

INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF THE AURORA HIGHLANDS PARKWAY

THIS INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF THE AURORA HIGHLANDS PARKWAY (this “**Agreement**”) is made and entered into the ____ day of _____, 2020 (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 Section 43-4-601, *et seq.*, C.R.S. (“**ARTA**”). ARTA and AACMD may be 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 “**Establishing Agreement**”) for the general purposes of constructing, or causing to be constructed, a Regional Transportation System, as more particularly described in the Establishing Agreement and Exhibit A thereto (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 Establishing Agreement as Exhibit D (as the same may be amended, the “**Capital Plan**”).

C. 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.

D. 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.

E. The Parties previously entered into that certain Intergovernmental Agreement Regarding Project Management of the Design and Construction of the Aerotropolis Regional Transportation Authority Regional Transportation System dated May 22, 2019 (the “**Project Management Agreement**”), regarding the provision of project management services by AACMD related to the design, construction, and operation and maintenance of the Regional Transportation System Improvements (any capitalized terms used but not defined herein shall have the meanings set forth in the Project Management Agreement).

F. 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 regarding the costs funded by AACMD for the Regional Transportation System Improvements under the Project Management Agreement (the “**Verified Costs**”).

G. The Capital Plan includes the Regional Transportation System Improvement known and referred to as “The Aurora Highlands Parkway,” or the “TAH Parkway” (as used herein, the “**TAH Parkway**”), and the Capital Plan identifies the TAH Parkway as three separate segments with separately identified cost estimates and phasing as follows: Item F, E470 to Main Street (“**Segment 1**”); Item G, Main Street to Aura Blvd (“**Segment 2**”); and Item H, Aura Blvd to Powhatan (“**Segment 3**”).

H. As progress has been made on the Regional Transportation System consistent with the provisions of the Project Management Agreement, the Parties have determined that certain components of Segment 3 (the “**Segment 3 Improvements**”) must be completed prior to or simultaneous with certain other components of Segment 1 and Segment 2 in order to allow for the timely completion of the TAH Parkway, including Segment 1, Segment 2 and Segment 3 (collectively, the “**TAH Parkway Improvements**”).

I. ARTA issued special revenue bonds in 2019 (the “**2019 ARTA Bonds**”) to finance certain components of the design and construction of the Regional Transportation System consistent with the phasing set forth in the Capital Plan, including the total estimated amount of \$6,614,784 to fund Segment 1 and Segment 2 (the “**Available TAH Parkway Funds**”), but ARTA did not anticipate the need to fund any portion of Segment 3 at that time and thus did not include in the 2019 ARTA Bonds sufficient funds to fund all of the TAH Parkway Improvements.

J. ARTA does not currently have adequate funds to fund the planning, design or construction of the all of the TAH Parkway Improvements; however, consistent with the phasing set forth in the Capital Plan, ARTA intends to pursue the issuance of additional bonds or other obligations in the future to finance the design and construction of the next phase of Regional Transportation System Improvements, which next phase is expected to include the completion of all of the TAH Parkway Improvement (“**Future ARTA Bonds**”).

K. AACMD has adequate funds available and is willing to fund the planning, design and construction of the TAH Parkway Improvements as necessary beyond the Available TAH Parkway Funds on the condition that such funds are reimbursed to AACMD by ARTA pursuant to the terms and conditions of this Agreement.

L. The Parties have determined it to be in their mutual best interests and the interests of their respective constituents and taxpayers to provide for the completion of the TAH Parkway Improvements as set forth herein in order to facilitate the timely completion of Segment 1, Segment 2 and Segment 3 specifically, and the Regional Transportation System and the AACMD Improvements generally.

M. ARTA and AACMD desire to enter into this Agreement to set forth their understanding regarding AACMD's funding of the planning, design and construction of the TAH Parkway Improvements and the terms for reimbursement of AACMD by ARTA for the same, 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. Funding and Completion of the TAH Improvements. AACMD agrees it will advance on ARTA's behalf any and all funds reasonably necessary to plan, design and construct the TAH Parkway Improvements beyond the Available TAH Parkway Funds (the "**TAH Parkway Advances**"), which Available TAH Parkway Funds the Parties agree is \$6,614,784, and AACMD will plan, design and construct the TAH Improvements, including the Segment 3 Improvements, consistent with the provisions of the Project Management Agreement; provided, the Parties agree the TAH Parkway Advances and the TAH Parkway Costs (defined below) shall not include any discretionary costs to enhance the TAH Parkway Improvements beyond what is required by the applicable governing and/or accepting jurisdiction(s) to complete the TAH Parkway Improvements, including but not limited to enhanced landscaping, cosmetic structural enhancements, and enhanced pedestrian access. The Parties further agree that in planning, designing and completing the Segment 3 Improvements, for the limited purpose of facilitating the timely completion of Segment 1 and Segment 2 to the extent reasonably necessary, the Parties shall consider all components of Segment 1, Segment 2 and Segment 3 to be one Regional Transportation System Improvement and part of the Phase I Improvements as identified and defined in the Project Management Agreement; provided, AACMD shall not plan, design, construct or advance funds related to any components of Segment 3 that are not reasonably necessary to facilitate the timely completion of Segment 1 and/or Segment 2, it being the intent of the Parties that any such components of Segment 3 not necessary for facilitating the timely completion of Segment 1 and Segment 2 will be funded and completed at a later date consistent with the Establishing Agreement and the Project Management Agreement.

3. Records; Progress Reports. During the term of this Agreement, AACMD shall keep or cause to be kept accurate and current books and accounts in which are recorded all costs incurred by AACMD for the planning, design and completion of the TAH Parkway Improvements (“**TAH Parkway Costs**”). All TAH Parkway Costs shall be included in the Work Costs reported by AACMD pursuant to the Project Management Agreement, submitted to the Independent Engineer for verification as Verified Costs, and included in Draw Requests consistent with the provisions of the Project Management Agreement up to the full amount of the Available TAH Parkway Funds. Once the full amount of the Available TAH Parkway Funds has been identified as Verified Costs and included in Draw Requests, AACMD shall begin to fund the TAH Parkway Improvements with TAH Parkway Advances, and any and all TAH Parkway Advances shall be recorded and kept separately from all other Verified Costs and shall not be included in any Draw Request submitted by AACMD pursuant to the Project Management Agreement until such time as ARTA has adequate funds to reimburse AACMD for the TAH Parkway Advances as further set forth herein. All AACMD books and records related to the Segment 3 Improvements and the TAH Parkway Advances shall be made available to ARTA at any time for review (upon reasonable prior written notice). AACMD shall include regular updates regarding the Segment 3 Improvements, TAH Parkway Improvements, TAH Parkway Costs, and TAH Parkway Advances in its regular Progress Reports provided pursuant to the Project Management Agreement.

4. Allocation of Total TAH Parkway Costs. In order to most efficiently and effectively account for, record and allocate the costs to complete the TAH Parkway (inclusive of Segment 1, Segment 2 and Segment 3) between the Parties, and to maintain consistency with the estimated and allocated costs as set forth in the Capital Plan, the Parties agree that all costs actually incurred to complete the planning, design and construction of the TAH Parkway Improvements, as well as any project savings related thereto, shall be allocated between the Parties as follows (the “TAH Parkway Allocation”):

AACMD: 58%;

ARTA: 42%.

All books, records, accounting and Draw Requests, including but not limited to any reimbursements for TAH Parkway Costs as set forth below, shall incorporate and be consistent with the TAH Parkway Allocation.

5. Reimbursement of AACMD.

5.1 AACMD understands and agrees that ARTA does not currently have sufficient appropriated funds to fund all of the TAH Parkway Improvements or to reimburse AACMD for costs associated with the TAH Parkway Advances expected to be advanced by AACMD hereunder. Subject to the availability of adequate funds and appropriation by the Board of Directors of ARTA, ARTA agrees to make payment to AACMD for all TAH Parkway Advances incurred by AACMD and verified as Verified Costs pursuant to the Project Management Agreement. The Parties further understand and agree that ARTA intends to issue the Future ARTA Bonds, in part in order to reimburse AACMD for the TAH Parkway Advances,

and ARTA does not intend to issue the Future ARTA Bonds unless such issuance provides revenues sufficient to reimburse AACMD for the TAH Parkway Advances.

5.2 It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse AACMD hereunder, but that this Agreement shall not constitute a debt or indebtedness of ARTA within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by ARTA. ARTA may make payment on the amounts due hereunder out of any available revenues. Nothing herein shall be deemed or construed to create a “contract” or “other obligation” within the meaning of Section 5.02 of the Establishing Agreement.

5.3 The amounts due hereunder shall not accrue interest and are payable at any time without prepayment penalty.

5.4 By acceptance of this Agreement, AACMD agrees and consents to all of the limitations in respect of the payment of the principal and interest due hereunder.

5.5 Upon the availability and appropriation by the Board of Directors of ARTA of funds adequate to reimburse the TAH Parkway Advances incurred by AACMD and verified as Verified Costs pursuant to the Project Management Agreement, ARTA shall provide written notice of such availability and appropriation to AACMD. AACMD shall thereafter include such TAH Parkway Advances in a Draw Request pursuant to the Project Management Agreement for reimbursement by ARTA.

6. Project Implementation. AACMD shall coordinate, administer and oversee the Segment 3 Improvements consistent and in compliance with the provisions of the Project Management Agreement as though the Segment 3 Improvements are a component of the Phase I Improvements as set forth in the Project Management Agreement.

7. 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, 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.

8. 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.

9. 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.

10. 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 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 copies to:

Spencer Fane LLP
Attention: Tom George
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Phone: (303) 839-3800
Fax: (303) 839-3838
Email: tgeorge@spencerfane.com

If to AACMD: Aerotropolis Area Coordinating Metropolitan District
c/o CliftonLarsonAllen LLP
Attention: Anna Jones
8390 E. Crescent Parkway, Suite 300
Greenwood Village, Colorado 80111
Phone: (303) 779-4525
Fax: (303) 773-2050
Email: anna.jones@claconnect.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

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 Agreement.

12. Termination of this Agreement. This Agreement shall terminate in its entirety upon the reimbursement to AACMD by ARTA of all amounts owed hereunder.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 Design and Construction of The Aurora Highlands Parkway 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