

**AGREEMENT REGARDING MEMBER FUNDING TRANSFERS PURSUANT TO THE
AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY ESTABLISHMENT
AGREEMENT**

THIS AGREEMENT REGARDING MEMBER FUNDING TRANSFERS PURSUANT TO THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY ESTABLISHMENT AGREEMENT (this "Agreement") is entered into and effective as of the 3rd day of June, 2019, by and between the AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY, a regional transportation authority established pursuant to the Regional Transportation Authority Law, Section 43-4-601, et seq., C.R.S., as amended (the "RTA"), and the CITY OF AURORA, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas (the "City") (the RTA and the City may be referred to collectively herein as the "Parties").

WHEREAS, the RTA was organized pursuant to an intergovernmental agreement among the City, the County of Adams (the "County") and the Aerotropolis Area Coordinating Metropolitan District (the "District"), dated February 27, 2018 (the "Establishment Agreement") (the City, County and District may each be referred to herein individually as a "Member" and collectively as the "Members"), and consistent with the provisions of the Regional Transportation Authority Law, Section 43-4-601, et seq., C.R.S., as amended; and

WHEREAS, the Members formed the RTA, in part, in furtherance of supporting the public interest and economic health of the region to effectuate the goals of fostering and supporting economic development through the expansion and creation of transportation improvements, and for the stated purpose of constructing, or causing to have constructed, a regional transportation system within or outside the boundaries of the RTA for the primary benefit of those residing or owning property within the boundaries, as further described in the IGA; and

WHEREAS, pursuant to the Establishment Agreement, each of the Members 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 [RTA] 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;" and

WHEREAS, the Parties recognize that the Establishment Agreement does not provide clear direction as to the timing of remittances to be made to the RTA pursuant to the Establishment Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to clarify and set

forth their mutual agreement regarding the timing of remittances to be made to the RTA pursuant to the Establishment Agreement.

NOW THEREFORE, as full consideration for and in furtherance of the goals, intents, and purposes of the Establishment Agreement, and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated as though fully set forth herein.

2. Remittance of Funds to the RTA. To the extent the City appropriates revenues for remittance to the RTA pursuant to the provisions of the Establishment Agreement, the City agrees that such revenues shall be transferred to the RTA within 60 days of the City's actual receipt of the same. Transfers between the City and the RTA may be made by any means mutually agreeable to the Parties.

3. Limited Effect; Conflict of Provisions. Except as expressly set forth herein, the Establishment Agreement remains in full force and effect in accordance with its terms and nothing contained herein shall be deemed to be a waiver, amendment, modification or other change of any term, condition or provision of the Establishment Agreement. In the event of any conflict between the provisions of this Agreement and those of the Establishment Agreement, the provisions of the Establishment Agreement shall control.

4. Miscellaneous Provisions.

a. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

b. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture, or agency of any kind between the Parties.

c. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Adams County, Colorado.

d. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of the Parties, and no consultant, contractor, any subcontractor nor any other person or entity is a third-party beneficiary to or under this Agreement.

e. This Agreement contains the entire agreement of the Parties with respect to its subject matter. Any assignments, amendments or modifications to this Agreement

must be in writing executed by the Parties in order to be valid and binding.

f. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

g. The Parties are political subdivisions of the State of Colorado and, as such, any and all financial obligations described hereunder are subject to annual budget and appropriations requirements.

h. The Parties, and their respective elected officials, directors, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights, immunities, or protections afforded by the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S., as the same may be amended from time to time.

i. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable 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.

j. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

[remainder of page intentionally left blank; signature pages follow]


**AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY**

By: 


Name: Matthew Hopper

Its: Chairman

CITY OF AURORA

By:  Dated: 6-4-19
Bob LeGare, Mayor

Attested:

By: 
Stephen J. Ruger, City Clerk

Approved as to Form:

By: 
Michelle Gardner, Assistant City Attorney