

**INTERGOVERNMENTAL AGREEMENT FOR PROJECT FUNDING AND
REIMBURSEMENT FOR INITIAL DESIGN OF ARTA PHASE I IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT FOR PROJECT FUNDING AND REIMBURSEMENT FOR INITIAL DESIGN OF ARTA PHASE I IMPROVEMENTS (this “**Agreement**”) is made and entered into August 23, 2018, (the “**Effective Date**”), by and between **AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT**, a political subdivision and quasi-municipal corporation of the State of Colorado (“**AACMD**”) and the **AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY**, a political subdivision and body corporate of the State of Colorado formed pursuant to C.R.S. Section 43-4-601 et seq (“**ARTA**”), **ARTA** and **AACMD** are referred to collectively herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. ARTA was organized pursuant to an Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the AACMD Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018 (the “**Establishment Agreement**”) for purposes of constructing, or causing to be constructed, a Regional Transportation System.

B. The Regional Transportation System is defined in the Establishment Agreement and includes, among other improvements, the design of the improvements more particularly described on Exhibit A attached to this Agreement and incorporated herein by this reference (the “**Phase I Improvements**”).

C. Certain adjacent improvements will be designed together with the Phase I Improvements as such adjacent improvements are an integrated part of the roads included in the Phase I Improvements, (for example additional lanes to the lanes determined to be regional in the same road), (the “**Adjacent Improvements**”)

D. ARTA has determined it to be in the best interest of its taxpayers to begin the design of the Phase I Improvements and the **Adjacent Improvements**.

E. ARTA does not have funds available to begin the design of the Phase I Improvements.

F. ARTA and AACMD are in discussions regarding the funding of the Regional Transportation System, and in particular the Unsolicited Proposal to Design, Build and Fund Certain Transportation Improvements submitted to ARTA by AACMD on June 8, 2018 (the “**Unsolicited Proposal**”).

G. ARTA and AACMD desire to proceed with the beginning of the design of the Phase I Improvements as these discussions progress.

H. AACMD has established a project budget in an amount not to exceed Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) for payment of the initial design work on the Phase I Improvements that is anticipated to be incurred in a ninety (90) day period which

will begin on the Effective Date of this Agreement (respectively the “**Initial Design**”, “**Initial Design Period**” and the “**Initial Design Costs**”).

I. AACMD has established a project budget in an estimated amount of Two Million Seven Hundred Thousand and No/100 Dollars (\$2,700,000) for payment of the initial design work on the Adjacent Improvements that is anticipated to be incurred in a ninety (90) day period which will begin on the Effective date of this Agreement (respectively the “**Adjacent Improvement Initial Design**”, “**Adjacent Improvement Initial Design Period**” and the “**Adjacent Improvement Initial Design Costs**”).

J. AACMD has funds available and has determined it to be in the best interest of its taxpayers to begin the Initial Design on behalf of ARTA pursuant to the terms and conditions of this Agreement.

K. ARTA and AACMD desire to enter into this Agreement to set forth their understanding regarding the funding of the Initial Design by AACMD and the terms for reimbursement of AACMD by ARTA together with such other matters as are hereinafter set forth.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ARTA and AACMD agree as follows:

1. Funding and Design Activities by AACMD. The Parties acknowledge and agree that AACMD shall fund the Initial Design and the Adjacent Improvements Initial Design and shall cause the Initial Design and the Adjacent Improvements Initial Design to proceed in the manner hereinafter set forth. The parties acknowledge that the Initial Design Costs were based upon an estimate of design costs that would be incurred on the Initial Design within the Initial Design Period and that the design of the Phase I Improvements will not be complete within the Initial Design Period or for the Initial Design Costs. The parties also acknowledge that the Adjacent Improvements Initial Design Costs were based upon an estimate of design costs that would be incurred on the Adjacent Improvements Initial Design within the Adjacent Improvements Initial Design Period and that the design of the Adjacent Improvements will not be complete within the Adjacent Improvements Initial Design Period or for the Adjacent Improvements Initial Design Costs

1.1 Generally. AACMD shall coordinate, administer and oversee: (i) the preparation of all budgets, timetables and other documents pertaining to the Initial Design and the Adjacent Improvements (ii) the funding of the Initial Design and the Adjacent Improvements. AACMD will engage engineers, surveyors and other consultants as required for the Initial Design and the Adjacent Improvements (“**Service Provider(s)**”).

1.2 Comply with Legal Requirements. AACMD shall comply with all terms and conditions of applicable law in performing its obligations under this Agreement.

1.3 Taxes, Fees and Permits. AACMD or its Service Providers shall pay all applicable sales, use, and other similar taxes pertaining to the Initial Design, if any.

1.4 Insurance. AACMD shall procure and maintain and shall cause the Service Providers to procure and maintain, the insurance described in **Exhibit B** attached hereto during the Initial Design.

2. Accounting and Reporting. AACMD shall keep good and accurate books and records in sufficient detail to provide periodic reporting on the Initial Design Costs and the Adjacent Improvements Initial Design and the payment of same which books and records shall be made available for review (upon reasonable prior written notice) by ARTA.

2.1.1 AACMD shall provide a verbal report as to the progress made on the Initial Design and Adjacent Improvements Initial Design to ARTA at each Board meeting during the Initial Design Period.

2.1.2 Within thirty (30) days of commencement of the Initial Design Period AACMD shall provide a written progress report to ARTA on the Initial Design and the Adjacent Improvements Initial Design containing the names of the engineering companies and other Service Providers under contract (the “**Initial Progress Report**”).

2.1.3 Within sixty (60) days of commencement of the Initial Design Period AACMD shall provide a written progress report to ARTA on the Initial Design and the Adjacent Improvements Initial Design containing the names of the engineering companies and other Service Providers under contract, the Initial Design Costs and Adjacent Improvements Initial Design Costs incurred and the amount of Initial Design Costs and the Adjacent Improvements Initial Design Costs paid (the “**60 Day Progress Report**”).

2.1.4 Within sixty (60) days of completion of the Initial Design Period AACMD shall provide a written progress report to ARTA on the Initial Design and the Adjacent Improvements Initial Design containing the names of the engineering companies and other Service Providers under contract, the Initial Design Costs and Adjacent Improvements Initial Design Costs incurred and the amount of Initial Design Costs and the Adjacent Improvements Initial Design Costs paid (the “**Completion Progress Report**”).

2.1.5 The Initial Design Costs and Adjacent Improvements Initial Design Costs will be subject to verification by a third party engineer retained by AACMD and independent of the owner of property within the boundaries of the ARTA, or any of the owner’s affiliates (the “**Independent Engineer**”).

2.1.6 The verification by the Independent Engineer shall include verification that the cost incurred for the Initial Design being verified (the “**Work**”) is reasonable and within market parameters for the Work, that the Work was confirmed to be for the Initial Design, and the Service Provider of the Work has been paid for the Work (“**Verified Costs**”). Although the Verified Costs may exceed \$750,000, in no event shall the amount due for reimbursement under this Agreement from ARTA to AACMD exceed \$750,000 plus interest accrued pursuant to Section 4 below without the prior written consent of ARTA or an amendment to this Agreement. In no event shall the Verified Costs to be paid by ARTA include the Adjacent Improvements Initial Design Costs.

2.1.7 During the Term of this Agreement, AACMD shall keep, or cause to be kept, proper and current books and accounts in which are recorded; the Verified Costs; and the District's administrative and management expenses. Unless otherwise exempted under State statutes, the District shall prepare after the close of each fiscal year for the District, a complete audited financial statement for such year in reasonable detail covering the above information, certified by a public accountant selected by the District, and shall furnish a copy of such statement to ARTA upon its request.

3. Reimbursement of AACMD. Subject to the receipt of funding pursuant to Section 5 herein and all other applicable provisions hereof, ARTA agrees to make payment to AACMD for all Verified Costs, together with interest thereon.

4. Interest and Payment Priority. Interest shall accrue from the date of deposit of funds in the AACMD bank account for payment to each of the Service Providers and shall compound annually at the rate of nine percent (9%) per annum until paid. The Parties agree that payments by ARTA to AACMD shall credit first against accrued and unpaid interest and then to the principal amount due.

5. Funding Requirement. The Parties agree that no payment shall be requested of ARTA hereunder unless and until ARTA issues bonds or any other evidence of indebtedness or contractual obligation ("**Bonds**") in an amount sufficient to reimburse AACMD for all of the Verified Costs. ARTA may exercise reasonable efforts to issue Bonds to reimburse AACMD. In addition, ARTA agrees that it does not intend to issue any Bonds unless such issuance of Bonds provides revenues sufficient to pay the Verified Costs plus interest to AACMD.

5.1 ARTA, may make payment on the amounts due hereunder out of any available revenues. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse AACMD hereunder, but that this Agreement shall not constitute a debt or indebtedness of ARTA within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by ARTA. Nothing herein shall be deemed or construed to create a "contract" or "other obligation" within the meanings of Section 5 herein, or Section 5.02 of the Establishing Agreement.

5.2 The amounts due hereunder are payable at any time without prepayment penalty.

5.3 By acceptance of this Agreement, AACMD agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder.

5.4 ARTA and AACMD agree that any agreement between ARTA and AACMD resulting from discussions on the Unsolicited Proposal shall include terms for repayment of AACMD for the Verified Costs, plus interest.

6. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity after the provision of thirty (30) days prior written notice of the alleged breach or default to the other Party. In the event of any litigation, arbitration or other proceeding to enforce the

terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

7. Notices and Communications. All notices, statements, demands, requirements, approvals or other communications and documents ("**Communications**") required or permitted to be given, served, or delivered by or to any Party or any intended recipient under this Agreement shall be in writing and shall be given to the applicable address set forth below ("**Notice Address**"). Communications to a Party shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such Party's Notice Address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such Party's Notice Address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such Party at such Party's Notice Address; or (iv) on the date and at the time shown on the facsimile or electronic mail message if telecopied or sent electronically to the number or address designated in such Party's Notice Address and receipt of such telecopy or electronic mail message is electronically confirmed. The Notice Addresses for each Party are as follows:

If to ARTA:

Aerotropolis Regional Transportation Authority
c/o CliftonLarsonAllen
Attention: Bob Blodgett
8390 E. Crescent Parkway, Suite 500
Greenwood Village, Colorado 80111
Phone: (303) 779-4525
Fax: (303) 773-2050
Email: Bob.Blodgett@claconnect.com

With copies to:

Spencer Fane LLP
Attention: Tom George
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Phone: (303) 839-3800
Fax: (303) 839-3838
Email: tgeorge@spencerfane.com

If to AACMD:

Aerotropolis Area Coordinating Metropolitan District
c/o Special District Management Services, Inc.
Attention: Lisa Johnson
141 Union Blvd., Suite 150
Lakewood, Colorado 80228
Phone: (303) 987-0835
Email: ljohnson@sdmsi.com

With copies to:

McGeady Becher P.C.
Attention: MaryAnn M. McGeady
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203
Phone: (303) 592-4380
Fax: (303) 592-4385
Email: mmcgeady@specialdistrictlaw.com

8. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

9. Entire Agreement; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. This Agreement constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof. No change or addition is to be made to this Agreement except by written amendment executed by ARTA and AACMD. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one (1) Party than another merely by virtue of the fact that it may have been initially drafted by one (1) of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party(ies), shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

10. Governing Law. This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado.

11. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

12. Assignment; Binding Effect. Except as expressly permitted under this Agreement, none of the Parties hereto may assign any of their rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in each Party's sole and absolute discretion. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assigns.

13. Counterparts; Copies of Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall

constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. This Agreement may be executed and delivered by facsimile or by electronic mail in portable document format (.pdf) or similar means and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to the other Party. Upon execution of this Agreement by ARTA and AACMD, shall provide a fully executed copy of this Agreement to ARTA.

14. Time of the Essence. Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

15. Computation of Time Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday.

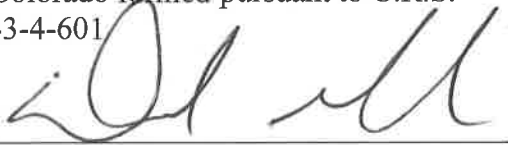
16. No Waiver of Governmental Immunity. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed a waiver of any protections afforded AACMD or ARTA pursuant to Colorado law, including, but not limited to, the Colorado Governmental Immunity Act.

17. Amendments. This Agreement may not be amended except by written agreement signed by all Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first set forth above.

**AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY,**
a political subdivision and body corporate of the
State of Colorado formed pursuant to C.R.S.
Section 43-4-601

By: 
Name: Colonel Dave Gruber
Title: Vice-Chairperson

**AEROTROPOLIS AREA
COORDINATING METROPOLITAN
DISTRICT,** a political subdivision and quasi-
municipal corporation of the State of Colorado

By: 
Name: Matthew Hopper
Title: President

EXHIBIT A

PHASE I IMPROVEMENTS - 2018-2021

1. Design The Aurora Highlands Parkway from E470 to Aura Boulevard.
2. Design 26th Avenue from E470 to Main Street.
3. Design E470 interim project connection (right in/out).
4. Design the full interchange of E470/38th Avenue/The Aurora Highlands Parkway.
5. Design the full interchange of I-70/Harvest/Powhaton Roads.
6. Design I-70/Harvest/Powhaton Roads interim connection.

EXHIBIT B

Required Insurance

AACMD shall maintain, in the amounts and types of insurance described below and shall cause the Service Providers, as appropriate, to maintain such coverages from insurance companies authorized to do business in the State of Colorado having a Best's Insurance Report Rating of A/VI or better covering the risks described below:

A. Commercial General Liability Insurance (including premises, operations, products, completed operations, and contractual liability coverages, subject to policy terms and conditions) in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000.00) personal injury and [advertising injury], and Two Million Dollars (\$2,000,000.00) General Aggregate.

B. Automobile Liability Insurance for all motor vehicles operated by or for Constructing Party, including owned, hired, and non-owned autos, with minimum Combined Single Limit for Bodily Injury and Property Damage of One Million Dollars (\$1,000,000.00) for each accident.

C. Workers Compensation Insurance for all employees as required by law, to cover the applicable statutory limits in the State of Colorado and employer's liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury by accident (each accident) and One Million Dollars (\$1,000,000.00) for bodily injury by disease (each employee).

D. With respect to Service Providers that provide professional services (e.g., engineers), professional liability insurance, including prior acts coverage sufficient to cover any and all claims arising out of the services, or a retroactive date no later than the date of commencement of the services, with limits of not less than Two Million Dollars (\$2,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) annual aggregate. The professional liability insurance shall be maintained continuously during the term of the agreement with such Service Provider and so long as the insurance is commercially reasonably available.

The following general requirements shall apply to all insurance policies described in this Exhibit.

1. All liability insurance policies, except workers compensation insurance and professional liability insurance, shall be written on an occurrence basis.

2. All insurance policies required hereunder except Workers Compensation and Employers Liability and professional liability shall: (i) name AACMD as "additional insured" utilizing an ISO CG 2010 form acceptable to AACMD; (ii) be issued by an insurer authorized in the State of Colorado; (iii) provide that such policies shall not be canceled or not renewed without at least thirty (30) days' prior written notice to the Parties, and (iv) provide a notice within ten (10) days of any non-payment of premium. Each additional insured endorsement (or each policy, by reasonably acceptable endorsement) shall contain a primary insurance clause providing that the coverage afforded to the additional insureds is primary and that any other insurance or self-insurance available to any of the additional insureds is non-contributing. A

waiver of subrogation endorsement for the workers' compensation coverage shall be provided in favor of the Parties.

3. The liability insurance policies shall provide that such insurance shall be primary on a non-contributory basis.

The Service Providers shall provide AACMD with certificates evidencing the insurance coverages required by this Exhibit prior to the commencement of any activity or operation which could give rise to a loss to be covered by such insurance. Replacement certificates shall be sent to AACMD, as policies are renewed, replaced, or modified.