

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE E-470 PUBLIC HIGHWAY AUTHORITY
AND
THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY
REGARDING E-470 AND 38TH AVENUE INTERCHANGE FUNDING AND
CONSTRUCTION**

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE E-470 PUBLIC HIGHWAY AUTHORITY AND THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY REGARDING E-470 AND 38TH AVENUE INTERCHANGE FUNDING AND CONSTRUCTION (the "Agreement") is made and entered into this 5th day of August, 2019 (the "Effective Date"), by and between the E-470 PUBLIC HIGHWAY AUTHORITY, a body corporate and political subdivision of the State of Colorado (the "Authority"), and the AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY, a political subdivision and body corporate of the State of Colorado formed pursuant to C.R.S. Section 43-4-601 *et seq.* ("ARTA") (the Authority and ARTA may be collectively referred to herein as the "Parties" or 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 Establishment Agreement and following organization adopted its Financing Plan for the purposes of constructing, or causing to be constructed, a Regional Transportation System, of which the Interchange is a part.

C. ARTA issued the ARTA Bonds on June 26, 2019, and ARTA has committed to the Authority to actively pursue the issuance of the Additional ARTA Bonds in order fund the Interchange in conjunction with the Authority's Widening Project. Accordingly, ARTA has commenced work on the Initial Interchange Design which will be turned over to the Authority for development of the Final Interchange Design during the Widening Project.

D. In order to facilitate the provision of public infrastructure related to development of the Aurora Highlands area prior to the final completion of the Interchange, ARTA seeks to construct the Interim Connection. The Authority is willing to allow ARTA's construction of the Interim Connection pursuant to the terms and conditions set forth in this Agreement.

E. The Parties acknowledge that significant efficiencies and cost savings may be realized to the mutual benefit of both Parties by planning and executing the construction of the Interchange in connection with the Widening Project. Accordingly, the Authority is agreeable to accelerating construction of the Interchange provided ARTA pays the costs associated with the

Initial Interchange Design and the costs of the design and construction of the Bridge pursuant to the terms and conditions set forth in this Agreement.

F. ARTA is willing to fund the Initial Interchange Design and the design and construction of the Bridge on the terms and conditions forth herein, and the Authority is willing to fund the remainder of the Interchange and construct the Interchange on the terms and conditions set forth herein.

G. Following completion of the construction of the Interchange, the Authority will assume the Authority Maintenance Obligations for the Interchange and ARTA shall have the full and sole obligation to work with the City, the County and/or or other public entities with jurisdiction in regard to turning over all Connecting Facilities to the City, County and/or or other public entities with jurisdiction for ownership, operation, maintenance, repair, and replacement. ARTA shall retain ownership, operation, maintenance, repair and replacement responsibilities for all Connecting Facilities until such time as the City, County or other public entities with jurisdiction have taken ownership of the same.

H. The Parties and their respective residents, constituents, and customers will jointly benefit from the accelerated construction of the Interchange, and the Parties therefore agree to cooperatively provide for the design and construction of the Interchange as provided herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are hereby incorporated as though fully set forth herein.

2. **DEFINITIONS.**

Adams County or County Adams County, Colorado.

Additional ARTA Bonds A tranche of additional bonds or other like debt instruments, beyond the ARTA Bonds, to be issued by ARTA in a time frame which allows ARTA to fund the construction of the Bridge in conjunction with the Authority's Widening Project.

Agreement This Intergovernmental Agreement between ARTA and the Authority Regarding E-470 and 38th Avenue Interchange Funding and Construction as of the Effective Date.

Anticipated Funding Date The date by which the Additional ARTA Bonds are anticipated to be issued by ARTA, being no later than December 31, 2021.

ARTA	Aerotropolis Regional Transportation Authority.
ARTA Bonds	Special revenue bonds issued by ARTA on June 26, 2019, to finance the design and construction of certain components of the Regional Transportation System, excluding the Interchange.
Authority	E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado.
Authority Maintenance Obligations	Following completion of the Interchange, the Authority will be responsible for maintaining the following components of the Interchange structure: approach slabs, bridge railing, under deck lighting, abutment wall lighting, on and off ramp pavement, signage, pavement marking, fencing and all other lighting for E-470.
Bridge	All Interchange infrastructure directly associated with the bridge conveying traffic on 38 th Avenue over the E-470 Public Highway, comprising, but not limited to, the following: all substructure, superstructure, abutments, approach slabs, safety approach rails and related infrastructure, which will be designed and constructed as a component of the Interchange.
Bridge Completion Cost Estimate	The Authority's final cost estimate based on the completed Final Interchange Design after bids are received for the construction of the Bridge which shall include an estimate of the following: (a) updated costs based on the bids received for the Final Interchange Design, plus, (b) a contingency percentage of fifteen percent (15%), plus, (c) all costs paid, or to be paid, to third parties for engineering, quality assurance, quality control, independent cost estimating, design support during construction, and geotechnical work, plus, (d) ARTA's estimated share of the Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any. As the Bridge is a component of the Interchange, the Bridge Completion Cost Estimate shall be a component of and shall be included in the Interchange Completion Cost Estimate. Neither the Bridge Completion Cost Estimate nor the Interchange Completion Cost Estimate shall include the Authority's costs related to the design for the Final Interchange Design, which costs shall be borne by the Authority if the Authority elects to further refine the Initial Interchange Design before bidding the Interchange for construction.
Bridge Performance Guaranty	A performance bond, surety or other financial guaranty satisfactory to the Authority to be provided by ARTA to the Authority in an amount sufficient to guaranty ARTA's performance of ARTA's obligation to fund the design and construction of the Bridge and the Bridge Completion Cost Estimate in accordance with the Initial Interchange Design, as it will be amended by the Final Interchange Design, all as further set forth herein.

<i>City</i>	The City of Aurora, Colorado.
<i>CM/GC</i>	A construction manager/general contractor contracting methodology wherein the contractor’s pre-construction phase services include design development and cost refinement on an “open book” basis involving the Authority’s independent cost estimator.
<i>Connecting Facilities</i>	Any and all transportation infrastructure connected to, but not part of, the Interchange, including but not limited to local roads, frontage roads, 38th Avenue to the west of the west intersection with the E-470 Public Highway and to the east of the east intersection with E-470 Public Highway within the limits delineated by the end of the curb returns where they meet the cross street.
<i>Construction Funds Account</i>	A segregated account of the Authority into which funding in the amount of the Bridge Completion Cost Estimate shall be deposited by the Authority following the transfer of such funds to the Authority by ARTA from the proceeds of the Additional ARTA Bonds and then held by the Authority and used for the limited purposes of funding the construction of the Bridge and the Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any, in accordance with the Final Interchange Design.
<i>Establishment Agreement</i>	The intergovernmental agreement among Adams County, the City, and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018.
<i>Final Interchange Design</i>	The final design for the Interchange which may be further developed by the Authority based on the Initial Interchange Design which will be contracted for construction by the Authority.
<i>Financing Plan</i>	The plan of finance for the Regional Transportation System adopted by ARTA at its May 17, 2019, Board Meeting, as the same may be amended or superseded consistent with the Establishment Agreement.
<i>Initial Interchange Design</i>	ARTA’s preliminary design work for the Interchange design which will culminate on or before December 31, 2019, in an initial 100% percent design for the Interchange.
<i>Interchange</i>	A full diamond interchange at E-470 Public Highway and 38th Avenue, excluding Connecting Facilities, and comprising only the following elements of infrastructure: (a) ramps in all directions including the ramp intersections to the point to the curb returns where they meet the cross-street, (b) a bridge conveying traffic on 38 th Avenue over the E-470 Public

Highway (the Bridge), (c) signals and lights at the intersection(s) with 38th Avenue, and (d) the Authority's tolling infrastructure. The Interchange is depicted in **Exhibit A** attached to this Agreement.

***Interchange
Completion
Cost Estimate***

The Authority's final cost estimate based on the completed Final Interchange Design after bids are received for the construction of the Interchange which shall include an estimate of the following: (a) updated costs based on the bids received for the Final Interchange Design, plus, (b) a contingency percentage of fifteen percent (15%), plus, (c) all costs paid, or to be paid, to third parties for engineering, quality assurance, quality control, independent cost estimating, design support during construction, and geotechnical work, plus, (d) the estimated Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any. The Interchange Completion Cost Estimate shall separately identify as a component of it the Bridge Completion Cost Estimate. Neither the Bridge Completion Cost Estimate nor the Interchange Completion Cost Estimate shall include the Authority's costs related to the design for the Final Interchange Design, which costs shall be borne by the Authority if the Authority elects to further refine the Initial Interchange Design before bidding the Interchange for construction.

Interchange Costs

Costs incurred by the Authority pursuant to this Agreement to construct the Interchange, excluding the Authority's costs related to the design for the Final Interchange Design if the Authority elects to further refine the Initial Interchange Design before bidding the Interchange for construction.

***Interchange
Property***

Such real property rights or interests as are deemed necessary by the Authority to complete the Interchange per the Final Interchange Design, excluding any and all real property owned by the Authority.

Interim Connection

An interim "right-in, right-out" connection between the existing eastbound lanes of E-470 and 38th Avenue (called 38th Place where it enters the Authority's property) which connection is depicted in **Exhibit B** attached hereto.

***Interim Connection
Permit***

An Authority-standard construction and access permit separate and apart from this Agreement that shall include, among other terms, insurance and other Authority-standard and specific requirements to allow the construction and use of the Interim Connection pursuant to the terms thereof.

Master Plan

The E-470 Public Highway Authority Master Plan, adopted December 14, 2017, and as it may be amended from time to time by the Authority's Board of Directors.

<i>Party(ies)</i>	ARTA and/or the Authority as the context may dictate.
<i>Regional Transportation System</i>	The system of transportation improvements provided for in the Establishment Agreement which expressly includes the Interchange.
<i>Widening Project</i>	The Authority's next anticipated road widening project to widen a significant portion of the eastbound and westbound lanes of E-470 from 2 to 3 lanes in each direction, including that portion of E-470 that intersects with 38th Avenue, which will begin with finalization of design in 2021 and with construction commencing in 2022 and continuing into 2023.

3. **INTERIM CONNECTION.** In furtherance of the purposes set forth in this Agreement, the Authority agrees ARTA may construct, or cause to be constructed, and may utilize the Interim Connection subject to the ARTA's strict compliance with all of the following terms and conditions:

A. ARTA's plans for the Interim Connection shall be approved in writing by the Authority in advance of any construction activities; and

B. ARTA shall provide the Authority with the Bridge Performance Guaranty under the terms and within the timeframe set forth in Section 5 or the Interim Connection Permit may be revoked by the Authority and all access afforded by the Interim Connection may be immediately closed by the Authority; and

C. No members of the public shall be allowed to use the Interim Connection for any purpose until the Bridge Performance Guaranty has been provided to the Authority; and

D. ARTA shall apply for and receive from the Authority the Interim Connection Permit; if ARTA's contractors will be performing construction for ARTA, each of the contractors shall obtain separate construction permits and provide all insurance and meet all other Authority-standard requirements; and

E. The Interim Connection Permit may contain special provisions that it will be terminated and revoked by the Authority when and as construction of the Interchange by the Authority so dictates or as otherwise reasonably required by the Authority for the continued safety of the Authority's customer traffic and use.

4. **ARTA RESPONSIBILITY FOR INITIAL INTERCHANGE DESIGN.** ARTA has commenced work on the Initial Interchange Design. Henceforth ARTA shall regularly coordinate with the Authority regarding development of the Initial Interchange Design, including but not limited to holding regular coordination meetings with the Authority's engineering staff and all involved contractors and consultants for the purpose of coordinating the Initial Interchange Design and obtaining Authority input, direction, and approvals regarding the same. ARTA shall

be responsible, at its sole cost and expense, for completing the Initial Interchange Design and submitting the same to the Authority for all necessary reviews and approvals consistent with the Authority's standard procedures.

5. BRIDGE PERFORMANCE GUARANTY AND USE OF INTERIM CONNECTION.

A. Bridge Performance Guaranty. ARTA shall provide the Bridge Performance Guaranty to the Authority no later than the earlier of the 10th day following the Authority's approval of the Initial Interchange Design or December 10, 2019.

B. Initial Use of Interim Connection At Risk. If the Bridge Performance Guaranty is not timely provided to the Authority as required under Section 5(A), then the Interim Connection Permit, allowing for construction access, shall automatically be revoked and terminate; further, this provision shall be expressly incorporated into the Interim Connection Permit.

C. Continued and Public Use of Interim Connection. Subject to the terms of this Agreement and all terms and conditions of the Interim Connection Permit, following ARTA's provision of the Bridge Performance Guaranty, the Authority agrees that it shall in good faith allow the continual and uninterrupted public use of the Interim Connection until such time as the Interim Connection must necessarily be relocated, removed or otherwise modified in conjunction with construction of the Interchange during the Road Widening.

6. AUTHORITY RESPONSIBILITY FOR FINAL INTERCHANGE DESIGN AND CONSTRUCTION.

A. General. The Parties understand and agree, subject to ARTA's transfer of funds equal to the Bridge Completion Cost Estimate to the Authority and the deposit of such funds into the Construction Funds Account, the Authority, with coordination and cooperation from the City, Adams County and ARTA, will incorporate the Interchange into the Authority's Widening Project, thus allowing the parties to realize any and all possible efficiencies and cost savings which may be captured.

B. Additional Costs.

(i) Interchange Property Acquisition Costs. In the event it is necessary to acquire Interchange Property to complete the Interchange, ARTA agrees it will pay the actual costs of acquiring such Interchange Property (the "Interchange Property Acquisition Costs").

(ii) Solar Relocation Costs. In the event it is necessary for the Authority to cause the relocation of any solar facilities or arrays currently located on Authority property pursuant to an existing lease in order to complete the Interchange, the

Parties agree they will share in the actual costs incurred by the Authority to cause such relocation(s) pursuant to the applicable lease(s) (the “Solar Relocation Costs”) as follows: ARTA shall be responsible for 50% and the Authority shall be responsible for 50% of the Solar Relocation Costs.

(iii) Building Relocation Costs. The Parties understand and agree that it may be necessary for the Authority to cause the relocation of 2,200 square feet of office space associated with the Authority’s administration building currently located adjacent to the 38th Avenue tolling point in order to complete the Interchange. ARTA agrees it will pay the actual costs incurred by the Authority to cause such relocation, if any, up to \$550,000 (the “Building Relocation Costs”).

(iv) Identification of Additional Costs. The Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any, shall be separately identified and included in the Bridge Completion Cost Estimate and the Interchange Completion Cost Estimate, as appropriate, and ARTA shall be obligated to fund its share of such additional costs, if any, as set forth above, as components of the Bridge Completion Cost Estimate.

C. Best Efforts. The Authority agrees that it shall, in good faith, use commercially reasonable best efforts in carrying out its obligations under this Agreement, including but not limited to in the design, construction and negotiation with third parties necessary to complete the Interchange, to minimize all costs to be incurred by either of the Parties associated with the completion of the Interchange, including but not limited to the Interchange Costs, the Interchange Property Acquisition Costs, the Solar Relocation Costs, and the Building Relocation Costs, if any.

D. Other Necessary Property. The Authority will, at no cost to ARTA, obtain and make available for the Interchange such real property rights or interests owned by the Authority as are deemed necessary by the Authority to complete the Interchange per the Final Interchange Design.

E. Completion of Final Interchange Design. The Authority shall complete the Final Interchange Design in accordance the following terms and conditions:

(i) ARTA shall be afforded the opportunity to review updates, if any, to the Initial Interchange Design during the Authority’s development of the Final Interchange Design, and shall have fifteen (15) days from the date the review is provided to review the development of the Final Interchange Design and to offer comments. The Authority will give reasonable consideration and will in good faith attempt to accommodate all reasonable comments from ARTA, but will retain full and final approval authority over the Final Interchange Design.

(ii) In the event material redesign of the Final Interchange Design becomes necessary after construction of the Interchange has begun, the Authority

shall notify ARTA of the material redesign necessity and ARTA shall be afforded a ten (10) day review and comment period. The Authority will give reasonable consideration and will in good faith attempt to accommodate all reasonable comments from ARTA, but will retain full and final approval authority over material redesign of the Final Interchange Design. For the purposes of this provision, material redesign shall comprise significant changes in the approved Final Interchange Design which either: (a) change the Interchange footprint, or (b) change the Interchange configuration (including configuration of tolling points). Material redesign shall not include changes which merely accommodate field conditions, sub-surface soils or topography.

F. Construction of Interchange. The Authority shall oversee construction of the Interchange in compliance with all applicable local, state, and federal laws, rules, and regulations. The Authority shall have no responsibility for the design or construction of any Connecting Facilities.

G. Anticipated Completion of Interchange. The Authority will use reasonable efforts to complete construction of the Interchange by December 31, 2023. No failure by the Authority to complete the Interchange by the foregoing date shall constitute a breach of this Agreement so long as the Authority pursues completion with reasonable efforts and due diligence.

H. Communication. The Authority shall keep accurate records of the progress of the Interchange and shall provide status reports to ARTA, or its designees, on a regular basis (a minimum of every quarter after execution of this Agreement), including progress updates and notice of any problems related to the Interchange. Said status reports shall also include updates to the costs expended and the remaining costs projected to be expended through completion of the Interchange, and shall note any variances from the Interchange Completion Cost Estimate or the Bridge Completion Cost Estimate as well as any adjustments to the time schedule for Interchange completion.

I. Fees. The Authority agrees it will waive any and all Authority fees associated with the Interchange and the Interim Connection that may be waived pursuant to applicable Authority rules and regulations and will not include any such fees in either the Bridge Completion Cost Estimate or the Interchange Completion Cost Estimate.

7. INTERCHANGE DELIVERY AND FUNDING.

A. Authority's Obligations. The Authority agrees it shall diligently complete the design of, and construct, the Interchange, subject to the provisions set forth below:

(i) Consistent with the other provisions of this Agreement, the Authority agrees to assume all costs associated with the Final Interchange Design and the construction of the Interchange, except for those costs associated with the construction of the Bridge and ARTA's share of the Interchange Property

Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, which costs are to be funded by ARTA as further set forth herein.

(ii) The Authority shall solicit construction bids for construction of the Final Interchange Design in conjunction with the Authority's Widening Project, which the Authority may conduct on a design-bid-build, design-build or CM/GC basis as determined by the Authority. Once the Authority has selected a contractor for construction using the Authority's preferred contracting methodology, the Authority will notify ARTA in writing of its intent to award a construction contract.

(iii) The Authority will not award the portion of the Widening Project construction contract comprising the Interchange, nor commence construction of the Interchange, until such time as ARTA has transferred to the Authority funds in the amount of the Bridge Completion Cost Estimate. Once ARTA has transferred to the Authority funds in the amount of the Bridge Completion Cost Estimate and the Authority has deposited such funds into the Construction Funds Account, the Authority can then make disbursements to fund construction of the Bridge and the Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any, from the Construction Funds Account, and to reimburse itself for any related costs incurred prior to ARTA's deposit of the Bridge Completion Cost Estimate funds, if any.

B. ARTA's Funding Obligation.

(i) ARTA shall diligently pursue the issuance of the Additional ARTA Bonds in order to close them by the Anticipated Funding Date. ARTA will transfer funds equal to the Bridge Completion Cost Estimate to the Authority to be deposited into the Construction Funds Account within 30 days of ARTA's receipt of a written request from the Authority to transfer such funds; provided, the Authority shall not request such transfer prior to the Anticipated Funding Date, and the Authority agrees it will not, in good faith, submit a request to transfer funds until such time as the Authority has a reasonable expectation that it will begin to incur Interchange Costs, Interchange Property Acquisition Costs, Solar Relocation Costs, or Building Relocation Costs, in any amount, within 60 days of the request. The funds may be transferred in any manner mutually agreeable to the Parties.

(ii) If ARTA is unable for any reason to close on the issuance of the Additional ARTA Bonds by the Anticipated Funding Date:

a. ARTA shall notify the Authority in writing, including the rationale for failure to close by the Anticipated Funding Date and the expected new date of issuance of the Additional ARTA Bonds; and

b. the Parties understand and agree that the Authority may, in its discretion, exercise its rights under the Bridge Performance Guaranty.

(iii) Except for the completion of 38th Avenue west of the Interchange, which project ARTA expects it may seek to fund and commence prior to the Anticipated Funding Date, ARTA hereby agrees that the Interchange shall be the first of the Regional Transportation Improvements funded by ARTA from the Additional ARTA Bonds and further that no other Regional Transportation Improvements shall be funded from the proceeds of the Additional ARTA Bonds until funds equal to the Bridge Completion Cost Estimate have been transferred to the Authority or otherwise set aside by ARTA to the satisfaction of the Authority.

C. Use of ARTA Funds and Accounting.

(i) The Authority agrees all funds transferred to the Authority by ARTA pursuant to this Agreement shall only be used for the limited purpose of funding Interchange Costs associated with the construction of the Bridge, and the Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs.

(ii) The Parties agree the cost of Authority staff time directly related to and necessary for the completion of the Interchange may be considered and included in Interchange Costs, and such costs will be specifically documented in the Authority's records; provided, general administrative and overhead costs of the Authority not directly related to the Interchange shall not be considered and included in Interchange Costs.

(iii) The Authority shall, as requested by ARTA, on a quarterly basis, provide to ARTA a detailed accounting of expenditures made by the Authority within the previous 3 month period for Interchange construction, which accounting shall include: (1) invoices or other documentation of the costs incurred, including but not limited documentation of requests and invoices from contractors or subcontractors related to the construction of the Bridge and the Interchange; (2) a current accounting of total amount of the Interchange Completion Cost Estimate and the Bridge Completion Cost Estimate expended to date; (3) an estimate of the remaining Interchange Costs expected to be incurred, including to complete the Bridge; (4) costs associated with the Interchange Property Acquisition Costs, Solar Relocation Costs, and Building Relocation Costs, if any; and (5) such other documentation reasonably requested by ARTA.

D. Interchange Cost Overruns and Underruns.

(i) Change Orders. The Authority shall have full authority to issue change orders to its construction contracts for the Interchange without consulting ARTA up to the amount of the fifteen percent (15%) contingency included in the Interchange Completion Cost Estimate and Bridge Completion Cost Estimate. If the actual Interchange Costs will exceed either fifteen percent (15%) contingency, then any such change orders shall be approved by both the Authority and ARTA.

(ii) In the event the actual costs expended by the Authority to complete the Bridge and to pay ARTA's share of the Interchange Property Acquisition Costs, the Solar Relocation Costs, and the Building Relocation Costs, if any, are less than estimated in the Bridge Completion Cost Estimate and funded by ARTA, ARTA shall be entitled to the savings (the difference between the total actual costs incurred by the Authority and the Bridge Completion Cost Estimate funded by ARTA). Within 30 days of final completion of the Interchange, the Authority shall transfer to ARTA any such savings in the Authority's possession.

8. CONNECTING IMPROVEMENTS.

A. The Parties acknowledge and agree that the completion of the Interchange will create the need for Connecting Improvements and the Authority shall not be obligated to fund, own nor maintain any Connecting Improvements.

B. ARTA agrees that it will assume or otherwise ensure, at its sole cost and expense, all reasonable maintenance of the Connecting Improvements until such time they are accepted for ownership and maintenance by the City, Adams County or other public entities with jurisdiction.

9. COMPLETION OF IMPROVEMENTS; OWNERSHIP AND MAINTENANCE. The Authority will own, operate and maintain the Interchange upon its completion. Nothing herein shall be construed as granting ARTA or any other entity any rights in or to the Authority's real property, right-of-way or multi-use easement areas except as otherwise granted herein. It is understood by the Parties that the Authority and the City intend to enter into a separate agreement regarding the City's ownership and maintenance of traffic signalization devices and equipment generally, including but not limited to for the Interchange.

10. POTENTIAL COMPLETION OF INTERCHANGE PROJECT BY ARTA. In the event, due to any circumstances at the time, either ARTA desires to accelerate completion of the Interchange in advance of the timing contemplated in this Agreement, or the Authority desires to begin completion of the Interchange beyond the timing contemplated in this Agreement, the Parties agree they will in good faith enter into discussions to consider amending this Agreement or entering into one or more separate agreements as necessary to allow ARTA, instead of the Authority, to undertake the planning and construction of the Interchange or any component thereof.

11. INSURANCE. The Authority shall require that contractor(s) performing work for the Interchange obtain and maintain insurance in customary industry amounts satisfactory to the Authority.

12. CHARACTER OF ARTA ROLE. ARTA shall not be liable to the Authority for any claims, demands, losses, damages, expenses, injuries, or liabilities arising from the death or injury of any person or persons, including any claims of the Authority or other funding entities, or from any damage to or destruction of property caused by the performance of the Authority's obligations pursuant to this Agreement including but not limited to the Authority's planning, design and construction of the Interchange, or any negligent act or omission of the Authority, its

officers, employees, or agents, or contractor(s) related thereto. This provision does not in any way exculpate ARTA from claims, demands, losses, damages, expenses, injuries, liability or damage or destruction of property caused by the performance of ARTA's obligations under this Agreement, including but not limited to planning, design and monitoring during construction of the Interchange.

13. **BREACH AND ENFORCEMENT.** It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

14. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the final completion of the Interchange and payment by the Authority to ARTA of any cost savings pursuant to Section 7.D(ii), if any.

15. **MISCELLANEOUS.**

A. **Assignment.** None of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.

B. **Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of this Agreement.

C. **No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the Parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

D. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person or entity other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

E. **Governmental Immunity.** Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

F. No Personal Liability. 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.

G. Annual Appropriations. 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 of applicable law.

H. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any Party hereto by another Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

If to ARTA:

Aerotropolis Regional Transportation Authority
c/o CliftonLarsonAllen LLP
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 a copy to:

Aerotropolis Regional Transportation Authority
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the Authority:

E-470 Public Highway Authority
Attention: Executive Director
Administrative Headquarters Facility
22470 E. 6th Parkway
Aurora, CO 80018

With a copy to:

E-470 Public Highway Authority
c/o Icenogle Seaver Pogue
Attn: Tamara Seaver
4725 South Monaco Street, Suite 360
Denver, CO 80237

A Party may change its address for the purpose of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

I. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

J. Controlling Law and Venue. 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.

K. No Waiver. 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.

L. Binding Contract. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

M. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

N. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

O. 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.

P. Counterpart Execution. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

E-470 PUBLIC HIGHWAY AUTHORITY

Tim Stewart
By: Tim Stewart
Its: Executive Director

STATE OF Colorado)
COUNTY OF Arapahoe) ss.

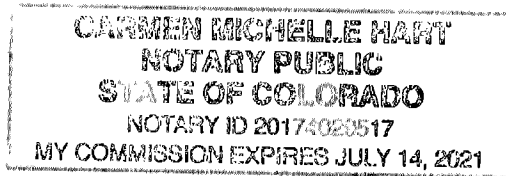
The foregoing instrument was acknowledged before me this 8 day of Aug, 2019 by Tim Stewart as Executive Director of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: July 21, 2021
Carmen Michelle Hart
Notary Public

DEPARTMENT APPROVAL:

NG Thomson
Director of Engineering and Roadway Maintenance



FINANCE APPROVAL:

John Hayes
Director of Finance

APPROVED AS TO FORM:
ICENOGL SEAVR POGUE
A Professional Corporation

Sam K. Seaver
General Counsel

DATE APPROVED BY THE BOARD OF DIRECTORS: August 8, 2019

AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY

/s/ [Signature]

By: Matthew Hopper

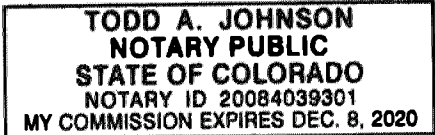
Title: President / Chairman

STATE OF COLORADO)
)
COUNTY OF ARAPAHOE) ss.

The foregoing instrument was acknowledged before me this 24 day of July, 2019, by MATTHEW HOPPER as PRESIDENT/CHAIRMAN of the Aerotropolis Regional Transportation Authority.

WITNESS my hand and official seal.

My commission expires: 12-8-2020



[Signature]
Notary Public

APPROVED AS TO FORM:

[Signature]
Thomas N. George
Spencer Fane LLP, General Counsel

