether to

release an inmate or be charged a per diem. Following this action, there are three Cities that are each one over (Aurora, Commerce City, and Thornton). Each of these Cities would be faced with the decision to either release an inmate or risk being charged up to 1/3 per diem.

So to recap, if all occurred as described above, Thornton would either be charged 1 1/3 per diem (if it did not release its first inmate and none released another inmate) or 1/3 per diem along with Aurora and Commerce City if Thornton did release its first inmate, but none released another inmate.

Municipality	Proposed 80 Bed Allocation	# of Municipal Inmates at Count	# Over/Under Individual Allocation	Result
Arvada	2	0	-1	No Action Needed
Aurora	14	15	+1	At Risk
Bennett	1	0	-1	No Action Needed
Brighton	7	7	0	No Action Needed
Commerce City	12	13	+1	At Risk
Federal Heights	4	4	0	No Action Needed
Northglenn	7	7	0	No Action Needed
Thornton	21	23	+2	At Risk
Westminster	12	12	0	No Action Needed
Total	80	82	+2	2 Over Soft Cap

**Example #3.** In the example below the total number of inmates is over 80 by three inmates so those three jurisdictions that are over their allocation may be at risk. Since Commerce City is over its allocation the most (5 over) it would be the first to be charged a per diem if one of its inmates were not released. After Commerce City decides whether to release or risk paying a per diem for the first inmate over its individual allocation, it remains most over its allocation (4 over), so it would again be faced with either releasing an inmate or paying another per diem. Commerce City remains the most over its allocation (3 over), so it would again be faced with either releasing an inmate or paying another per diem.

So to recap, if all occurred as described above, Commerce City would be faced with either releasing up to three inmates or being charged up to three per diems. Even though Aurora and Thornton were also over their allocations, they would not be impacted because Commerce City remained the most over its allocation.

Municipality	Proposed 80 Bed Allocation	# of Municipal Inmates at Count	# Over/Under Individual Allocation	Result
Arvada	2	2	0	No Action Needed
Aurora	14	15	+1	At Risk

Bennett	1	0	-1	No Action Needed
Brighton	7	5	-2	No Action Needed
Commerce City	12	17	+5	At Risk
Federal Heights	4	3	-1	No Action Needed
Northglenn	7	7	0	No Action Needed
Thornton	21	22	+1	At Risk
Westminster	12	12	0	No Action Needed
Total	80	83	+3	3 Over Soft Cap

**II. TERM.**

This Agreement shall be in effect until otherwise agreed to by all the Cities in writing.

**III. NONAPPROPRIATIONS CLAUSE.**

The Cities herein acknowledge and agree that each has every intention of carrying out and performing the provisions of this Agreement for its entire term. Each City agrees it shall make every reasonable effort to ensure the continued appropriation of funds for the payments referenced in this Agreement. In the event that any of the respective City Councils fail to appropriate funds for the continuation of this Agreement for any fiscal year past the first fiscal year, the Cities may, at the beginning of the fiscal year for which the City Councils do not appropriate such funds and upon thirty (30) days prior written notice, terminate this Agreement without penalty and thereupon be released of further obligations pursuant thereto.

**IV. PROVISIONS CONSTRUED AS TO FAIR MEANING.**

The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attributes to such Party as the source of the language in question.

**V. NO IMPLIED REPRESENTATIONS.**

No representations, warranties, or certifications, express or implied, shall exist as between the Parties, except as specifically stated in this Agreement.

**VI. NO ORAL OR COLLATERAL AGREEMENTS OR UNDERSTANDINGS.**

This Agreement may be amended only by an instrument in writing signed by the Parties.

**VII. INTEGRATED AGREEMENT.**

This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein.



**VIII. WAIVER.**

The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

**IX. UNCONSTITUTIONALITY.**

The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement, and each and every provision thereof, are declared to be severable.

**X. GOVERNMENTAL IMMUNITY.**

The Parties hereto understand and agree that the Parties, their officers and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time-to-time amended, or otherwise available to the Parties their officers, or their employees.

**XI. NOTICE.**

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Party or City. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Arvada  
City Manager  
8101 Ralston Rd  
P.O. Box 8101  
Arvada, CO 80001-8101

City of Aurora:  
City Manager  
City of Aurora  
15151 East Alameda Parkway  
Aurora, CO 80012

Town of Bennett

Town Administrator  
355 Fourth Street  
Bennett, CO 80102

City of Brighton  
City Manager  
Brighton City Hall  
500 South 4<sup>th</sup> Avenue  
Brighton, CO 80601

City of Commerce City  
City Manager  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

City of Federal Heights  
City Manager  
City of Federal Heights  
2380 W 90<sup>th</sup> Avenue  
Federal Heights, CO 80260

City of Northglenn  
City Manager  
11701 Community Center Drive  
Box 330061  
Northglenn, CO 80233

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

City of Westminster  
City Manager  
4800 West 92nd Avenue  
Westminster, Colorado 80031

## **XII. APPLICABLE LAW AND VENUE.**

This Agreement shall be interpreted and enforced pursuant to the laws of the State of Colorado. In the event of litigation concerning this Agreement, the Parties agree that proper venue shall be the District Court, Adams County, Colorado.

**XIII. LITIGATION.**

Each Party hereto shall be responsible for any suits, demand, costs or actions at law resulting from its own acts or omissions.

**XIV. EFFECTIVE.**

This Agreement shall supersede and replace the First Intergovernmental Agreement entered between the Parties in conjunction with the initial Settlement Agreement entered in the Action and will become effective as of the last date of execution by the Parties hereto, subject to the full execution of the New Settlement Agreement in the Action.

**XV. EXECUTION**

This Agreement may be executed in counterparts. Each of which shall be considered an original and all of which together shall constitute one and the same interests and any facsimile or electronic signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, The Cities have caused this Agreement to be duly executed as of the day and year below written.

**THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK**

**(SIGNATURES FOLLOW ON NEXT PAGE)**

**CITY OF ARVADA, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Marc Williams, Mayor  
City of Arvada  
8101 Ralston Road  
P.O. Box 8101  
Arvada, Colorado 80001

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher K. Daly, City Attorney

**CITY OF AURORA, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Stephen D. Hogan, Mayor  
Aurora Municipal Center  
15151 East Alameda Parkway  
Aurora, Colorado 80012

ATTEST:

\_\_\_\_\_  
Janice Napper, City Clerk

APPROVED AS TO FORM:  
Michael J. Hyman, City Attorney

\_\_\_\_\_  
Teresa L. Kinney, Senior Assistant City Attorney  
Daniel L. Money, Assistant City Attorney II

**TOWN OF BENNETT, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Sue F. Horn, Mayor

ATTEST:

\_\_\_\_\_  
Lynette F. White, Town Clerk

APPROVED AS TO FORM:  
Light Kelly, PC

\_\_\_\_\_  
Samuel J. Light, Town Attorney

**CITY OF BRIGHTON, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Richard N. McLean, City Mayor

ATTEST:

\_\_\_\_\_  
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Margaret R. Brubaker, City Attorney

**CITY OF COMMERCE CITY, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Brian K. McBroom, City Manager  
Commerce City Civic Center  
7887 East 60<sup>th</sup> Avenue  
Commerce City, Colorado 80022  
Telephone: (303) 227-8808  
Facsimile: (303) 289-3688  
bmcbroom@c3gov.com

ATTEST:

\_\_\_\_\_  
Laura Bauer, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert Gehler, City Attorney



**CITY OF FEDERAL HEIGHTS, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Joyce Thomas, Mayor  
City of Federal Heights  
2380 W. 90th Ave.  
Federal Heights, CO 80260

ATTEST:

\_\_\_\_\_  
Patti Lowell, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Hayashi, City Attorney

**CITY OF NORTHGLENN, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_  
Joyce Downing, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

**CITY OF THORNTON, COLORADO**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jack Ethredge, City Manager

ATTEST:

\_\_\_\_\_  
Nancy Vincent, City Clerk

APPROVED AS TO FORM:  
Margaret Emerich, City Attorney

\_\_\_\_\_  
Gary Jacobson, Deputy City Attorney

**CITY OF WESTMINSTER, COLORADO**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Donald M. Tripp, City Manager

ATTEST:

\_\_\_\_\_  
Linda Yeager, City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
David Frankel, City Attorney