

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-104
Series of 2015

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A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE CITIES OF NORTHGLENN, AURORA, COMMERCE CITY, FEDERAL HEIGHTS, AND THORNTON AND ADAMS COUNTY SHERIFF MICHAEL MCINTOSH, IN HIS OFFICIAL CAPACITY, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS

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

Section 1. The Settlement Agreement between the Cities of Northglenn, Aurora, Commerce City, Federal Heights, and Thornton, and Adams County Sheriff Michael McIntosh, in his official capacity, and the Board of County Commissioners of the County of Adams, attached hereto as **Exhibit A**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

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

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the cities of Aurora, Commerce City, Federal Heights, Northglenn, and Thornton, Colorado (collectively "Cities" or "Plaintiffs"), and Sheriff Michael McIntosh, in his official capacity (hereinafter "Sheriff"), and the Board of County Commissioners of the County of Adams (hereinafter "BOCC") (collectively "Parties").

WHEREAS all of the municipalities in the County of Adams, Colorado, have the statutory ability to use the Adams County Detention Facility ("ACDF") to house their municipal inmates "subject to conditions imposed by law, and with the consent of the Board of County Commissioners;"

WHEREAS the prior Sheriff Douglas N. Darr instituted a cap on municipal inmates that limited the number of inmates accepted on municipal charges to thirty (30), not including Domestic Violence inmates;

WHEREAS the Cities instituted a lawsuit in the Adams County District Court, Civil Action No. 2014CV30353, titled:

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 ("Action")

which is currently pending;

WHEREAS it is the Cities' position in the Action that the Sheriff does not have the legal authority to limit the number of municipal inmates at the ACDF;

WHEREAS it is the position of the Sheriff that, consistent with his legal responsibilities, he has the authority and responsibility to limit the number of inmates he will accept in the ACDF, based upon the safety of Facility staff, including law enforcement personnel, and inmates in the Facility;

WHEREAS since the lawsuit was filed, the BOCC passed a resolution limiting the number of municipal inmates in the ACDF to thirty (30);

WHEREAS the Parties to the Action executed a temporary Settlement Agreement, which stayed the litigation until May 15, 2015, and established a soft cap of 65 municipal inmates, not including domestic violence inmates;

WHEREAS the Court extended the stay and the operation of the temporary Settlement Agreement until July 31, 2015, so that the Parties could draft and execute another Settlement Agreement;

WHEREAS it is the intent of this Agreement to dismiss the Action without prejudice in exchange for the conditions stated in this Agreement.

NOW WHEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

A. In addition to inmates being held on domestic violence related charges, there will be a soft cap of 80 municipal inmates in the ACDF on any one day, unless otherwise agreed upon by the Parties. This soft cap, which may be amended at any time as agreed upon by the Parties will be administered as follows:

1. The Sheriff will continue to publish, by email, the daily list of municipal inmates in the ACDF. The list will continue to be published no later than 9:00 a.m. each day.

2. To assure that each City receives the daily list of municipal inmates, each City will furnish the Sheriff with the names and email addresses of that City's officials who are to receive the list. The Sheriff will place said officials on a Listserve of persons to whom the daily list is to be sent. Each City will have the responsibility of notifying the Sheriff of any change in the identity of its officials designated to receive the list. Emailing the daily list to the persons designated on the Listserve is presumed to be appropriate publication.

3. The Sheriff's daily list of municipal inmates will, if applicable include the number of municipal inmates above 80.

4. The Cities will be responsible for checking the list to determine if it contains more than 80 municipal inmates. If it does, the Cities will notify the Sheriff by email or similar writing (1) whether to release one or more inmates so as to come within the cap of 80; (2) if any inmate is to be released, the identity of that inmate; and (3) provide a written court order granting release of the identified inmate. This notification shall occur no later than 12 hours after publication of the list, or by 9 p.m., whichever is later.

5. Persons being held on both an Adams County State charge and an Adams County Municipal charge shall not be counted against this cap. Persons being held on both an Adams County Municipal charge and a State charge from outside Adams County will not count against the cap until the detention associated with the State charge has been satisfied. Persons being held by two or more municipalities shall only be counted one time, for the

purpose of establishing the 80 inmate cap, and the Sheriff's report will show the multiple cities with holds. When held by two or more municipalities, an inmate shall be counted as a portion for each holding agency on the Sheriff's report, and the total of those portions shall equal only one person towards the inmate cap.

6. Unless the Cities timely notify the Sheriff to release enough municipal inmates to come within the cap of 80, and provide the Sheriff with a court order to release the identified inmates, then, for each inmate in excess of 80, the Sheriff is entitled to receive \$45 per diem from one or more of the Cities, without any additional costs, determined as follows:

a. The Cities will, by 5:00 p.m. on the second succeeding business day following the publication of the list of municipal inmates, notify the Sheriff which City or Cities to charge. After that time, no City may challenge the municipal inmate count by the Sheriff for the corresponding day.

b. Failing timely notification from the Cities concerning which City or Cities to charge, the Sheriff will charge the City or Cities whose inmate(s) caused the number of municipal inmates to exceed 80 on a last-in first-charged basis.

There will be no charges or fees for the housing and care of the municipal inmates covered by the 80 inmate cap.

B. The actual processing of the bills for inmates exceeding 80 will be done by the Sheriff, unless the Sheriff and the County otherwise agree. The Cities billed shall remit payment to the County within 30 days, with the money to be deposited in the County's general fund. The County will not, without consent of the Sheriff, forgive, waive, or release any amount billed by the Sheriff.

C. In addition to the daily list of municipal inmates, the Sheriff will furnish each City using the Listserve (see paragraph A.2) with copies of the average daily population report of all inmates (municipal and otherwise) at the time of the report's regular distribution, but in no event less than monthly.

D. The BOCC, the Sheriff, and the Cities agree that the eventual removal of restrictions on the number of municipal inmates housed in the ACDF is desirable, and agree to work together in good faith toward that goal. The Parties recognize that there are many variables that affect the ability of the ACDF to accept municipal inmates, including physical constraints of the facility,

classification issues, staffing requirements, fiscal limitations, statutory considerations, judicial sentencing and other factors. The Parties also acknowledge the independent authorities and responsibilities of the BOCC, the Sheriff, the Cities and the Courts related to effectively and safely addressing the criminal justice needs of Adams County. In that vein, assuming no other change occurs by agreement of the Parties before the time for review, the Parties agree to review and evaluate the terms of this Agreement, including the cap, in good faith at least every eighteen months, with the first date for completion of such review being on or before March 9, 2017.

E. The Parties agree that the continuation of the Criminal Justice Coordinating Committee ("CJCC") will be useful to achieving the ends of the Settlement Agreement. Subject to annual appropriation and approval by the BOCC, the County agrees to continue providing facilities for meetings and continue funding of the Criminal Justice Planner position ("Planner") to staff the CJCC. The Planner will be a County employee subject to the employment policies of Adams County. The Planner's daily activities for the CJCC will be assigned and supervised by the CJCC chair on behalf of the CJCC. The Planner will keep the County apprised of the assignments that the Planner is working on for the CJCC. Although the Planner's primary job function is support of the CJCC, the County may also give the Planner assignments. All expenses incurred by the Planner in the performance of his/her duties must be approved by the County Manager or his designee. The Planner's periodic performance evaluations will be performed by the CJCC chair and the County Manager, or his designee. The County Manager, or his designee, and the CJCC chair shall promptly bring any issues of concern regarding the Planner's performance to each other's attention so the two have the opportunity to address the matter. Major employment decisions such as termination and discipline will be made by the County Manager, or his designee, following consultation with the CJCC chair.

F. Each of the Parties to this Agreement shall bear their own costs, expenses, and attorneys' fees incurred in connection with the Action. The City of Aurora agrees that it will not seek damages against Adams County related to the housing of municipal inmates that may have accrued up through the date that the stay is lifted and the Action is dismissed.

G. Upon the execution of this Agreement, the Parties agree to cooperate fully and to take all additional actions which may be necessary to dismiss without prejudice all claims in this matter and to execute any and all necessary documents to affect that purpose.

H. The BOCC will pass a resolution as soon as practicable, but no later than thirty (30) days following the execution and adoption of this Agreement, that is in conformance with this Agreement. The BOCC agrees to rescind any resolution that may be inconsistent with this Agreement (including, but not limited to Resolution 2014-113). The BOCC agrees that it will not adopt

any resolution limiting municipal inmates beyond the agreement set forth herein without consulting the Sheriff and the Cities.

I. This Agreement shall supersede and replace the prior Settlement Agreement in this Action entered as an Order of this Court on September 23, 2014, and shall be effective when fully executed by all the Parties, and when approved and adopted by the governing bodies of the Parties, if applicable.

J. 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. The provisions of paragraph F above shall remain in full force and effect in the case of termination of this Agreement.

K. This Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings. The Parties represent that the Parties signing this Agreement have full lawful authority to execute this Agreement on behalf of the Party for whom they are signing.

L. This Agreement shall not be assigned by any Party to any successor or assigns without the prior written consent of the other Parties.

M. 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.

N. This Agreement shall be governed by the laws of the State of Colorado and any legal actions concerning the provisions thereof shall be brought in the County of Adams, State of Colorado.

DATED this _____ day of July, 2015.

FOR THE PLAINTIFFS:

OFFICE OF THE CITY ATTORNEY FOR THE CITY OF AURORA

s/_____
Michael J. Hyman, Aurora City Attorney
Teresa L. Kinney, Senior Assistant City Attorney
Daniel L. Money, Assistant City Attorney

CITY OF COMMERCE CITY, COLORADO

Brian K. McBroom, City Manager
Commerce City Civic Center
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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: _____

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: _____
Joyce Downing, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann
City Attorney

CITY OF THORNTON, COLORADO

Jack Ethredge, City Manager
9500 Civic Center Drive
Thornton, Colorado 80229
Telephone: (303) 538-7210

ATTEST:

Nancy Vincent, City Clerk

APPROVED AS TO FORM:
Margaret Emerich, City Attorney

Gary Jacobson, Deputy City Attorney (14787)
Sarah Geiger, Assistant City Attorney (40377)

ATTORNEYS FOR THE CITY OF THORNTON

KATHRYN L. SCHROEDER, ESQ.

ATTORNEY FOR DEFENDANT
SHERIFF MICHAEL MCINTOSH

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kathrynschroeder@earthlink.net

**ADAMS COUNTY BOARD OF
COUNTY COMMISSIONERS**

Chair
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APPROVED AS TO FORM:

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