

TO: Fort Collins City Council

Loveland City Council

Kelly DiMartino, Fort Collins City Manager Steve Adams, Loveland City Manager Carrie Daggett, Fort Collins City Attorney Moses Garcia, Loveland City Attorney

FROM: Dan Reimer, Special Counsel to Cities on Airport Matters

DSR LLC

DATE: October 30, 2023

SUBJECT: Airport Governance

I. Introduction

The Northern Colorado Regional Airport ("Airport" or "FNL") is owned jointly by the Cities of Loveland and Fort Collins ("Cities"), managed by the Northern Colorado Regional Airport Commission ("Commission"), and operated by a professional airport staff, led by an Airport Manager.

The current allocation of responsibility has been in place since 2015. In the sixty-year history of the Airport, multiple approaches to airport governance have been employed, adjusted and abandoned. In each of these approaches, the Cities have been supported by a separate entity, alternately referred to as a board, ad hoc committee, airport authority, steering committee and, most recently, a commission, to provide some level of responsibility to, for example, enter into agreements, promulgate rules, develop budgets and expend funds. Nevertheless, the Cities consistently have reserved for themselves the roles of owner, operator, proprietor and sponsor of the Airport.

The Cities wish to revisit Airport governance. A longstanding concern with joint ownership is that, regardless of the precise scope of day-to-day responsibilities delegated to a commission or staff, it remains cumbersome to seek and obtain approval from both Cities on policy-level and "big ticket" items. Also of concern is the fact that the current approach necessarily means that decision-making and information about the Airport is widely and unevenly dispersed among elected officials and staff of the two cities, members of the Commission, and the professional Airport staff. This has led to continuing debate about the appropriate allocation of responsibility and whether those asked to make decisions are up-to-speed and fully equipped to do so.

II. Short History

The Cities jointly acquired roughly 1,000 acres of private property in 1964 to construct the Airport, which opened in 1965. The property remains owned by the Cities jointly.¹

The chronology and sequence of Airport governance can be summarized as follows:

- **1965 1979** Airport managed with assistance of Airport Board, including representatives of Fort Collins, Loveland and Larimer County
- **1979 1983** Airport managed with assistance of Ad Hoc Committee, consisting of two council members and city managers of each city
- **1983 1990** Airport managed with assistance of Airport Authority; however, Cities reserved considerable decision-making responsibilities (unlike how other airport authorities operate in the State)
- 1990 2015 Airport managed with assistance of Steering Committee, with representation by both Cities
- 2015 2023 Airport managed with assistance of seven-member Commission, pursuant to the *Amended* and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport (Jan. 2015), as amended

Although the Airport governance structure appears variable, governance of FNL has retained the same two essential elements: (1) policy-making and big-ticket decision-making reserved to the two City Councils, including decisions as to the disposition of Airport property jointly owned by the Cities; and (2) some delegation of responsibility and advisory services from a distinct body, with representation by the Cities and sometimes other stakeholders.

III. Short Survey of Trends in Airport Governance

Across the U.S., airports are owned and operated by a multiplicity of government types, at the state, regional and local level. There are two summary reports on this topic published by the Transportation Research Board of the National Academies of Sciences:

- 1. Airport Cooperative Research Program, Legal Research Digest 7, <u>Airport Governance and Ownership</u> (2009).
- 2. Airport Cooperative Research Program, Research Report 245, <u>Guide to Evaluating Airport</u> Governance Structures (2022).

¹ Real property acquired after 1979 is held in equal (50/50) proportion by the Cities; however, real property acquired prior to 1979 is held one-third by Loveland and two-thirds by Fort Collins.

These reports provide a breakdown on how airports across the country are governed. There is a companion <u>website</u> to Research Report 245 that provides governance information for more than 3,000 airports.

In very short summary, there is no particular pattern; airports are governed by a variety of public entities regardless of size, geography or other attributes. Colorado is a microcosm of this national phenomenon. Some airports in the state are owned by a municipality, including Denver International Airport and Colorado Springs Airport. Some airports are owned by a county, including Eagle County Regional Airport and Aspen/Pitkin County Airport. Some airports are owned by a special purpose airport authority, including Grand Junction Regional Airport and Centennial Airport. Two airports are owned jointly by a County and City (Durango-La Plata County and Salida Harriet Alexander Field), although in both instances the city operates the airport.

The principal debate on the subject of airport governance among academic researchers and airport professionals is whether airports governed by a special-purpose entity (airport authority, port authority or special district) are more efficient and otherwise superior to airports governed by a general-purpose entity (county or city).

The academic research, including studies cited in the two TRB publications, indicates that there is no "best" airport governance model. Nevertheless, there is a persistent belief that special-purpose entities like airport authorities can provide distinct advantages. Commonly cited advantages include a dedicated and focused governing body, reduced political influence, greater flexibility in hiring professional staff and setting compensation, and more flexibility in contracting and procurement to meet market demands.

There are three discernable trends in airport governance over the last twenty-five years.

- 1. Most of the completed changes in governance involved transfer from a general-purpose government to a special-purpose airport authority. Examples include the creation of the Syracuse Regional Airport Authority, Connecticut Airport Authority, Des Moines Airport Authority, Wayne County Airport Authority, and Allegheny County Airport Authority.
- 2. There have been several contested efforts by state legislatures to forcibly regionalize the governance of airports located in large metropolitan areas. Such efforts have occurred in Atlanta, Georgia; Charlotte, North Carolina; Jackson, Mississippi; and Nashville, Tennessee.
- 3. Very few airports in the U.S. have been privatized, notwithstanding Congressional support for privatization. The only airport to privatize in recent years is the Luis Muñoz Marin International Airport in San Juan, Puerto Rico. This issue is discussed below in the discussion of available options for FNL.

IV. Identification of Continuing Concerns

In order to identify the nature and extent of concerns with the current governance structure, I conducted interviews with each of the seven City Councilmembers from the City of Fort Collins (September 6-7, 2023) and nine City Councilmembers from the City of Loveland (September 13 and 15, 2023).

Notes from the sixteen Councilmember interviews are attached at **Attachment B**. While it is not surprising that there was not unanimity among sixteen elected officials, the following key points came across in the interviews:

- 1. There appears to be consensus that the current governance structure is not working. Both Cities agree that Loveland has greater influence over Airport-related matters and that Loveland derives greater benefit from the Airport. And, a common refrain during the interviews was that the Cities are very different, resulting in different views on the Airport and approach to Airport matters.
- 2. The two cities do not (currently) have a shared vision for the future of the Airport. This is manifest primarily in only modest belief by Fort Collins about the prospects for commercial passenger service and greater interest in use of the Airport as a multi-modal transit hub. Loveland representatives generally were more optimistic about the prospects for the Airport, including commercial passenger service.
- 3. There is a desire to change the governance structure. There was virtually no support for the status quo alternatives, summarized below. City Council members appear very open to a change, including through detailed examination of available options and further engagement in the process. Some Council members observed that this is not the highest priority item in the community, which may make it difficult to find the time and resources necessary to make a change.
- 4. There was no immediate consensus on an alternative governance structure. Admittedly, these interviews occurred before Council members had been presented with available options (including this memorandum). However, there was some interest in delegating responsibility to a dedicated board (the airport authority and special district options summarized below). There was some interest in transferring the Airport to Loveland, but no interest in transferring the Airport to Fort Collins.

V. Options, Transfer Process and End State

At various points, the Cities have received internal and external recommendations on the best or most efficient approach to governance, some of which have led to changes, as summarized above. The current effort avoids recommendations and instead focuses on the options, the mechanics of transfer, and a discussion of the conditions after transfer, to help the Cities reach their own conclusions on a path forward.

The attached matrix (**Attachment A**) organizes the options into five groups: (A) maintaining the current structure, (B) creating an airport authority, (C) transferring to one general-purpose government, (D) creating a special district, and (E) privatizing the Airport or aspects of it.

To supplement the matrix, the following information is offered on the five options:

A. Maintain Current Structure

The Cities can continue to operate the Airport in accordance with the 2015 Intergovernmental Agreement, as amended in 2016 and 2019. Alternatively, the Cities could revisit and amend the Intergovernmental Agreement to reallocate responsibility among the Cities, Commission and Airport staff, based on recent experiences and identified concerns with the current allocation of responsibility.

This option further would permit the Cities to make changes outside the IGA. For example, the noted concern with a lack of information and input could be addressed through more regular briefings, joint information meetings by the two City Councils, etc. And, concerns with Airport management could be addressed by increasing the Airport budget, increasing staff, etc.

B. Airport Authority

The Colorado Public Airport Authority Act, C.R.S. Section 41-3-103 – 41-3-108, authorizes municipalities, counties and combinations (such as two municipalities) to create a separate political subdivision to own, operate, manage and improve airports. Airport authorities have virtually all of the hallmarks of political subdivisions, including the power to contract, sue-and-be-sued, hold property, incur debt and issue bonds. Importantly, airport authorities have no power to impose taxes. The originating local governments have the power to appoint members to the governing body (comprised of 5 to 9 members) and also retain the power to dissolve an airport authority that they created.

In the last legislative session, the Colorado Legislature enacted and the Governor signed HB 23-1156, which included extensive updates to the Public Airport Authority Act that clarified and altered the powers of airport authorities. While not expressly intended to make airport authorities more attractive as an airport governance model, HB 23-1156 does enhance certain advantages of airport authorities.

Airport authorities largely are independent of their originating local governments. There is one important caveat: the FAA requires originating local governments to serve as co-sponsors for purposes of the terms, conditions and assurances of grant agreements for planning and improving airports. The essential reason is that the FAA must be assured, in the event the originators dissolve the airport authority, that there will be an entity responsible for continuing to operate the airport, complete unfinished work, and satisfy the other contractual obligations. The FAA's power to make such a demand was challenged and upheld in a case involving the Grand Junction Regional Airport Authority.² The legal and practical consequences of co-sponsorship are untested.

The process for transferring the Airport to an airport authority would include the following steps:

i. The Cities would enter into an intergovernmental agreement to create an airport authority. That entity would establish Bylaws and other governing documents.

² Walker Field, Colorado, Public Airport Authority v. Adams, 606 F.2d 290 (10th Cir. 1979).

- ii. The Cities and the newly created airport authority would enter into an assignment and assumption agreement by which the airport authority would assume the real and personal property, assets and liabilities associated with the Airport, including the obligations under FAA grant agreements. Most likely, the Cities would enter into a separate real estate transaction to transfer their respective interests in Airport real property to the newly-created airport authority. Typically, there is no money paid by the newly created airport authority for the real and personal property and other assets of the Airport.
- iii. The airport authority would have to apply to the FAA for a new Airport Operating Certificate to accommodate commercial passenger service, consistent with the current Airport plans.
- iv. The airport authority would have to hire or contract for its own support services (e.g., human resources, legal, law enforcement, etc.).

As reflected in the matrix, there are three permutations of an airport authority:

- i. The Cities could establish a "true" airport authority created under the Colorado Public Airport Authority Act, similar to the other four airport authorities in the state, which would include transfer of ownership of the Airport and full decision-making authority.
- ii. The Cities could reestablish a municipal authority, consistent with the governance structure during the period 1983 to 1990. Under that approach, the Cities would not transfer ownership of the Airport to the airport authority and would retain decision-making authority for policylevel and big-ticket items.
- iii. The Cities could lobby the Colorado legislature for a further amendment to the Colorado Public Airport Authority Act that would make it possible for the Cities to avoid serving as co-sponsors, and create an airport authority under the amended law. This might be possible if, for example, the originating local governments were prohibited from dissolving an airport authority that they created. The precise details of such a statutory amendment have not been fully explored; however, preliminary discussions with FAA officials suggest that there may not be any way to amend the Act that will satisfy FAA.

C. Transfer to One General Purpose Government

In some ways, the most straightforward option is for one city to transfer its ownership interest in the Airport to the other city. The City of Loveland would be a good candidate since (i) it currently provides most of the central support services for the Airport, and (ii) the Airport is located in the City of Loveland and surrounded by Loveland neighbors. The City of Fort Collins would be a good candidate since (i) it is the larger of the two cities, (ii) it has a larger staff and budget, and (iii) its residents may be users of the Airport and/or affected by Airport operations. As a third choice, the Cities could divest of the Airport altogether and transfer the Airport to Larimer County, which represents the broader constituency of Airport users and those impacted by the Airport.

In any of these approaches, the Cities would transfer ownership of the Airport, which currently is held jointly by the Cities. Typically, no money is paid when transferring airports from one public entity to another, in part because sale proceeds are considered airport revenue under federal law and FAA policy and thus must be used exclusively for airport purposes. The Cities would enter into an assignment and assumption agreement, as necessary to transfer the Airport to an airport authority. Unlike an airport authority, the city divesting its share of the Airport would be able to relinquish its obligations to the FAA. The single entity made responsible for holding the Airport would have to provide for staffing (likely through the creation of a Department of Aviation) and administrative support (human resources, finance, legal, etc.).

The obvious downside with this option is that it would leave either or both cities with less representation in the governance and management of the Airport. There may be ways to mitigate this risk, such as creating an advisory committee, with regional representation.

D. Special District

In some states, the state legislature both provides for local governments to establish special-purpose airport authorities and also creates special-purpose entities to govern specific airports. This has not been the experience in Colorado; however, I am not aware of any legal impediment that would prohibit the Colorado Legislature from doing so.

Establishing a special district through Airport-specific legislation would (i) allow the legislature to compose the governing body in a way that best reflects the longstanding interests of the Cities; (ii) delegate specific powers to the district, such as the power to impose taxes, not available to airport authorities; and (iii) possibly constitute the district in such a way that FAA would not require the Cities to remain co-sponsors.

E. Privatization

It is possible to privatize portions or all of an airport. There are two summary reports on this topic published by the Transportation Research Board.

- 1. Airport Cooperative Research Program, Report 66, <u>Considering and Evaluating Airport Privatization</u> (2012).
- 2. Airport Cooperative Research Program, Research Report 227, <u>Evaluating and Implementing Airport Privatization and Public-Private Partnerships</u> (2021).

As reflected in the matrix, there are three permutations of this option:

i. *Private airport manager*. The Cities could contract with a private company to manage the Airport. The Cities would remain co-sponsors, and both the Cities and Commission would retain oversight. However, this option might allow the Cities to delegate further responsibility to the private airport manager than currently provided to Airport staff.

- ii. Management agreement and lease. This option is similar in that it entails contracting with a private company to manage the Airport. However, the Cities further would lease portions of the Airport to the private company to allow that entity to also be responsible for developing and operating specific facilities. This might be a way, for example, for a private company to assume responsibility to construct and operate a new passenger terminal.
- iii. *Full privatization*. Federal law provides a mechanism for local governments to sell or lease airports to private entities, known as the Airport Investment Partnership Program. The advantage of privatizing under the Program, as compared to other approaches to privatization, is that it allows the airport owner to transfer sponsorship to the private entity and to extract revenue from the sale or lease of the airport. Interest in the Program has been low, in part because full privatization strips the airport owner and community of control over a vital transportation and economic asset. Most communities to consider changes in governance have opted for a less dramatic approach, including creation of airport authorities and contracting with private entities for less than full control.

VI. Conclusions and Recommendations

Based upon the work and analysis performed to date, the conclusions and recommendations of the project team, comprised of the consultant and Cities Staff, are as follows:

- 1. The analysis yielded twelve (12) viable options for go-forward governance of the Airport.
- 2. Based on the history of the Airport and perspectives shared to date, the options recommended for continued evaluation are: (i) Airport Authority, (ii) Special District, and (iii) Fort Collins divestiture.
- 3. The Cities should refine alternatives and identify an option for consideration and adoption by the City Councils.
- 4. Further coordination between the Cities could include joint meetings of both City Councils or meetings among Council-appointed representatives. These discussions could be supported by Cities Staff, a facilitator or mediator, and myself.
- 5. The Cities should develop a public participation plan to solicit input from key stakeholders, including the Airport Commission, Airport tenants and community members.



Attachment A Menu of FNL Governance Options

No.	Option	Description	Examples	Pros	Cons
	Maintain Current Structure				
1.A	Status Quo	Maintain current governance structure, meaning Cities continue to own FNL and set policy, with certain powers delegated to the Commission and Airport staff, pursuant to the 2015 Intergovernmental Agreement, as amended	FNL Today	 Stability and consistency Recognizes that some perceived problems can be addressed outside IGA (e.g., transparency and communication) 	Not likely to address core concerns with efficiency and political accountability
1.B	Amend 2015 IGA	Execute third amendment to IGA to adjust powers of Cities and Commission. Potential amendments include (1) withdrawing powers delegated to Commission, (2) expanding powers delegated to Commission, or (3) abolishing Commission and reestablishing advisory committee (as used historically).	FNL (1979 – 1983 and 1994 – 2015)	 Allows rebalancing of obligations while maintaining stability Flexible; allows variety of adjustments to expand or contract Commission's powers 	Not likely to address core concerns with efficiency and political accountability

No.	Option	Description	Examples	Pros	Cons
	Airport Authority				
2.A	"True" Airport Authority	Cities form Airport Authority pursuant to C.R.S. § 41-3-102 as a separate political subdivision and abolish Commission; Cities remain co-sponsors for purposes of federal grant agreements	GJT, APA, TEX, GXY	 Increased efficiency Definitive solution to joint ownership Retains influence by Cities, through board member appointments 	 Loss of direct control Cities would remain cosponsors Loss of financial backstop for Airport
2.B	Municipal authority	Cities retain ownership but delegate responsibility to Commission or newly-created entity to serve as the Cities' agent for operating and improving the Airport	FNL (June 1983 – May 1990) Many states expressly permit municipal commissions (see e.g., lowa Code § 330.17 – 330.24)	 Increased efficiency through additional delegation Cities retain some measure of control 	Tried in the past and rejected
2.C	Authority pursuant to proposed revised Act	Cities lobby for change in Colorado Public Airport Authority Act that would allow Cities to transfer ownership and control to an Airport Authority without Cities also having to serve as co-sponsors	N/A	Theoretical means of allowing Cities to avoid obligations of co-sponsors	Many uncertainties (political support, FAA support)

No.	Option	Description	Examples	Pros	Cons
	Transfer to One General Purpose Government				
3.A	Transfer to City of Loveland	Options for transfer: (1) Fort Collins transfers all interest in Airport to Loveland and parties terminate IGA, or (2) Cities amend IGA to delegate full responsibility to Loveland to operate and improve Airport. Loveland could govern and manage Airport directly or with support of advisory committee, as reflected in other options.	DEN, COS, LMO, BDU, SBS, PUB	 Resolves joint ownership Increased efficiency Reflects that Loveland currently provides more administrative support Reflects that Airport is located in Loveland Airport neighbors also are located in Loveland 	 Eliminates Fort Collins' control and influence No likely financial gain for Fort Collins
3.B	Transfer to City of Fort Collins	Same options for transfer as above, only directed to Fort Collins rather than Loveland	DEN, COS, LMO, BDU, SBS, PUB	 Resolves joint ownership Increased efficiency Fort Collins is larger of two cities Fort Collins has larger administration to support the Airport 	 Does not recognize Loveland's historical and currently active role in managing and supporting Airport Loveland would retain taxing and land use jurisdiction Neighbors in Loveland might feel loss of representation

No.	Option	Description	Examples	Pros	Cons
3.C	Transfer to Larimer County	Cities transfer property ownership and control to Larimer County	EGE, ASE, MTJ, BJC, CFO, RIL	 Reflects regional interest in Airport County has had representation historically Avoids fight over which city would assume control 	 County is not presently part of airport governance County has no experience managing airport Suffers from some of same problems as transfer to Fort Collins
			Special District		
4	Creation of Special District by Colorado Legislature	Colorado Legislature creates special district, with particular powers (rather than create airport authority under Public Airport Authority Act)	Truckee Tahoe Airport (CA), Monterey Regional Airport (CA)	 Might allow for novel structure to address some or all perceived problems with status quo and other options Might be means to convey taxing power to airport district 	 Untested in Colorado Uncertain advantages over airport authority created under current law
			Privatization		
5.A	Private Airport Manager	Cities amend or terminate IGA and contract with a private airport manager to operate the Airport; Cities would remain co- sponsors and remain responsible for improving the Airport	Los Angeles County (CA) airports, Teterboro Airport (NY), Bob Hope Airport (CA)	 Delegates control to professional airport management firm Might enhance tenant and community confidence Might limit Cities' financial risk 	Significant loss of control

No.	Option	Description	Examples	Pros	Cons
5.B	Management Agreement and Lease	Cities amend or terminate IGA and enter into (1) a management agreement with a private entity to manage the Airport, and (2) a lease with the same private entity to improve and operate portions of the Airport (e.g., a new passenger terminal); Cities would remain cosponsors	Tweed-New Haven Airport (CT) U.S. Virgin Islands (planned)	Means to address both governance and new terminal	 Limited experience with model in the U.S. Significant loss of control
5.C	Full Privatization	Cities transfer (by sale or lease) Airport to private entity to manage and improve the Airport under Airport Investment Partnership Program; private entity becomes cosponsor	Luis Muñoz Marin International Airport, San Juan, Puerto Rico	 Cities can extract revenue from Airport Limits future contributions Improves performance and efficiency by relying on professional airport operator Transfer sponsorship 	 Limited interest and support in U.S. Significant loss of control

Attachment B City Council Interview Notes

City of Loveland	City of Fort Collins
 Key Themes: 1. The current governance structure is not working 2. Airport is an asset to the community, but governance structure makes it difficult to realize potential 3. Support for commercial passenger service and planned new terminal 4. Loveland derives greater benefits from Airport than Fort Collins 5. Cities (and City Councils) are very different 	 Key Themes: 1. Current governance structure is not working 2. City of Loveland has greater control/influence 3. Cities (and city councils) are very different 4. Uncertain vision for Airport (perhaps lack of vision)
 Other Comments: Differing views about prospects for air service development (e.g., likely destinations, intrastate service, ability to market Northern Colorado as destination) Disappointment in the lack of coordination and consensus on the Cities' financial contributions to the new terminal Some disappointment in virtual tower and Landline Uncertain vision (or lack of vision) about Airport's future Airport currently serves largely private interests but efforts should be made to enhance public benefit Need for more marketing and messaging about services and benefits of the Airport Fort Collins has less incentive to invest in Airport Some concern that Loveland City Council members, who do not also serve on the Airport Commission, are not fully up-to-speed on Airport matters 	 Other comments: Lack of confidence that commercial passenger service is a realistic goal Interest in transit hub (intercity bus, rail, etc.) Disappointment in Landline (to date), including lack of approval to bypass security screening at DEN Disappointment in virtual tower (to date), including disappointment in the lack of a contingency plan if virtual tower is not approved Disappointment in process for new hangar development, including lack of competitive solicitation Concern that City Council is not provided regular and adequate information Concern that differences in how Cities operate (coupled with the structure of the IGA) give Loveland greater control over management of Airport Concern that Airport currently is serving largely private interests (who may not be paying their fair share) and belief that public

City of Loveland	City of Fort Collins
	 Only bring in City Council when required under 2015 IGA or need money Loveland derives financial benefit from tax revenue (the extent of which is unclear), but Fort Collins does not Loveland has disproportionate control through land use, zoning and building jurisdiction Airport does not provide direct benefit to Fort Collins Might benefit from broader community participation (e.g., Windsor) Airport, like the region, is growing and would benefit from more professional management Cities are not aligned in positions on and support for growth (commercial and residential)
 Comments on Governance: 1. Support for transfer to Loveland 2. Support for airport authority 3. Some support for special district, including ability to give entity taxing power and make governing body an elected position 4. Some support for private airport manager 5. Some support for multi-step process (e.g., transfer to Loveland, followed by creation of authority, advisory board or private manager) 6. No support for transfer to Fort Collins 7. Some concern with Fort Collins continuing to play a role in Airport governance 8. Need to study options a. Need better understanding of composition of new governing body (authority or district) b. Need better understanding of financial issues, including whether Fort Collins would/could be compensated in some way if Airport is transferred to Loveland 	Comments on Governance: 1. No consensus 2. Some support for airport authority (but not uniform) a. NOTE: There was considerable interest in understanding the composition of an airport authority's governing body, including whether elected officials, city staff and/or Airport staff could serve as airport commissioners 3. Some support for transfer to Loveland, but also some opposition 4. No support for transfer to Fort Collins 5. No interest in privatization 6. No support for "Do Nothing" 7. Need to study options