INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF GLENWOOD SPRINGS (CITY) AND THE ROARING FORK TRANSPORTATION AUTHORITY (RFTA) TO CONSTRUCT AND MAINTAIN THE 27TH STREET AND STATE HIGHWAY 82 PEDESTRIAN UNDERPASSES

This INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of _____, 2021, by and between the City of Glenwood Springs ("City") and the ROARING FORK TRANSPORTATION AUTHORITY ("RFTA"), a regional transportation authority created pursuant to Section 43-4-601, et seq., C.R.S., as amended, whose address is 2307 Wulfsohn Road; Glenwood Springs CO.

RECITALS

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1. RFTA, City, the Colorado Department of Transportation (CDOT) and other entities have collectively appropriated approximately $10.3 million to complete two Pedestrian Underpasses of State Highway 82 (SH82) and 27th Street (hereinafter, "Project") located in the right of ways of State Highway 82 (CDOT), 27th Street (City) and Rio Grande Corridor (RFTA) located in the City of Glenwood Springs, CO.

2. RFTA desires by this Agreement to help coordinate, fund, construct and establish maintenance and operations of the Project, in accordance with the conceptual plans attached as Exhibit "A."

3. Pursuant to the terms of this Agreement, RFTA agrees to assume the primary responsibility with regard to funding, managing and constructing the Project. With this agreement, RFTA and City enter into a separate intergovernmental agreement setting the obligations of the City and RFTA for long-term maintenance and operations of the Underpasses that cross SH82 and 27th Street. RFTA will own the Underpass that crosses 27th Street. The City will own the underpass that crosses SH 82. See Exhibit B Ownership.

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 City and RFTA agree as follows:

1. This Agreement is entered into by the Parties contingent upon the following assumptions regarding the project:

a. RFTA will manage all required utility relocations

b. RFTA will set aside five percent (5%) of project funds for project contingency based upon RFTA's engineer's estimates for the design.

c. RFTA and City 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.

2. RFTA's shall assume the following responsibilities associated with administering government agreements, procurement, contracts and project management.

a. RFTA shall coordinate the construction of the Project as one construction project under the

management and supervision of RFTA with the direct input from CDOT and City. Once the construction contract is approved by RFTA, CDOT and the City, RFTA shall be responsible to perform all obligations as project manager and grantee of all funds.

b. It is anticipated that RFTA will become the grantee of the following funds:

Source	Amount
RFTA 2040 Funds (including design efforts)	$4.279 million
RFTA 2040 Service Reallocation	$2.27 million
CDOT Multimodal Options Funds (MMOF)	$1.1 million
CDOT Transportation Alternatives Program (TAP)	$1.0 million
CDOT Regional Priority Project (RPP)	$1.0 million
CDOT Revitalizing Main Streets	TBD
Garfield County Federal Mineral Lease District	TBD
City of Glenwood Springs	$0.75 million

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RFTA shall utilize $815,515.72 of its dedicated funds to retain and pay for the design of the project by Consultants in 2020. In 2021, RFTA shall allocate $659,801.78 to augment staff to provide inspection and testing during the life of the construction project. The balance of RFTA 2040 funds will be dedicated to the construction project.

c. If RFTA is successful in 2021 in either acquiring a Garfield County Federal Mineral Lease District grant or a CDOT Revitalizing Main Street grant for the Project, those grant amounts will be subtracted from the value contributed by the RFTA to the Project.

d. RFTA will solicit competitive bids for constructing the Underpasses following RFTA, and Federal/CDOT procurement process.

e. The Project Manager assigned by RFTA shall review the bids and provide written concurrence that the funding will be sufficient to defray all agreed upon costs associated with construction of the Underpass, including project management by RFTA, construction management by consultants and all required permits. Any additional portion of the Project cost requested by the City above the allocations in the Table described in 2b shall be paid for by the City. Any additional project cost requested by RFTA above the allocations in Table 2b shall be paid for by RFTA. RFTA will develop a cost sharing or allocation plan for disbursement of all grant funds, based on specific grant requirements, after construction bids are received and prior to the start of construction.

f. Contingent upon written concurrence with CDOT and City, and subject to RFTA's satisfaction that it meets RFTA requirements, RFTA will execute the contract with the selected construction contractor for the Project, with the goal of completing the Project by November 23, 2022.

g. RFTA, directly and/or through an engineering consultant, will manage the construction and ensure that design specifications are followed, testing protocols are met, and the Project is constructed meeting previously engineered plans and specifications.

h. RFTA will pay the Contractor for work performed on the Project and request reimbursement from the CDOT and City by means of monthly or periodic pay applications or invoices.

i. City and CDOT may be involved in coordinating and supporting the management of the Project by assisting RFTA with the following activities:

i. obtaining all required permits for the Project, including permits for all required utility relocations
ii. obtaining and/or providing all necessary right of way clearances
iii. managing all required utility relocations for the Underpass, including agreements with the utility companies and contracts with contractors performing the actual utility relocation work;
iv. attending and providing input at weekly construction meetings with RFTA; and
v. making periodic site visits as needed.

j. All consultant services provided prior to award of a construction contract (i.e. engineering, environmental clearances, right of way services, utility engineering, etc.) shall be paid for by RFTA with prior budgeted funds from RFTA's 2040 allocation to the Project.

k. RFTA will work with CDOT and City to execute all necessary utility relocation agreements for the Project. Required documentation for all agreements, easements and rights of way will be completed by RFTA and supplied to CDOT and the utility companies

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l. City staff will be available when needed to evaluate and approve proposed modifications to the Project design with appropriate CDOT staff and to authorize any necessary change orders before RFTA issues them to the Contractor.

m. The City will be willing to sign a single page exhibit to this Agreement verifying that it will comply with the private use restrictions contained Tax Compliance Certificate that is part of the RFTA's bond package requirements. RFTA's Bond Council will provide the exhibit at a later date.

n. The City will execute a Special Use Permit with CDOT at the conclusion of the Project, or whatever permitting process CDOT requires, for full responsibility of the SH82 Underpass.

3. Project collaboration, problem solving and change order approval.

RFTA and City will form a collaborative Construction Management Team (hereinafter "Team") that will meet at least weekly throughout the life of the Project. The Team will address construction issues and changes as they develop throughout the construction of the Project. Project modifications and other project decisions will be made on a consensus basis by the Team. All change orders with regard to the Project shall be approved by CDOT and the City's designees prior to execution by RFTA and the Contractor. These designees shall be available on short notice to discuss critical issues arid provide necessary authorization for changes that otherwise might result in costly time delays and financial impacts for the Project.

4. Project Cost Assignments and final payment.

Project acceptance and final payment for the construction will be approved by RFTA, CDOT and City.

5. Cash Flow and Reimbursement.

a. RFTA shall determine the most appropriate cost sharing and allocation of grant funds, based on the requirements of each grant. RFTA shall withhold up to 5% of each grant for final acceptance and project closeout. All reimbursements shall be completed within three months of final project acceptance.

b. If additional funds in excess of the total project budget are required to complete the Project the

funds shall be equally reimbursed by City for any additional expenditures. RFTA will not incur costs for the Project in excess of budget without prior written authorization from City. Costs determined to be betterments outside the scope of the original project will be borne by the responsible party alone.

c. RFTA shall not proceed with the Project if the cost of the Project is anticipated to exceed the Project budget detailed above, unless additional funds have been appropriated.

d. Project expense reports and forecasts will be presented to and discussed by the Team as often as practicable, but at least on a monthly basis during the life of the construction of the Project. If, for any reason, it appears that the cost of completing the construction of the Project could exceed the Project budget, RFTA will notify the CDOT and City and request written instructions as to whether it should continue or discontinue construction of the Project.

6. Public Outreach.

City and RFTA shall coordinate a robust public outreach campaign to provide the public with Project information before Project initiation and will provide regular public updates throughout the Project. RFTA will designate a single point of contact for each agency that will be responsible for this coordinated effort and public information. RFTA shall operate as the lead entity and all public outreach information will be reviewed by t City before it is made public.

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7. Maintenance Responsibilities.

Upon final completion of the project and reconciliation of project expenses between RFTA and grantors, City will assume ownership responsibility for the SH82 Underpass, its approaches and sidewalk connections to 27th Street on both sides See Exhibit B Ownership. The City will assume maintenance responsibility for the 27th Underpass and the Rio Grande Trail from its connection at 23rd Street all the way to 27th Street. The City will also maintain landscaping associated with the sidewalk connections on the west side of the intersection along both sides of 27th. Artwork added into the project landscaping areas or mounted to structures after the project completion will be the responsibility of the City.

RFTA will continue to maintain the 27th BRT Station and associated landscaping adjacent to/within the ramp/stairway area. RFTA will also maintain the SH 82 underpass and the approaches on the East side of the project. RFTA trails crews will maintain the Rio Grande Trail south of the SH82 Underpass. RFTA shall maintain security cameras for both tunnels. Modifications to the SH82 traffic signal shall be assumed by CDOT Traffic.

Each party will take care of general day to day maintenance, such as trash/snow/graffiti removal, irrigation repairs, and plant/lighting replacement, with its own forces or contracted service in their areas of responsibility.

8. Site Utilities.

Upon final completion of the Project and reconciliation of Project expenses, responsibility for payment of the following ongoing utility costs shall be split among RFTA, CDOT and City in the following manner:

a. Security Cameras and Internet Wi-Fi service shall be provided by RFTA through BRT Station connections

b. Utilities for traffic signals shall be borne by CDOT

c. Lighting costs will be split by RFTA and the City

d. Snowmelt utilities will the responsibility of RFTA

e. Irrigation will be borne by RFTA at the BRT Station and the City on the West side of the Project

9. Hold Harmless.

To the extent permitted by law, RFTA and City 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 or the City of the provisions of Section 24-10-101, *et seq.*, Colorado Revised Statutes, commonly known as the Colorado Governmental Immunity Act.

10. Choice of Law.

This Agreement and every related document shall be governed and construed in accordance with the laws of the State of Colorado.

11. 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) and the City, the substantially prevailing party shall be awarded its reasonable costs and attorneys' fees and costs incurred inconnection therewith.

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

13. Performance.

The Parties agree to perform any and all acts, without limitation, as maybe 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.

14. No Third Party Beneficiaries.

It is the intent of the Parties 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 authorized representatives which would form the basis for interpretation construing a different intent and expressly disclaim any such acts or actions.

15. No Waiver of Governmental Immunity.

RFTA, the City and CDOT, their 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.*, a it may be amended from time to time.

16. Breach or Termination.

In the event of a breach of any provision of this Agreement, 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, the breaching party 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.

17. Disputes.

Any unresolved dispute arising under this Agreement which is not resolved by agreement shall be referred to the RFTA CEO, City Manager, and CDOT Director or designee, who shall promptly confer with each other and members of the their Boards, and who shall reduce their decisions to writing and mail or otherwise furnish a copy thereof to the Parties. The decision shall be final and conclusive unless, within five (5) days from the date of receipt of such decision or lack thereof, either Party furnishes to the other a written notice of appeal.

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18. Appeal.

In the event of an appeal, such dispute shall then be referred to the RFTA Board, the City Council and CDOT Transportation Commission who shall meet in joint session within ten (10) calendar days thereof. If no resolution is then achieved the dispute may be settled by appropriate legal proceedings, or, if the Parties mutually agree, through mediation, arbitration or administrative process. Pending any binding arbitration or administrative decision, appeal or judgment referred to in this paragraph or the settlement of any dispute arising under this Agreement, RFTA shall nonetheless proceed diligently with the performance of this Agreement as directed by the RFTA Board.

19. 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.

20. 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.

21. Amendment.

This Agreement may only be amended by a written document executed by RFTA, or its successors and assigns.

22. Venue.

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

23. Appropriation.

All financial obligations of RFTA under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by RFTA for the purpose of this Agreement.

24. No Personal Liability.

No elected official, director, officer, agent or employee of RFTA, the City or CDOT shall be charged personally or held contractually liable by or to the other party 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.

25. 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.

26. 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.

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27. 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.

28. 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.

29. Force Majeure.

RFTA shall not be in violation of this Agreement by failure to perform any obligation express or implied hereunder by causes beyond RFTA's control, including, without limitation, acts of God, boycotts, strikes, embargoes, unforeseen shortages of labor, fuel, or other items essential to provide service, acts of public enemy, riots, rebellions, accidents, vandalism, or governmental laws, regulations, or approvals. RFTA shall, as soon as reasonably practicable, but in no event later than ten (10) days of any such failure, potential delay or default, notify the City in writing of the causes of the failure, potential delay or default and the facts relating thereto.

30. Independent Contractor.

a. RFTA's relationship to City and the performance of this Agreement is that of an independent contractor. RFTA personnel performing services under this Agreement shall at all times be under RFTA's exclusive direction and control and shall be employees of RFTA and not employees of City. RFTA shall

have and exercise complete control over the supervision of its employees.

b. Nothing is this Agreement shall be construed to convey any title or interest to City in RFTA facilities or equipment; nor shall anything in this Agreement be construed to convey any title or interest in City facilities or equipment to RFTA; nor shall RFTA and City be deemed to have created a partnership or joint venture.

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

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CITY OF GLENWOOD SPRINGS
By:_____
Johnathan Godes, Mayor

ATTEST:

By:_____

APPROVED AS TO FORM:

By:_____

ROARING FORK TRANSIT AUTHORITY

By:_____
Dan Blankenship, Chief Executive Officer

ATTEST:

By:_____
RFTA Secretary