

AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY
REGULAR BOARD MEETING AGENDA

Board of Directors:

Matthew Hopper, Chairman
 Dave Gruber, Vice-Chair
 Nicole Johnston, Secretary
 Steve O’Dorisio, Treasurer
 Charles “Chaz” Tedesco, Director

Date: **May 22, 2019 (Wednesday)**
Time: **11:00 a.m.**
Place: **Adams County Government Center**
 4430 S. Adams County Parkway
 Brighton, CO 80601
 (5th Floor Study Session Conference Room)

1. CALL TO ORDER
2. DECLARATION OF QUORUM/DIRECTOR QUALIFICATIONS/DISCLOSURE MATTERS
3. APPROVE AGENDA
4. PUBLIC COMMENT and/or GUESTS
 Members of the public may express their views to the Board on matters that affect the Authority, Comments will be limited to three (3) minutes. Please sign in.
5. CONSENT AGENDA

Consent Agenda - The items listed below are a group of items to be acted on with a single motion and vote by the Board. The Board has received the information on these matters prior to the meeting. An item may be removed from the consent agenda to the regular agenda, if desired, by any Board member. Items on the consent agenda are then voted on by a single motion, second, and vote by the Board.

A. Other

6. ENGINEERING/CONSTRUCTION MATTERS
 - A. Presentation, discussion and possible action concerning the First Amended and Restated IGA for Project Funding and Reimbursement for Design and

Construction of Phase 1 Improvements, and the planning, design and construction of Authority's Regional Transportation System and related matters.

1. AACMD Status Report
- B. Discussion and possible action concerning the review and verification of project costs associated with the Authority's Regional Transportation System.
- C. Discussion and possible action concerning planning, design and construction of Authority's Regional Transportation System and related matters.

7. FINANCIAL MATTERS

- A. Presentation, discussion and possible action concerning financial statements.
- B. Presentation, discussion and possible action on claims payable.
- C. Presentation, discussion and possible action concerning financing matters related to the Authority's Regional Transportation System, including but not limited to action on proposed 2019 bond issuance.
 1. Presentation, discussion and possible action to approve Comprehensive Plan of Finance, Series 2019 Debt Issue.
 2. Discussion and possible action to make a final determination to issue revenue bond indebtedness by the adoption of a parameters resolution authorizing the issuance of revenue bond indebtedness in the form of \$25,000,000 (maximum) Aerotropolis Regional Transportation Authority, Special Revenue Bonds, Series 2019, and approving the execution and delivery of certain documents related thereto.
 3. Identify and authorize Authority Board members to approve and execute documents and other items related to the proposed Series 2019 Bond Issuance.
 4. Review Updated Distribution List and Bond Issuance Schedule
- D. Other

8. MANAGER MATTERS

- A. Authority Manager Report
- B. Discussion and possible action concerning matters presented by Authority Manager.
- C. Website Update
- D. Other

9. LEGAL MATTERS

- A. Authority Legal Counsel report
- B. Discussion and possible action concerning contracts, intergovernmental agreements and other legal arrangements related to the planning, design and construction of the Authority's Regional Transportation System and related matters.

1. Discussion and possible action concerning Intergovernmental Agreement with AACMD regarding the imposition, collection and transfer of ARI Mill Levies (enclosed).
2. Discussion and possible action concerning Intergovernmental Agreement with AACMD regarding coordinated design and construction of Regional Transportation System (enclosed).
3. Discussion and possible action concerning Intergovernmental Agreement with E-470 PHA regarding 38th Interchange and Phase 1 access (enclosed).
 1. Expected Schedule for E470 IGA:
 - May 7, 2019 – Meeting with E470
 - May 10, 2019 – Revisions to IGA
 - May 24, 2019 – IGA language finalized
 - May 29, 2019 – ARTA Board approves IGA
 - TBD – E470 Board approves IGA

10. EXECUTIVE SESSION (If needed, an executive session may be called pursuant to and for the purposes set forth in Section 24-6-402(4), C.R.S., after announcement of the specific topic for discussion and statutory citation authorizing the executive session, and a vote of two-thirds of the quorum of the Board present).

11. OTHER BUSINESS

12. ADJOURNMENT

SCHEDULED BOARD MEETINGS – 11:00 A.M.

Adams County Government Center

4430 S. Adams County Parkway

Brighton, CO 80601

(5th Floor Study Session Conference Room)

City of Aurora

15151 E. Alameda Avenue

Aurora, CO 80012

(5th Floor Mt. Elbert Conference Room)

2019 Meeting Calendar

January						
Su	M	Tu	W	Th	F	Sa
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INTERGOVERNMENTAL AGREEMENT REGARDING IMPOSITION, COLLECTION AND TRANSFER OF ARI MILL LEVIES

This INTERGOVERNMENTAL AGREEMENT REGARDING IMPOSITION, COLLECTION AND TRANSFER OF ARI MILL LEVIES (this “Agreement”) is made and entered into the ____ day of _____, 2019, (the “Effective Date”), by and between AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision 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 Section 43-4-601, et seq., C.R.S. (“ARTA,” or the “Authority”). 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 generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport, which includes the development known as The Aurora Highlands (any capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Establishment Agreement).

B. The District is a metropolitan district organized pursuant to the Special District Act, Section 32-1-101, et seq., C.R.S., as amended, for the general purpose of coordinating and supporting the public improvements and services necessary for The Aurora Highlands.

C. Pursuant to the Establishment Agreement, each of the County of Adams (the “County”), the City of Aurora (“Aurora”), and AACMD generally agreed to the “Budgetary Covenant,” which term is defined in the Establishment Agreement to mean “the covenant given [in the Establishment Agreement] by the City, the County and the District in Section 5.01 [of the Establishment Agreement], requiring the City Manager, County Manager or other officer charged with responsibility for preparation of the budget to prepare and submit annually to their respective Governing Bodies a request to include in the budget and appropriate the revenues generated by each funding source identified in Exhibit E [of the Establishment Agreement] for remittance to the Authority for the Regional Transportation System, provided that the decision whether to appropriate the funds annually as requested shall be within the sole discretion of the respective Governing Bodies.”

D. Section 5.01 of the Establishment Agreement provides, in part: “The City, the County and the District hereby adopt the Budgetary Covenant and agree that each will separately account for and allocate those revenues described in Exhibit E and collected within the Boundaries, for payment, subject to the Budgetary Covenant, to the Authority”

E. As it relates to AACMD's Budgetary Covenant, Exhibit E of the Establishment Agreement describes the "Authority Revenues from Levy by [AACMD] or Authority," as follows: "100% of a Mill Levy of 5.00 mills on all taxable real property through the District's imposition of the Aurora Regional Mill Levy, provided that if such Regional Mill Levy is not imposed, the Authority shall levy up to 5.00 mills in its place."

F. AACMD's boundaries are located entirely within the Authority's boundaries as established in the Establishment Agreement, but AACMD's boundaries are not coterminous with the Authority's boundaries, and the Parties do not expect that AACMD's boundaries will be extended to include additional property.

G. There are a number of metropolitan districts in addition to AACMD that have been organized or will be organized to serve an area within the boundaries of the Authority, which districts were also formed or will be formed for the general purpose of providing the public improvements and services necessary to support The Aurora Highlands (each a "District," and collectively the "Districts"). As of the date of this Agreement, the Districts include, The Aurora Highlands Metropolitan District No. 1, The Aurora Highlands Metropolitan District No. 2, and The Aurora Highlands Metropolitan District No. 3. Additional Districts organized within or overlapping portions of the Authority's boundaries for the general purpose of providing the public improvements and services necessary to support The Aurora Highlands development may be organized or include such overlapping portions at a future date, and, upon such organizations or inclusions, AACMD shall, to the full extent of its powers under state law, cause their consent to the terms and conditions of this Agreement as further provided herein. A district organized to serve the Aurora Highlands that does not have property in its boundaries that overlaps the boundaries of the Authority shall not be included in the definition of Districts for purposes of this Agreement.

H. As described in the service plans for each of the Districts, it is anticipated that the Districts will over time include different properties within their inclusion area boundaries such that the collective boundaries of the Districts and AACMD will be approximately coterminous with the Authority's boundaries as established in the Establishment Agreement.

I. The service plans for each of the Districts and AACMD generally require the Districts and AACMD under certain circumstances to impose an ARI Mill Levy (as used herein, ARI Mill Levy, or ARI Mill Levies, has the meaning set forth in the service plans for AACMD and the Districts) and to deposit the revenues associated therewith in a segregated account to be spent only in accordance with a Regional Intergovernmental Improvements Agreement, which Regional Intergovernmental Improvements Agreement is defined as "one or more intergovernmental agreements between [each such district] and the City."

J. Specifically, AACMD's service plan defines "ARI Mill Levy" as follows:

ARI Mill Levy: means the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which shall be five (5) mills, plus Gallagher Adjustment, minus any ARTA Mill Levy, for collection beginning for each district in the first year of collection of a debt service mill levy by such district,

and continuing in each year thereafter, as set forth in the Regional Intergovernmental Improvements Agreement.

K. AACMD voters approved the following election questions in November 2017:

SHALL AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT TAXES BE INCREASED \$8,000,000,000 ANNUALLY OR BY SUCH LESSER AMOUNT AS NECESSARY FOR THE PAYMENT OF SUCH AMOUNTS DUE PURSUANT TO ONE OR MORE INTERGOVERNMENTAL AGREEMENTS OR OTHER CONTRACTS, BY THE IMPOSITION OF AD VALOREM PROPERTY TAXES LEVIED IN ANY YEAR, WITHOUT LIMITATION AS TO RATE OR AMOUNT OR ANY OTHER CONDITION FOR THE PAYMENT OF SUCH AMOUNTS DUE, AND SHALL THE PROCEEDS OF SUCH TAXES AND ANY INVESTMENT INCOME THEREON BE COLLECTED, RETAINED AND SPENT BY THE DISTRICT IN FISCAL YEAR 2017 AND IN EACH FISCAL YEAR THEREAFTER AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, THE LIMITS IMPOSED ON INCREASES IN PROPERTY TAXATION BY SECTION 29-1-301, C.R.S. IN ANY YEAR, OR ANY OTHER LAW WHICH PURPORTS TO LIMIT THE DISTRICT’S REVENUES OR EXPENDITURES AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED IN THE FUTURE, ALL WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED, RETAINED AND SPENT BY THE DISTRICT?

SHALL AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT BE AUTHORIZED TO ENTER INTO ONE OR MORE INTERGOVERNMENTAL AGREEMENTS WITH ONE OR MORE POLITICAL SUBDIVISIONS OF THE STATE, GOVERNMENTAL UNITS, GOVERNMENTALLY-OWNED ENTERPRISES, OR OTHER PUBLIC ENTITIES FOR THE PURPOSE OF JOINTLY FINANCING THE COSTS OF ANY PUBLIC IMPROVEMENTS, FACILITIES, SYSTEMS, PROGRAMS, OR PROJECTS WHICH THE DISTRICT MAY LAWFULLY PROVIDE, OR FOR THE PURPOSE OF PROVIDING FOR THE OPERATIONS AND MAINTENANCE OF THE DISTRICT AND ITS FACILITIES AND PROPERTIES, WHICH AGREEMENT MAY CONSTITUTE A MULTIPLE FISCAL YEAR FINANCIAL OBLIGATION OF THE DISTRICT TO THE EXTENT PROVIDED THEREIN AND OTHERWISE AUTHORIZED BY LAW, AND IN CONNECTION THEREWITH SHALL THE DISTRICT BE AUTHORIZED TO MAKE COVENANTS REGARDING THE ESTABLISHMENT AND USE OF AD VALOREM TAXES, RATES, FEES, PUBLIC IMPROVEMENT FEES, TOLLS, PENALTIES, AND OTHER CHARGES OR REVENUES OF THE DISTRICT, AND COVENANTS, REPRESENTATIONS, AND WARRANTIES AS TO OTHER MATTERS

ARISING UNDER THE AGREEMENTS, ALL AS MAY BE DETERMINED BY THE DISTRICT BOARD OF DIRECTORS?

L. ARTA is authorized by the Establishment Agreement, voter approval, the Regional Transportation Authority Law (Section 43-4-601, et seq., C.R.S., as amended), and other relevant laws to impose a uniform mill levy of 5.000 mills on all taxable property within its boundaries; however, pursuant to Section 43-4-605(1)(j.5)(II), C.R.S. (2019), ARTA's statutory authority to impose such a mill levy will be repealed effective January 1, 2029, unless amended.

M. ARTA is currently in the process of working toward the issuance of bonds in order to fund, in part, the Regional Transportation System (the "2019 Bonds").

N. ARTA is expected to issue bonds or other obligations in addition to the 2019 Bonds in the future in order to fund additional portions of the Regional Transportation System (together with the 2019 Bonds, such bonds or other obligations are collectively referred to herein as the "Bonds").

O. It is anticipated that one of ARTA's revenue sources to support the Bonds will be ARTA's imposition of a uniform mill levy of 5.000 mills on all taxable property within its boundaries, which will potentially be supplemented by ARI Mill Levies imposed by AACMD and the Districts as further set forth herein.

P. ARTA and AACMD desire to enter into this Agreement in order to clarify and to set forth their mutual understanding and agreement regarding the operation of the Budgetary Covenant and the relevant provisions of Exhibit E of the Establishment Agreement, and to set forth their mutual understanding regarding the coordinated imposition of their respective mill levies, as applicable, and the process by which AACMD will collect and transfer to ARTA the ARI Mill Levies for AACMD and all of the Districts, if necessary and as appropriate, together with such other matters, all as further set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing recitals which are incorporated herein as though fully set forth below, ARTA and AACMD agree as follows:

1. ARTA Mill Levy. ARTA agrees that it will, in each year that it is both permitted by law to do so and otherwise required to do so by any indenture, resolution or other instrument relating to the issuance of any Bonds, impose a uniform mill levy of 5.000 mills on all taxable property within its boundaries consistent with the provisions of the Establishment Agreement (the "ARTA Mill Levy"). ARTA expects and intends each indenture, resolution or other instrument relating to the issuance of any Bonds to include a covenant requiring it to impose the ARTA Mill Levy to support the payment of such Bonds in each year that it is permitted by law to do so.

2. ARI Mill Levies; District IGAs. Notwithstanding ARTA's agreement to impose the ARTA Mill Levy as set forth above, AACMD agrees that it will impose its respective ARI Mill Levy in an amount no less than the number of mills required to be imposed by its service plan

on all property within its boundaries in all such levy years as set forth in AACMD's service plan as such service plan exists on the date of execution of this Agreement; further, AACMD agrees to enter into an intergovernmental agreement with each District that includes a covenant by each such District to impose its respective ARI Mill Levy in an amount no less than the number of mills required to be imposed by such District's service plan on all property within its boundaries in all such levy years as set forth in its respective service plan as such service plan exists on the date of execution of this Agreement (collectively, the "District IGAs"). AACMD further agrees that it will, in good faith, endeavor and use best commercial efforts to enter into agreements similar to the District IGAs with all metropolitan districts now existing or that may be later organized to serve the Aurora Highlands that are required by their service plan(s) to impose an ARI Mill Levy on any property located within ARTA's boundaries.

3. Annual Notice. ARTA agrees that it will, annually in each year it is required to do so under the circumstances set forth in Section 2 hereof, take formal action to impose the ARTA Mill Levy for collection in the subsequent year no later than December 1 of the then current year and provide written notice of such action to AACMD on or before December 5th of such year.

4. Imposition, Collection and Transfer of ARI Mill Levies. For any year in which ARTA is not permitted by law or otherwise fails to impose the ARTA Mill Levy, AACMD agrees that it will impose, and will collect and transfer to ARTA as further set forth herein, the ARI Mill Levies imposed by AACMD and each of the Districts, as applicable, as follows:

4.1 AACMD will impose its ARI Mill Levy on all property within AACMD's boundaries as required by AACMD's service plan and shall, to the extent such revenue has been appropriated for remittance to ARTA within such fiscal year in accordance with the Budgetary Covenant, transfer the revenues derived therefrom to ARTA within sixty (60) days of AACMD's receipt.

4.2 Consistent with the provisions of the District IGAs, AACMD will require that each of the Districts impose its respective ARI Mill Levy on all property within its boundaries as required by its respective service plan and transfer all revenues derived therefrom from property located within the ARTA boundaries to AACMD within sixty (60) days of each District's receipt; AACMD shall thereafter transfer all revenues it receives from the Districts' ARI Mill Levies from property located with the ARTA boundaries pursuant to the District IGAs, as applicable, to ARTA within sixty (60) days of AACMD's receipt.

5. Budgetary Covenant; Annual Appropriation. The Parties expressly agree that nothing in this Agreement is intended to or shall be interpreted to modify the District's "Budgetary Covenant" as set forth in the Establishment Agreement, and, consistent with the provisions of the Establishment Agreement, the decision whether to appropriate funds as set forth herein shall be within the sole discretion of AACMD's Board of Directors. AACMD agrees that once its ARI Mill Levy has been imposed consistent with the provisions of this Agreement, AACMD will continue to impose the ARI Mill Levy and remit the funds derived therefrom to ARTA annually each year for so long as ARTA has outstanding Bonds; further, AACMD agrees that it will similarly require each of the Districts pursuant to the District IGAs, once each District's ARI Mill Levy has been imposed consistent with the provisions of this Agreement, to continue to impose the ARI Mill

Levy and remit the funds derived therefrom to ARTA annually each year for so long as ARTA has outstanding Bonds.

6. Gallagher Adjustments.

6.1 Consistent with AACMD's service plan, AACMD hereby agrees that it will, regardless as to whether ARTA imposes the ARTA Mill Levy or not, beginning in the first year it imposes a debt service mill levy and continuing in each year thereafter until AACMD is no longer required to impose an ARI Mill Levy, impose an ARI Mill Levy equal to five (5) mills, plus any applicable Gallagher Adjustment (as defined in AACMD's service plan), minus any ARTA Mill Levy, and, to the extent such revenue has been appropriated for remittance to ARTA within such fiscal year in accordance with the Budgetary Covenant, transfer the revenues derived therefrom to ARTA within sixty (60) days of AACMD's receipt. Further, consistent with the provisions of the District IGAs, AACMD will require that each of the Districts, pursuant to their respective service plans, beginning in the first year each of the Districts imposes a debt service mill levy and continuing in each year thereafter until each of such Districts is no longer required to impose an ARI Mill Levy, impose an ARI Mill Levy equal to five (5) mills, plus any applicable Gallagher Adjustment (as defined in each District's respective service plan), minus any ARTA Mill Levy, and transfer the revenues derived therefrom to AACMD within sixty (60) days of each District's receipt; AACMD shall thereafter transfer all revenues it receives from the Districts' ARI Mill Levies from property located with the ARTA boundaries pursuant to the District IGAs, as applicable, to ARTA within sixty (60) days of AACMD's receipt.

6.2 The intent of the Parties in this Section 6 is to ensure that in the event there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, to the extent possible, the actual tax revenues generated by the ARTA Mill Levy and the ARI Mill Levies of AACMD and the Districts, and available to ARTA are not diminished as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

7. Regional Intergovernmental Improvements Agreement. For the purposes of directing how the revenues derived from the ARI Mill Levies imposed by AACMD and the Districts shall be spent, it is the intent of the Parties that this Agreement may be considered a Regional Intergovernmental Improvements Agreement pursuant to the service plans of AACMD and the Districts.

8. Default/Remedies. In the event of a material 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. A material default expressly includes, but is not limited to, the failure of AACMD to enter into or enforce the District IGAs as set forth herein. 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.

9. Notices and Communications. All notices, statements, demands, requirements, approvals or other communications and documents ("Communications") required or permitted to

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

10. Covenant of Good Faith and Fair Dealing. The Parties agree to act in good faith in dealing with one another, carrying out their responsibilities, and performing their obligations pursuant to this Agreement. Each Party hereby covenants to the other that it shall not undermine the rights or obligations of the other Party hereto with respect to the Agreement and it will cooperate with the other in achieving the purposes of this Agreement.

11. 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.

12. Entire Agreement; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. This Agreement, along with the Establishment Agreement as referenced and incorporated herein, 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 Party than another merely by virtue of the fact that it may have been initially drafted by one 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, 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.

13. 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.

14. 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.

15. Assignment; Binding Effect. Except as expressly permitted under this Agreement, none of the Parties hereto may assign any of its 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. Third Party Beneficiaries. Nothing expressed or implied in this 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 Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of AACMD and ARTA shall be for the sole and exclusive benefit of AACMD and ARTA.

21. 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 Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this INTERGOVERNMENTAL AGREEMENT REGARDING IMPOSITION, COLLECTION AND TRANSFER OF ARI MILL LEVIES 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: _____

Title: _____

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

By: _____

Name: _____

Title: _____

**INTERGOVERNMENTAL AGREEMENT REGARDING PROJECT MANAGEMENT
OF THE DESIGN AND CONSTRUCTION OF THE AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY REGIONAL TRANSPORTATION SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING PROJECT MANAGEMENT OF THE DESIGN AND CONSTRUCTION OF THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY REGIONAL TRANSPORTATION SYSTEM (this “**Agreement**”) is made and entered into the ____ day of _____, 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 **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. The Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18, and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government.

B. 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 Aerotropolis Area Coordinating Metropolitan District 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 more particularly described in the Establishment Agreement and Exhibit A thereto, which Exhibit A is also attached to this Agreement and incorporated herein by this reference (the “**Regional Transportation System**,” as used herein, the term “**Regional Transportation System Improvements**” shall mean any one or more individual components of the Regional Transportation System), consistent with the detailed phasing plan and budget attached to the Establishment Agreement as Exhibit D, which Exhibit D is incorporated by reference herein (as the same may be amended, the “**Capital Plan**”) (any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Establishment Agreement).

C. The Establishment Agreement provides, in part, that following their completion the Regional Transportation System Improvements will be conveyed to the appropriate governing jurisdiction responsible for similarly situated improvements for ownership, operation, maintenance, repair and replacement, regardless of whether such jurisdiction is a member of ARTA, and ARTA shall not retain ownership of any Regional Transportation System Improvements after the expiration of applicable warranty periods.

D. AACMD was originally organized on December 7, 2004, and its general purpose is to plan for, design, acquire, construct, install, relocate, redevelop, and finance certain public improvements as described in AACMD’s First Amended and Restated Service Plan approved by

the City of Aurora on October 16, 2017, and to generally coordinate and support the provision of public improvements and services necessary for the development of The Aurora Highlands, a development located entirely within the boundaries of ARTA.

E. Pursuant to the requirements of the Establishment Agreement, ARTA has adopted a plan of finance for the Regional Transportation System Improvements at its May 17, 2019, Board Meeting (the “**Financing Plan**”).

F. ARTA and AACMD previously determined it to be in their mutual best interests to begin the design of the Phase I Improvements (as defined below) 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**”) as amended and restated by the First Amended and Restated Intergovernmental Agreement for Project Funding and Reimbursement for Design and Construction of Phase I Improvements between the Parties dated January 15, 2019 (the “**Amended and Restated IGA**”).

G. Pursuant to and in reliance on the terms of the Amended and Restated IGA, AACMD has proceeded with the funding, design and construction of the Phase I Improvements, and has borrowed and expended funds to pay the costs of the design of the Phase I Improvements (including all applicable interest thereon, the “**Initial Funding Advances**”).

H. ARTA and AACMD have entered into that certain Master Service Agreement for Engineering Services 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 for the Regional Transportation System Improvements under the Amended and Restated IGA and this Agreement are eligible for reimbursement of AACMD by ARTA (the “**Verified Costs**”).

I. Consistent with the provisions of the Establishment Agreement, ARTA is in the process of and intends to complete the issuance of special revenue bonds in June 2019 to finance the design and construction of the Regional Transportation System consistent with the Capital Plan and the Financing Plan, as the same may be amended (the “**ARTA Bonds**”), the proceeds of which ARTA intends to use, in part, to reimburse AACMD for the Initial Funding Advances and to fund the completion of the design and construction of the Phase I Improvements.

J. Pursuant to the terms of the Establishment Agreement ARTA also intends to pursue the issuance of additional bonds or other obligations in the future to finance the design and construction of the remaining Regional Transportation System Improvements (“**Future ARTA Bonds**”).

K. Pursuant to the terms of the Amended and Restated IGA, the Amended and Restated IGA will terminate upon ARTA’s reimbursement for the Initial Funding Advances.

L. The Parties recognize that because AACMD is currently in the process of coordinating and supporting the provision of various public improvements within the boundaries of ARTA in furtherance of AACMD’s purposes, including but not limited to street and

transportation improvements (the “**AACMD Improvements**”), which AACMD Improvements are to a degree generally related to and connected with the Regional Transportation System Improvements, it is in their mutual best interests to cooperate and collaborate where possible in the planning, design, construction and completion of certain AACMD Improvements and the Regional Transportation System Improvements to take advantage of practical efficiencies and potential cost savings as well as other benefits to both Parties and their respective residents, constituents, and taxpayers.

M. AACMD is willing, upon the terms and conditions further set forth herein, to continue to provide certain project management services to ARTA regarding the design, construction and operation and maintenance of the Regional Transportation System Improvements.

N. ARTA desires, upon the terms and conditions set forth herein, to continue to utilize AACMD’s project management services regarding the design, construction and operation and maintenance of the Regional Transportation System Improvements.

O. ARTA and AACMD desire to enter into this Agreement to supplant and generally continue the purposes of the Amended and Restated IGA and to set forth their mutual understanding regarding the provision of project management services by AACMD related to the design, construction and operation and maintenance of the Regional Transportation System Improvements until the date of final acceptance by the appropriate agencies, 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. Incorporation of Recitals. The foregoing recitals are hereby incorporated in this Agreement as if fully set forth herein.

2. Continuation and Completion of the Phase I Improvements. Upon receipt of written confirmation that funds sufficient to complete the Phase I Improvements and reimburse the Initial Funding Advances in full are available to ARTA from the proceeds of the ARTA Bonds, the Parties acknowledge and agree that AACMD shall continue to manage and advance the design and construction related to the completion of the Phase I Improvements as more specifically detailed in Exhibit B (the “**Phase I Improvements**”).

2.1 Phase I Project Implementation. 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 (the “**Phase I Services**”). AACMD has engaged and will continue to engage engineers, surveyors and other consultants and construction contractors (“**Phase I Service Provider(s)**”) as reasonably necessary to complete the Phase I Improvements.

3. Initiation and Completion of the Remaining Regional Transportation System Improvements. The Parties acknowledge that the remaining Regional Transportation System Improvements are intended to be phased for design and construction as set forth in the Capital Plan and the Establishment Agreement. The Parties also acknowledge ARTA intends to issue Future ARTA Bonds in order to fund the design and construction of the remaining Regional Transportation System Improvements beyond the Phase I Improvements.

3.1 Planning of Future Phases. AACMD shall provide regular Progress Reports, defined below, to ARTA and shall include in such Progress Reports information on the services that AACMD currently has under contract for design and/or construction of Regional Transportation System Improvements, and also any services that are anticipated to be required and under contract for design and construction of Regional Transportation System Improvements within the next eighteen (18) months following the last day of the month prior to the month the Progress Report is dated (respectively the “**Planning Window**” and the “**Planning Window Projects**”) in order complete the Regional Transportation System consistent with the Capital Plan. The purpose of providing the Planning Window and the Planning Window Projects is to facilitate communication and discussion between AACMD and ARTA regarding the status of and various details and information related to the Regional Transportation System Improvements currently in process as well as those Regional Transportation System Improvements next in the critical path for funding consistent with the Capital Plan. It is anticipated that the Planning Window Projects will be sequenced consistent with the Capital Plan and funded by ARTA in the sequence and amounts set forth in the Financing Plan; however, the design or construction of certain Regional Transportation System Improvements may be accelerated when possible to achieve earlier completion or other benefits and included in the Progress Reports and the Planning Window Projects. If ARTA and the AACMD agree particular Regional Transportation System Improvements or components of them should be accelerated, such project shall be referred to herein as an Accelerated Project (the “**Accelerated Project**”).

3.2 Notice of Initiation of a Future Phase. AACMD shall provide four (4) months prior written notice to ARTA of the upcoming initiation by AACMD of each next phase of the Regional Transportation System Improvements which requires additional funding from ARTA consistent with the Capital Plan (the “**Next Phase Work**”), which notice shall include a description of the proposed work and related estimated cost for completion of the Next Phase Work and shall identify whether there are any Accelerated Projects to be included in the projects to be initiated therein (“**Notice of Initiation**”).

3.3 Issuance of Future ARTA Bonds. As soon as practicable following its receipt of a Notice of Initiation from AACMD, ARTA shall initiate its process for the issuance of its next applicable series of Future ARTA Bonds in an amount sufficient to fund the estimated cost of completion contained in the Notice of Initiation for the Next Phase Work prior to the end of the four (4) month prior notice period (the “**Next Phase Funding Date**”).

3.4 Initiation of the Next Phase Work. In the event any next series of Future ARTA Bonds has not been issued and ARTA does not have adequate funds available, in its discretion, to fund any Next Phase Work by the applicable Next Phase Funding Date, AACMD and ARTA shall work together in good faith to secure alternative financing. Once Future ARTA

Bonds or alternative, mutually agreed upon and sufficient financing is secured to fund the applicable Next Phase Work (“**Next Phase Funding**”), AACMD will proceed with the Next Phase Work. It is intent of the Parties that the process described in this section may be repeated for each phase and as many phases as are reasonably necessary to fund and complete the Regional Transportation System Improvements consistent with the Capital Plan.

3.5 Project Implementation. AACMD shall coordinate, administer and oversee: (i) the preparation of all budgets, schedules, contracts and other documents pertaining to the Next Phase Work; and (ii) the design and construction of the Next Phase Work (the “**Next Phase Services**,” the Next Phase Services and the Phase I Services shall collectively be referred to as the “**Services**”). AACMD has engaged and will continue to engage engineers, surveyors and other consultants and construction contractors as reasonably necessary to complete the Next Phase Work (“**Next Phase Service Provider(s)**,” the Next Phase Service Providers and the Phase I Service Providers shall collectively be referred to as the “**Service Providers**”).

3.6 Mutual Benefits. AACMD agrees it will in good faith endeavor to coordinate, administer and oversee the Services as described herein in coordination with AACMD’s efforts to provide the AACMD Improvements in order to take advantage of practical efficiencies, potential cost savings, and other benefits to the mutual benefit of both Parties.

3.7 Final Conveyance to Accepting Jurisdictions. As part of the Services described herein, AACMD agrees it will, following completion of any Regional Transportation System Improvements, facilitate the timely final conveyance of such Regional Transportation System Improvements to the appropriate accepting jurisdiction(s), including but not limited to facilitating the completion of any and all warranty or other requirements of such accepting jurisdiction(s), as appropriate.

4. General Design and Construction Provisions.

4.1 Compliance with Legal Requirements. AACMD shall comply with all applicable laws, rules, or regulations of any and all applicable controlling local, state, or federal entities in its design, construction and operation and maintenance of the Regional Transportation System Improvements and performing its obligations under this Agreement.

4.2 Certification of Compliance with the Illegal Alien Statute. By its execution hereof, AACMD confirms that it has and agrees that it will comply with the provisions of Section 8-17.5-101, et seq., C.R.S., the provisions, certifications, statements, representations and warranties of which Section are hereby incorporated by reference in this Agreement.

4.3 Taxes, Fees and Permits. AACMD or its Service Providers shall pay all applicable sales, use, and other similar taxes and fees pertaining to the Regional Transportation System Improvements, if any, and ARTA acknowledges that such costs shall be included in the costs of the Work, defined below; provided, AACMD agrees that AACMD and its Service Providers shall take advantage of any and all applicable tax exemptions available to AACMD and/or ARTA, and any such taxes erroneously paid shall not be included in the costs of the Work.

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

4.5 Bonds. AACMD shall secure and pay for all applicable bonds or other security required and pertaining to the Phase I Improvements and the Next Phase Work, if any, and ARTA acknowledges that such costs shall be included in the costs of the Work.

4.6 Standards of Care, Skill and Diligence. AACMD agrees that all Services to be provided pursuant to this Agreement shall be performed by individuals or entities having all certifications, registrations, or licenses as may be required by applicable local, state and federal laws governing the particular field of services provided, and the Services shall only be performed by individuals and entities who possess the capacity and the professional experience and skill to perform the Services in accordance with the standards of care, skill and diligence provided by competent entities who perform work of a similar nature and in the same or similar locality.

5. Accounting and Reporting.

5.1 Bookkeeping. During the term of this Agreement, AACMD shall keep or cause to be kept, accurate and current books and accounts in which are recorded the Work Costs, the Verified Costs, and all AACMD's administrative and management expenses related to the Services. 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 completion and approval by AACMD. AACMD shall keep its books and accounts in sufficient detail to provide periodic reporting on the Verified Costs related to the Work (the "**Work Costs**") and the payment of the same, which books and records shall be made available at any time for review (upon reasonable prior written notice) by ARTA.

5.1.1 AACMD shall provide an oral report to ARTA as to the general progress made in the design and construction of the Regional Transportation System Improvements at each ARTA Board meeting during the term of this Agreement.

5.1.2 ARTA acknowledges receiving previous written progress reports from AACMD on the Phase I Improvements (the "**Progress Reports**") consistent with the provisions of the Amended and Restated IGA. AACMD shall continue to provide Progress Reports to ARTA on the Regional Transportation System Improvements monthly on or before the 15th day of each month beginning the first month after the Effective Date.

5.1.3 AACMD agrees it will, on a routine and timely basis, report all Work Costs incurred by AACMD pursuant to this Agreement to the Independent Engineer and provide such records of the Work Costs and other information as necessary to allow the Independent Engineer to determine the associated Verified Costs and report the same to ARTA in a timely manner.

5.1.4 The Independent Engineer shall verify that the Work Costs, through the final acceptance of such Work by the appropriate jurisdiction, including but not limited to, the cost incurred in the design, construction, permitting, bonding, insuring, construction management, construction, easement or right of way acquisition, project accounting, management, legal costs and other services directly related to same (the “**Work**”) are reasonable and within market parameters for the Work, that the Work was confirmed to be for the Phase I Improvements or the Next Phase Work, as applicable, and the Service Provider of the Work has been paid for the Work (“**Verified Costs**”).

5.1.5 Whenever applicable and appropriate, AACMD shall negotiate and execute agreements with applicable jurisdictions, including but not limited to the E-470 Public Highway Authority and the Colorado Department of Transportation, to secure reimbursement to AACMD for that portion of the Verified Costs reimbursable by such entities in relation to the design, financing, and construction of Regional Transportation System Improvements (the “**Reimbursements**”). Any funds committed to or received by AACMD associated with the Regional Transportation System Improvements pursuant to the Reimbursements shall be credited toward the Verified Costs for which the Reimbursements were received by AACMD, or otherwise be remitted to ARTA, as applicable. Provided, the Parties understand and agree that ARTA intends to enter into one or more intergovernmental agreements with the E-470 Public Highway Authority regarding the funding for, construction of, and reimbursement of costs associated with the proposed E-470 and 38th Avenue interchange. AACMD will not negotiate or enter into any agreement with the E-470 Public Highway Authority regarding reimbursements associated with the proposed E-470 and 38th Avenue interchange without the express written consent of ARTA.

6. Funding Requirement

6.1 Funding of Phase I Improvements. AACMD shall, no more frequently than once a month, submit a draw request to ARTA for payment of Verified Costs incurred by AACMD for the Work related to the Phase I Improvements (the “**Draw Request**”). The Draw Request shall be accompanied by a report prepared and certified by the Independent Engineer indicating the funds requested in the Draw Request for the Phase I Improvements are for Verified Costs.

6.1.1 Unless otherwise agreed by the Parties, ARTA shall make payment of each Draw Request within fifteen (15) days of receipt to assure funds are available to AACMD for the timely payment of the Service Providers by AACMD.

6.2 Funding of Next Phase Work. Within five (5) business days of the closing on any Next Phase Funding, ARTA shall reimburse AACMD for any Verified Costs previously incurred by AACMD associated with the applicable Next Phase Work. Thereafter, no more frequently than once a month, AACMD shall submit a draw request to ARTA for payment of Verified Costs incurred by AACMD for the Next Phase Work (the “**Next Phase Work Draw Request**”). Each Next Phase Work Draw Request shall be accompanied by a report prepared and certified by the Independent Engineer indicating the funds requested in the Next Phase Draw Request are for Verified Costs.

6.2.1 Unless otherwise agreed by the Parties, ARTA shall make payment of each Next Phase Draw Request within fifteen (15) days of receipt to assure funds are available to AACMD for the timely payment of the Service Providers by AACMD.

7. Operations and Maintenance. AACMD shall be responsible for the operations and maintenance of certain components of the Regional Transportation System and certain other improvements related thereto as set forth in the Intergovernmental Agreement Regarding Interim Maintenance of Aerotropolis Regional Transportation Authority Regional Transportation System Improvements executed contemporaneously herewith.

8. Access to Regional Transportation System Improvements. Where generally necessary and applicable, ARTA hereby grants to AACMD, and its applicable contractors, a limited license to access all property owned or controlled by ARTA as is reasonably necessary to provide the services contemplated pursuant to this Agreement, such license to expire as to each of the Regional Transportation System Improvements upon acceptance by the appropriate accepting jurisdiction and as to all Regional Transportation System Improvements upon termination of this Agreement.

9. Dispute Resolution. In the event either of the Parties reasonably objects in whole or in part to the other Party's performance of its duties pursuant to this Agreement or to any other matter related to the provisions of this Agreement, including but not limited to the provision of Services, Work, Service Providers, Draw Requests, Next Phase Work Draw Requests, Work Costs or Verified Costs, but expressly excluding any material breach or default, the Parties agree they shall use commercially reasonable efforts to meet and confer in good faith to resolve such reasonable objection as soon as practicable, including but not limited by engaging in third party mediation or engaging in some other form of mutually agreed upon alternative dispute resolution. If, despite their commercially reasonable and good faith efforts, the Parties are unable to resolve any such reasonable objection within thirty-five (35) days after the date that such reasonable objection has been received, the Parties may seek any remedies available pursuant to this Agreement.

10. Covenant of Good Faith and Fair Dealing. The Parties agree to act in good faith in dealing with one another, carrying out their responsibilities, and performing their obligations pursuant to this Agreement. Each Party hereby covenants to the other that it shall not undermine the rights or obligations of the other Party hereto with respect to the Agreement and it will cooperate with the other in achieving the purposes of this Agreement.

11. Limitations on Responsibilities.

11.1.1 Covered Liability. Except for the Covered Liability (as hereinafter defined), AACMD shall owe no duty nor have any liability or obligation or responsibility to ARTA, directly or indirectly, with respect to any (i) services other than the Services specified in this Agreement, (ii) improvements other than the Phase I Improvements or the Next Phase Improvements, as applicable, (iii) entity or person that is not a Party to this Agreement, (iv) accident on the Phase I Improvements or the Next Phase Work, as applicable, or any fire or other casualty or hazard except to the extent resulting from the negligence of the AACMD, or

(iv) defect in the material or workmanship of the Phase I Improvements or the Next Phase Work, as applicable. The Parties acknowledge that AACMD's coordination and observation of work being performed by the Service Providers (including evaluations and tests) shall not serve as AACMD's warranty as to the quality of such work. AACMD shall not be obligated to independently confirm the accuracy of any evaluations and tests conducted by any Service Providers, nor shall AACMD be obligated to independently confirm that any plans or reports prepared by any Service Providers comply with Applicable Laws. "**Covered Liability**" means the following matters for which AACMD shall be liable in connection with the performance or failure to perform its obligations under this Agreement: (i) any damage, loss, or injury arising from AACMD's (a) failure to exercise due care, or failure to maintain commercially reasonable standards of performance, during the performance of the Services; or (b) any breach of this Agreement on its terms.

12. Default/Remedies. In the event of a material 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-five (35) 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.

13. 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 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 2000
 Denver, Colorado 80203
 Phone: (303) 839-3800
 Fax: (303) 839-3838
 Email: rkron@spencerfane.com;
 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 and Elisabeth Cortese
 450 E. 17th Avenue, Suite 400
 Denver, Colorado 80203
 Phone: (303) 592-4380
 Fax: (303) 592-4385
 Email: mmcgeady@specialdistrictlaw.com
 ecortese@specialdistrictlaw.com

14. 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.

15. Termination of this Agreement. This Agreement shall terminate in its entirety upon the final acceptance for ownership, operation and maintenance by the appropriate agency of all of the Regional Transportation System Improvements and the full payment to AACMD of any amounts due hereunder.

16. Amendment; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. No amendment, 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.

17. Governing Law; Venue. 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. Any legal dispute arising hereunder shall be tried and heard in the District Court for the County of Adams, State of Colorado.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. AACMD Indemnification of ARTA. To the extent permitted by law, AACMD shall indemnify, defend, save, and hold harmless ARTA, its officers, employees, and agents, against any and all third party claims, damages, liability, and court awards, including all costs, expenses, and attorney fees incurred, as a result of any act or omission of AACMD or its employees, agents, subcontractors, or assignees related to AACMD's performance of its duties pursuant to this Agreement.

25. ARTA Indemnification of AACMD. To the extent permitted by law, ARTA shall indemnify, defend, save, and hold harmless AACMD, its officers, employees, and agents, against any and all third party claims, damages, liability, and court awards, including all costs, expenses, and attorney fees incurred, as a result of any act or omission of ARTA or its employees, agents, subcontractors, or assignees related ARTA's in the implementation of ARTA's responsibilities under this Agreement.

26. No Partnership or Joint Venture; Contractors and Agents. The Parties to this Agreement are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them. Further, any and all contractors or other agents engaged by AACMD to perform services related to this Agreement shall be considered contractors and agents of AACMD only and not of ARTA, unless otherwise expressly agreed to in writing by ARTA.

27. Third Party Beneficiaries. Nothing expressed or implied in this 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 Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and any and all provisions in this 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.

28. 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 Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement for Project Management of the Design and Construction of the ARTA 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: 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

February 5, 2018

Project	Description (RTA Portion)	Total Cost	RTA Total	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
A	48th Avenue E470 to Gun Club 6 Lanes (2 Lanes)	\$ 4,899,840	\$ 1,714,944						\$ 428,736	\$ 1,286,208									
B	48th Avenue Gun Club to Harvest 6 Lanes (2 Lanes)	\$ 6,082,560	\$ 2,128,896											\$ 532,224	\$ 1,596,672				
C	48th Avenue Harvest to Powhatan 6 Lanes (2 Lanes)	\$ 12,165,120	\$ 4,257,792											\$ 1,064,448	\$ 3,193,344				
D	38th Avenue Himalaya to E470 4 Lanes (North 2 Lanes)	\$ 14,931,280	\$ 14,931,280	\$ 746,564	\$ 746,564						\$ 6,719,076	\$ 6,719,076							
E	38th Avenue Himalaya to E470 4 Lanes (South 2 Lanes)	\$ 8,039,920	\$ 8,039,920														\$ 4,019,960	\$ 4,019,960	
F	TAH Parkway E470 to Main Street 4 Lanes (1 Lane)	\$ 3,674,880	\$ 3,674,880	\$ 918,720	\$ 2,756,160														
G	TAH Parkway Main St to Aura Blvd 4 Lanes (1 Lane)	\$ 7,349,760	\$ 2,939,904	\$ 734,976	\$ 2,204,928														
H	TAH Parkway Aura Blvd to Powhatan 4 Lanes (1 Lane)	\$ 26,169,600	\$ 9,159,360					\$ 1,831,872	\$ 3,663,744	\$ 3,663,744									
I	26th Avenue E470 to Main Street 6 Lanes (2 Lanes)	\$ 3,210,240	\$ 1,123,584	\$ 280,896	\$ 842,688														
J	26th Avenue Main Street to Harvest 6 Lanes (2 Lanes)	\$ 9,630,720	\$ 3,370,752											\$ 674,150	\$ 1,348,301	\$ 1,348,301			
K	26th Avenue Harvest to Powhatan 6 Lanes (2 Lanes)	\$ 14,530,560	\$ 5,085,696											\$ 1,017,139	\$ 2,034,278	\$ 2,034,278			
L	Powhatan Road I-70 to 26th 6+ Lanes (3 Lanes)	\$ 18,928,000	\$ 12,303,200					\$ 2,460,640	\$ 4,921,280	\$ 4,921,280									
M	Powhatan Road 26th to 48th 6+ Lanes (3 Lanes)	\$ 32,032,000	\$ 20,820,800					\$ 4,164,160	\$ 8,328,320	\$ 8,328,320									
N	Powhatan Road 48th to 56th 6+ Lanes (3 Lanes)	\$ 25,920,000	\$ 16,848,000					\$ 3,369,600	\$ 6,739,200	\$ 6,739,200									
O	E470/38th Interchange 100%	\$ 24,000,000	\$ 24,000,000	\$ 1,200,000	\$ 1,200,000					\$ 4,800,000	\$ 9,600,000							\$ 7,200,000	
P	HM/PR/I70 Interchange 100%	\$ 36,000,000	\$ 36,000,000	\$ 1,440,000	\$ 1,440,000								\$ 720,000	\$ 10,800,000	\$ 10,800,000	\$ 10,800,000			
Q	Powhatan/I-70 INT Initial Interchange 100%	\$ 6,080,000	\$ 6,080,000	\$ 304,000	\$ 304,000	\$ 608,000	\$ 1,216,000	\$ 1,824,000	\$ 1,824,000										
R	Picadilly Interchange Interchange(NEATS) Design Only	\$ 49,440,000	\$ 2,472,000														\$ 1,236,000	\$ 1,236,000	
	PROJECTED TOTAL	\$ 295,044,560	\$ 174,951,008	\$ 5,625,156	\$ 9,494,340	\$ 608,000	\$ 1,216,000	\$ 13,650,272	\$ 25,905,280	\$ 29,738,752	\$ 16,319,076	\$ 6,719,076	\$ 4,007,962	\$ 18,972,595	\$ 14,182,579	\$ 12,036,000	\$ 12,455,960	\$ 4,019,960	\$ -
	CUMMULATIVE TOTAL			\$ 5,625,156	\$ 15,119,496	\$ 15,727,496	\$ 16,943,496	\$ 30,593,768	\$ 56,499,048	\$ 86,237,800	\$ 102,556,876	\$ 109,275,952	\$ 113,283,914	\$ 132,256,509	\$ 146,439,088	\$ 158,475,088	\$ 170,931,048	\$ 174,951,008	\$ 174,951,008

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.

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 the service provider, 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 and ARTA 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.

**INTERGOVERNMENTAL AGREEMENT REGARDING INTERIM MAINTENANCE
OF AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY
REGIONAL TRANSPORTATION SYSTEM IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING INTERIM MAINTENANCE OF AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY REGIONAL TRANSPORTATION SYSTEM IMPROVEMENTS (this “**Agreement**”) is made and entered into this ___ day of _____ 2019 (the “**Effective Date**”), by and between AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“**AACMD**”), and AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY, a political subdivision and body corporate of the State of Colorado formed pursuant to C.R.S. § 43-4-601, *et. seq.* (“**ARTA**”). AACMD and ARTA may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties.**”

RECITALS

A. AACMD was organized on December 7, 2004, to plan for, design, acquire, construct, install, relocate, redevelop, and finance certain public improvements as described in AACMD’s First Amended and Restated Service Plan approved by the City of Aurora on October 16, 2017.

B. 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 Aerotropolis Area Coordinating Metropolitan District 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 more particularly described in the Establishment Agreement and on Exhibit A, thereto, which Exhibit A is also attached to this Agreement and incorporated herein by this reference (the “**Regional Transportation System;**” as used herein, the term “**Regional Transportation System Improvements**” shall mean any one or more individual components of the Regional Transportation System), consistent with the detailed phasing plan and budget attached to the Establishment Agreement as Exhibit D, which Exhibit D is incorporated by reference herein (as the same may be amended, the “**Capital Plan**”) (any capitalized terms used but not defined herein shall have the meanings ascribed to them in the Establishment Agreement).

C. The Establishment Agreement provides that the ARTA members will remit certain revenues to ARTA to fund the completion of the Regional Transportation System and, further, authorizes ARTA to issue Bonds to fund the Regional Transportation System in reliance, in part, on such revenues from ARTA’s members.

D. Pursuant to the requirements of the Establishment Agreement, ARTA adopted a plan of finance for the Regional Transportation System Improvements on May 17, 2019 (the “**Financing Plan**”).

E. The Parties previously entered into that certain Intergovernmental Agreement for Project Funding and Reimbursement for Initial Design of ARTA Phase I Improvements dated August 23, 2018, and on January 15, 2019, AACMD and ARTA entered into that certain First Amended and Restated Intergovernmental Agreement for Project Funding and Reimbursement for Design and Construction of Phase I Improvements (together, the “**Amended and Restated IGA**”), which provides, in part, that AACMD may fund certain design and construction and warranty costs related to the completion of the Phase I Improvements, as described and defined therein, in reliance on and with the expectation of reimbursement for such costs from ARTA.

F. It is anticipated that, contemporaneously with the execution hereof, the Parties will enter into a separate intergovernmental agreement regarding the funding and reimbursement of the Regional Transportation System Improvements with the purpose and intent of supplementing the Amended and Restated IGA and providing for additional Regional Transportation System Improvements not addressed in the Amended and Restated IGA (the “**Project Management IGA**”).

G. ARTA and AACMD have entered into that certain Master Services Agreement for Engineering Services with Schedio Group, LLC (the “**Independent Engineer**”) pursuant to which the Independent Engineer will, among other services, identify, review and report to ARTA and AACMD any costs funded by AACMD for the Regional Transportation System Improvements, including but not limited to costs incurred by AACMD to provide the Maintenance Services as provided herein, that are eligible for reimbursement to AACMD by ARTA (as such costs pertain to the Maintenance Services, the “**Verified Maintenance Costs**”).

H. Consistent with the provisions of the Establishment Agreement, ARTA intends to pursue the issuance of bonds or other obligations to finance the design and construction of the Regional Transportation System consistent with the Capital Plan and the Financing Plan, as the same may be amended (the “**ARTA Bonds**”), the proceeds of which ARTA intends to use, in part, to reimburse AACMD for certain costs incurred in the cooperative development and maintenance of the Regional Transportation System pursuant to the Amended and Restated IGA as further set forth in the Project Management IGA and this Agreement.

I. The Parties acknowledge and agree that the completion of the Regional Transportation System will necessarily involve the planning for, design, construction, installation, and financing of certain street and ancillary improvements connecting the Regional Transportation System Improvements to other existing and planned regional and local transportation infrastructure (the “**Connecting Improvements**”); provided, the Parties also acknowledge that under some

circumstances the ownership and maintenance responsibilities associated with other certain street and ancillary improvements connecting the Regional Transportation System Improvements to other existing and planned regional and location transportation infrastructure may not be directly related to any Regional Transportation System Improvements or may be more directly related to other, non-regional improvements, the responsibility for which does not reasonably fall to ARTA, and in such circumstances such certain street and ancillary improvements will not be considered Connecting Improvements pursuant to this Agreement.

J. The Establishment Agreement provides, in part, that following their completion the Regional Transportation System Improvements will be conveyed to the appropriate governing jurisdiction responsible for similarly situated improvements for ownership, operation, maintenance, repair, and replacement, regardless of whether such jurisdiction is a member of ARTA, and ARTA shall not retain ownership of any Regional Transportation System Improvements after the expiration of applicable warranty periods.

K. The Parties recognize that in providing the Regional Transportation System Improvements it will be necessary to also provide for the interim maintenance of the Regional Transportation System Improvements and, as applicable, the Connecting Improvements, including but not limited to providing for any capital costs necessary during applicable warranty periods, for the period of time between when the Regional Transportation System Improvements and related Connecting Improvements are constructed until they are conveyed to the appropriate governing jurisdiction(s) for long term ownership, operation, maintenance, repair and replacement.

L. AACMD is willing, upon the terms and conditions further set forth herein, to provide certain interim maintenance services for the Regional Transportation System Improvements and Connecting Improvements on ARTA's behalf.

M. ARTA desires, upon the terms and conditions further set forth herein, to enlist AACMD's support to provide certain interim maintenance services for the Regional Transportation System Improvements and Connecting Improvements on ARTA's behalf.

N. ARTA and AACMD desire to enter into this Agreement in order to set forth their mutual understanding and agreement regarding the provision of certain interim maintenance services for the Regional Transportation System Improvements and Connecting Improvements as further described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals above and the mutual promises and covenants contained herein, the adequacy and sufficiency of which are mutually acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated in this

Agreement as if fully set forth herein.

2. Definitions.

Capitalized terms used but not defined in this Agreement shall have the meanings specified in the Establishment Agreement. In addition to capitalized terms defined in the body of this Agreement, the following terms shall be defined as follows:

(a) “**Accepting Jurisdiction**” shall mean the City of Aurora, Adams County, the E-470 Public Highway Authority, the Colorado Department of Transportation, or any other governmental entity that accepts the ownership, operations, and maintenance of any part of the Regional Transportation System Improvements.

(b) “**Contractor Proposal Process**” shall mean the procurement of proposals for Maintenance Services from known contractors at the request or invitation of AACMD.

(c) “**Hardscape Maintenance**” shall mean the clearing, repair, or replacement of hardscape features, including concrete walkways, decks, retaining walls, potting containers, and other design features of stone, wood, sand, pebble, brick, metal, concrete and other similar materials incorporated into the Regional Transportation System Improvements for practical or aesthetical purposes as reasonably necessary to maintain such hardscape features in good condition and repair (normal wear and tear excepted), but shall not include the initial provision of installation of such capital improvements.

(d) “**Landscape Maintenance**” shall mean pruning, weeding, planting of annuals, irrigation, mowing of turf lands and ground cover management which is undertaken in connection with the normal maintenance and repair of landscaped property, including shrubbery, trees, grasses, flowerbeds, and soils and other design features of similar materials incorporated into the Regional Transportation System Improvements for practical or aesthetical purposes as reasonably necessary to maintain such landscaping in good condition and repair (normal wear and tear excepted), but shall not include the initial provision or installation of landscape improvements.

(e) “**Maintenance Expenses**” shall mean all of the actual costs incurred by AACMD in the performance of Maintenance Services.

(f) “**Maintenance Services**” shall mean all Landscape Maintenance, Hardscape Maintenance, Snow Removal Maintenance, and other maintenance activities required by an Accepting Jurisdiction during the Warranty Period.

(g) “**Public Bidding**” shall mean the bidding process set forth under Sections 32-1-1001 or 24-92-101, *et seq.*, C.R.S., as applicable.

(h) “**Snow Removal Maintenance**” shall mean the removal of snow and ice and, if necessary, the related laying of sand or other material, on any vehicular or pedestrian way of travel, including roads, streets, public alleyways, walkways, bike paths, or any multi-purpose hardscape path being a part of or appurtenant to the Regional Transportation System Improvements as reasonably necessary to allow normal usage of the same.

(i) “**Warranty Period**” shall mean the applicable period of any warranty associated with a specific component of the Regional Transportation System Improvement or Connecting Improvement constructed by AACMD and/or ARTA as may be required in any applicable construction contract or pursuant to applicable law, rule, or regulation of any applicable controlling local, state, or federal entity.

3. Maintenance of Regional Transportation System.

3.1 AACMD’s Maintenance Responsibilities. ARTA hereby assigns and AACMD hereby assumes all obligations for the Maintenance Services associated with the Regional Transportation System Improvements and Connecting Improvements constructed by AACMD during the Term of this Agreement. Further, AACMD agrees that it will, upon written request of ARTA, also assume all obligations for the Maintenance Services associated with any Regional Transportation System Improvements or Connecting Improvements not constructed by AACMD, conditioned on the satisfaction of ARTA of its obligations set forth in Section 6.1 and provided such Maintenance Services are to be provided, funded, and reimbursed consistent with the terms of this Agreement. Throughout the Term (as defined herein), AACMD shall provide, or shall contract for the provision of, the Maintenance Services, including Landscape Maintenance, Hardscape Maintenance, and Snow Removal Maintenance.

3.2 Term. The “**Term**” of this Agreement shall commence upon the Effective Date and continue until the reimbursement obligation set forth herein is fully satisfied and all of the Regional Transportation System Improvements and Connecting Improvements to be maintained by AACMD hereunder have been conveyed to the appropriate Accepting Jurisdiction after expiration of any applicable Warranty Period. Notwithstanding the foregoing, AACMD’s responsibilities under this Agreement shall end with the final acceptance of all Regional Transportation System Improvements and Connecting Improvements constructed by AACMD by an Accepting Jurisdiction.

3.3 Provision of Services. It is contemplated that AACMD will, and agreed by ARTA that AACMD may, enter into service agreements with one or more third parties for the provision of the Maintenance Services (each a “**Service Agreement**”). AACMD shall adhere to the contracting requirements set forth in Section 4 hereof when entering into any agreement for the provision of Maintenance Services.

4. Service Agreements Requirements.

4.1 Minimum Requirements. AACMD shall perform all Maintenance Services or enter into Service Agreements consistent with, at minimum, the following requirements:

(a) Prohibition on Employment of Illegal Aliens. In accordance with Section 8-17.5-101, *et seq.*, C.R.S., AACMD will not enter into any Service Agreement with any contractor who knowingly employs or contracts with an illegal alien, or who knowingly subcontracts with a subcontractor who knowingly employs or contracts with an illegal alien, to provide any of the Maintenance Services hereunder. A provision concerning this requirement will be included in all Service Agreements, and certification by all service contractors, as set forth on the attached **Exhibit B** must be provided to AACMD.

(b) Public Health/Aesthetics. The Maintenance Services shall be performed in a safe, healthful, and attractive manner appropriate for each specific phase of development of the Regional Transportation System on a periodic and as-needed basis, and consistent with reasonable and customary industry standards for such services.

(c) Hazardous Materials. If supplies purchased for use in performance of the Maintenance Services contain or are themselves hazardous materials, AACMD or AACMD's contractors shall understand the nature of any hazards associated with the manufacture, handling, use and transportation of such materials, and shall be properly licensed for the performance of the same.

(d) Insurance. Insurance in minimum coverage limits not less than the minimum coverage limits set forth on the attached **Exhibit C** shall be required of all service contractors, and AACMD and ARTA shall each be identified as additional insureds in all such policies.

(e) Certification and Licensing. All Maintenance Services shall be performed by individuals or entities having all certifications, registration, or licenses as may be required by applicable local, state and federal laws governing the particular field of services provided.

(f) Standards of Care, Skill, and Diligence. The Maintenance Services shall only be performed by individuals and entities who possess the capacity and the professional experience and skill to perform the Maintenance Services in accordance with the standards of care, skill and diligence provided by component entities who perform work of a similar nature and in the same or similar locality.

5. Awarding of Service Agreements.

5.1 Bid/Proposal. All agreements for Maintenance Services or agreements incorporating Maintenance Services furnished by any third-party shall be awarded through either: (i) Public Bidding, or (ii) a Contractor Proposal Process including the solicitation of proposals from no less than three (3) service providers. ARTA acknowledges AACMD cannot compel a

third party to respond to a request for proposal; therefore, the solicitation of proposals from no less than three (3) service providers shall be sufficient evidence of compliance with this provision, even if proposals are not received from all three service providers.

5.2 Scored System Awarding of Service Agreements. AACMD shall develop and maintain a scored system for awarding Service Agreements and will provide the same to ARTA upon request. Such scored system shall incorporate, at a minimum, considerations of cost and time of performance, and may also include considerations of project knowledge, contractor mobilization, local preference, and other factors deemed relevant by AACMD.

5.3 Bid/Proposal Transparency. AACMD shall ensure that all bids/proposals for Maintenance Services submitted pursuant to Public Bidding or the Contractor Proposal Process shall be scored according to the scored system established by AACMD in Section 5 hereof and retained as required under Section 7 of this Agreement, and made available to ARTA upon request.

5.4 Administrative Costs. AACMD agrees that any administrative costs of AACMD necessary to solicit, review, negotiate, complete or otherwise establish Service Agreements may be considered Maintenance Expenses only to the extent such costs are necessary, reasonable, and directly related to the provision of the Maintenance Services, the Regional Transportation System Improvements or related Connecting Improvements, and the purpose and intent of this Agreement.

6. Funding and Reimbursement of Maintenance Expenses.

6.1 AACMD Appropriation. On or before December 15 of each year throughout the Term of this Agreement and including the year in which the Term of this Agreement expires or is terminated, AACMD agrees to budget and appropriate funds for the ensuing year in an amount sufficient to pay for the Maintenance Expenses for all Regional Transportation System Improvements and Connecting Improvements for which AACMD has assumed Maintenance Services obligations and which have not yet been accepted by an Accepting Jurisdiction. AACMD will make available to ARTA each year's budget upon request. The obligation of AACMD to provide Maintenance Services on Regional Transportation System Improvements or Connecting Improvements that AACMD did not construct shall be contingent on the delivery to AACMD of evidence in a form acceptable to AACMD in its sole discretion that ARTA has sufficient funds in its bank account(s), appropriated and encumbered in a sufficient amount, for payment to AACMD for such Maintenance Services.

6.2 ARTA Pledge of Revenues. Subject to the receipt of funding from ARTA Bonds, or from any other legally available sources deemed available in ARTA's sole discretion, ARTA shall reimburse AACMD for all Verified Maintenance Costs expended by AACMD to provide the Maintenance Services on the Regional Transportation System Improvements and Connecting Improvements for which AACMD has assumed Maintenance Services obligations and which have not yet been accepted by an Accepting Jurisdiction, within forty-five (45) days of ARTA's receipt of an invoice or other documentation from AACMD documenting Verified Maintenance Costs incurred by AACMD and requesting reimbursement.

6.3 Verification of Maintenance Expenses. AACMD agrees it will, on no less frequently than a quarterly basis, report all Maintenance Expenses incurred by AACMD pursuant to this Agreement to the Independent Engineer and provide such records of the Maintenance Expenses as are necessary to allow the Independent Engineer to determine the associated Verified Maintenance Costs and report the same to ARTA in a timely manner.

6.4 Subordination. All amounts owed by ARTA to AACMD pursuant to this Agreement shall be subordinate to any obligation of ARTA related to the ARTA Bonds, the Amended and Restated IGA, and ARTA's obligation to reimburse AACMD for the planning of, design, acquisition, construction, installation, relocation, redevelopment, and financing of the Regional Transportation System Improvements.

7. Access to Records and Reports.

7.1 Retention. Throughout the Term of this Agreement and for a period of three (3) years following termination of this Agreement for any reason, AACMD shall maintain, preserve, and make available to ARTA and any of its authorized representatives access at all reasonable times to any books, documents, papers, and records of AACMD which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

7.2 Access. AACMD shall maintain, and ARTA shall at any time have the right to examine and audit, all records and other evidence sufficient to reflect properly all prices, costs, or rates negotiated and invoiced by or to AACMD in performance of the Maintenance Services. This right of examination shall include inspection at all reasonable times of AACMD or any contractor engaged in performing any portion of the Maintenance Services.

8. Access to Regional Transportation System Improvements. Where generally necessary and applicable, ARTA hereby grants to AACMD, and its applicable contractors, a limited license to access completed Regional Transportation System Improvements and Connecting Improvements owned or controlled by ARTA as is reasonably necessary to provide the Maintenance Services, such license to expire as to each of the Regional Transportation System Improvements and Connecting Improvements upon acceptance by an Accepting Jurisdiction and as to all Regional Transportation System Improvements and Connecting Improvements upon termination of this Agreement.

9. Miscellaneous.

9.1 Default/Remedies. In the event of a material 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.

9.2 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 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 2000 Denver, Colorado 80203 Phone: (303) 839-3800 Fax: (303) 839-3838 Email: rkron@spencerfane.com 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

9.3 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.

9.4 Amendment; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. No amendment, 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.

9.5 Governing Law; Venue; Attorneys Fees. 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. Any legal dispute arising hereunder shall be tried and heard in the District Court for the County of Adams, State of Colorado. In the event that legal action is instituted to enforce any of the provisions of the Agreement, the prevailing party shall recover from the losing party its reasonable attorneys fees and court costs.

9.6 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.

9.7 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 AACMD Indemnification of ARTA. To the extent permitted by law, AACMD shall indemnify, defend, save, and hold harmless ARTA, its officers, employees, and agents, against any and all third party claims, damages, liability, and court awards, including all costs, expenses, and attorney fees incurred, as a result of any act or omission of AACMD or its employees, agents, subcontractors, or assignees related to AACMD's provision of the Maintenance Services under this Agreement.

9.13 ARTA Indemnification of AACMD. To the extent permitted by law, ARTA shall indemnify, defend, save, and hold harmless AACMD, its officers, employees, and agents, against any and all third party claims, damages, liability, and court awards, including all costs, expenses, and attorney fees incurred, as a result of any act or omission of ARTA or its employees, agents, subcontractors, or assignees related to implementation of ARTA's responsibilities under this Agreement.

9.14 No Partnership or Joint Venture; Contractors and Agents. The Parties to this Agreement are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them. Further, any and all contractors or other agents engaged by AACMD to perform the

Maintenance Services or any other services related to this Agreement shall be considered contractors and agents of AACMD only and not of ARTA, unless otherwise expressly agreed to in writing by ARTA.

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

9.17 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 Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement for Interim Maintenance of ARTA Regional Transportation System Improvements as of the Effective Date first set forth above.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT FOR INTERIM MAINTENANCE OF ARTA REGIONAL TRANSPORTATION SYSTEM IMPROVEMENTS]

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: 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

REGIONAL TRANSPORTATION SYSTEM

E470/38 th /The Aurora Highlands Pkwy Interchange - Full interchange design and build of diamond interchange along with frontage roads to and from 48 th .
I-70/Harvest/Powhatan Interchange - Full interchange design and build of diamond interchange at Harvest along with frontage roads to and from Powhatan in the interim.
38 th Avenue (E470 to Himalaya) – full section improvements - 4 lane arterial along with regional drainage crossings, traffic control and multimodal/bike boulevard.
Harvest/Powhatan Interconnect (I-70 to 56 th Avenue) – full section improvements - 6 lane limited access principal arterial along with regional drainage crossings, traffic control and multimodal (ped/bike) path and UPRR grade separation.
48 th Avenue (E470 to Powhatan) - full section improvements - 6 lane arterial along with regional drainage crossings, traffic control, multimodal (ped/bike) path and E470 overpass upgrade.
26 th Avenue (E470 to Powhatan) – full section improvements - 4 lane arterial along with regional drainage crossings/conveyance and traffic control.
Gun Club/Aura Boulevard/Main Street (26 th to 56 th) – full section improvements - 4 lane arterial along with regional drainage crossings/conveyance, traffic control and multimodal (ped/bike) path.
The Aurora Highlands Parkway (Interconnect to 38 th /E470 Interchange) – full section improvements - 4 lane arterial separated by major drainageway along with regional drainage crossings/conveyance, traffic control and multimodal/bike boulevard. Only constructed with approval of the E-470 Board of Directors.
Picadilly Interchange – Full Interchange Design

A

Exhibit B

Certification of Compliance with Illegal Alien Statute

By execution of this addendum (“**Addendum**”) to that certain [Name of Agreement] dated _____, 20____, by and between Aerotropolis Area Coordinating Metropolitan District (the “**District**”) and _____ (the “**Contractor**”) (the “**Agreement**”), the parties to the Agreement further agree as follows:

1. Pursuant to the requirements of Section 8-17.5–102(1), C.R.S., the Contractor hereby certifies to the District that the Contractor does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Contractor who are newly hired to perform work under the Agreement.

2. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Contractor shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

(b) Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. The Contractor represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

4. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

5. If the Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

(a) Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “**Department**”) made in the course of an investigation

that the Department is undertaking, pursuant to the law.

7. If the Contractor violates any provision of this Addendum, the District may terminate the Agreement immediately and the Contractor shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by the Contractor to the Colorado Secretary of State, as required by law.

IN WITNESS WHEREOF, the Parties have executed this Addendum on _____,
20____.

**AEROTROPOLIS AREA
COORDINATING METROPOLITAN
DISTRICT**

_____, President

Attest:

Secretary

CONTRACTOR

By: _____

Its: _____

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 Two Million Dollars (\$2,000,000.00) General Aggregate.

B. Automobile Liability Insurance for all motor vehicles operated by or for the service provider, 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 and ARTA 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.