INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GLENWOOD SPRINGS (CITY), AND THE ROARING FORK TRANSPORTATION AUTHORITY (RFTA) TO COMPLETE THE GRAND AVENUE ALTERNATIVES ANALYSIS

This INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this ___ day of __, 2019, by and between the CITY OF GLENWOOD SPRINGS, COLORADO, acting by and through its City Council (hereinafter "City") 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. City, 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 City and RFTA desire to enter into an *Intergovernmental Agreement* (hereinafter "IGA") establishing and acknowledging funding, roles and responsibilities for the oversight of planning and conceptual design of the Grand Avenue Alternates Analysis , herein known as the "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 to manage the Project and assign roles and responsibilities to ensure the Project is completed successfully.

WHEREAS, the project received an acceptable proposal 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 City and RFTA agree as follows:

1. The City and RFTA desire to complete the Grand Avenue Alternates Analysis budgeted at $609,783.58dollars and is sometimes refer to herein as the "project". The Scope of Work for the project to be completed is attached as Exhibit A.

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

RFTA	$368,783.58
City	$241,000.00
Total Funding	**$609,783.58**

3. The City and RFTA agree that study will not commence until the entirety of funding is appropriated. If the entirety of funding is not appropriated, RFTA and the City have the option to revise the scope to coincide with appropriated funding.

4. Should either RFTA or the City be awarded a grant to help fund the project, the funds from the grant shall be used to defray the expenses of the entity that was awarded the grant. For applications for grants to help fund the project submitted with both entities named as grant recipients the funds from the grant shall be equally allocated and split between RFTA and the City to defray the cost of the project.

5. The City and RFTA agree to coordinate the funding and completion of the Project by means of a single consultant contract, the management of which shall be overseen by RFTA with staffing support from the City.

6. The City shall initially appoint Terri Partch, City Engineer), as the City Representative and the point of contact to the project whom shall have the authority to make decisions on the City's behalf, sign contract revisions, change orders and shall be available throughout the life of the project to make decisions in a timely manner. The city shall also initially appoint (the City Transportation Manager), to act in a secondary role. The City reserves the right to change its designees in its sole discretion upon written notice thereof to RFTA.

6. RFTA shall appoint two staff members to the project. (David Johnson, Planning Director of Planning)), shall initially act as the Project Manager and shall have the authority to direct the work and enforce the terms of the contract. The Project Manager will also have authority to produce pay applications, encumber the minor changes associated with the project, with the consent of the City and write change orders for the subtraction or addition or modifications of work during the life of the project. The RFTA project manager shall report to the city representative. RFTA shall also appoint (Jason White, Assistant Planner), to act as secondary role. RFTA reserves the right to change its designees in its sole discretion upon written notice thereof to City.

7. RFTA and the City agree to assume joint responsibility for managing the Project and for ensuring a functional outcome at the conclusion of the Project. The parties shall endeavor in good faith to complete the Project shall be accomplished by the end of 2020 or the date specified in the Project Contract.

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

9. City of Glenwood Springs and RFTA project management responsibilities
The basic responsibilities of each organization are outlined below and committed to for the entire duration of the project management.

City of Glenwood Springs:

- The City shall be responsible for the management, reporting, and reimbursement of City funds and City-acquired grants, including required reporting and seeking reimbursement for each individual grant associated with the project
- In the event that any legal services are required to resolve any issue related to the project the City shall split this representation with RFTA.
- The City shall be responsible for approving pay applications to the consultant team for work performed during the study within 2 weeks of submittal from RFTA.

RFTA:

- RFTA shall responsible for the management, reporting, and reimbursement of RFTA funds and RFTA-acquired grants, including required reporting and seeking reimbursement for each individual grant associated with the project
- RFTA shall act as the Project Manager for the work and provide (someone and their title) to manage the project and enforce the terms of the contract.
- RFTA shall use utilize its SharePoint site to create an office electronic project record system for the project and will manage the site. This project record shall be maintained throughout the Project and provided to the City at the completion of the Project.
- Should either the city or RFTA be awarded any grants to help fund the project, RFTA will be responsible for insuring that grant requirements such as DBE goals, employment numbers reporting etc. are met.
- RFTA shall produce and verify pay applications and submit them to the City for approval prior to processing. RFTA will be responsible for processing pay applications to the consultants for the work performed during the contract within 30 days.

10. <u>City of Glenwood Springs project involvement and payments</u>.

a. Either (Terri Partch, City Engineer) or their alternate (the City Transportation Manager) shall be involved in managing the project through attending all coordination meetings and by making periodic Council/Board updates as needed.

b. Either (Terri Partch, City Engineer) or their alternate (the City Transportation Manager) shall be available to evaluate and approve proposed modifications to scope of work. Modifications to the scope and authorization of any necessary change orders will occur no later than five (5) working days after presentation by RFTA and before any change orders are issued to the consultant.

c. All payment applications or invoices shall be routed through (the City Transportation Manager) for approval on a monthly basis.

d. If additional funds for the project, in excess of the initial funding, are required to complete the Project, the funds may be either fully appropriated by the City or RFTA for any additional expenditures. The City and RFTA shall be responsible only for overages to the cost of the Project for portions and proportions work, as outlined in Section 4: Project Cost Assignments for which they are responsible. Overall project expense reports and

forecasts shall be presented to and discussed by the Management Team (Team) as often as practicable, but at least on a monthly basis, during the life of the project. The City or RFTA shall not incur costs for the project in excess of the initial funding without prior written authorization from the entity to which a funding request is submitted and appropriation therefor. If, for any reason, it appears that the cost of completing the Project could exceed Funding, RFTA and the City shall determine in writing whether to continue or discontinue mutually agreed upon nonessential portions of the Project.

11. Project collaboration, problem solving and change order approval.
City of Glenwood Springs and RFTA shall form a collaborative team that will meet at least monthly throughout the project. This team shall 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 project will need to be approved by both RFTA and the City prior to formally approving the change order request with the consultant.

All change orders with regard to Glenwood Springs Parking and Transit Circulation Study must be approved by the City's representative or her designee prior to preparation by RFTA staff for execution with the consultant. The City'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 project.

12. Project Cost Assignments and final payment.
RFTA and the City have agreed on cost allocations for changes in the Scope of Work will be reimbursed by the following allocations:
Task 1 - RFTA 50% City 50%
Task 2 - RFTA 50% City 50%
Task 3 - RFTA 50% City 50%
Task 4 - RFTA 50% City 50%
Task 5 - RFTA 100%
Task 6 - RFTA 10% City 90%
Task 7 - RFTA 20% City 80%
Task 8 - RFTA 50% City 50%
Task 9 - RFTA 50% City 50%
Task 10 - RFTA 50% City 50%
If the scope or cost of these tasks should change during contracting or during the Project, the City and RFTA may revise the cost allocation, such. Revision to be agreed upon by both parties in writing prior to implementation.

13. Public Outreach.
The City, 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.
RFTA contact (Jamie Tatsuno, Communications Manager)
City contact (Sarah Derrigan)

14. Hold Harmless; No Waiver of Governmental Immunity

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

15. Attorneys' Fees.

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

16. 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 RFTA:
Roaring Fork Transportation Authority
Attn: Chief Operating Officer
2307 Wulfsohn Road
Glenwood Springs, CO 81601

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

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

17. 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.

18. 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.

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, 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. 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.

21. 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.

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

23. 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.

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

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

26. 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.

27. 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.

28. 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.

29. 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.

CITY OF GLENWOOD SPRINGS
By:_____
Jonathan Godes, Mayor

APPROVED AS TO FORM:

By:_____
City Attorney

ATTEST:

By:_____
City Clerk

ROARING FORK TRANSIT AUTHORITY

By:_____
Dan Blankenship, Chief Executive Officer

ATTEST:

By:_____
RFTA Secretary

APPROVED AS TO FORM:

_____
RFTA General Counsel