DRAFT 11/3/2015

INTERGOVERNMENTAL AGREEMENT BETWEEN GARFIELD COUNTY AND THE ROARING FORK TRANSPORTATION AUTHORITY ("RFTA") FOR THE JOINT USE OF RFTA FUELING FACILITIES

This INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this ___ day of _____, 2015, by and between the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO, a body corporate and politic (the "County") 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 0051 Service Center Road, Aspen, Colorado 81611.

A. **Context and Purpose**

1. RFTA owns and maintains facilities and equipment at its Glenwood Maintenance Facility (the "GMF"), 2307 Wulfsohn Road, Glenwood Springs, Colorado 81601, that are used for dispensing diesel fuel, unleaded gasoline, and Compressed Natural Gas (CNG) fuel, for the purpose of refueling RFTA-owned vehicles. RFTA and County desire to enter into this Agreement for the purpose of permitting County access to and the ability to purchase vehicle fuel from RFTA.

2. RFTA and the County have the authority pursuant to Article XIV, Section 18, of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually. Authority for this Agreement _____.

3. Although the County, as RFTA, is exempt from federal fuel taxes, the County does not have access to convenient fueling facilities in Glenwood Springs at this time. Due to the size of the County's fleet based in and traveling to and from the Glenwood Springs area, it is believed that the County can achieve significant efficiencies by having access to RFTA fueling facilities located at the GMF. RFTA and the County have discussed the mutual benefits to be derived by the parties by enabling the County to fuel its vehicles at the GMF.

B. **Intent**

This Agreement is intended to formalize the County's use of RFTA's vehicle fueling facilities located at the GMF.

THE PARTIES AGREE AS FOLLOWS:

1. **Joint Use**

The County may use RFTA's vehicle fueling facilities, located at the GMF, to fuel the

County's vehicles, according to the terms contained in this Agreement. The use of RFTA's fueling facilities by the County has been arranged as a courtesy to the County, which is a valued RFTA partner and the County understands that RFTA has priority to the fuel and fueling facilities and, if a limited supply exists, RFTA has superior rights to any available fuel.

As necessary, the County will provide and update RFTA with codes for each vehicle and department that will be using the fueling station. RFTA shall enter these codes into its inventory and billing software.

2. **Fuel Supplier and Brand**

RFTA has the sole authority to manage the refilling of the fuel storage tanks. RFTA will utilize any available method or opportunity to contract with fuel suppliers, in its sole discretion, although it will welcome and entertain any advice or suggestions from the County that could result in lower fuel prices for both entities.

3. **Fuel Price**

The County's cost of the fuel shall depend upon RFTA's fuel supplier contracts, over which RFTA shall have sole discretion. The County understands that fuel costs may fluctuate during term of this Agreement. Should RFTA's contracted fuel price rise to a level the County finds unacceptable, the County's sole remedies shall be to discontinue using RFTA's GMF fueling facilities or to terminate this Agreement.

4. **Payments and Invoice**

RFTA will invoice the County monthly for fuel used. RFTA shall invoice the County for actual fuel used at the current contracted price. The County shall promptly pay each invoice upon receipt according to the County's accounts payable procedures, but no later than 30 days after receipt of invoice from RFTA.

5. **Fueling Procedures, Liability, Safety and Hazards**

Upon entering the fueling station, County employees shall enter a County department code and a County vehicle code at the fueling station to allow for the proper information to be entered for billing purposes. Recognizing that the County may need to respond to emergency situations, such as severe weather or catastrophic events, RFTA will provide access to the fueling stations for emergency response outside of the hours agreed upon in section 6 of this Agreement. The County is required to follow RFTA security and access protocols during these times. The County's Fleet Manager will provide notification to RFTA of the emergency situation and the expected duration for the need of special access to the fueling facilities. In the event the County requires emergency access during hours RFTA's yard is closed to the County, the County employee will enter a code to open the main gate and when finished will exit the Transportation yard and properly secure the gate lock.

RFTA will provide training for the use of the fueling facility to the County. The County will inform RFTA if it is aware of faulty or damaged equipment or refueling operations and will take the utmost care and proper safety procedures with the equipment.

The County understands that it uses RFTA's fueling station at its own risk. RFTA will make every effort to offer quality fuel and properly functioning refueling equipment; however, RFTA is not liable in the event the fuel is contaminated or other issues that result in any internal or external damage to a County vehicle, County personnel, pedestrian and/or vehicle accident, injury, death, or any other act related to the fuel or the fueling station. RFTA holds no liability of improper use or fraud from fueling for non-authorized uses or non-County owned vehicles by any County employee. In addition, the County understands and accepts that there are inherent hazards when in contact with fuels, fuel vapors and fuel delivery systems. To the extent allowed by law, the County shall defend, indemnify, and hold RFTA and its employees and agents harmless from any injury or damage arising from the County's use of RFTA's fueling facilities.

When accidents or incidents occur that involve County personnel engaged in fueling activities, for which it is determined the County is at fault, the County shall be wholly responsible for repairing or replacing any damaged, vandalized, or stolen property in or around the GMF, including but not limited to vehicles owned by RFTA, personal vehicles of RFTA staff, equipment owned or not owned by RFTA, the fueling facilities, buildings, fencing, gates, landscaping, or any other property owned or not owned by RFTA on the GMF property, to the extent such damage arises from the County's use or access to RFTA's fueling facilities.

In the event the County's use of RFTA's fueling facilities results in a hazardous fuel spill, the County shall reimburse all of RFTA's out-of-pocket costs associated with mitigation of the spill.

6. **Fuel Availability**

The County shall have access to RFTA fueling facilities twelve months of the year from 6 a.m. to 9 p.m., seven days per week. The County should be prepared to manage unforeseen circumstances that may affect the availability of fuel and the RFTA fueling facilities, which may disrupt continuous use, such as a supplier's inability to furnish fuel, fueling facility repairs, closures of any one or all of RFTA's fueling facilities for construction, maintenance or due to unforeseen circumstances, ceasing to operate RFTA's fueling facilities for any reason, and other circumstances. RFTA will attempt to provide at least 14 days' notice to the County for anticipated disruptions in access to the fueling facilities and attempt to provide as much advance notice as possible in the event of unforeseen disruptions.

7. **Maintenance**

RFTA shall have sole discretion to maintain, hold, inspect, and upgrade the fueling station as it sees fit or as required by law for proper use, subject to the availability of repair parts and service personnel. RFTA shall have the sole discretion to close the fuel station if necessary for maintenance or emergency repairs.

8. **Term of Agreement**

This Agreement shall remain in effect until terminated by either party. The County may terminate this Agreement at any time, provided that it pays all outstanding invoices at the time of termination. RFTA may terminate this Agreement upon sixty (60) days advance written notice to the County, provided that RFTA may terminate the Agreement immediately for cause or in the event of an emergency.

9. **Indemnification and Liability Insurance**

RFTA and County shall each defend, indemnify, and hold the other harmless from any and all claims, suits, costs and liability occasioned by the acts or neglects of each party, or its agents, employees, or invitees, to the extent allowed by law. In this regard, County shall procure, at County's own expense, public liability coverage for the benefit of RFTA and County (naming RFTA as co-insured) with limits of not less than those specified by Section 24-10-114, C.R.S., as may be amended. County shall maintain such coverage in full force and effect during the term of this Agreement and shall furnish RFTA with a copy of such insurance policy or a certificate evidencing such coverage prior to, and as a condition of, the use of the property in accordance with the terms of this Agreement. All insurance policies maintained pursuant to this paragraph shall contain an endorsement substantially as follows:

"It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew be stated by surety until thirty (30) days after receipt by the Lessor, by registered mail, of a written notice of such intention to cancel or not to renew."

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

10. **No Assignment**

Neither party may assign this Agreement nor any rights granted pursuant to this Agreement without the prior written consent of the other party.

11. **Notice**

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:

COUNTY:

Garfield County Manager
_____
_____

With a copy to:

Garfield County Attorney
_____
_____

RFTA:

Roaring Fork Transportation Authority
Attn: CEO
2307 Wulfsohn Road
Glenwood Springs, CO 81601

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

12. **Binding Effect**

This Agreement shall be binding upon and shall insure to the benefit of City and RFTA and their respective successors and assigns.

13. **Governing Law**

This Agreement shall be enforced and interpreted in accordance with the laws of the State of Colorado. Any action brought to enforce or interpret this lease shall be brought in the District Court in and for Pitkin County, Colorado. In the event of litigation between the parties concerning this Agreement or matters arising therefrom, the prevailing party shall be awarded its costs and reasonable attorney's fees.

14. **Choice of Law**

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

15. **Attorney's 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 County, the substantially prevailing party shall be awarded its reasonable costs and attorneys' fees and costs incurred in connection therewith.

16. **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.

17. **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.

18. **No Waiver of Governmental Immunity**

RFTA and the County, 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*., as it may be amended from time to time.

19. **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.

20. **Disputes**

Any unresolved dispute arising under this Agreement which is not resolved by agreement shall be referred to the RFTA CEO and County Manager, 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 of the RFTA CEO shall be final and conclusive unless, within (15) days from the date of receipt of such copy, the County mails or otherwise furnishes to RFTA a written notice of appeal.

In the event the dispute cannot be resolved by agreement, such dispute shall then be referred to the RFTA Board and the Board of County Commissioners 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 RFTA. The prevailing party shall be awarded attorneys' fees and costs in the event of litigation or arbitration.

21. **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.

22. **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.

23. **Amendment**

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

24. **Venue**

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

25. **Appropriation**

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

26. **No Personal Liability**

No elected official, director, officer, agent or employee of RFTA or the County 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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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 County in writing of the causes of the failure, potential delay or default and the facts relating thereto.

32. **Independent Contractor**

a. RFTA's relationship to the County 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 the County. 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 the County in RFTA facilities or equipment; nor shall anything in this Agreement be construed to convey any title or interest in County facilities or equipment to RFTA; nor shall RFTA and the County be deemed to have created a partnership or joint venture.

In WITNESS WHEREOF, and with the express approval of the governing bodies of each jurisdiction, the parties hereto have caused the Agreement to be executed on their behalf and the Parties have hereunto set their hands and seals as of the day and year first above written.

GARFIELD COUNTY, COLORADO

By:_____
Kevin Bacheldor, Acting County Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

By:_____
County Attorney

ROARING FORK TRANSPORTATION AUTHORITY

By:_____
Dan Blankenship, Chief Executive Officer

ATTEST:

By:_____
Edna Adeh, RFTA Secretary

APPROVED AS TO FORM:

By:_____
Paul J. Taddune, General Counsel, RFTA