

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF THE AURORA HIGHLANDS PARKWAY

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN AND CONSTRUCTION OF THE AURORA HIGHLANDS PARKWAY (this “**First Amendment**”) is made and entered into the 28th day of July, 2021 (the “**Effective Date**”), by and between **AEROTROPOLIS AREA COORDINATING METROPOLITAN DISTRICT**, a political subdivision and quasi-municipal corporation of the State of Colorado (“**AACMD**”), and **AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY**, a political subdivision and body corporate of the State of Colorado formed pursuant to Section 43-4-601, *et seq.*, C.R.S. (“**ARTA**”). ARTA and AACMD may be referred to collectively herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

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. The Parties previously entered into that certain Intergovernmental Agreement Regarding Design and Construction of The Aurora Highlands Parkway dated August 12, 2020 (the “**Agreement**”), pursuant to which Agreement AACMD has generally advanced funds on ARTA’s behalf in relation to the TAH Parkway Improvements and ARTA is required to reimburse AACMD for such advances from Future ARTA Bonds.

3. ARTA intends to issue its next tranche of the Future ARTA Bonds in August or September 2021 and has determined that, due to the timing of such issuance and the continuing progress on the Regional Transportation System being made by the Parties pursuant to the Project Management Agreement, ARTA may exhaust its current project funds prior to the issuance and may require additional funds to continue the planning, design and/or construction of Regional Transportation System Improvements without interruption.

4. AACMD has adequate funds available and is willing to advance funds on ARTA’s behalf, if and as necessary, to continue the planning, design and/or construction of Regional Transportation System Improvements pursuant to the Project Management Agreement until the next tranche of Future ARTA Bonds are issued on the condition that such funds are reimbursed to AACMD by ARTA pursuant to the terms and conditions of this First Amendment.

5. 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 First Amendment to provide for the continued planning, design and/or construction of Regional Transportation System Improvements without interruption as further set forth herein.

6. ARTA and AACMD desire to enter into this First Amendment to amend the Agreement to set forth their understanding regarding AACMD’s potential funding of the planning, design and/or construction of Regional Transportation System Improvements on ARTA’s behalf,

if necessary, and the terms for reimbursement of AACMD by ARTA for the same, together with such other matters as are hereinafter set forth.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the Agreement, and the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby amend the Agreement and agree as follows:

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

2. Defined Terms. All capitalized terms used but not defined in this First Amendment shall have the meaning ascribed to such terms in the Agreement.

3. Interest to Accrue on TAH Parkway Advances. The Parties agree that interest shall accrue on all TAH Parkway Advances made under the Agreement at the simple annual interest rate of 4% until such TAH Parkway Advances are repaid to AACMD as follows:

3.1. For any and all TAH Parkway Advances approved as Verified Costs by ARTA's Board of Directors (the "ARTA Board") on or before March 1, 2021, interest shall accrue beginning March 1, 2021.

3.2. For any TAH Parkway Advances made after March 1, 2021, interest shall accrue beginning on the date the ARTA Board approved or approves as Verified Costs such TAH Parkway Advances.

4. Interim Funding Advances. In the event ARTA does not have adequate project funds remaining from the 2019 Bonds to fund Verified Costs submitted to ARTA consistent with the provisions of the Project Management Agreement, excluding any costs associated with TAH Parkway Improvements, upon written request from ARTA, AACMD agrees it will advance on ARTA's behalf adequate funds necessary to fund the Verified Costs (the "**Interim Funding Advance(s)**"). Any Interim Funding Advances shall be made by AACMD by paying such Verified Costs directly on ARTA's behalf (as opposed to transferring funds directly to ARTA) consistent with the provisions of the Project Management Agreement.

5. Maximum Amount of Interim Funding Advances. The cumulative principal amount of any and all Interim Funding Advances shall not exceed \$1,000,000.

6. Interest to Accrue on Interim Funding Advances. Any Interim Funding Advance made pursuant to this First Amendment shall accrue interest at the simple annual interest rate of 4%, calculated beginning on the date the ARTA Board approves Verified Costs which require such Interim Funding Advance and ending on the date ARTA reimburses AACMD for such Interim Funding Advance.

7. Records; Progress Reports. AACMD shall keep or cause to be kept accurate and current books and accounts in which are recorded all costs paid by AACMD associated with the Interim Funding Advances, including without limitation information regarding the Regional Transportation System Improvements and related Verified Costs funded by the Interim Funding Advances. All AACMD books and records related to the Interim Funding Advances shall be made available to ARTA at any time for review (upon reasonable prior written notice).

8. Reimbursement of AACMD.

8.1. AACMD understands and agrees that ARTA may not currently have sufficient appropriated funds to fund all of the Regional Transportation System Improvements or to reimburse AACMD for costs associated with the Interim Funding Advances expected to be advanced by AACMD hereunder. Subject to the availability of adequate funds and appropriation by the Board of Directors of ARTA, ARTA agrees to make payment to AACMD for all Interim Funding Advances incurred by AACMD. The Parties further understand and agree that ARTA intends to issue the Future ARTA Bonds, in part in order to reimburse AACMD for the TAH Parkway Advances and the Interim Funding Advances, and ARTA does not intend to issue the Future ARTA Bonds unless such issuance provides revenues sufficient to reimburse AACMD for the TAH Parkway Advances and the Interim Funding Advances.

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

8.3. The amounts due hereunder are payable at any time without prepayment penalty.

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

8.5. Upon the availability and appropriation by the Board of Directors of ARTA of funds adequate to reimburse the Interim Funding Advances, ARTA shall provide written notice of such availability and appropriation to AACMD. AACMD shall thereafter include such Interim Funding Advances in a Draw Request pursuant to the Project Management Agreement for reimbursement by ARTA.

9. Priority. ARTA’s obligation to reimburse AACMD for Interim Funding Advances advanced pursuant to this First Amendment shall be considered to be on an equal basis of priority as any and all TAH Parkway Advances, and, consistent with the foregoing provisions, TAH Parkway Advances and Interim Funding Advances may be included in the same Draw Request(s).

10. Limited Effect. All other provisions of the Agreement not expressly modified herein shall remain in full force and effect and are not modified, changed, or amended by this First Amendment.

11. Entire Agreement. This First Amendment represents the entire agreement of the Parties regarding the subject matter hereof.

12. Counterparts. This First Amendment may be executed in one or more counterparts and may be executed and delivered by electronic means, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement.


13. Headings. The section headings contained in this First Amendment are for reference purposes only and shall not affect the meaning or interpretation of this First Amendment.

[SIGNATURE PAGE FOLLOWS]

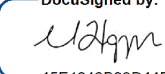
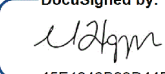
IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date first set forth above.

Approved unanimously by vote of the Board of Directors of the Aerotropolis Regional Transportation Authority on 07/28/2021.

**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

DocuSigned by:
Dave Gruber
By: 
0C657016BA754B4...
Name: Dave Gruber
Title: Vice-Chairperson

**AEROTROPOLIS AREA
COORDINATING METROPOLITAN
DISTRICT,** a political subdivision and quasi-municipal corporation of the State of Colorado

DocuSigned by:

By: 
45E4943B33D44F2...
Name: Matthew Hopper
Title: President

Certificate Of Completion

Envelope Id: C60B6B4E53754EFC82B211550EBA3FFF	Status: Completed
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Client Number: 011-045387-OS01-2021	
Source Envelope:	
Document Pages: 5	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Kathy Suazo
Time Zone: (UTC-06:00) Central Time (US & Canada)	220 South 6th Street
	Suite 300
	Minneapolis, MN 55402
	Kathy.Suazo@claconnect.com
	IP Address: 67.137.57.251

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Status: Original	Holder: Kathy Suazo	Location: DocuSign
8/2/2021 9:14:25 AM	Kathy.Suazo@claconnect.com	

Signer Events

Dave Gruber
 dgruber@auroragov.org
 Security Level: Email, Account Authentication (None)

Signature



Signature Adoption: Pre-selected Style
 Using IP Address: 63.149.121.82

Timestamp

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Electronic Record and Signature Disclosure:
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 ID: 851c8431-9703-48ef-a9f9-7969b2508186

Matt Hopper
 matt@summit-strategies.net
 Security Level: Email, Account Authentication (None)



Signature Adoption: Uploaded Signature Image
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In Person Signer Events	Signature	Timestamp
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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	8/4/2021 10:12:59 AM

Payment Events	Status	Timestamps
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