MEMORANDUM OF UNDERSTANDING
BETWEEN THE
TOWN OF CARBONDALE
AND ROARING FORK TRANSPORTATION AUTHORITY AND CARBONDALE ARTS

REGARDING DEVELOPMENT, MAINTENANCE & MANAGEMENT OF THE CARBONDALE YOUTH ART PARK ALONG THE RIO GRANDE ARTWAY

This Memorandum of Understanding (MOU) is entered into this ___ day of _____2020 by and between the TOWN OF CARBONDALE, a Carbondale home rule municipal corporation with a street address of 511 Colorado Ave., Carbondale, CO, 81623 (the "Town"); the ROARING FORK TRANSPORTATION AUTHORITY, a statutory regional transportation authority and and political subdivsion of the State of Colorado established pursuant to Title 43 Article 4, Part 6, Colorado Revised Statutes, with a street address of 0051 Service Center Drive, Aspen, CO., 81623 (RFTA); and CARBONDALE ARTS, a Colorado non-profit corporation with a street address of 76 South 4th Street, Carbondale, CO, 81623 ("Carbondale Arts") (collectively, the "Parties").

1. <u>Background</u>. Great Outdoors Colorado (GOCO) offers a mini-grant program within the Local Parks and Outdoor Recreation (LPOR) grant cycle. GOCO awarded a LPOR grant for $35,000 to the Town to fund the proposed Youth Art Park, which will be located within the RFTA right-of-way along the Rio Grande Trail as shown on **Exhibit A** attached hereto and incorporated herein by reference. The Town, RFTA, and Carbondale Arts desire to enter into this MOU to outline the Parties' respective responsibilities related to the development, maintenance, management, and improvements of the proposed Youth Art Park site, and to grant a revocable license to Carbondale Arts for such purposes

2. <u>Purpose of the Town</u>: The Town has designated its Parks and Recreation Department to partner with RFTA and Carbondale Arts to seek grant funds from GOCO for the implementation of the Youth Art Park. The Town applied for the GOCO grant with the Town's Parks & Recreation Director serving as the primary contact.

3. <u>Purpose of RFTA</u>: RFTA is the owner of the Aspen Branch of the Denver & Rio Grande Western Railroad ("Corridor"), which is currently "railbanked" under 16 U.S.C. 1247(d). As such, it remains under the jurisdiction of the Surface Transportation Board ("STB") for future (freight) rail reactivation. In STB's view, the chief purpose of section 1247(d) is not preservation of a corridor for a trail, but preservation of a corridor for future rail reactivation and/or some type of mass transit system.

RFTA supports the Youth Art Park and has been a supporter of the Rio Grande ARTway projects, including the Latino Folk Art Garden and DeRail Park. The Town and Carbondale Arts ackowledge and agree that the Corridor was originally purchased and is held by RFTA in perpetuity not only for its Conservation Values and the construction and maintenance of a trail or trail amenities like the ARTway

projects, but for the re-establishment of a future mass transit system. Although RFTA does not anticipate this will happen in the foreseeable future, should the need arise to remove any of the ARTway projects, including the Youth Art Park, due to the use of the railroad corridor for mass transportation purposes, RFTA reserves the right to require the relocation or removal of the Youth Art Park at the sole expense of Carbondale Arts, and RFTA shall not be held financially responsible for any such removal and/or relocation of the ARTway projects, or for grant reimbursement to the Town, Carbondale Arts or Great Outdoors Colorado.

RFTA is responsible for keeping the trail and corridor safe, clean, and weed free. RFTA conducts maintenance for invasive weeds and ongoing trail maintenance.

4. <u>Purpose of Carbondale Arts:</u> The Rio Grande ARTway evolved as a sub-project of the Carbondale Creative District planning process. The ARTway is a place-based backbone for Creative District wayfinding and community connectivity. Carbondale Arts will function as the main steward of the park with obligations to design, develop, build, maintain and inspect the Youth Art Park.

5. <u>Scope of Work</u>: The work described within this MOU includes ongoing and future activities to be undertaken by Carbondale Arts to develop, improve, maintain, and manage the proposed Youth Art Park within the Rio Grande ARTway. Carbondale Arts will utilize current and future volunteers along with other additional community partner volunteers to build, manage, and maintain the Youth Art Park. The Youth Art Park will be sited directly behind the Carbondale Community Recreation Center as shown on **Exhibit A**.

6. <u>Roles and Responsibilities</u>:

<u>Town of Carbondale:</u>

- Partner with RFTA and Carbondale Arts to seek possible funding through municipal grant sources for the Youth Art Park.

<u>Roaring Fork Transportation Authority:</u>

- Provide review and approval of conceptual plans for the Youth Art Park.
- Provide ongoing access to the Rio Grande Corridor and to the Youth Art Park, by conducting regular trail and weed maintenance of the corridor.

<u>Carbondale Arts:</u>

- Partner in grant writing and grant closeout paperwork. Provide the 25% matching funds for the GOCO grant requirements with at least 10% of that funding being a cash match.
- Meet all of the GOCO grant recipient requirements, including reporting, budgeting, auditing and grant closeout timing and reports.
- Ensure funding is available for the design, development, construction and ongoing maintenance of the Youth Art Park.

- Work with Carbondale Arts Educators to form a community service program where high school students maintain, supply, and update the Youth Art Park for use by younger children.

- Provide routine maintenance in the Youth Art Park that includes:
    - Removal of weeds and invasive plant species as required within the Garfield County weed management plan and the Town of Carbondale Integrated Weed Management Plan.
    - Inspect park elements for wear and tear and necessary repairs including fall attenuation under the climbing wall.

- Provide oversight of the Youth Art Park as a public community park amenity.

7. <u>Effective Date:</u> The license granted by RFTA as provided for herein shall become effective as of the date the GOCO grant is awarded. If a GOCO grant is not awarded by December 31, 2020, this MOU shall become null and void.

8. <u>Amendment</u>: The Parties may, from time to time, request changes in the nature of the provisions of this MOU. Such changes which are agreed upon by all Parties will be incorporated in written amendments to this MOU.

9. <u>Ratification of MOU</u>: It is agreed that this MOU shall be reevaluated and reapproved by all Parties on an as-needed basis, with a formal review every 5 years.

10. <u>Insurance</u>: Carbondale Arts shall keep and maintain for the duration of this MOU including but not limited to commercial general liability with at least the minimum limits shown below. The commercial general liability insurance shall include completed operations coverage. Carbondale Arts shall furnish the Town and RFTA with a certificate of insurance listing the Town and RFTA as Certificate Holders and as additional insureds on the Carbondale Arts' general liability policy. In the event of bodily injury or property damage loss caused by Carbondale Arts or Carbondale Arts' actions or inactions pursuant to this MOU, the Carbondale Arts insurance coverage shall be primary with respect to any other insurance which may be available to the Town or RFTA, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the Carbondale Arts insurance carrier shall give the Town and RFTA at least thirty (30) days prior written notice. No work shall be performed until Carbondale Arts has furnished to the Town and RFTA the above-referenced certificates of insurance, in a form suitable to the Town and RFTA. Upon request, Carbondale Arts shall provide the Town and RFTA copies of Carbondale Arts insurance policies and endorsements.

Commercial General Liability:

a. Each Occurrence:	$1,000,000
b. General Aggregate	$1,000,000

11. <u>Idemnification</u>: Carbondale Arts and its respective agents, officers, employees and volunteers shall indemnify, hold harmless, and defend the Town and RFTA and their officers, agents, employees from and against any and all liability for personal injury and property damage arising out of or resulting from the negligent acts or omissions of Carbondale Arts employees, volunteers, and/or agents, in the performance of this MOU. Carbondale Arts' indemnity obligations hereunder shall include the obligation to pay any attorney fees or other costs incurred by the Town or RFTA in defense of any third party claims.

12. <u>Assignment</u>: No Party shall asign any interest in this MOU unless approved in writing by all Parties.

13. <u>Governing Law</u>: The MOU shall be construed under the statutes and laws of Colorado. It is agreed between the Parties that Carbondale Arts will comply with and observe all Federal and State or local laws, or ordinances, codes, rules or regulations pertaining to this MOU and performance thereof.

14. <u>Authority</u>: The Town Manager under whose supervision the Parks and Recreation Department is assigned or his/her designee shall have authority to act on behalf of the Town and shall be the interpreter of the requirements of this MOU on behalf of the Town. The first point of contact for Carbondale Arts shall be the Parks & Recreation Director.

15. <u>Independent Contractor</u>: Employees and volunteers of Carbondale Arts and RFTA shall not be deemed to be employees of the Town. Carbondale Arts and RFTA will supervise their respective employees and volunteers and will disburse all payrolls, taxes, licenses, insurance, uniforms and all other expenses incurred by the respective Party in the preformance of this MOU.

16. <u>Governmental Immunity/Budgeting</u>. Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town or RFTA would otherwise be entitled under § 24-10-101, et seq., C.R.S., as amended. All of the Town's and RFTA's obligations pursuant to this MOU are and shall remain contingent upon annual budgeting by the Town and RFTA, and nothing in this MOU shall be construed as a multi-year financial obligation of the Town or RFTA.

TOWN OF CARBONDALE

BY: _____
Dan Richardson

TITLE: Mayor

DATE: _____

ATTEST:

_____
Cathy Derby, Town Clerk

ROARING FORK TRANSPORTATION AUTHORITY

BY: _____
Dan Blankesnhiip

TITLE: CEO

DATE: _____

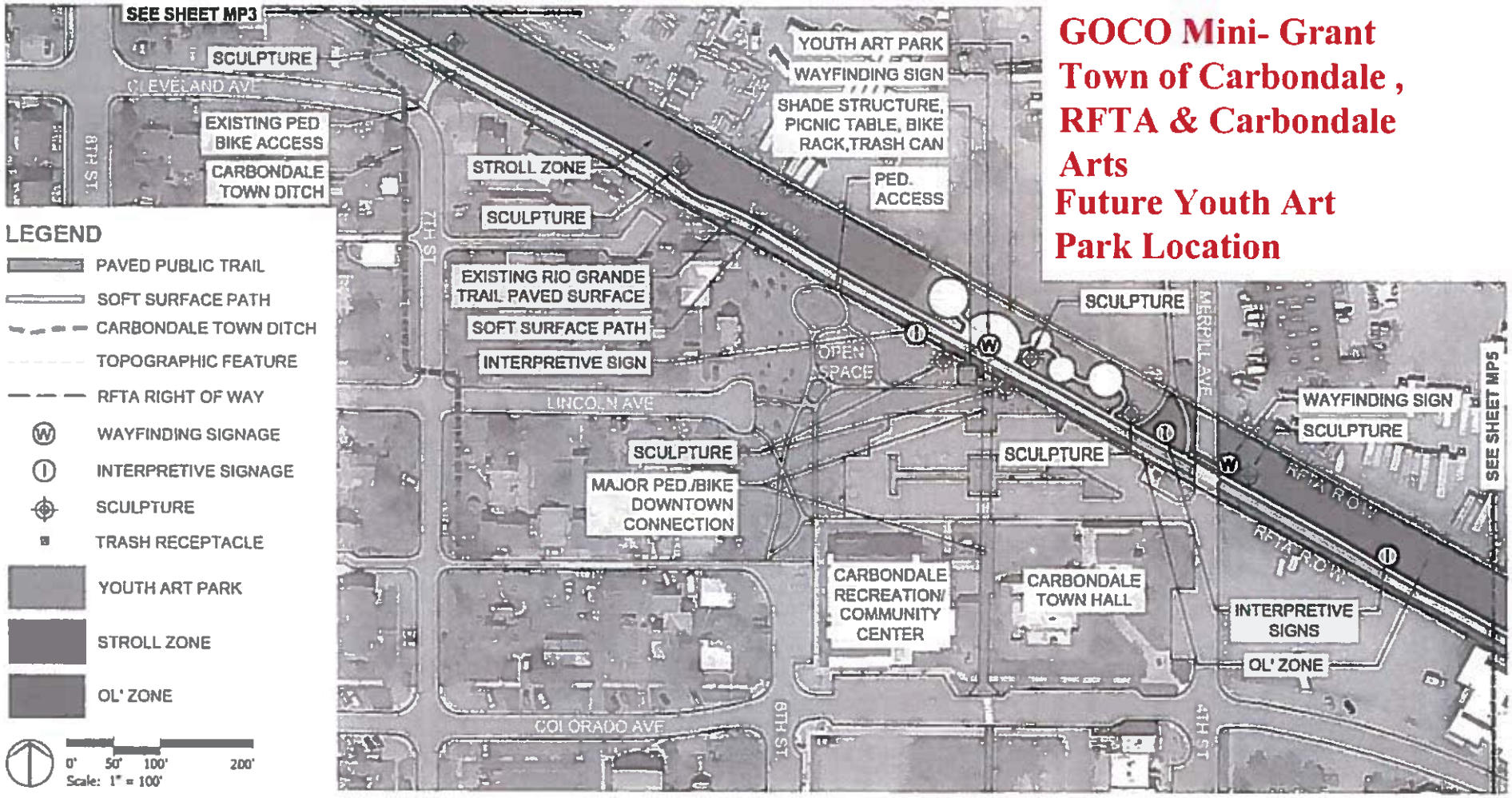
CARBONDALE ARTS

BY: _____
Amy Kimberly

TITLE: Carbondale Arts Director

DATE: _____

Exhibit A -Map of Youth Art Park Location


GOCO Mini- Grant
Town of Carbondale ,
RFTA & Carbondale
Arts
Future Youth Art
Park Location
SEE SHEET MP3
SCULPTURE
CLEVELAND AVE
EXISTING PED BIKE ACCESS
CARBONDALE TOWN DITCH
8TH ST.
7TH ST
STROLL ZONE
SCULPTURE
EXISTING RIO GRANDE TRAIL PAVED SURFACE
SOFT SURFACE PATH
INTERPRETIVE SIGN
LINCOLN AVE
SCULPTURE
MAJOR PED./BIKE DOWNTOWN CONNECTION
COLORADO AVE
6TH ST.
YOUTH ART PARK
WAYFINDING SIGN
SHADE STRUCTURE, PICNIC TABLE, BIKE RACK,TRASH CAN
PED. ACCESS
OPEN SPACE
SCULPTURE
MERRILL AVE
SCULPTURE
CARBONDALE RECREATION/ COMMUNITY CENTER
CARBONDALE TOWN HALL
4TH ST
WAYFINDING SIGN
SCULPTURE
RFTA ROW
RFTA ROW
INTERPRETIVE SIGNS
OL' ZONE
SEE SHEET MP5
LEGEND
PAVED PUBLIC TRAIL
SOFT SURFACE PATH
CARBONDALE TOWN DITCH
TOPOGRAPHIC FEATURE
RFTA RIGHT OF WAY
WAYFINDING SIGNAGE
INTERPRETIVE SIGNAGE
SCULPTURE
TRASH RECEPTACLE
YOUTH ART PARK
STROLL ZONE
OL' ZONE
0' 50' 100' 200'
Scale: 1" = 100'