FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR PROJECT FUNDING AND REIMBURSEMENT FOR DESIGN AND CONSTRUCTION OF PHASE I IMPROVEMENTS

THIS FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR PROJECT FUNDING AND REIMBURSEMENT FOR DESIGN AND CONSTRUCTION OF PHASE I IMPROVEMENTS (this "Amended and Restated Agreement") is made and entered into the 15th day of January, 2019, (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 the 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 the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishment Agreement as more particularly described on Exhibit A attached to this Agreement and incorporated herein by this reference (respectively the "Regional Transportation System", the "Regional Transportation System Improvements" and the "Capital Plan") (any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Establishment Agreement).

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 B attached to this Amended and Restated Agreement and incorporated herein by this reference (the "Phase I Improvements").

C. ARTA and AACMD determined it to be in the best interest of their taxpayers to begin the design of the Phase I Improvements and previously entered into that certain Intergovernmental Agreement for Project Funding and Reimbursement for Initial Design of ARTA Phase I Improvements dated August 23, 2018 (the "Initial Design Funding IGA").

D. Pursuant to and in reliance on the terms of the Initial Design Funding IGA, AACMD has borrowed and expended funds to pay the costs of the design of the Phase I Improvements and anticipates on or before January 15, 2019 that such costs incurred will equal approximately $750,000 ("Initial Funding Advances").

E. ARTA and AACMD have entered into that certain Master Service Agreement with Schedio Group, LLC (the "Independent Engineer") pursuant to which the Independent Engineer will, among other services, review and report to ARTA and AACMD which of the
costs funded by AACMD under the Initial Design Funding IGA and this Amended and Restated Agreement are eligible for reimbursement of AACMD by ARTA (the “Verified Costs”).

F. ARTA is seeking sources of funding for the Regional Transportation System and to obtain the best financing terms and interest rate for all phases of the Regional Transportation System.

G. While ARTA’s discussions progress with its potential funding sources, ARTA and AACMD believe it is in the best interest of their taxpayers for AACMD to continue to design and construct the Phase I Improvements by using funds advanced to AACMD by its third party funding source.

H. In advance of approval of this Amended and Restated Agreement, the City and the County have each secured their respective governing bodies appropriation of revenues identified in Exhibit E of the Establishment Agreement generated from within each of their respective jurisdictions for deposit into ARTA’s Income Fund, as defined in the Establishment Agreement, for the funding of the Regional Transportation System.

I. ARTA has adopted a Financing Plan for the Phase I Improvements as required by the Establishment Agreement.

J. ARTA and AACMD desire to enter into this Amended and Restated Agreement to set forth their mutual understanding regarding the continued funding by AACMD of that portion of the Phase I Improvements anticipated to be incurred through June 30, 2019, which amount is anticipated to be $5,885,000, and which amount, plus the Initial Funding Advances, shall be referred to herein as the “Interim Phase I Funding” 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. Continuation and Completion of the Phase I Improvements. The Parties acknowledge and agree that AACMD shall continue to fund the design and construction costs related to the completion of the Phase I Improvements and to proceed in the manner hereinafter set forth. In furtherance hereof:

1.1 AACMD shall continue with advancement of the Phase I Improvements as more specifically detailed in Exhibit B through June 30, 2019, provided, the Parties agree the Interim Phase I Funding, including the Initial Funding Advances, shall not exceed $6,635,000, plus applicable interest as further set forth herein.

1.2 AACMD has budgeted and appropriated funds sufficient to provide the Interim Phase I Funding through June 30, 2019.

1.3 Prior to June 30, 2019, ARTA will seek an irrevocable and enforceable
financial commitment from an alternative funding entity to reimburse AACMD for the Verified Costs related to the Interim Phase I Funding, plus applicable interest (the “Interim Funding Reimbursement”) and to fund the remainder of the Phase I Improvements (the “Funding to Complete the Phase I Improvements”).

2. **Project Implementation.** Through June 30, 2019 and thereafter upon mutual written agreement of the Parties, receipt of the Interim Funding Reimbursement and confirmation of the availability of the Funding to Complete the Phase I Improvements, AACMD shall coordinate, administer and oversee: (i) the preparation of all budgets, schedules, contracts and other documents pertaining to the Phase I Improvements; and (ii) the design and construction of the Phase I Improvements. AACMD has engaged and will continue to engage engineers, surveyors and other consultants (“Service Provider(s)”) as required for Phase I Improvements.

2.1 **Comply with Legal Requirements.** AACMD shall comply with applicable law in performing its obligations under this Amended and Restated Agreement. In addition, AACMD will enter into any intergovernmental agreements reasonably required by the Colorado Department of Transportation and/or the E-470 Authority in order to complete the design and construction of the Phase I Improvements and will, in good faith, include ARTA in negotiations of, and as a party to, such intergovernmental agreements as reasonably necessary.

2.2 **Taxes, Fees and Permits.** AACMD or its Service Providers shall pay all applicable sales, use, and other similar taxes pertaining to the Phase I Improvements, through June 30, 2019, if any, and ARTA acknowledges that such costs are included in the costs of the Work.

2.3 **Insurance.** AACMD shall procure and maintain and shall cause the Service Providers to procure and maintain, the insurance described in Exhibit C attached hereto.

2.4 **Bonds.** AACMD shall secure and pay for all applicable surety bonds pertaining to the Phase I Improvements through June 30, 2019, if any, and ARTA acknowledges that such costs are included in the costs of the Work.

2.5 **Ongoing Project Management.** As soon as practicable following the Effective Date, the Parties agree they will begin negotiations in good faith to enter into an agreement to govern the terms of project management for the Phase I Improvements beyond the term of this Amended and Restated Agreement to assure the continued design and construction of the Phase I Improvements.

2.6 **E-470 Authority Central Maintenance Facility.** The Parties agree any modifications necessary to the E-470 Authority’s Central Maintenance Facility to complete the Phase I Improvements shall not increase the cost incurred by ARTA or AACMD for the Phase I Improvements, including but not limited to the E470/38th Interchange, under this Amended and Restated Agreement.

3. **Accounting and Reporting.** During the term of this Amended and Restated
Agreement, AACMD shall keep or cause to be kept, accurate and current books and accounts in which are recorded; the Verified Costs; and AACMD’s administrative and management expenses. Unless otherwise exempted under applicable law, AACMD shall prepare after the close of each fiscal year for AACMD, a complete audited financial statement for such year in reasonable detail covering the above information, certified by a public accountant selected by AACMD, and AACMD shall furnish a copy of such statement to ARTA upon its request. AACMD shall keep its books and accounts in sufficient detail to provide periodic reporting on the Verified Costs related to the Phase I Improvements (the “Phase I Improvement Costs”) and the payment of same, which books and records shall be made available for review (upon reasonable prior written notice) by ARTA.

3.1.1 AACMD shall provide a verbal report to ARTA as to the progress made in the design and construction of the Phase I Improvements through June 30, 2019, and upon receipt of the Funding to Complete the Phase I Improvements, as to the progress of the Phase I Improvements to completion, at each ARTA Board meeting during the term of this Amended and Restated Agreement.

3.1.2 ARTA acknowledges receiving previous written progress reports from AACMD on the Phase I Improvements (the “Progress Reports”). AACMD shall continue to provide Progress Reports to ARTA on the Phase I Improvements no less than every thirty (30) days beginning on the thirtieth (30th) day after the Effective Date.

3.1.3 AACMD shall submit documentation to the Independent Engineer for verification of the costs incurred related to the Phase I Improvements.

3.1.4 The Independent Engineer shall verify that the costs incurred for the Phase I Improvements (the “Work”) are reasonable and within market parameters for the Work, that the Work was confirmed to be for the Phase I Improvements, and the Service Provider of the Work has been paid for the Work (“Verified Costs”).

3.1.5 AACMD may negotiate and execute agreements with the E-470 Authority and other applicable entities, such as the Colorado Department of Transportation, to secure reimbursement to AACMD for any portion of the Verified Costs reimbursable by such entities in relation to the design, financing, and construction of applicable interchange improvements (the “Interchange Reimbursements”); provided, the Parties agree that any funds actually received by AACMD during the term of this Amended and Restated Agreement associated with the Phase I Improvements pursuant to such Interchange Reimbursements shall be credited toward the Verified Costs to be reimbursed by ARTA pursuant to this Amended and Restated Agreement, as applicable.

4. Reimbursement of AACMD. Subject to the receipt of funding pursuant to Section 6 herein and all other applicable provisions hereof, ARTA agrees to make payment to AACMD to reimburse AACMD for all Verified Costs, together with interest thereon. ARTA agrees that it shall not incur any debt or enter into any multiple fiscal year obligations for any purpose other than to reimburse AACMD for the Interim Funding Reimbursement and to fund the Phase I Improvements (including any applicable costs of issuance, reserve funds, capitalized
interest funds, and other reasonable financing costs), until full reimbursement to AACMD of all amounts due hereunder has been made.

5. **AACMD Draws on the Interim Phase I Funding: Interest and Payment Priority.** The Interim Phase I Funding, excluding the Initial Funding Advances, shall be paid by AACMD to Service Providers for services rendered or, if necessary, in advance of actual construction, as applicable (each such payment constituting a “Draw”), with Draws to be made on a time schedule reasonably determined by AACMD pursuant to its contracts with such Service Providers. Interest to be paid by ARTA shall commence and accrue separately on each Draw, commencing on the date the AACMD Board of Directors approves payment of the Draw, 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.

6. **Funding Requirement.** The Parties agree that no payment shall be required of ARTA by AACMD hereunder until the earlier to occur of the following: (i) the date of issuance of Bonds in any form by ARTA (expressly excluding this Amended and Restated Agreement), or (ii) the date upon which ARTA begins to receive revenue from any of the Pledged Revenues.

6.1 ARTA shall make payments on the amounts due hereunder out of the first available proceeds of any Bonds and the Pledged Revenues and may, at its discretion, make such payments from any other legally available revenues of ARTA. In the event ARTA’s Interim Funding Reimbursement is not fully satisfied on or before December 31, 2019, ARTA’s commitment to make the Interim Funding Reimbursement to AACMD shall be considered a multiple fiscal year financial obligation and is a contract within the definition of Section 5 of the Establishment Agreement.

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

6.3 This Amended and Restated Agreement shall terminate in its entirety and be of no further force and effect upon ARTA’s full repayment of the Interim Funding Reimbursement.

7. **Default/Remedies.** In the event of a material breach or default of this Amended and Restated 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.

8. **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 Amended and Restated 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 Clifion Larson Allen
Attention: Bob Blodgett
8390 E. Crescent Parkway, Suite 300
Greenwood Village, Colorado 80111
Phone: (303) 779-4525
Fax: (303) 773-2050
Email: Bob.Blodgett@claconnect.com

With copies to:
Spencer Fane LLP
Attention: Rick Kron and Tom George
1700 Lincoln Street, Suite 200C
Denver, Colorado 80203
Phone: (303) 839-3800
Fax: (303) 839-3838
Email: rkrong@spencerfane.com;
tjorge@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
9. **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 Amended and Restated Agreement.

10. ** Entire Amended and Restated Agreement; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver.** This Amended and Restated 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 Amended and Restated Agreement except by written amendment executed by ARTA and AACMD. The headings, captions and titles contained in this Amended and Restated Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Amended and Restated Agreement. This Amended and Restated 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 Amended and Restated Agreement, no failure by a Party to exercise any right or remedy under this Amended and Restated 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 Amended and Restated Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Amended and Restated Agreement, from having all the force and effect of a default.

11. **Governing Law.** This Amended and Restated 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.

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

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

14. **Counterparts; Copies of Signatures.** This Amended and Restated 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 Amended and Restated 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.

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

16. **Computation of Time Periods.** All time periods referred to in this Amended and Restated 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 Amended and Restated 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.

17. **No Waiver of Governmental Immunity.** Notwithstanding any provision of this Amended and Restated Agreement to the contrary, nothing in this Amended and Restated 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.

18. **Amendments.** This Amended and Restated Agreement may not be amended except by written agreement signed by all Parties.

19. **Third Party Beneficiaries.** Nothing expressed or implied in this Amended and Restated Agreement is intended or shall be construed to confer upon or to give to any person or entity other than AACMD and ARTA any right, remedy, or claim under or by reason of this Amended and Restated Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Amended and Restated Agreement by and on behalf of AACMD and ARTA shall be for the sole and exclusive benefit of AACMD and ARTA. It is the express intention of the Parties that any person other than the Parties shall be deemed to be an incidental beneficiary only.

20. **No Personal Liability.** No elected official, director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or under any term or provision of this Amended and Restated Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Amended and Restated Agreement.

**[SIGNATURE PAGE FOLLOWS]**
IN WITNESS WHEREOF, the Parties have executed this First Amended and Restated Intergovernmental Agreement For Design and Construction of Phase I Improvements 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

CAPITAL PLAN

(insert a copy of the Capital Plan from the Establishment Agreement)
## Exhibit D - Phasing Plan

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EXHIBIT B

PHASE I IMPROVEMENTS

AACMD shall continue, under the terms of this Amended and Restated Agreement to:

1. Design and construct The Aurora Highlands Parkway from E470 to Aura Boulevard.
2. Design and construct 26th Avenue from E470 to Main Street.
3. Design and construct the 38th/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 the I-70/Harvest/Powhaton Roads interim connection.
7. Design 38th Avenue from Himalaya to E-470.

The total cost of the Phase I Improvements is currently estimated to be approximately $15,119,496.

The total amount of the Interim Funding Advances shall not exceed $5,885,000 (estimate of cost of Work to be incurred between the date of this Amended and Restated Agreement through June 30, 2019) plus $750,000 (estimate of cost of Work incurred as the Initial Funding Advances), plus all applicable interest.

Interim Funding Advance cost estimates are included in the total of $15,119,496 estimated cost of the Phase I Improvements (but do not include interest).
EXHIBIT C

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 Amended and Restated Agreement with such Service Provider and so long as the insurance is commercially reasonably available.

E. 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.