INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BASALT (TOWN), THE ROARING FORK TRANSPORTATION AUTHORITY (RFTA) AND PITKIN COUNTY (COUNTY) TO DEVELOPMENT PROJECT WITH ONE CONSTRUCTION CONTRACT TO COMPLETE THE BASALT PEDESTRIAN CROSSING MANAGED BY RFTA AND PITKIN COUNTY

This INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this ___ day of __, 2016, by and between the TOWN OF BASALT, COLORADO, acting by and through its Town Council (hereinafter "Town") BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO, a body corporate and politic ("County") and the ROARING FORK TRANSPORTATION AUTHORITY (hereinafter "RFTA"), a regional transportation authority created pursuant to Section 43-4-601, et seq., C.R.S., as amended, whose address is 2037 Wulfsohn Road, Glenwood Springs, Colorado 81611. Town, County and RFTA are also sometimes referred to herein as a "Party" or the "Parties."

W I T N E S S E T H:

WHEREAS, The Town, County and RFTA desire to enter into an *Intergovernmental Agreement* (hereinafter "IGA") establishing and acknowledging funding and roles and responsibilities for the construction of the Basalt Pedestrian Crossing of State Highway 82, herein known as "Project".

WHEREAS, funding has been committed for the Project from various governments and the Parties desire to formally acknowledge these amounts.

WHEREAS, the Parties desire for RFTA and the County to manage the Project and assign roles and responsibilities to ensure the Project is completed successfully.

WHEREAS, the project received an acceptable construction bid equal to or less than the proposed funding commitments.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Town, County and RFTA agree as follows:

RECITALS

1. The Town, County and RFTA desire to complete the Basalt Pedestrian Underpass budgeted at 7,140,000 million dollars. A plan of the Basalt Pedestrian Underpass to be completed is attached as Exhibit A, and is sometimes referred to herein as "the Project."

2. The Town, County and RFTA acknowledge that funding for the Project is anticipated to be accomplished as follows:

RFTA	$ 500,000
CDOT (RPP, TAP, FASTER)	$2,016,000
Town	$2,954,000
County (OST, EOTC, County Gen Fund)	$1,390,000
Safe Routes to School (SRS)	$ 280,000
Total Funding	**$7,140,000**

3. The Town, County and RFTA agree that construction of the improvements will not commence until the entirety of funding is appropriated.

4. The Town, County and RFTA agree to coordinate the funding and completion of the construction of Basalt Underpass improvements by means of a single construction contract, the management of which shall be overseen by the by the Town with staffing support from the County and RFTA. The County and RFTA are offering staff augmentation to the Town because of recent experience on the CDOT funded AABC Underpass.

5. The Town of Basalt shall appoint the Assistant Town Manager, Judi Tippetts, as the Town Representative and the point of contact to the project whom shall have the authority to make decision on the Town's behalf, sign Minor Contract Revisions (MCR) and change orders and shall be available throughout the life of the project to make decisions in a timely manner.

6. RFTA shall appoint two staff members to the project. Nicholas Senn shall act as the Project Engineer and shall have the authority to direct the work and enforce the terms of the construction and design support contracts. The Project Engineer will also have authority to produce pay applications, encumber the (MCR) funds associated with the project, with the consent of the Town and write change orders for the subtraction or addition of work during the life of the project. The RFTA Project Engineer shall report to the Town Representative and the County Resident Engineer. RFTA shall also appoint Ben Ludlow to act as the Assistant Project Engineer who will manage the SharePoint site which will be the official record for the project, manage the Requests for Information (RFI) and submittal process and manage the site observations and record keeping.

7. Pitkin County shall appoint two staff members to the project. GR Fielding shall act as the Resident Engineer to the project at act as the County's Project Manager for the life of the project and shall report to the Town Representative and oversee/direct the rest of the combined staff. The Resident Engineer and have the authority to direct the work and enforce the terms of the construction and design support contracts as typically defined in the CDOT grant agreements. The County shall also appoint Chris Baroody to the project at act as an Inspector for the life of the project and he shall report to the Project Engineer

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or Resident Engineer. The Inspector will be the primary field observation for the combined staff and is chiefly responsible for daily CDOT compliant documentation.

8. RFTA and the County agree to assume the primary responsibility for managing the construction of the Project and for ensuring a functional facility at the conclusion of the Project with the final completion of the Project, which will entail minor fit and finish, to be accomplished by the summer of 2017 or as soon as possible thereafter as provided for herein. The Town and the Designers of Record agree to provide the support necessary to facilitate the construction of the project.

9. The Town of Basalt shall provide CDOT compliant design documents for the construction of the project. The Town shall also assume full responsibility for Errors and Omissions in the delivered Plans, Specifications, Reports and Estimates provided by the Town's design professionals. Should it become necessary the Town shall provide legal support for any dispute resolution process or any other matter associated with the project, RFTA and the County agree to provide technical support for these efforts as necessary.

10. Parties acknowledge that the discovery or occurrence of extraordinary unforeseen site conditions after the start of construction may delay completion of the Project for an unknown period of time and could also affect the overall cost of the Project.

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AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Town, County and RFTA agree as follows:

1. Town of Basalt, RFTA and Pitkin County project management responsibilities

   RFTA and the County, directly and/or through an engineering consultant, agree to manage the combined projects and ensure design specifications are followed, testing protocols are met, and the combined projects are constructed meeting previously engineered plans and specifications and grant agreements. The basic responsibilities of each organization are outlined below and committed to for the entire duration of the construction management.

Town of Basalt:

- The Town will responsible for the management, required reporting and seeking reimbursement for all grants and funds associated with the project
- In the event that any legal service are required to resolve issue related to the project the Town agrees to provide this representation at no cost to RFTA or Pitkin County.

- The Town will pay for any construction testing, construction inspections, design support and public information consulting required by the Project.
- The Town will be responsible the management of all grants and assume responsibly for meeting each grants reporting requirements as well as seek reimbursement for each individual grant.
- The Town will be responsible for processing pay applications to the Contractor and Consultants for the work performed during the construction contract within 30 days.

RFTA:

- RFTA shall act as the construction manager for the project and provide a Project Engineer and Assistant Project Engineer to manage the construction and enforce the terms of the construction and design contracts.
- Shall procure an engineering firm for materials testing and a public information consultant as required by the Project.
- RFTA will use utilizes its SharePoint site to create an office project record system for the project and will manage the site.
- RFTA will be responsible for insuring DBE goals are met, reviewing Davis Bacon wage information and FASTER employment numbers reporting and supply reports to the Town to submit to CDOT.
- RFTA shall manage the inspection, testing and site observations for the project.
- RFTA shall produce and verify pay applications and submit them to the Town for processing.

Pitkin County:

- The Resident Engineer shall be available to help resolve issues on the project and make final decisions on behalf of the Team. The Resident Engineer shall be responsible for oversight in compliance with CDOT grant agreement terms.
- The Resident Engineer (or Project Engineer if directed) shall be available to support the Assistant Town Manager in communicating progress to the Town Board.
- The Pitkin County Inspector shall be available for life of the project and provide documentation at the direction of the Resident/Project Engineers that is CDOT compliant.

2. <u>Town of Basalt project involvement and payments</u>.

a. Either the Town Manager or the Assistant Town Manager/Finance Director will be involved in managing the project through attending weekly construction meetings and by making periodic site visits as needed.

b. Either the Town Manager or the Assistant Town Manager/Finance Director will be available to evaluate and approve proposed modifications to plan design. Modifications to the approved design and authorization of any necessary change orders will occur no later than five (5) working days after presentation by RFTA or the County and before any change orders are issued to the Contractor.

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c. All payment applications or invoices will be routed through the Assistant Town Manager/Finance Director for approval on a monthly basis.

d. If additional funds for construction, in excess of Funding, are required to complete the Project, the funds may be either fully appropriated by the Town or the Town may request to be reimbursed by an entity such as CDOT or EOTC for any additional expenditures. RFTA or the County shall not be responsible for overages to the cost of the Project. Overall project expense reports and forecasts will be presented to and discussed by the Construction Management Team (Team) as often as practicable, but at least on a monthly basis, during the life of the construction project. County or RFTA will not incur costs for the project in excess of current funding without prior written authorization from the entity to which a funding request is submitted. If, for any reason, it appears that the cost of completing construction of the Project could exceed Funding, RFTA and the County will notify the Town and request written instructions as to whether it should continue or discontinue constructing mutually agreed upon nonessential portions of the Project.

e. Consultant Construction Management (Design Assistance, Inspections, Testing, and Certifications) costs shall be assigned directly to Project costs based upon the level of effort required by the funding agencies, which costs shall be identified and allocated in the overall project construction budget that is reliant on Funding. In other words, the Funding shall cover all hard and soft costs related to completing the Project.

f. The Town shall obtain all required permits, including permits for all required utility relocations, from the Town's Community Development and Building Departments.

g. The Town shall obtain and/or provide all Rights of Way (ROW) clearances.

h. All required utility relocations on the site that will occur during the life of the Project and the utility costs associated from those independent entities shall be promptly paid by the Town as they are incurred.

3. <u>Project collaboration, problem solving and change order approval</u>.
Town of Basalt, Pitkin County and RFTA will form a collaborative team that will meet at least weekly throughout the project. This team will address issues and changes as they develop throughout the project. Project modifications and decision making will be made on a consensus basis. All change orders with regard to the Pedestrian Crossing will need to be approved by the Town prior to formally approving the change order request with the Contractor.

All change orders with regard to Basalt Underpass must be approved by the Town's representative or her designee prior to preparation by RFTA staff for execution with the Contractor.

The Town's designee, shall be available on short notice to discuss critical issues and provide necessary authorization for changes that otherwise might result in costly time delays and financial impacts for the Facility.

4. Project Cost Assignments and final payment.

a. All construction management costs assigned directly to the Pedestrian Crossing will be paid by the Town to the County and RFTA based on their time spent managing the Project. Reimbursement to RFTA and the County will each be set at a maximum of $100,000 and shall be supported by standard accepted accounting documentation. If support to the project extends beyond the reimbursement limit, all parties will jointly address required support after that point.

b. Project acceptance and final payment will be approved by the Town, Pitkin County, RFTA and CDOT as a team. Final payment will be made by the Town once the team approves the job completion.

5. Public Outreach.

The Town, Pitkin County and RFTA will designate a single point of contact for each agency that will be responsible for this coordinated effort and public information. Any outreach will be approved by all agencies before it is made public. The Resident/Project Engineers will utilize the Public Information Officer, included in the construction contract, for much of the general dissemination of general information, but instances where the Project Team feels there are additional measures to be taken; they will be led by the Town. The Resident/Project Engineers will support the Assistant Town Manager in this additional effort.

6. Hold Harmless (a)

To the extent permitted by law, Town, the County and RFTA shall each defend and hold harmless the other from and against any injury, claim or damage to any third party arising out of or in connection with each party's operations under this Agreement. Nothing in this Agreement, however, is intended or shall be construed to constitute a waiver on the part of RFTA, County or the Town of the provisions of Section 24-10-101, *et seq*., Colorado Revised Statutes, commonly known as the Colorado Governmental Immunity Act.

7. Attorneys' Fees.

In the event the interpretation or enforcement of this Agreement should ever become the subject of litigation, arbitration or mediation between RFTA (or its successors and assigns), the County and the Town, the substantially prevailing party shall be awarded its reasonable costs and attorneys' fees and costs incurred in connection therewith.

8. Notices.

All notices or other communication required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, postage prepaid and

return receipt requested, and such notices shall be deemed given when received. Notices shall be directed to the following addresses:

To Pitkin County:
Pitkin County Public Works
Attn: Public Works Director
76 Service Center Road
Aspen, CO 81611

With a copy to:
Pitkin County Attorney
530 East Main Street, Suite 302
Aspen, Colorado 81611

To RFTA:
Roaring Fork Transportation Authority
Attn: Facilities Director
1340 Main Street
Carbondale, CO 81623

To Town of Basalt:
Town of Basalt
Attn: Town Manager
101 Midland Ave.
Basalt, CO 81621

Notice of any change of address shall be given by written notice in the manner detailed in this paragraph.

9. Performance.
The Parties agree to perform any and all acts, without limitation, as may be reasonably necessary to fully effectuate the intent and purposes of this Agreement. Whenever any action is required or permitted to be taken by the parties under the terms of this Agreement, such action may be taken and performed by any authorized officer, director, agent or other representative of the parties.

10. No Third Party Beneficiaries.
It is the intent of the parties hereto that no third party beneficiary interest is created in this Agreement. The parties hereto are not presently aware of any actions by them or any of their authorize representatives which would form the basis for interpretation construing a different intent and expressly disclaim any such acts or actions.

11. No Waiver of Governmental Immunity.

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RFTA, the County and the Town, its directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq*., as it may be amended from time to time.

12. Breach or Termination.
In the event of a breach of any provision of this Easement written notice of the breach, which shall include a reasonably specific description of what constitutes the breach and what corrective action or cure is required by the party giving the notice, shall be given by the non-breaching party. If within ten (10) days after receipt of such written notice, the breaching party has not cured the breach, of if cure cannot be reasonably accomplished within ten (10) days, has not commenced what curative measures are possible and is not prosecuting the same to timely completion, the non-breaching party may, in addition to such contractual remedies as may be available, ask a court of competent jurisdiction for appropriate injunctive relief.

13. Entire Agreement.
This Agreement constitutes the entire and complete agreement of the parties in regard to the subject matter herein. No promise or undertaking has been made by any party, and no understanding exists with respect to the transaction herein contemplated except as expressly set forth herein. All prior and contemporaneous negotiations and understandings between the parties are embodied and merged into this Agreement.

14. Severability.
If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall continue to exist and shall be valid and enforceable to the fullest extent permitted by law.

15. Amendment.
This Agreement may only be amended by a written document executed by the County and RFTA and Town, or its successors and assigns.

16. Venue.
Venue for any legal action relating to this Agreement shall be in the District Court in and for the County of Pitkin, Colorado.

17. Appropriation.
All financial obligations of RFTA, the County or the Town under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by RFTA, the County or the Town for the purpose of this Agreement.

18. No Personal Liability.
No elected official, director, officer, agent or employee of RFTA, the County or the Town shall be charged personally or held contractually liable by or to the other party

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under any term or provision of this Agreement or because any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

19. Paragraph Headings.
The paragraph headings in this Agreement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

20. Waiver.
No failure or delay of the parties to exercise any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Nothing contained in this Agreement shall constitute a waiver of any right, power or authority of the parties hereto, except as expressly provided for herein.

21. Counterparts.
This Agreement may be executed in duplicate original counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

22. Authority to Execute.
By signing this Agreement, the parties acknowledge and represent to one another that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each party have been duly authorized to do so. The parties acknowledge and agree that no representation or inducement has been made regarding the rights set forth in this Agreement that is not expressly set forth herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

TOWN OF BASALT

By:_____
Jacque Whitsitt, Mayor

ATTEST:

By:_____

APPROVED AS TO FORM:

By:_____

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BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

By:_____
Rachel E. Richards, Chair

ATTEST:

By:_____
Jeanette Jones, Deputy Clerk

APPROVED AS TO FORM:

By:_____
John M. Ely, County Attorney

ROARING FORK TRANSIT AUTHORITY

By:_____
Dan Blankenship, Chief Executive Officer

ATTEST:

By:_____
RFTA Secretary

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