INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF GLENWOOD SPRINGS AND THE ROARING FORK TRANSPORTATION AUTHORITY TO ACQUIRE EASEMENTS AND DEVELOP TRANSPORTATION INFRASTRUCTURE

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into effective as of the ___ day of _____ 2018, regardless of the day actually signed, by and between the CITY OF GLENWOOD SPRINGS, COLORADO (the "City") and the ROARING FORK TRANSPORTATION AUTHORITY ("RFTA"), together "the Parties".

WHEREAS, the City is designing a critical infrastructure project, the "South Bridge", a public right-of-way extending South Midland Avenue to Highway 82, through the Railroad Corridor; and

WHEREAS, the current design as requested by RFTA increases the estimated cost of the project by approximately $25 million; and

WHEREAS, the Parties desire to agree on an alternate design, on an interim basis, while also providing adequate assurances for potential reestablishment of rail service on the Rail Corridor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements identified below, the Parties agree to this IGA as follows:

1. **Incorporation of Recitals.** The forgoing recitals are incorporated herein as if set forth in full.

2. **Design of South Bridge Crossing**.

a. City shall design a pedestrian grade separated crossing at MP ___ that allows for an at grade intersection at Highway 82.

b. City shall construct the grade separated pedestrian crossing as part of the South Bridge Project when that project is funded and constructed.

c. In the event RFTA determines to reinstate freight rail service on the corridor, the City shall design and construct a grade separated rail crossing consisting of:

i. a vehicular bridge;

ii. lowering the grade of the rail corridor to accommodate the crossing;

iii. reconstructing the ballast without tracks to the same condition as it is at the time of construction by the City.

3. **Easement.** The Parties shall execute an easement reflecting the proposed crossing in the form attached as Exhibit A.

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4. **Public Record.** The Parties shall cause all documents necessary to fulfill the purposes of this IGA to be recorded in the Office of the Garfield County Clerk and Recorder.

5. **Preservation of Purpose and Survival.** No portion of this IGA shall be read or understood to alter, amend, or terminate the purpose and intent of the IGA or the rights and responsibilities of the Parties created therein. Any conflict between the provisions of this IGA shall be resolved by the Parties in a manner agreed to be the least disruptive to the preservation of the IGA's purpose.

6. **Breach and Notice.** If either Party fails to perform its respective obligations under this Agreement, the non-breaching Party shall provide thirty (30) days' notification of such failure to the breaching Party's representative as provided in paragraph 21. If the breaching Party fails to correct or remedy the breach, the non-breaching Party may proceed in law or equity to seek injunctive relief, specific performance, and/or damages incurred as a result of the Breach.

7. **Good Faith.** There is an obligation of good faith on the part of the Parties, including the obligation to make timely communication of information that may reasonably be believed to be material to the other Party.

8. **No Waiver of Governmental Immunity Act.** Nothing herein shall be deemed a waiver of the Colorado Governmental Immunity Act for or by either Party. C.R.S. § 24-10-101 *et seq*.

9. **No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither Party shall have the express or implied right to act for, on behalf of, or in the name of the other Party.

10. **No Third-Party Beneficiary.** No third party may enforce or rely upon this IGA.

11. **Term of Agreement.** This IGA shall become effective upon signature of the last Party to sign and will terminate upon completion of the South Bridge project except as otherwise provided for herein. All rights concerning remedies, fees and costs shall survive termination of this IGA.

12. **Amendment and Assignment.** This IGA may be amended by the Parties solely through a written agreement signed by both Parties. This IGA may not be assigned by either Party.

13. **Counterparts.** This IGA may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the same instrument. Facsimile or photographic signatures of either Party to this IGA or subsequent modifications thereto, shall be effective for all purposes.

14. **Governing Law, Venue and Survival.** The laws of the State of Colorado to the extent not preempted by federal law shall govern the validity, performance and enforcement of this IGA. Should either Party institute legal action for enforcement of this IGA, venue of such

action shall be in the United States District Court for the District of Colorado, if the court has jurisdiction; otherwise, any such action shall be filed in Garfield County, Colorado.

15. **Whole Agreement.** This IGA sets forth the whole agreement of the Parties. No representations, either verbal or written, shall be considered binding on either Party to the extent not set forth herein.

16. **Section Headings.** The section headings in this IGA are inserted only for the purpose of convenient reference and are in no way to define, limit or prescribe the scope or intent of this Agreement or any part thereof.

17. **Authority.** Each Party signing this IGA represents and warrants that the individual is fully authorized to enter into and execute this IGA and to bind the Party it represents to the terms and conditions thereof.

18. **Notice and Representatives.** All notices required under this IGA shall be transmitted in writing and shall be deemed duly given when hand-delivered or sent by certified mail, return receipt requested and postage prepaid, or by electronic communication, addressed to the designated representative(s) as follows:

To City: City of Glenwood Springs
Attn.: City Manager
101 West 8th Street
Glenwood Springs, CO 81601

With copy to: City of Glenwood Springs.
Attn.: City Attorney
101 West 8th Street
Glenwood Springs, CO 81601

To RFTA: Roaring Fork Transportation Authority
Attn.: Chief Executive Officer
2307 Wolfsohn Road
Glenwood Springs, CO 81601

With copy to: Roaring Fork Transportation Authority
RFTA General Counsel
2307 Wolfsohn Road
Glenwood Springs, CO 81601

19. **Change of Representatives.** Either Party may, in its sole discretion, change its individual designated representative and the address to which future notices shall be sent by providing written notice to the other Party.

20. **Severability.** Should any provision of this IGA be found to be in conflict with any law of the United States or the State of Colorado or to otherwise be unenforceable, the remaining provisions shall be deemed severable and the validity of such shall not be affected provided that

the remaining provisions can be construed in substance to constitute the agreement which the parties intended to enter into under this IGA.

21. **Railbanking Protection.** Notwithstanding anything in this Agreement to the contrary, no provision herein shall be construed to permit any action by either Party that would cause the Corridor to be severed from the interstate rail system.

22. **GOCO Approval.** The Parties recognize that this Agreement may be impacted by and/or subject to requirements of the Agreement made the 17th day of January 2018, by the Roaring Fork Railroad Holding Authority (the predecessor to RFTA) and the State Board of the Great Outdoors Colorado Trust Fund, recorded November 5, 2001 in the Office of the Garfield County Clerk and Recorder at Reception No. 591339

IN WITNESS WHEREOF, the City and RFTA have executed duplicate originals of this Agreement.

CITY OF GLENWOOD SPRINGS, COLORADO

ATTEST:

_____ By: _____

Catherine Mythen Fletcher, City Clerk Michael Gamba, Mayor

Date: _____

ROARING FORK TRANSPORTATION AUTHORITY

ATTEST:

_____ By: _____

Secretary George Newman, Chair

Date: _____