

AGREEMENT FOR CONSULTING SERVICES
(Aerotropolis Regional Transportation Authority)

THIS AGREEMENT FOR CONSULTING SERVICES (this “Agreement”) is entered into and effective the ____ day of _____, 2020 (the “Effective Date”), by and between AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY, a regional transportation authority established pursuant to the Regional Transportation Authority Law, Section 43-4-601 et. seq., C.R.S. as amended (“ARTA”), and TERRA FORMA SOLUTIONS, INC., a Colorado corporation (“Consultant”) (ARTA and Consultant may be referred to herein individually as a “Party,” and collectively as the “Parties”), to set forth the Parties’ mutual understandings and agreements.

RECITALS

WHEREAS, ARTA desires to engage the services of Consultant in accordance with the terms and conditions of this Agreement; and

WHEREAS, Consultant is specially trained and possesses certain skills, experience, and competency to perform those services as hereinafter set forth, and Consultant is able and willing to provide such services under the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE in consideration of the compensation to be paid hereunder and the mutual agreements set forth herein, the Parties agree as follows:

1. PERFORMANCE OF SERVICES. ARTA does hereby engage the Consultant to perform and provide consulting services as set forth herein, and Consultant does hereby agree to perform such services in accordance with the terms and conditions hereof. Consultant shall provide at its sole cost and expense all materials, equipment and personnel required to perform its services under and pursuant to this Agreement.

2. EXHIBITS TO AGREEMENT. The following exhibits (the “Exhibits”) are attached to this Agreement, and the provisions of the following Exhibits are expressly incorporated into this Agreement and thus made an integral part hereof:

Exhibit A: Letter of Engagement/Consultant Agreement dated November 24, 2020

To the extent any term, condition or provision of the Exhibits conflicts with any term, condition or provision of this Agreement, this Agreement shall control.

3. SCOPE OF SERVICES. Consultant shall provide those services described and set forth on the Exhibits in the manner and to the extent described in Exhibit A and this Agreement (the “Services”). The Parties agree that to the extent Exhibit A does not contain all necessary details and information regarding the Services, Consultant will take direction from the ARTA

Representative (as defined herein) and will not perform any services contrary to or in excess of the ARTA Representative's direction.

4. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date of this Agreement first set forth above and shall terminate on December 31, 2022, unless otherwise agreed in writing by the Parties.

5. COMPENSATION; COMPLETION OF SERVICES. As compensation for the Services to be performed by Consultant hereunder, ARTA agrees to pay Consultant for the Service consistent with this Agreement and Exhibit A, provided, the Parties agree the total amount paid to Consultant shall not exceed \$25,000 unless otherwise agreed in writing by the Parties. Unless otherwise agreed by the Parties, Consultant shall provide invoices to ARTA on a monthly basis no later than the 5th day of each month for the Services performed in the preceding month, describing the Services underlying such invoices in reasonable detail. ARTA will make payments or provide reasonable objection(s) to all or any portion of the Services claimed to have been provided in each invoice within fifteen (30) business days of receipt of such invoice. If ARTA objects to only a portion of the Services claimed to have been completed, ARTA shall pay the amount not in dispute. In the event ARTA objects to payment of all or any portion of an invoice submitted by Consultant, ARTA shall reasonably describe the deficiency of the subject Services, and Consultant shall use its best efforts to make any changes or take any action necessary to correct any such deficiencies. In the event that material deficiencies are not corrected, ARTA shall be entitled to terminate this Agreement and shall be released from any further obligations to provide any additional compensation to be paid to Consultant in accordance herewith.

6. COORDINATION WITH ARTA. ARTA hereby identifies Lisa Johnson, ARTA Manager, or his or her designee, as ARTA's representative for the purposes of this Agreement (the "ARTA Representative") and authorizes the ARTA Representative to act on behalf of ARTA in directing, supervising, modifying as necessary, and accepting the Services to be performed by Consultant hereunder. The ARTA Representative shall have the authority to make Service- or Agreement-related decisions which do not require approval from the Board of Directors of ARTA.

7. LIABILITY; INSURANCE. Consultant hereby assumes the entire responsibility and liability for any and all damage and injury due to any negligent act, omission or willful misconduct of Consultant of any kind or nature whatsoever to all persons, whether employees or otherwise, and to all property growing out of or resulting from the labor or material or both or occurring in connection with Consultant's performance of this Agreement and agrees to fully defend and indemnify ARTA and its directors, officers and employees against all claims made based upon any and all loss, expense (including legal fees and disbursements), damage, or injury growing out of, resulting from, or occurring in connection with any negligent act, omission or willful misconduct of Consultant in Consultant's performance of this Agreement.

Consultant shall at all times during the term of this Agreement carry and maintain in full force at Consultant expense insurance that meets or exceeds the insurance coverages shown below:

A. Workers' Compensation Insurance as required by State of Colorado law.

- B. Comprehensive Commercial General Liability Insurance with minimum coverage limits of liability of \$1,000,000 general aggregate and \$1,000,000 each occurrence
- C. Motor Vehicle Liability Insurance as required by State of Colorado law.

ARTA shall be named as an additional insured on Consultant's Comprehensive Commercial General Liability Insurance policy, and Consultant's policies shall be primary to any other insurance policies held by ARTA or any other additional insured, and no other insurance of ARTA will be called on to contribute to a loss. The Consultant shall not engage any subcontractor to perform any portion of the Services. If requested by ARTA, Consultant shall, prior to commencement of Service, provide ARTA with certificates of insurance evidencing the policies listed above.

8. STANDARD OF PERFORMANCE; WARRANTY. Consultant shall perform the Services in a manner consistent with that degree of knowledge and skill ordinarily used by members of the same profession practicing at the same time under the same or similar circumstances and in full compliance with all applicable laws and/or regulations, whether federal, state or local.

9. GOOD FAITH AND FAIR DEALING. Without limiting any rights or obligations as specifically set forth herein, the Parties agree to act in good faith and deal fairly with one another pursuant to this Agreement.

10. INDEPENDENT CONTRACTOR. Consultant, for all purposes arising out of this Agreement, is an independent contractor and shall not be deemed an employee of ARTA.

11. TERMINATION. Either Party may, upon seven (7) days' notice, terminate this Agreement for convenience. If such termination occurs, Consultant shall be entitled to be compensated for all Services performed to the date of termination.

ARTA shall have the right to terminate this Agreement immediately upon written notice to Consultant in the event of any default by Consultant. It shall be considered a default by Consultant whenever Consultant shall disregard or violate important provisions of the Agreement or instructions of the ARTA Representative, or fail to prosecute the Services according to the agreed-upon schedule of completion, including extensions thereof, if any.

12. NOTICE. 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:

Consultant: Terra Forma Solutions, Inc.
c/o Todd A. Johnson, P.E.
3465 South Gaylord Court, A304
Englewood, CO 80113
Phone: (303) 257-7653
Email: todd@terraformas.com

ARTA: Aerotropolis Regional Transportation Authority
c/o CliftonLarsonAllen LLP
Attn: Lisa Johnson
8390 E. Crescent Parkway, Suite 300
Greenwood Village, CO 80111
Phone: (303) 779-5710
Email: lisa.johnson@claconnect.com

With a copy to the ARTA's Legal Counsel:

Aerotropolis Regional Transportation Authority
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Phone: (303) 839-3800
Email: tgeorge@spencerfane.com

The foregoing Notice Addresses may be changed at any time by a Party by submitting notice of such change to the other Party consistent with this section.

13. DEFAULT/REMEDIES. In the event of a 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, provided the Parties waive any claims against each other for consequential damages arising out of or relating to this Agreement, including, but not limited to, special, incidental, consequential, or punitive damages of any kind arising out of or related to the performance or non-performance of the Agreement, and regardless of whether such losses, damages or liability arises from breach of contract or warranty, tort (including negligence), strict liability or otherwise.

14. WAIVER. The waiver of any breach, or alleged breach, of this Agreement by either Party hereto shall not constitute a continuing waiver of any subsequent breach by said Party of the same or any other provision of this Agreement.

15. ILLEGAL ALIENS. The Consultant shall comply with any and all federal, state and local laws, rules and regulations regarding the hiring of employees and retention of subcontractors, including without limitation Section 8-17.5-101, et seq., C.R.S. The Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or contract with a sub-contractor who (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement, or (b) fails to certify to the Consultant that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Consultant hereby certifies that it does not knowingly employ or contract with an illegal alien. The Consultant shall participate in either the E-Verify Employment Verification Program administered by the United States Department of Homeland Security (“E-Verify Program”) or the State’s Department Program established pursuant to C.R.S. § 8-17.5-102(5)(c) to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement. The Consultant shall not utilize the E-Verify Program or the Department Program procedures to independently undertake pre-employment screening of job applicants.

The Consultant shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Agreement. If Consultant obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, Consultant shall be required to: (a) notify the subcontractor and ARTA within three (3) days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving notice from Consultant the subcontractor does not stop employing or contracting with the illegal alien; except that Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation by the Department pursuant to Section 8-17.5-102(5), C.R.S.

In addition to any other legal or equitable remedy ARTA may be entitled to for a breach of this Agreement, if ARTA terminates this Agreement, in whole or in part, due to the Consultant’s breach of any of this Section, the Consultant shall be liable for actual and consequential damages of ARTA resulting from such termination, and ARTA shall report such violation by the Consultant to the Colorado Secretary of State as required by law.

16. COLORADO OPEN RECORDS ACT. Consultant expressly recognizes that ARTA is a political subdivision of the State of Colorado and is subject to the provisions of the Colorado Open Records Act, Section 24-72-201, et seq., C.R.S. ARTA agrees to protect confidential, proprietary, trademark, copyrighted and otherwise protected materials of the

Consultant, as applicable, but only to the extent such protection does not conflict with the Colorado Open Records Act and ARTA's obligations thereunder.

17. DISCLOSURE: During the performance of the Services and for all time subsequent to completion of the Services, the Consultant agrees to treat as confidential and not to use or disclose to anyone, except as required in the performance of this Agreement or by law, or as otherwise authorized in writing by ARTA, any and all information given to the Consultant by ARTA, or by the Consultant to ARTA, or which is developed by the Consultant as a result of the performance of this Agreement. This provision shall survive termination of the Agreement.

18. FORCE MAJEURE. Neither Party shall be liable to the other for, or be considered to be in breach of or default under this Agreement because of, any delay or failure in performance by such Party under this Agreement to the extent such delay or failure is due to any cause or condition beyond such Party's reasonable control. Each Party shall exercise reasonable diligence to overcome the cause of such delay; provided, however, that to the extent the cause of such delay arises from any breach of, or failure by the other Party to perform any of its obligations under this Agreement, the costs and expenses incurred by the Party that has delayed or failed in its performance under this Agreement to overcome the cause of such delay shall be for the account of such other Party.

19. ASSIGNMENTS. Consultant agrees that it shall not assign this Agreement, or any of the amounts due it, or to become due hereunder, nor subcontract any portion of the Services without first obtaining written consent of ARTA. Any such assignment or subcontract without ARTA's consent shall be void *ab initio*.

20. APPROPRIATION/NO LIENS. Consultant acknowledges and agrees that ARTA is a political subdivision of the State of Colorado and, as such, (1) any and all financial obligations of ARTA under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by ARTA's Board of Directors for the purposes of the Agreement, and (2) the Consultant shall not have lien rights against ARTA or against any property of ARTA in the event of nonpayment of any amount due under this Agreement or for any other reason. Provided, however, ARTA hereby affirms that it has appropriated sufficient funds to meet its financial obligations as set forth in this Agreement.

21. CONSULTANT'S OBLIGATIONS. Consultant shall pay, at no expense to ARTA, all contributions, taxes or premiums which may be payable under Federal or State Unemployment Insurance Law or the Federal Social Security Act. ARTA is exempt from sales and use taxes. It is Consultant's responsibility to obtain and use the sales tax exemption number of ARTA to the extent appropriate and applicable. ARTA shall not reimburse Consultant for sales or use taxes erroneously paid.

22. SAFETY. Consultant shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with any Services performed hereunder and shall comply with all applicable laws, ordinances, rules and regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from

damage, injury or loss, and shall erect and maintain all necessary safeguards for such safety and protection.

23. COVID-19 SAFETY PLAN. In addition to its other responsibilities as set forth in the Agreement, Consultant shall be responsible for compliance with any and all applicable local, state and federal laws, rules, regulations, orders, ordinances, guidelines, recommendations and/or other directives related to the Coronavirus Disease 2019 (COVID-19) in performing the Services set forth in the Agreement.

24. GOVERNMENTAL IMMUNITY. No term or condition of this Agreement shall be construed or interpreted as a waiver by ARTA, express or implied, of any of the notice requirements, immunities, limitations to liability, rights, benefits, protections, or other provisions under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., or under any other law.

25. 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.

26. ENTIRE AGREEMENT, AMENDMENT AND BINDING EFFECT. This Agreement contains the entire agreement between the Parties regarding the Services, and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both Parties hereto. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto, and upon their respective successors in interest and permitted assigns, except as otherwise herein expressly provided.

27. ATTORNEY FEES. If any Party breaches this Agreement, the breaching Party shall pay all of the non-breaching Party's reasonable attorneys' fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.

28. GOVERNING LAW. The Parties agree that Colorado law shall apply to this agreement and that any dispute shall be tried and heard in the District Court in and for Adams County, Colorado.

29. COUNTERPARTS. 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 and the same instrument. The signature pages from one 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 electronically 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.

30. 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 ARTA and the Consultant any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions hereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of ARTA and the Consultant shall be for the sole and exclusive benefit of ARTA or the Consultant. It is the express intention of the Parties that any person other than the Parties shall be deemed to be an incidental beneficiary only.

31. HEADINGS. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

CONSULTANT:
TERRA FORMA SOLUTIONS

Signature: _____

Name: _____

Title: _____

ARTA:
AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY

Signature: _____

Name: _____

Title: _____

EXHIBIT A

[insert Letter of Engagement/Consultant Agreement dated November 24, 2020]



November 24, 2020

Aerotropolis Regional Transportation Authority
c/o Matt Hopper, matt@summit-strategies.net

**RE: Aerotropolis Regional Transportation Authority (ARTA) –
Letter of Engagement/Consultant Agreement**

Dear Matt,

I am writing regarding your interest in retaining Terra Forma Solutions, Inc (TFS) (Consultant) to represent and assist Aerotropolis Regional Transportation Authority (ARTA), (the “Client) for general services and authority matters for the ARTA projects generally located in Aurora, CO. TFS is pleased to engage ARTA and it appreciates this opportunity.

TFS will be providing the following general scope of services:

- Provide the below generally outlined services or as mutually amended:
- Capital Project Phasing
- Meet with Client to define the project, limits of the work and gather project information;
- Visit site to observe visible improvements;
- Review the project information and compare to improvements;
- Schedule preparation and analysis;
- Budget and cost preparation and analysis;
- Board meeting preparation, presentation and attendance
- Exclusions: Any items not specifically identified herein or mutually agreed to.

Standard Rates:

Expert Witness/Public Presentations: \$412/hr; Program/Project Manager: \$266/hr.; Technician: \$166/hr.; Administrative: \$92/hr.

Payment:

TFS will bill monthly on a Time and Materials basis and will require payment within 15 working days from the date of the invoice.

Thank you again for this opportunity and please feel free to contact me at 303-257-7653 or todd@terraformas.com with any questions or comments related to this agreement.

STANDARD OF CARE

Consultant shall perform its services in a manner consistent with that degree of knowledge and skill ordinarily used by members of the same profession practicing at the same time under the same or similar circumstances.

CORPORATE PROTECTION

Terra Forma Solutions, Inc. is a Colorado corporation. Client agrees that its sole remedy for any claims, damages, losses, expenses and costs arising from or caused by Consultant's services regarding the Project shall be against this entity and not against any individual employee, member or owner of Consultant.

RISK ALLOCATION

Notwithstanding any provision in this Agreement to the contrary, Client agrees to the fullest extent permitted by law, to limit Consultant's total aggregate liability to Client and anyone claiming by or through Owner, for any and all injuries, claims, losses, expenses, damages, costs and expenses arising out of or relating to the services provided under this Agreement or the Project, from any and all causes including but not limited to negligence, breach of contract, or any other legal or equitable theory, to the remaining limits of liability available from Consultants' applicable insurance policies at the time of any settlement or final judgment in favor of Client.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors or employees shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including, without limitation, negligence, strict liability, breach of contract and breach of strict or implied warranty.

NO THIRD PARTY BENEFICIARIES

Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant. Consultant's services are being performed solely for the Client's benefit.

If Client authorizes Consultant to begin work this Consultant Agreement shall constitute the complete contract between the parties regardless of whether it is signed by either or both parties.

Agreed this ____ day of _____, 2020.



Client Signature/Title:

Todd A. Johnson, P.E, President
Terra Forma Solutions, Inc.