

INTERGOVERNMENTAL AGREEMENT REGARDING REGIONAL TRANSPORTATION SYSTEM PROJECT FUNDING AND CONSTRUCTION

This **INTERGOVERNMENTAL AGREEMENT REGARDING REGIONAL TRANSPORTATION SYSTEM PROJECT FUNDING AND CONSTRUCTION** (this “**Agreement**”) is made and entered into the ___ day of _____, 2021 (the “**Effective Date**”), by and between **GREEN VALLEY RANCH EAST METROPOLITAN DISTRICT NO. 6**, a political subdivision and quasi-municipal corporation of the State of Colorado (the “**District**”), and **AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY**, a political subdivision and body corporate of the State of Colorado formed pursuant to the Regional Transportation Authority Law, Sections 43-4-601, *et seq.*, C.R.S. (“**RTA Law**”) (“**ARTA**”). The District and ARTA may be referred to collectively herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

1. 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.

2. ARTA was organized in accordance with the RTA Law and 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, as amended and supplemented from time to time (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 or revised, the “**Capital Plan**”).

3. The District was formed pursuant to the Special District Act, Article 1 of Title 32, C.R.S., as amended from time to time, (the “**Special District Act**”), by order of the District Court for Adams County, Colorado entered on November 16, 2004, and after approval of its eligible electors at an organizational election held on November 2, 2004, and its general purpose is to plan for, design, acquire, construct, install, relocate, redevelop, and finance certain public improvements as described in and in compliance with the Consolidated First Amended and Restated Service Plan for Green Valley Ranch East Metropolitan District Nos. 6 – 8, as may be amended from time to time, approved by the City of Aurora City Council on October 30, 2017 (the “**Service Plan**”).

4. Pursuant to that certain Resolution of the Board of Directors of the Aerotropolis Regional Transportation Authority Including Property into the Authority Boundaries (ATEC and GVRE Properties) adopted by the ARTA’s Board of Directors on March 3, 2021, and consistent

with the provisions of the Establishing Agreement and the RTA Law, all of the property located within the boundaries of the District, as well as the property located within Green Valley Ranch East Metropolitan Nos. 7 and 8, has been included within the Authority's boundaries (as used herein, the "**GVRE Property**").

5. The District intends to undertake and/or support the provision of various public improvements within and surrounding the boundaries of the GVRE Property, some of which public improvements are Regional Improvements (as defined in the Service Plan) and are part of or are closely related to various components of ARTA's planned Regional Transportation System Improvements.

6. ARTA previously issued general obligation bonds on June 26, 2019 (the "**2019 Bonds**") and expects to issue several additional series of bonds or other financial obligations in a time frame which allows ARTA to fund the Projects (as defined herein), which are part of the Regional Transportation System, within the timeframes specified herein (the "**Future ARTA Bonds**," and together with the 2019 Bonds, the "**ARTA Bonds**").

7. The Parties understand and agree they have a shared interest in facilitating the timely and efficient completion of 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.

8. ARTA intends to facilitate the completion of the Regional Transportation System Improvements and to issue the ARTA Bonds to fund the Regional Transportation System Improvements, generally, consistent with the phasing set forth in the Capital Plan and, specifically, to issue the Future ARTA Bonds in a time frame which allows ARTA to have the funding available for and complete the Projects consistent with the time frames and phasing as further set forth herein.

9. The District may have available or may be able to secure adequate funds and may be willing, on the terms and conditions as further set forth herein, to fund certain of the Regional Transportation System Improvements in advance of ARTA's intended phasing on the condition that ARTA will reimburse the District for the actual costs incurred by the District to complete such Regional Transportation System Improvements.

10. ARTA agrees on the terms and conditions as further set forth herein, to reimburse the District for the actual costs incurred by the District to complete certain of the Regional Transportation System Improvements, including, but not limited to, the Projects (as defined below).

11. Contemporaneously with the execution of this Agreement, ARTA, the District, Aerotropolis Area Coordinating Metropolitan District, and Green Valley Ranch East Metropolitan District Nos. 7 and 8 will enter into that certain Intergovernmental Agreement Regarding Imposition, Collection and Transfer of ARI Mill Levies (the "**ARI Mill Levies IGA**"), which ARI

Mill Levies IGA will set forth various agreements between the Parties regarding the imposition of their property tax mill levies.

12. The Parties previously entered into that certain Intergovernmental Agreement Regarding Construction and Funding of 38th Avenue Improvements dated February 21, 2021 (the “Prior Project Agreement”), which Prior Project Agreement generally concerns the 38th Avenue (Picadilly to Tibet) Project (as defined below) and which Prior Project Agreement the Parties desire to terminate and replace in its entirety with the provisions of this Agreement.

13. The Parties have determined it to be in their mutual best interests and the interests of their respective constituents and taxpayers to enter into this Agreement in order to facilitate the timely completion of the Projects as set forth herein.

14. In furtherance of the purposes set forth in the ARI Mill Levies IGA and as further set forth herein, the District and ARTA desire to enter into this Agreement to set forth their understanding regarding ARTA’s construction and funding phasing for certain of the Regional Transportation System Improvements, the potential for the District’s participation in completion of such portions of the Regional Transportation System Improvements, and the terms and conditions for reimbursement of the District 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, the District and ARTA agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated in this Agreement as if fully set forth herein.

2. ARTA Phasing of Certain of the Regional Transportation System Improvements. ARTA agrees that, as of the date of this Agreement, ARTA intends to and in good faith using commercial best efforts will undertake, fund, and/or complete, in whole or in part, either on its own or in coordination with other governmental entities, surrounding property owners, and/or other related parties, consistent with the Establishing Agreement, the following components of the Regional Transportation System Improvements as follows:

2.1. 38th Avenue (Picadilly to Tibet).

2.1.1. Project Name. As used herein, this project is referred to as the “**38th Avenue (Picadilly to Tibet) Project.**”

2.1.2. Project Description. The 38th Avenue (Picadilly to Tibet) Project includes the northern half (two lanes) of the future right-of-way of 38th Avenue from Picadilly Road on the west to Tibet Road on the east, located in the City of Aurora, Colorado, including, but not limited to: (1) the two paved lanes comprising the northern half of 38th Avenue (inclusive of any tie-ins to existing roadways or

tapers or transitions segments); (2) all adjacent curb, gutter, sidewalks, and median (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete such northern half of 38th Avenue.

2.1.3. Expected Phasing. ARTA has completed the design and has intended to commence and complete construction of the 38th Avenue (Picadilly to Tibet) Project by December 31, 2024; however, as acknowledged in Section 4.2.5, as of the Effective Date, planning, funding, construction and/or completion of the 38th Avenue (Picadilly to Tibet) Project has recently been undertaken, in part, the District.

2.1.4. Expected Funding. ARTA intends to make \$2,574,000 in funds available for the 38th Avenue (Picadilly to Tibet) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

2.2. 38th Avenue (Tibet to E470).

2.2.1. Project Name. As used herein, this project is referred to as the “**38th Avenue (Tibet to E470) Project**.”

2.2.2. Project Description. The 38th Avenue (Tibet to E470) Project includes the northern half (two lanes) of the future right-of-way of 38th Avenue from Tibet Road on the west to the E-470 interstate on the east, located in the City of Aurora, Colorado, including, but not limited to: (1) the two paved lanes comprising the northern half of 38th Avenue (inclusive of any tie-ins to existing roadways or tapers or transitions segments but excluding the interchange with E-470); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (5) all other capital public improvements necessary to complete such northern half of 38th Avenue.

2.2.3. Expected Phasing. ARTA intends to commence and complete construction of the 38th Avenue (Tibet to E470) Project by December 31, 2024.

2.2.4. Expected Funding. ARTA intends to make \$2,310,000 in funds available for the 38th Avenue (Tibet to E470) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

2.3. 48th Avenue (Rome to Tibet).

2.3.1. Project Name. As used herein, this project is referred to as the “**48th Avenue (Rome to Tibet) Project**.”

2.3.2. Project Description. The 48th Avenue (Rome to Tibet) Project includes the re-approval of the previously designed full six lanes and the regional construction of up to four lanes of the future right-of-way of 48th Avenue from Rome Street on the west to Tibet Road on the east, located in the City of Aurora, Colorado, including, but not limited to: (1) the four paved lanes comprising 48th Avenue (inclusive of any tie-ins to existing roadways or tapers or transitions segments); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete the two regional lanes of such segment of 48th Avenue.

2.3.3. Expected Phasing. ARTA intended to commence the re-approval of the design of the 48th Avenue (Rome to Tibet) Project no later than December 31, 2023, to commence construction no later than December 31, 2024, and to complete construction no later than December 31, 2025, but, as acknowledged in Section 4.2.5, as of the Effective Date, planning, design, funding, construction and/or completion of the 48th Avenue (Rome to Tibet) Project has already been undertaken by the District.

2.3.4. Expected Funding. ARTA intends to make \$3,998,015 in funds available for the 48th Avenue (Rome to Tibet) Project from the proceeds of ARTA Bonds issued no later than December 31, 2023.

2.4. 48th Avenue (Tibet to E470).

2.4.1. Project Name. As used herein, this project is referred to as the “**48th Avenue (Tibet to E470) Project**.”

2.4.2. Project Description. The 48th Avenue (Tibet to E470) Project includes the re-approval of the previously designed full six lanes and the regional construction of up to two lanes of the future right-of-way of 48th Avenue from Tibet Street on the west to the E-470 interstate on the east, located in the City of Aurora, Colorado, including, but not limited to: (1) the two north paved lanes comprising 48th Avenue (inclusive of any tie-ins to existing roadways or tapers or transitions segments but excluding the interchange with E-470); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete the two regional lanes of such segment of 48th

Avenue.

2.4.3. Expected Phasing. ARTA intends to commence the re-approval of the design of the 48th Avenue (Tibet to E470) Project no later than December 31, 2023, to commence construction no later than December 31, 2024, and to complete construction no later than December 31, 2025.

2.4.4. Expected Funding. ARTA intends to make \$2,400,000 in funds available for the 48th Avenue (Tibet to E470) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

2.5. Picadilly Road (38th to 48th).

2.5.1. Project Name. As used herein, this project is referred to as the **“Picadilly Road (38th to 48th) Project.”**

2.5.2. Project Description. The Picadilly Road (38th to 48th) Project includes the re-approval of the previously designed eastern three lanes and construction of up to the equivalent of one-and-a-half eastern lanes of the future right-of-way of Picadilly Road from 38th Avenue on the south to 48th Avenue on the north, located in the City of Aurora, Colorado, including, but not limited to: (1) the paved lanes comprising the eastern three lanes of Picadilly Road (inclusive of any tie-ins to existing roadways or tapers or transitions segments); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete such eastern half of Picadilly Road.

2.5.3. Expected Phasing. ARTA intends to commence and complete design and construction of the Picadilly Road (38th to 48th) Project no later than December 31, 2023.

2.5.4. Expected Funding. ARTA intends to make \$693,000 in funds available for the Picadilly Road (38th to 48th) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

2.6. Picadilly Road (48th to 52nd).

2.6.1. Project Name. As used herein, this project is referred to as the **“Picadilly Road (48th to 52nd) Project.”**

2.6.2. Project Description. The Picadilly Road (48th to 52nd) Project includes the re-approval of the previously designed eastern three lanes and construction of up to the equivalent of one-and-a-half eastern lanes of the future

right-of-way of Picadilly Road from 48th Avenue on the south to 52nd Avenue on the north, located in the City of Aurora, Colorado, including, but not limited to: (1) the paved lanes comprising the eastern three lanes of Picadilly Road (inclusive of any tie-ins to existing roadways or tapers or transitions segments); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete such eastern half of Picadilly Road.

2.6.3. Expected Phasing. ARTA intends to commence and complete design and construction of the Picadilly Road (48th to 52nd) Project no later than December 31, 2023.

2.6.4. Expected Funding. ARTA intends to make \$507,000 in funds available for the Picadilly Road (48th to 52nd) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

2.7. Picadilly Road (52nd to 56th).

2.7.1. Project Name. As used herein, this project is referred to as the **“Picadilly Road (52nd to 56th) Project.”**

2.7.2. Project Description. The Picadilly Road (52nd to 56th) Project includes the re-approval of the previously designed eastern three lanes and the construction of the equivalent of one-and-a-half eastern lanes of the future right-of-way of Picadilly Road from 52nd Avenue on the south to 56th Avenue on the north, located in the City of Aurora, Colorado, including, but not limited to: (1) the paved lanes comprising the eastern three lanes of Picadilly Road (inclusive of any tie-ins to existing roadways or tapers or transitions segments); (2) all adjacent curb, gutter, sidewalks, and median; (3) all grading, stormwater improvements (inclusive of box culverts where applicable), landscaping and irrigation, retaining walls (if necessary), signage, site utilities and electrical, traffic and pedestrian safety improvements (inclusive of traffic signals); and (4) all other capital public improvements necessary to complete such eastern half of Picadilly Road.

2.7.3. Expected Phasing. ARTA intends to commence and complete design of the Picadilly Road (52nd to 56th) Project no later than December 31, 2023, and to commence and complete construction of the Picadilly Road (52nd to 56th) Project no later than December 31, 2025.

2.7.4. Expected Funding. ARTA intends to make \$400,500 in funds available for the Picadilly Road (52nd to 56th) Project from proceeds of ARTA Bonds issued no later than December 31, 2023.

3. Funding and Completion of the Projects.

3.1. The foregoing projects, the 38th Avenue (Himalaya to Picadilly) Project, the 38th Avenue (Picadilly to Tibet) Project, the 38th Avenue (Tibet to E470) Project, the 48th Avenue (Rome to Tibet) Project, the 48th Avenue (Tibet to E470) Project, the Picadilly Road (38th to 48th) Project, the Picadilly Road (48th to 52nd) Project, and the Picadilly Road (52nd to 56th) Project, may be referred to herein individually as a “**Project**” and collectively as the “**Projects**,” as the context implies.

3.2. ARTA agrees it will in good faith using commercial best efforts undertake or cause to be undertaken, as necessary, in whole or in part, the planning, design, funding and completion of the Projects, except to the extent completed by the District, either on its own or in coordination with other governmental entities, surrounding property owners, and/or other related parties. Further, ARTA agrees it will in good faith using commercial best efforts take all steps necessary to commence and complete, or cause to be commenced and completed, in whole or in part, either on its own or in coordination with other governmental entities, surrounding property owners, and/or other related parties, the Projects consistent with the expected phasing described in Section 2, above.

3.3. ARTA agrees that the expected funding figures described in Section 2, above, are based on the projected costs of materials and labor as of the Effective Date and, as such, that the costs associated with each of the Projects may vary significantly at the time of initiation of a Project by ARTA and that ARTA will undertake or cause to be undertaken, as necessary, in whole or in part, the planning, design, funding and completion of the Projects, subject to the availability of adequate funds, based on the cost of such Projects at the time they are initiated by ARTA.

3.4. ARTA shall diligently pursue the issuance of the Future ARTA Bonds in good faith using commercial best efforts in order to close and have proceeds available from each series of such Future ARTA Bonds in accordance with the expected funding commitments set forth in Section 2, above, including to reimburse the District for Actual Project Costs (defined below) incurred by the District to complete the Projects, if any. If ARTA is unable for any reason to (1) close on the issuance of the Future ARTA Bonds within a timeline that complies with expected funding commitments set forth in Section 2, above, or (2) the proceeds of such Future ARTA Bonds are insufficient to fully fund the Projects as described herein, ARTA shall notify the District in writing, including the rationale for such delay/insufficiency of funds and the expected new date(s) of issuance of the Future ARTA Bonds and/or financial projections for availability of proceeds for the Projects. Notwithstanding the foregoing, nothing herein obligates ARTA to issue any of the ARTA Bonds or to issue any other bonds or enter into other financial obligations, at any time or in any amount, and nothing herein limits or otherwise affects the sole and absolute discretion and authority of the Board of Directors of ARTA to issue or enter into any of the same.

4. Completion of Projects by the District; Reimbursement of Project Costs.

4.1. The Parties understand and agree that ARTA does not as of the date of this Agreement have sufficient appropriated funds to fund all of the Projects in 2021, however, ARTA hereby directs its management to include in the budgets for its consideration in future years sufficient funds to complete the Projects and/or reimburse the District for the completion of the Projects in accordance with the funding commitments set forth in Section 2, above. The District may, in its discretion and at different times during the term of this Agreement, have adequate funds available and be willing, on the terms and conditions as further set forth herein, to undertake or cause to be undertaken, as necessary, the planning, design, funding and/or completion of certain of the Projects, in whole or in part, either on its own or in coordination with other governmental entities, surrounding property owners, and/or other related parties, prior to ARTA's funding and/or undertaking of the same, on the condition that ARTA will promptly reimburse the District for the actual costs incurred by or on behalf of the District to complete such Project(s) or portions thereof, in accordance with the terms hereof. Nothing herein shall be construed as obligating the District to fund any of the Projects, or portions thereof, in whole or in part and such funding shall be subject to the District's annual budgeting and appropriation in its sole discretion.

4.2. Subject to the availability of adequate funds and appropriation by the Board of Directors of ARTA, ARTA agrees to reimburse the District for actual costs incurred to complete any one or more of the Projects or portions thereof as set forth below.

4.2.1. ARTA agrees to reimburse the District for costs actually incurred by or on behalf of the District to undertake the planning, design, funding, construction and/or completion of any one or more of the Projects or portions thereof, including, but not limited to, any and all soft costs related thereto, but excluding any and all costs incurred by the District related to the District's financing of such costs, if any, and subject to the provisions to Section 4.2.4 (the "**Actual Project Costs**"), up to the following total maximum amount for each Project, which amounts are set forth in 2021 dollars and based on the projected costs of materials and labor as of the Effective Date and, as such, shall be adjusted upward at the rate of 4% per year from the Effective Date (as it pertains to each Project, the "**Maximum Project Reimbursement Amount**"):

4.2.1.1. 38th Avenue (Picadilly to Tibet) Project: \$2,574,000.

4.2.1.2. 38th Avenue (Tibet to E470) Project: \$2,310,000.

4.2.1.3. 48th Avenue (Rome to Tibet) Project: \$3,998,015

4.2.1.4. 48th Avenue (Tibet to E470) Project: \$2,400,000.

4.2.1.5. Picadilly Road (38th to 48th) Project: \$693,000.

4.2.1.6. Picadilly Road (48th to 52nd) Project: \$507,000.

4.2.1.7. Picadilly Road (52nd to 56th) Project: \$400,500.

4.2.3. The maximum combined amount ARTA agrees it will reimburse to the District for Actual Project Costs for all of the Projects is \$12,882,515, which amount is set forth in 2021 dollars and based on the projected costs of materials and labor as of the Effective Date and, as such, shall be adjusted upward at the rate of 4% per year from the Effective Date (the “**Maximum Combined Project Reimbursement Amount**”). ARTA shall not have any obligation to reimburse to the District any amount in excess of the Maximum Project Reimbursement Amount for any one Project or in excess of the Maximum Combined Project Reimbursement Amount for the combined Projects, provided, however, the Parties hereby acknowledge and agree that due to current volatility in the labor market, supply chain issues, and other circumstances that are currently not anticipated, that the costs associated with each of the Projects may vary significantly at the time of initiation of such Project, and, therefore, the Parties agree to cooperate in good faith to revise the Maximum Project Reimbursement Amount for any one Project and the Maximum Combined Project Reimbursement Amount as needed in order to facilitate the timely and efficient completion of the Projects.

4.2.4. Notwithstanding any provision of this Agreement to the contrary, the Parties agree the Actual Project Costs for any of the Projects or portions thereof shall not include any discretionary costs to enhance such Projects or portions thereof beyond what is required by the applicable governing and/or accepting jurisdiction(s) to complete the same, including but not limited to enhanced landscaping, cosmetic structural enhancements, and enhanced pedestrian access, it being the understanding of the Parties that while such enhancements may be desired by the District, the costs therefore shall not be included Actual Project Costs to be reimbursed by ARTA. Nothing herein prevents the District from including such enhancements in any Project or portion thereof undertaken by the District at the cost of the District or some other third party.

4.2.5. During the term of this Agreement, the Parties will in good faith communicate openly and regularly, and coordinate with one another whenever possible regarding the planning, design and construction of the Projects and any portion(s) thereof, it being the mutual desire of the Parties to facilitate the timely and efficient completion of the Projects and to avoid the duplication of efforts. ARTA acknowledges that as of the Effective Date, planning, design, funding, construction and/or completion of the 38th Avenue (Picadilly to Tibet) Project and the 48th Avenue (Rome to Tibet) Project, or portions thereof, are already underway and that no additional notice thereof or approvals related thereto, except for final design as set forth below, must be given; however, prior to commencing any new planning, design, funding, construction and/or completion of any one or more of the other Projects or portions thereof, which are not already underway as of the

Effective Date, the District shall provide to ARTA written notice of the District's intent to do so (each a "District Project Notice"). Such District Project Notice shall include, at a minimum, a description of the activities expected to be undertaken by the District related to the Project(s), the District's anticipated schedule and the estimated Actual Project Costs for completing the same. The Parties agree that if the estimated Actual Project Costs listed in a District Project Notice exceed the Maximum Project Reimbursement Amount for the applicable Project that the Parties shall cooperate in good faith to revise the Maximum Project Reimbursement Amount for any one Project and the Maximum Combined Project Reimbursement Amount as needed in order to facilitate the timely and efficient completion of the Project.

4.2.6. The District understands and acknowledges ARTA's purpose and desire to facilitate the coordinated and efficient planning, design and construction of the entire Regional Transportation System of which the Projects are only a part. All final designs for the Projects or portions thereof undertaken by the District shall be subject to prior review and approval by ARTA, which review and approval shall not be unreasonably withheld or delayed by ARTA, and which approval shall be deemed granted by ARTA if such final design has not been disapproved by ARTA within thirty (30) days of the District providing ARTA with the final designs. Further, except for the 38th Avenue (Picadilly to Tibet) Project and the 48th Avenue (Rome to Tibet) Project, which projects the District has already commenced, upon receipt by ARTA of a District Project Notice, in the event ARTA desires to undertake any Project or portion thereof identified in the District Project Notice and ARTA is able to do so consistent with the timing set forth in Section 2, above, ARTA shall notify the District in writing of ARTA's current intent to undertake such Project or portion thereof, and the District shall defer to ARTA's preference by allowing ARTA to undertake such Project or portion thereof. Notwithstanding any provision herein to the contrary, ARTA shall not be required to reimburse the District for any Actual Projects Costs incurred by the District related to the implementation of final designs that were not approved by ARTA or the undertaking of any aspect of a Project or portion thereof for which ARTA notified the District of ARTA's intent to undertake the same consistent with the provisions of this Section 4.2.6.

4.2.7. Upon completion of any Project or portion thereof, the District shall provide a written report to ARTA detailing the Actual Project Costs incurred to complete the Project or portion thereof along with an invoice to ARTA for reimbursement of such Actual Project Costs up to the Maximum Project Reimbursement Amount for that Project; provided, prior to requesting the reimbursement of any Actual Project Costs, the District must obtain a certification of an independent professional engineer approved by ARTA that: (1) such Actual Project Costs are costs actually incurred by or on behalf of the District for the relevant Project, and are reasonable and comparable for similar projects as constructed in the Denver Metropolitan Area, and (2) that all jurisdictions with

authority have approved or preliminarily accepted the Project or portion thereof. The reasonable cost of obtaining the foregoing certification may be included as part of the Actual Project Costs to be reimbursed to the District in addition to the Maximum Project Reimbursement Amount.

4.2.8. The District understands and agrees that ARTA shall not have any obligation to advance the timing of the ARTA Bonds or the phasing set forth in Section 2 of this Agreement in the event the District, in its discretion, undertakes the planning, design, funding, construction and/or completion of any one or more of the Projects, or portion thereof, and incurs Actual Project Costs related to the same, in advance of the phasing set forth in Section 2 hereof.

4.2.9. ARTA agrees it will, subject to the terms and conditions of this Agreement, within thirty (30) days following (1) the receipt from the District of the written report and invoice required by Section 4.2.7 above for reimbursement of Actual Project Costs, and (2) the receipt and appropriation of adequate funds by ARTA, reimburse to the District funds in the amount of the Actual Project Costs for any Project(s) completed by the District. ARTA agrees that its obligation to reimburse the District as set forth herein shall have first priority over any other reimbursement obligations of ARTA entered into after the Effective Date from the Future ARTA Bond proceeds, and that ARTA shall not enter into any future reimbursement obligations from the Future ARTA Bond proceeds that do not acknowledge the priority of its reimbursement obligations under this Agreement, nor shall ARTA take any actions inconsistent with this provision.

4.2.10. The District agrees that in engaging any consultants, contractors or other agents and procuring materials or services in connection with the planning, design and construction of any of the Projects, the District shall comply with all applicable laws, rules, or regulations related to the same. In particular, the District agrees it will comply with the public bidding requirements set forth in §32-1-1001(1)(d)(I), C.R.S., and will, upon request, share with ARTA any and all bids received by the District related to the Project as part of the coordination set forth in Section 4.2.5 hereof.

4.3. The Actual Project Costs and any amounts due to the District from ARTA hereunder shall not accrue interest at any time.

4.4. Nothing in this Agreement shall modify or be construed as modifying or otherwise affecting the Establishing Agreement or ARTA's responsibilities associated with the planning, design, funding and construction of the Regional Transportation System or any Regional Transportation System Improvements thereunder.

5. Reports; Accounting. During the term of this Agreement, ARTA shall provide to the District periodic reports regarding ARTA's progress on and anticipated schedule for the ARTA Bonds and the Projects. In the event the District undertakes the planning, design, funding,

construction and/or completion of any one or more of the Projects, the District shall provide to ARTA periodic reports regarding progress on the Project(s) and shall maintain or cause to be maintained full and complete records of actual costs incurred and funds committed and expended by the District for actual costs associated with the Project(s) in accordance with generally accepted accounting principles. ARTA shall have the right to audit the District's financial records related to any Projects undertaken by the District during the term of this Agreement and up to three (3) years after reimbursement by ARTA to the District for the same, if any.

6. Future Right-of-Way.

6.2. In furtherance of the District's support of ARTA's provision of the Regional Transportation System, the District agrees that it will facilitate ARTA's acquisition of any and all real property rights reasonably necessary to complete ARTA's Regional Transportation System Improvements as follows:

6.2.3. In the event the District owns and/or controls any real property interest(s) reasonably necessary to complete any portion of ARTA's Regional Transportation System Improvements, including but not limited to fee simple title, easements, licenses, or any other property interest, the District agrees it will dedicate or convey such property interest(s) to ARTA, or the appropriate accepting jurisdiction, at no cost to ARTA or such accepting jurisdiction, such dedication or conveyance to be completed by any mutually agreeable means.

6.2.4. In the event the District does not own and/or control an identified real property interest reasonably necessary to complete any portion of ARTA's Regional Transportation System Improvements, including but not limited to fee simple title, easements, licenses, or any other property interest, the District agrees it will in good faith cooperate with ARTA to cause such property interest(s) to be dedicated and/or conveyed to ARTA, or the appropriate accepting jurisdiction, at no cost to ARTA or such accepting jurisdiction, regardless whether such property interest(s) is/are owned and/or controlled by another metropolitan district or entity related to the District, or an unrelated third party.

6.3. In furtherance of ARTA's support of the District's assistance with the provision of the Regional Transportation System, ARTA agrees that it will facilitate the District's acquisition of any and all real property rights reasonably necessary for the District to complete portions of ARTA's Regional Transportation System Improvements as follows:

6.3.3. In the event ARTA owns and/or controls any real property interest(s) reasonably necessary for the District to complete any portion of ARTA's Regional Transportation System Improvements, including but not limited to fee simple title, easements, licenses, or any other property interest, ARTA agrees it will dedicate or convey such property interest(s) to the District, or the appropriate accepting jurisdiction, at no cost to the District or such accepting jurisdiction, such

dedication or conveyance to be completed by any mutually agreeable means.

6.3.4. In the event ARTA does not own and/or control an identified real property interest reasonably necessary for the District to complete any portion of ARTA's Regional Transportation System Improvements, including but not limited to fee simple title, easements, licenses, or any other property interest, ARTA agrees it will in good faith cooperate with the District to cause such property interest(s) to be dedicated and/or conveyed to the District, or the appropriate accepting jurisdiction, at no cost to the District or such accepting jurisdiction, regardless whether such property interest(s) is/are owned and/or controlled by another metropolitan district or entity related to ARTA, or an unrelated third party.

7. Termination and Replacement of Prior Project Agreement. The Prior Project Agreement is hereby terminated and replaced in its entirety by the provisions of this Agreement. As of the Effective Date, the Parties shall no longer have any rights, duties or obligations whatsoever under the Prior Project Agreement.

8. No Multi-Fiscal Year Obligation; Annual Appropriations; ARTA. It is hereby agreed and acknowledged that while this Agreement evidences an intent of ARTA to issue the ARTA Bonds, to undertake the planning, design, funding, construction and/or completion of the Projects, and to reimburse the District for costs incurred by the District for the planning, design, funding, construction and/or completion of the Projects, if any, all as further set forth herein, this Agreement shall not constitute or be interpreted as constituting 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 of ARTA, and the issuance of the ARTA Bonds, appropriation and expenditure of funds for the Projects, and the making of any reimbursement hereunder shall be at all times subject to the annual appropriations by ARTA's Board of Directors. ARTA may reimburse to the District Actual Project Costs, if any, consistent with the provisions of this Agreement, with any legally available funds of the ARTA. Nothing herein is intended to be or shall be deemed or construed to create a "contract" or "other obligation" within the meaning of Section 5.02 of the Establishing Agreement.

9. No Multi-Fiscal Year Obligation; Annual Appropriations; District. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District is a political subdivision of the State of Colorado and, as such, any and all financial obligations of the District described hereunder are subject to annual budget and appropriations requirements of applicable law.

10. Project Responsibility; Contractors. Any and all contractors contracted by ARTA or the District to complete any portion of the Projects at any time shall be the contractors and/or agents of ARTA or the District, respectively, only, and shall not be considered or interpreted to be contractors or agents of the other.

11. Relationship of the Parties. The Parties shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other, other than as contracting parties.

12. Term. This Agreement shall be effective as of the Effective Date set forth above and shall terminate upon the final completion of all of the Projects and the reimbursement to the District of all amounts owed to the District for completion of the Projects, if any, as provided herein.

13. 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.

14. 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.

15. 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; 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. 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.

16. 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

drafted by one of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

19. 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.

20. 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.

21. 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.

22. 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 electronic means, and execution and delivery of the signature page by such methods will be deemed to have the same effect as if the original signature had been delivered to the other Party.

23. 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.

24. No Waiver of 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.

25. 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 the Parties 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 the Parties shall be for the sole and exclusive benefit of the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be an incidental beneficiary only.

26. 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.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have executed this INTERGOVERNMENTAL AGREEMENT REGARDING REGIONAL TRANSPORTATION SYSTEM PROJECT FUNDING AND CONSTRUCTION as of the Effective Date first set forth above.

Approved unanimously by vote of the Board of Directors of the Aerotropolis Regional Transportation Authority on _____.

**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: Matthew Hopper

Title: President

**GREEN VALLEY RANCH
METROPOLITAN DISTRICT NO. 6,** a
political subdivision and quasi-municipal corporation of the State of Colorado

By: _____

Name: Brandon Wyszynski

Title: President