

**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 22nd day of May, 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

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

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: David 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