

AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY
NOTICE OF REGULAR MEETING AND AGENDA

Wednesday, June 27, 2018
11:00 a.m.

Adams County Government Center
4430 S. Adams County Pkwy.
Brighton, CO 80601
Study Session Room, 5th Floor

MEETING AGENDA - THIS AGENDA IS SUBJECT TO CHANGE

- I. Call to Order
- II. Roll Call
- III. Approval of Minutes
- IV. Approval of Agenda
- V. Administrative Matters
- VI. Financial Matters
 - a. Review and Discussion of Unsolicited Proposal from the Aerotropolis Area Coordinating Metropolitan District – Tom George, Spencer Fane LLP
 - b. Discussion of funding for various services – Jason Batchelor, Interim City Manager
- VII. Legal Matters
 - a. Review, Discussion and Consideration for Approval of Proposed bylaws and other related rules, policies and procedures –Tom George, Spencer Fane LLP
 - b. Discussion of Bond Counsel
- VIII. Miscellaneous Matters
 - a. Recommendation on Branding and Marketing – Logo design and Website
 - b. Board Management Software considerations
- IX. Adjournment

**RECORD OF PROCEEDINGS
MINUTES OF A SPECIAL MEETING OF THE BOARD OF
AEROTROPOLIS REGIONAL TRANSPORTATION
AUTHORITY (“Authority”)**

Held: Friday June 8th, 2018 at 11:00 a.m. at:

5th Floor Study Session Room
Adams County Government Center
4430 S. Adams County Pkwy.
Denver, CO 80203

ATTENDANCE

A Special Meeting of the Board of Directors of the Aerotropolis Regional Transportation Authority, County of Adams, Colorado (“**Board**”), was called and held as shown above and in accordance with the applicable statutes of the State of Colorado, with the following Representatives present and acting:

Matthew Hopper,	Aerotropolis Area Coordinating Metropolitan District (the “District”)
Nicole Johnston,	City of Aurora (the “City”)
Dave Gruber,	City of Aurora (the “City”)
Charles “Chaz” Tedesco,	Adams County (the “County”)
Steve O’Dorisio,	Adams County (the “County”)

Also present were:

Elisabeth A. Cortese, Esq., McGeady Becher P.C., General Counsel for the District
Carla Ferreira, District Alternate to Authority
Todd Johnson, Terra Forma Solutions
Jack Bajorek, Aurora City Attorney’s Office
Heidi Miller, County Attorney
Dylan Monke, Adams County Manager’s Office
Bryan Ostler, Adams County Deputy Manager
Raymond H. Gonzales, Adams County Manager
Rick Kron, ARTA counsel
Tom George, ARTA counsel

APPROVAL OF MINUTES

Minutes were not taken from previous meeting; the series of minutes from June 8, will be approved next meeting, June 22, 2018.

APPROVAL OF AGENDA

The Board discussed the approval of the agenda for the Authority. Following discussion, upon motion duly made by Chairperson Tedesco seconded by Vice-Chairperson Gruber and, upon vote, unanimously approved the agenda.

ADMINISTRATIVE MATTERS

Consideration of Letter of Engagement for General Counsel Services – Norman “Rick” Kron and Tom George, Spencer Fane LLP- The Board discussed the approval of engagement for general counsel services for the Authority. Following discussion, the board, upon motion duly made by Chairperson Tedesco seconded by Vice-Chairperson Gruber and, upon vote, unanimously approved the letter of engagement for general counsel services.

Discussion of Administrative Support Work Plan – Ray Gonzales, County Manager and Jason Batchelor, Interim City Manager- The board discussed divisions of administrative support split among the City, the County and the District. The City will provide financial administrative components, the County will provide IT and clerk support and the District will provide project support through marketing and financial planning.

FINANCIAL MATTERS

Presentation and Discussion of Draft Financing Plan– Aerotropolis Area Coordinating Metropolitan District – The Board discussed checks and balances, the need for separate accounts for all three parties within the authority as well as component of formal review and process of City Council and County Board of Commissioners prior to approval. No vote was taken at this time.

Presentation and Discussion of an Unsolicited Proposal to Design, Construct and Finance the Capital Plan – Aerotropolis Area Coordinating Metropolitan District- The Board discussed conceptual agreement and formal process of proceedings. No vote was held at this time.

Discussion of funding for various services – Raymond H. Gonzales, County Manager addressed the formulation of approximately \$1M seed funding to address initial costs split evenly among the three entities. The board discussed returning letters of support for donation to formal review of City and County process. No vote was held at this time.

LEGAL MATTERS

Discussion of bylaws and other related rules, policies and procedures – Norman “Rick” Kron and Tom George, Spencer Fane LLP – Legal council discussed draft Bylaws, investigation to maintain contemporary ethics standards, signatory requirements and considerations of regulations of the City & County Code of Ethics as baseline for development. Chairperson Matthew Hopper requested investigation of bylaws similar to other RTA with transportation guidelines. No vote was held at this time.

MISCELLANEOUS MATTERS

Recommendation on Branding and marketing – The Board discussed proposals for an ARTA logo to accompany upcoming website. Commissioner O’Doriso expressed that we should avoid conflict or confusion in branding with mention, icon or notation of DEN. Councilman Dave Gruber elected to collaborate branding with consultant and City of Aurora.

ADJOURNMENT

There being no further business to come before the Board and following discussion and upon motion duly made, seconded and unanimously carried, the Board determined to adjourn the meeting. The foregoing record constitutes a true and correct copy of the Minutes of the above-referenced meeting.

Secretary

THESE MINUTES ARE APPROVED AS THE OFFICIAL June 22, 2018 MINUTES OF THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY BY THE MEMBERS OF THE BOARD OF DIRECTORS SIGNING BELOW:

Matthew Hopper

Dave Gruber

Nicole Johnston

Charles "Chaz" Tedesco

Steve O'Doriso

**AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY**

BYLAWS

**Adopted _____
by the Board of Directors
of the Aerotropolis Regional Transportation Authority**

DRAFT

ARTICLE 1: INTRODUCTION; PURPOSE

The Aerotropolis Regional Transportation Authority (the “Authority” or “ARTA”) was established by intergovernmental agreement dated February 27, 2018 (the “Establishing Agreement”), by and between the Board of County Commissioners of the County of Adams (the “County”), the City of Aurora (the “City”), and the Aerotropolis Area Coordinating Metropolitan District (the “District”) (collectively, the “Members”), for the general purpose of furthering and supporting the public interest and economic health of the region and to effectuate the goals of fostering and supporting economic development through the expansion and creation of transportation improvements.

These Bylaws (“Bylaws”) are adopted by the Board of Directors of the Authority (“Board”) (each Director a “Director” or “Board Member”) in order to facilitate the conduct of Authority meetings, promote smooth operations and set forth the Authority’s code of ethics, all to better serve the public. The Board has determined that these Bylaws serve the public interest and are in the best interests of Authority.

All capitalized terms used but not defined herein shall have the meaning set forth in the Establishing Agreement. In the event of any conflict between the provisions of these Bylaws and the Establishing Agreement or local, state or federal law, the Establishing Agreement and such law shall control.

ARTICLE 2: PROTOCOLS AND GUIDELINES

a. Officers

Consistent with the Establishing Agreement, the Board may appoint as officers of the Authority a Chair, Vice Chair, Secretary, Treasurer and Executive Director of the Authority, and any subordinate officer or agent appointed and designated as an officer of the Authority by the Board.

b. Calling Board Meetings

1. The Board shall meet regularly, once per quarter, or more frequently as determined by the Board. Meetings shall be held at the City, County, or District offices on a flexible rotating basis, or in another convenient location as reasonably determined by the Chair.

2. A special meeting of the Board may be requested by any Board Member by asking the Chair to call a special meeting; however, whether to hold a special meeting is in the discretion of the Chair (or Vice Chair in the absence of the Chair).

3. All Board Members and Alternate Directors will be informed of the date, time, and place of all meetings. Public notice of meetings will be given as required by law. The Executive Director may give such additional notices of meetings as the Executive Director reasonably determines or as directed by the Board. Notices of meetings will include specific

agenda information when possible.

c. Pre-meeting activities

1. Any Board Member, the Executive Director, or the Authority's legal counsel ("Legal Counsel") may ask the Chair or Executive Director to include an item for discussion and possible action on any meeting agenda. The Chair shall, if practicable, include the requested item on the agenda unless the request is made too late to be included on the agenda, or the item can be, or has been, resolved outside of a meeting.

2. Except in an emergency or for good cause, the request to add an agenda item is to be made at least 48 hours prior to a meeting. Written requests are preferred. The addition of appropriate items to the "consent agenda," rather than the "discussion agenda" is encouraged.

3. The Board, Executive Director, and Legal Counsel are discouraged from adding items to the agenda at the Board meeting. Nonetheless, the agenda may be modified at a meeting with the consent of the Chair or the Board. (Legal Counsel has advised that actions on certain items added to an agenda at or prior to the meeting without giving public notice can be void in some situations).

4. If possible, the Board packet is to be furnished to the Board and Alternate Directors at least 48 hours before a regular meeting and at least 24 hours prior to a special meeting.

5. Potential conflicts of interest will be disclosed in advance of meetings and at meetings as provided by law.

6. To the extent possible, questions concerning agenda items by a Board Member should be addressed to the Chair or Executive Director prior to a meeting to avoid utilizing meeting time on questions that can be resolved without Board involvement.

7. Questions by a Board Member for the Authority's Legal Counsel or other consultants should be discussed with the Chair or the Executive Director before the Board Member calls or emails the Authority's Legal Counsel or other consultants whenever possible. The intent of this protocol is to avoid incurring unnecessary legal and consultant fees whenever possible.

8. The Board strongly encourages discussions in Board committees, if any such committees are created. Any such committees are to make recommendations to the Board, and do not have decision making authority.

d. At Meetings

1. All Board Members are expected to attend all meetings.

2. All Board Members are to strive to be on time to meetings.

3. Board Members may attend a meeting by conference telephone, if necessary. Attendance by telephone should be arranged with the Chair and the Executive Director (or their designee) in advance of a meeting to be sure the technical details of the conference call are prepared.

4. Once a quorum is present (in person or by phone), the Chair may begin business as soon as the time of the meeting arrives. A majority of the Board then in office who are eligible to vote shall constitute a quorum.

5. Discussion of items on the consent agenda is discouraged. Questions about the consent agenda should be directed to the Chair or Executive Director prior to the meeting.

6. Board Members, staff, and consultants will disclose potential conflicts of interest on an agenda item prior to the start of discussion on the particular item, shall not attempt to influence the Board concerning any vote on the item, and shall not vote on the item except as allowed by law. A person with a potential conflict may answer factual or technical questions concerning the matters involving the conflict. The Member's Alternate Director without a conflict may vote on a matter if a Director cannot vote due to a conflict.

7. Board Members are expected to be courteous and respectful to each other, customers, staff, and consultants, and vice versa. Any Board Member may bring a perceived lack of courtesy or respect to the attention of the Board.

8. Any Board Member, including the Chair, may make or second a motion.

9. Except as otherwise set forth herein or in the Establishing Agreement, the affirmative vote of a majority of the Directors then in office who are eligible to vote and are present and voting at a meeting is sufficient to pass any motion or resolution, with the exception of a motion to enter executive session, which by law requires at least a two-thirds vote of the quorum present. A motion or resolution loses on a tie vote. (See Establishing Agreement, Sec. 4.02).

10. Unless prohibited from voting on an item by law (*i.e.*, a conflict of interest exists and voting is prohibited), all Board Members (including the Chair) are to vote on all motions and resolutions, without abstentions. Proxy voting is not allowed. A vote by an Alternate Director pursuant to Section 3.03 of the Establishing Agreement is not a proxy vote.

f. After the Meeting

1. To the extent possible, staff and consultants who are present at the conclusion of a meeting shall make themselves available for questions from Board Members; however, no more than two Board Members shall participate in the same after-meeting discussion about official Authority business.

2. Board Members and others present in an executive session shall not disclose the contents of the discussion that took place in the executive session except to Board Members, as directed by the Board, or as required by law. Disclosure of the content of the discussion of an executive session may be a breach of the Board Members' duty to ARTA.

3. Board Members are to review the minutes of the prior Board meeting to confirm that any motions and resolutions adopted by the Board and the minutes are in substantial compliance with the intent of the Board. (The intent of this protocol is to encourage the Board to review the minutes and check to be sure the records are accurate. The "substantial compliance" standard is intended to avoid having to state motions with painful precision at the meeting and to allow editing of a motion for clarity).

g. Protocols Unrelated to Meetings

1. The Chair and the Executive Director are the spokespersons for the Authority. Board Members and others are strongly encouraged to direct questions from the media to them for response.

2. Board Members owe a duty of loyalty to the Authority. Constructive examination and recommendations for the improvement of the Authority are encouraged. As the governing body of the Authority, Board Members are encouraged to be honest and positive about the Authority.

3. Board Members should encourage good staff and consultant morale and public relations.

4. Board Member comments about staff or consultants should be channeled through the Executive Director, especially negative comments.

5. Board Members, staff, and consultants should conduct themselves with professionalism.

ARTICLE 3: CODE OF ETHICS

a. Introduction

The constituents of the County, City and District are entitled to have a fair, ethical, and accountable local government that has earned the public's full confidence for integrity. The Authority adopts this Code of Ethics as part of these Bylaws to assure public confidence in local government and its effective and fair operation and to ensure that the Authority complies with all applicable State and local laws relating to conflicts of interest and ethics.

Integrity in government requires that decision-makers be independent, impartial, and accountable to those they serve, to that end, all Directors and staff of the Authority must carry out their duties in accordance with the following principles:

1. As public servants, Board Members are stewards of the public trust, entrusted with and responsible for the property and resources of the Members and shall carry out their duties for the benefit of the constituents of the Authority.

2. The constituents of the County, City and District expect and deserve their public servants to act with courtesy, impartiality, honesty, and openness in the performance of their duties.

3. The Board and all staff of the Authority must always perform their duties on behalf of the Authority with the best interests of the Authority mind, and not for any personal interest or for the interest of family, friends, or business and political associates.

4. Governmental decisions and policies are made utilizing the proper channels of the government structure, free of coercive or other improper influence.

5. To gain and retain public confidence in government operations, the Board and all staff and consultants of the Authority must avoid even the appearance of impropriety.

b. Intent

The purpose of this Article is to provide the Board and all staff of the Authority the tools and resources necessary to conduct themselves in the most ethical and appropriate manner possible and to ensure that the Authority operates in accordance with its mission, governing principles, and values.

It is the intent of the Authority that the Board and all staff of the Authority adhere to high levels of ethical conduct so that the public will have confidence that persons in positions of public responsibility are acting for the benefit of the public. The Board and all staff of the Authority should comply with both the letter and spirit of this Article and strive to avoid situations which create impropriety or the appearance of impropriety.

c. Applicability

These Bylaws and this Article apply to the Board and all staff of the Authority. The provisions of these Bylaws and this Article shall apply in addition to all applicable federal, state and local laws relating to conflicts of interest and ethics including, but not limited to, the Colorado Constitution, Article XXIX, Colorado Revised Statutes § 24-18-101, *et seq.*, and all applicable rules, regulations, policies and procedures of the County, the City, or the District.

d. Conflicts of Interest

No member of the Board or any staff of the Authority should have any direct or indirect interest, financial or otherwise, engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in conflict with the proper discharge of his or her duties in the public interest, except as permitted by law.

1. **Misappropriation of Authority Resources:** No member of the Board or any staff of the Authority shall misappropriate to himself, herself or to others the property, services or other resources of the Authority for private purpose or other compensated non-governmental purposes.

2. **Favoritism:** The members of the Board and staff of the Authority shall guard against any relationship that creates conflicts of interest or which might be reasonably construed as evidence of favoritism, coercion, unfair advantage, or collusion.

3. **Improper Influence:** The members of the Board and staff of the Authority should not act in a manner that creates by his or her conduct a reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

4. **Privileges or Exemptions:** The members of the Board and staff of the Authority should not use or attempt to use his or her official position to secure privileges or exemptions for himself, herself or others.

5. **Protection of Public Trust:** The members of the Board and staff of the Authority should endeavor to pursue a course of conduct which will not raise suspicion among the members of the public that he or she is likely to be engaged in acts that are in violation of the public trust.

6. **Official Actions:** The members of the Board and staff of the Authority shall not take any direct or official action on any matter in which the Director, staff member or a relative or business associate has any substantial employment, contractual, or financial interest. The members of the Board and staff of the Authority shall not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he or she has a substantial financial interest in a competing firm or undertaking.

7. **Contracting & Transacting Business:**

The members of the Board and staff of the Authority shall not, in their official or private capacity, offer for sale or sell goods or services to the Authority. A waiver may be granted by the Board where the circumstances clearly demonstrate that there is no conflict of interest or appearance of a conflict presented by the proposed sale of goods or services to the Authority.

The members of the Board and staff of the Authority shall not, for their own private purposes, directly or indirectly obtain goods or services for anything less than fair market value from any contractor or vendor that performs work for the Authority.

The members of the Board and staff of the Authority should not engage in any transaction as representative or agent of the Authority with any relative, business associate, or

business entity in which he or she has a direct or indirect financial interest.

8. Personal Investments & Business Ventures: The members of the Board and staff of the Authority should not acquire or hold an interest in any business or undertaking which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest, except as permitted by law.

e. Confidential Information

The members of the Board and staff of the Authority shall not use any confidential information received by virtue of that person's office or employment for any private purpose, including but without limitation to commercial purposes, financial gain, or present or future employment. The members of the Board and staff of the Authority may only use confidential information in the conduct of his or her official Authority duties.

f. Political Solicitations

1. The members of the Board and staff of the Authority shall not engage in political campaigning at Authority meetings or public hearings. The members of the Board and staff of the Authority shall not use public resources for political campaigning.

2. The members of the Board and staff of the Authority may in their private capacity give financial or other support to political parties and candidates for elected office, unless otherwise restricted.

3. The members of the Board and staff of the Authority shall not directly or indirectly compel or induce a subordinate employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

4. The members of the Board and staff of the Authority shall not make any employment recommendation or decision based on political affiliation, participation or contribution.

g. Hiring of Relatives

The purpose of this section is to avoid favoritism and the appearance of favoritism by officials or employees.

1. The members of the Board and staff of the Authority shall not appoint, hire, or advocate for the appointment or hiring of any person who is a relative of such members of the Board or staff of the Authority.

2. The members of the Board and staff of the Authority shall not participate directly or indirectly in the recruitment and selection process that involves a relative.

3. The members of the Board and staff of the Authority shall not directly or indirectly exercise supervisory, appointment or dismissal or disciplinary authority over any relative.

4. The members of the Board and staff of the Authority shall not audit, verify, receive or be entrusted with monies received or handled by a relative.

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These Bylaws are adopted and effective the ____ day of _____, 2018, and may be amended at any time by the Board.

**BOARD OF DIRECTORS,
AEROTROPOLIS REGIONAL
TRANSPORTATION AUTHORITY**

Chair

DRAFT



Memorandum

To: Board of Directors, Aerotropolis Regional Transportation Authority

From: Rick Kron and Tom George

Re: Unsolicited Proposal from the Aerotropolis Area Coordinating Metropolitan District;
Summary Observations and Discussion Questions

Date: June 25, 2018

On June 8, 2018, the Aerotropolis Regional Transportation Authority (the “Authority” or “RTA”) received a Term Sheet for Unsolicited Proposal for the Design, Build and Finance of Certain Transportation Improvements (the “Unsolicited Proposal”) from the Aerotropolis Area Coordinating Metropolitan District (the “District”).

In order to assist the Authority’s Board in its review and consideration of the Unsolicited Proposal, we have prepared this memorandum to set forth initial observations and discussion questions regarding the Unsolicited Proposal. This memo is not intended to be comprehensive nor conclusive, but to summarize the Unsolicited Proposal, highlight important considerations, raise significant questions and foster discussion.

All capitalized terms used but not defined in this memo shall have the meaning set forth in the Authority’s Establishing Agreement (the “Establishing Agreement”) or the Unsolicited Proposal.

A. Summary

In short, the District is proposing to provide all financing and work required to complete all \$175,000,000 of the RTA’s regional transportation improvements that were identified in Exhibit D of the Establishing Agreement. In return, the RTA is to issue an aggregate of \$175,000,000 in cash flow notes to the District at 9.0% compounding interest, payable over 40 years from the RTA’s Pledged Revenues. The Pledged Revenues consist of the money from the RTA’s 5.000 mill levy, and all other revenues identified in Exhibit E of the Establishing Agreement.

The terms of the proposed agreement between the District and the RTA would be set out in a more detailed agreement to be signed at a later date.

B. Initial Questions Regarding the Unsolicited Proposal

1. If the RTA accepts the District’s proposal, thereafter can the RTA issue notes or bonds to third parties on parity with the Notes issued to the District?



2. Will Notes issued to the District be transferable by the District and if so, what transfer restrictions would apply?
3. Can call protection be eliminated for the District notes? Alternatively, can the protection extend for a short period of time such as three or five years?
4. Section 4(b)(i)(3) anticipates that the District's "Pre Execution Costs" will be added to the principal of the first Note. How much are those costs and what documentation is there of them?
5. Who will be: the planner, right of way negotiator, designer, (persons who select public art, if any), engineer, environmental engineer, construction manager, and other professionals engaged by the District for the work? Public bidding will be required for the construction contractors; will guaranteed maximum price contracts be used? What resources does the District have to pay cost overruns? What bonding, insurance, or letters of credit will the District offer to assure completion of each phase?
6. Will the RTA be able to review and approve the selection of important professionals (especially the construction manager and engineer) and construction contractors?
7. Will contractor warranties and performance and payment bonds be enforceable by the District and the RTA?
8. What assurance can the District give the RTA that the District has the expertise to undertake the work? What prior projects have been completed by the District?
9. Has D.A. Davidson provided (or will it provide) a 'reasonableness' opinion concerning the proposed interest rate and terms of each Note prior to its issuance? If 9% is not reasonable at the time of issuance, how would that issue be handled?
10. The term sheet discussion anticipates multiple issuances of Notes but the Financing Plan anticipates a fill up note. In the end, it may not matter, but which is being proposed?
11. Do the development projections in the Financial Plan agree with prior projections (by the City and County)?
12. Will the RTA have "step in rights" to be able to take over a Phase if the District or its contractors fail to perform?
13. Does the broad definition of "Pledged Revenue" allow sufficient funds for the RTA to pay its operations and administrative expenses? Section 2.04 of the Establishing Agreement provides for the Pledged Revenues to be subject to carve out up to 1% for RTA administrative and maintenance expenses. The 1% should not be transferred to the District. Authority sales taxes were not included in Pledged Revenue but are to be used for debt repayment under Section 5.01(b) of the Establishment Agreement. Can the RTA use the sales tax revenues for obligations outside of the proposed intergovernmental agreement?



14. Under Section 5(a), can the RTA refuse to accept a Phase Funding Notice, issue its own bonds or notes to a third party, and proceed with the Phase without the District's involvement?

15. Section 5(a) requires the RTA to issue a Note to the District upon receipt of a Phase Funding Notice, but the Establishing Agreement, Section 5.02, requires the unanimous approval of a plan of finance prior to issuing Bonds (including notes), so the District Agreement must include a step for this RTA review and unanimous approval.

16. Under Section 5(a)(i), if the Phase comes in under budget, who gets the remaining funds? Are they applied to the next Phase to lower the RTA's costs?

17. Under Section 5(a)(vi), the requirement to deposit "all revenues" should be "all revenues less Treasurer's Fees, other costs of collection, and up to 1% for operations and maintenance costs." Are those reductions problems for the District? (The Financial Plan may take the cost of collection into account, because it shows a 98% collection rate).

18. Under Sections 5(a)(vii), (viii) and (ix), the requirement that the RTA "will work with" the County and City should be clarified that the RTA will use "reasonable commercial efforts" to seek the approval of the County and City. Will the District commit to adding its "reasonable commercial efforts" to the work?

19. Under Section 9(a), does the District consider the development projections in the Financial Plan, or any other document, to be a representation or warranty of the RTA, and therefore, failure to achieve the projected level of development would constitute a default? (The answer should be no, but the RTA should ask).

C. What's missing from the Proposal?

1. A clear statement that the standards of construction for the improvements are to be determined by the County, City, CDOT, or E-470, as applicable. (Are the standards set in regulations? Development agreements?). Does the RTA have any design review and approval authority? Will there be a public art component and who selects the art?

2. A provision for interest under 9% when the RTA's buildout allows for more favorable financing terms. (Refunding the 9% notes could be at a lower rate, but the initial 9% rate is written to be applicable to all future Phases).

3. A provision for a Note term of less than 40 years. In some cases, 40 years could be longer than the life of the improvements, which would prevent tax exempt bonding. This could be a more important issue for the District than the Authority.

4. More complete terms on progress reporting by the District to the RTA Board. Are the quarterly reports provided in Section 4(b)(ii) enough? Section 4(b)(iii) calls for an engineer that is independent of property owners—the engineer should also be independent of the District.

5. A statement that cost overruns for a Phase would be absorbed by the District along with some showing by the District that it could cover them.



6. A termination provision. An outside end date for the discharge of any outstanding Notes.

7. A District event of default for failure to pay the bonds of the District in accordance with their terms. A statement that the RTA, County, and City will have no liability to pay any bonds of the District.

8. A provision for the RTA to require the District to undertake a Phase at a particular time. Section 4 only has the District agreeing to provide the Improvements in the sequence shown in the Phasing Plan—but does not say when the Improvements would be provided. The RTA should have the ability to require the District to proceed with the next Phase or the ability to proceed without the District.

9. A provision for the District Board to report potential conflicts of interest, if any, to the RTA Board relating to the issuance of debt, consultant contracting, and construction contracting.

D. Legal Questions for the District to Answer

1. Does the District have any Landmark problems that may prevent it from issuing bonds to finance the obligations?

2. Does the TAM impact the ability of the District to issue tax exempt debt (or is the District planning to use taxable debt)?

3. Does the District have the voted and service plan authority to obligate itself to potentially issue \$175,000,000 of bonds for regional street and transportation improvements and to construct them?

4. If the District needs to use eminent domain, what are the Service Plan constraints on that power (if any)?

E. Policy Questions for the RTA

1. Is the RTA Board amenable to delegating the duties in the Agreement to the District Board and its management?

Advantage: The delegation will reduce RTA Board, management, and staff time.

Disadvantage: The District would run the operation, which may create a public or landowner perception of a loss of control by the RTA Board.

2. Are 9% and 40 years acceptable terms?

Advantage: The practical ability of the RTA to acquire its own financing on better terms is questionable at this time, but whether better terms could be available should be explored with an experienced financial advisor or underwriter. Accepting this deal should speed up the process of financing and start work on engineering and construction now.



Disadvantage: 9% could seem high to the public, which may have a different perception of the risk of the financing than the District, RTA, D.A. Davidson, and potential investors. The 40-year term is the maximum allowed under state law for an initial issuance of debt; however, the 40-year term reflects the possibility that the cash flow to pay the bonds could be delayed due to recession or other cause for lack of development in the RTA.

3. Does the RTA want to be bound to this Agreement for the entire \$175 million or should this Agreement only cover the first phases of the improvements, with later parity bonds being allowed if certain tests are met (such as a particular debt to assessed ratios or debt service coverage ratios)?

Advantage: The RTA would maintain flexibility in the future and would have time to build expertise before undertaking future phases on its own. If the current deal works, there could be a renewal of it.

Disadvantage: The District and its funding source might not agree. The RTA would not have an identified future funding source.

4. Will the RTA Board's acceptance of the Unsolicited Proposal create political issues with the landowners in the RTA? Will it create problems in obtaining R.O.W. or other cooperation from landowners? Are there currently good relations between the District and the remainder of the RTA and could this change in the future to the detriment of completing the Improvements?

F. Recommendations

1. The Authority needs to answer the Policy Questions.

2. The Authority needs to address the questions raised about the Unsolicited Proposal and the terms that are missing from it.

3. If satisfactory answers are provided, the Unsolicited Proposal sets out a method for constructing the Improvements that has been utilized with reasonable success in many special districts and could work for the RTA. The Board should direct RTA staff and legal counsel to work with the District and its legal counsel to address the specifics of a proposed intergovernmental agreement to carry out the Unsolicited Proposal to bring to both Boards for consideration.

**AEROTROPOLIS AREA COORDINATING
METROPOLITAN DISTRICT**
Aurora, Colorado

MEMORANDUM

To: Board of Directors of the Aerotropolis Regional Transportation Authority (the “RTA”)
From: Board of Directors of the Aerotropolis Area Coordinating Metropolitan District (the “District”)
Date: June 8, 2018
Re: Term Sheet for Unsolicited Proposal Design, Build and Finance of Certain Transportation Improvements

The following is a term sheet for an Unsolicited Proposal for the Design, Build and Finance of the Transportation Improvements set forth in Exhibit A attached hereto and incorporated herein by this reference (the “**Regional Transportation System Improvements**”). Upon acceptance of these terms by the Board of Directors of the RTA, an Agreement will be prepared containing these terms by the District and presented to the RTA for approval, together with all implementing documents to effect the purposes of the Agreement, including, but not limited to the Notes to be issued by the RTA and the Public Financing Agreement (the “**Notes**” and the “**PFA**”, each as further described below).

1. PARTIES TO THE PFA

- (a) RTA
- (b) District

2. BACKGROUND DOCUMENTS

(a) Referenced in this Term Sheet is 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 “**RTA IGA**”).

(b) Delivered with this Term Sheet, and to be referred to in the recitals of the PFA, is a financing plan, set forth in Exhibit C attached hereto and incorporated herein by this reference, containing the following (the “**Financing Plan**”):

- (i) The debt service schedule for the anticipated Notes to be issued by the RTA pursuant to the PFA,
- (ii) The interest rate of nine (9%) percent on the Notes and the anticipated schedule,
- (iii) The development absorption projections for all of the property within the RTA,
- (iv) Projected administrative and operational expenses for the RTA, and
- (v) Projected costs of constructing the Regional Transportation System Improvements.

3. TERM OF THE PFA

- (a) The PFA shall be effective as of the date of execution (the "**Effective Date**") and shall terminate when all funds advanced for Regional Transportation System Improvements under the PFA have been repaid plus interest as set forth herein (the "**Term**").

4. THE DISTRICT'S OBLIGATIONS

- (a) The Parties acknowledge the District has been expending funds to pay costs incurred to further the design and construction of the Regional Transportation System Improvements which have been reviewed and are Verified Costs, defined below, ("**Pre-Execution Project Costs**"). As of the Effective Date, defined below, the District shall initiate the design and construction of the Regional Transportation System Improvements in the sequence indicated on the Phasing Plan set forth in Exhibit B attached hereto and incorporated by this reference (the "**Phasing Plan**").

- (b) The District shall proceed to fund and cause the completion of the design and construction of the Regional Transportation System Improvements in the sequence identified in the Phasing Plan and in accordance with the requirements of all applicable jurisdictions.

- (i) Prior to the initiation of each Phase, the District shall provide written notice to the RTA containing the following information (the "**Phase Funding Notice**"):

- (1) An engineer's certification as to probable cost of the Phase of work to be initiated ("**Certification of Probable Cost**"); and

- (2) The certification of the District's Accountant that funds equal to the amount contained in the Certification of Probable Cost has been deposited in the Project Fund and the date of such deposit (the "**Phase Funding Deposit**"); and

(3) For the first Phase, in addition to the items in 4.(b)(i)(1) and (2) above, the District shall also include the Pre-Execution Project Costs;

(4) The updated Financing Plan for the anticipated Note to be issued by the RTA for that Phase Funding Deposit which shall include:

a) The debt service schedule for the anticipated Note and any previously issued Notes which schedule shall present all of the principal and interest on the Note being repaid by the fortieth (40th) anniversary date of the issuance, including the payment of principal and interest on any projected refunding of the Note,

b) The interest rate of nine (9%) percent on the Note,

c) The updated development absorption projections for all of the property within the RTA,

d) The updated projected administrative and operational expenses for the RTA, and

e) Evidence that the Note, and any previously issued Notes, can be repaid in full from the Pledged Revenues.

(ii) The District shall provide written quarterly progress reports to the RTA on the design and construction of the Regional Transportation System Improvements containing the names of the engineering companies, construction contractors and other vendors under contract, the estimated cost to complete for each of the contracts, the percentage completed to date, the remaining cost to complete, the accumulated amount of Verified Costs and the most recent addition of Verified Costs, the accumulated amount of Project Deposits, defined below and the most recent addition of Project Deposits, (the “**Progress Reports**”).

(iii) All of the construction contracts will be publicly bid and bonded in accordance with State statutes. All of the costs incurred in the design and construction of the Regional Transportation System Improvements, including the Pre-Execution Costs, shall be subject to verification by a third party engineer independent of the owner of property within the boundaries of the RTA, or any of the owner’s affiliates (the “**Independent Engineer**”).

a) The verification by the Independent Engineer shall include verification that the cost incurred for the portion of the Regional Transportation System Improvements being verified (the “**Work**”) is reasonable and within market parameters for the Work, that the Work was confirmed to be for a portion of the Regional Transportation System Improvements, and the provider of the Work has been paid for the Work (“**Verified Costs**”).

(iv) During the Term of the PFA, the District shall keep, or cause to be kept, proper and current books and accounts in which are recorded complete and accurate entries

of the receipt and use of the Pledged Revenues; the costs and expenditures on the Regional Transportation Improvements expended by the District; and the District's administrative and management expenses. Unless otherwise exempted under State statutes, the District shall prepare after the close of each fiscal year for the District, a complete audited financial statement for such year in reasonable detail covering the above information, certified by a public accountant selected by the District, and shall furnish a copy of such statement to the RTA upon its request.

(v) During the Term of the PFA, the District shall keep all books, records and reports (except those allowed or required by law to be kept confidential) in the possession of the District relating to the Regional Transportation Improvements and the Pledged Revenues, including the Progress Reports and the books and accounts referenced above, which shall at all reasonable times be open to inspection by such accountants or other agents as the RTA may from time to time designate.

5. THE RTA OBLIGATIONS

(a) Upon receipt of a Phase Funding Notice, the RTA shall proceed to issue a Note to the District with the following terms and conditions:

(i) The principal amount of the Note shall be equal to the Phase Funding Deposit, plus nine (9%) percent compounding interest from the date the Phase Funding Deposit was made through the date of issuance of the Note, plus all costs of issuance,

(ii) The Note shall be payable from Pledged Revenues on a parity basis with any previously issued Notes,

(iii) Interest on the Note shall be payable on May 1 and November 1 of each year and principal on November 1 of each year from the amounts received from Pledged Revenues by the RTA by April 1 and October 1, respectively, prior to each payment date,

(iv) The Note shall bear compounding interest at nine (9%) percent from the date of issuance until paid and all payments shall credit against interest due until all interest that is due through the date of payment has been made and then any remaining payment shall credit to reduce the principal,

(v) The total principal amount of all Notes issued shall not exceed \$175,000,000 plus the costs of issuance,

(vi) The RTA shall pledge to impose the 5 Mills in property taxes (the "**RTA Mill Levy**") and to deposit on the first of every month all of the revenues collected from the RTA Mill Levy, together with all other revenues collected from the sources listed in Exhibit E of the RTA IGA into the Income Fund, as defined in the RTA IGA, for payment on the Note, (the "**Pledged Revenues**"),

(vii) A Note, or Notes, can be refunded at any time after the expiration of any call protection period on any District Bonds that are issued and payable from the revenue and interest payments on the Note or Notes.

(viii) The RTA shall work with the City of Aurora (the "City") for the adoption by the City of the necessary Resolutions for the annual appropriation of one hundred (100%) percent of the City Use Tax on Construction Materials, as defined in the RTA IGA, and one hundred (100%) percent of the City Transportation Impact Fee for Residential Development, as defined in the RTA IGA, towards the payment of principal and interest on the Note, and

(ix) The RTA shall work with Adams County (the "County") for the adoption by the County of the necessary Resolutions for the annual appropriation pledge of fifty (50%) percent of the County General Fund Property Tax, as defined in the RTA IGA, and one hundred (100 %) percent of the County Road and Bridge Fund Tax, as defined in the RTA IGA, towards the payment of principal and interest on the Note.

(b) During the Term of the PFA, the RTA shall keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries of the receipt and use of the Pledged Revenues and the amounts paid out as principal of, and interest and otherwise, on the Notes are noted.

(c) During the term of the PFA, the RTA shall keep all books, records and reports (except those allowed or required by law to be kept confidential) in the possession of the RTA relating to the Regional Transportation Improvements, the Pledged Revenues, the Notes, including the books and accounts referenced above, which shall at all reasonable times be open to inspection by such accountants or other agents as the District.

6. MUTUAL COOPERATION

(a) The District and the RTA agree to take whatever subsequent actions and to execute whatever documents are necessary to implement the covenants and agreements set forth herein.

7. DISTRICT EVENTS OF DEFAULT

(a) Representations or warranties made by the District were materially and knowingly inaccurate when made; or

(b) Failure or refusal to perform any other of the material covenants, agreements or conditions of the District made by the District in the PFA.

(c) The District shall not be in default unless it has received thirty days prior notice in writing of the alleged default and an opportunity to cure within the thirty days.

8. AUTHORITY REMEDIES

(a) Once a Note has issued, under no circumstances shall the RTA remedies entitle the RTA to withhold payment of the Pledged Revenues as required by the PFA and the Note issuance documents.

(b) The RTA's remedies shall be limited to protect and enforce its rights under the PFA to such suit, action or special proceedings as it may deem appropriate under the circumstances, including, without limitation, an action for injunctive or similar relief that is available at law or in equity, including specific performance or an action in mandamus.

9. RTA EVENTS OF DEFAULT

(a) Representations or warranties made by the RTA were materially and knowingly inaccurate when made; or

(b) Failure or refusal to deposit the Pledged Revenues in the Income Fund or to apply the Pledged Revenues to the payment of principal and interest and other amounts due related to the Notes; or

(c) Failure or refusal to perform any other of the material covenants, agreements or conditions of the RTA made by the RTA in the PFA.

(d) The RTA shall not be in default unless it has received thirty days prior notice in writing of the alleged default and an opportunity to cure within the thirty days.

10. DISTRICT REMEDIES

(a) The District's remedies shall be limited to protect and enforce its rights under the PFA to such suit, action or special proceedings as it may deem appropriate under the circumstances, including, without limitation, an action for injunctive or similar relief that is available at law or in equity, including specific performance or an action in mandamus.

