INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ASPEN AND THE ROARING FORK TRANSPORTATION AUTHORITY TO COMPLETE THE RUBEY PARK OVERHEAD ELECTRIC CHARGER PROJECT FINAL DESIGN AND CONSTRUCTION

This INTERGOVERNMENTAL AGREEMENT (hereinafter "Agreement") is made and entered into_____day of _____2023 by and between the CITY OF ASPEN, COLORADO, a Colorado Home Rule Municipality, 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. City and RFTA are also sometimes referred to herein as a "Party" or the "Parties."

RECITALS

1. City and RFTA desire to complete final design and construction of an overhead electric bus charging (OEC) system at the City owned Rubey Park Transit Center located at 450 East Durant Avenue (hereinafter referred to as the ""Project"). A conceptual plan of Rubey Park overhead charger improvements to be completed is attached as Exhibit A.
2. City and RFTA understand that the project is currently funded as follows:

Rubey Park OEC funding 1-23-2023		
Party	**Amount**	**Notes**
RFTA FASTER grant	**$480,000.00**	**CDOT funds**
RFTA match for grant	**$120,000.00**	**RFTA match for FASTER grant**
City appropriation	**$350,000.00**	**For equipment and permit fees only**
Additional RFTA funds	**$150,000.00**	
Total funding	**$1,100,000.00**	

Additional project funding will require additional RFTA and/or City processes as described in Sections 1 of the Agreement.

3. City and RFTA agree to coordinate the funding and completion of the design and construction of the project by means of a design contract managed by RFTA and a single construction contract managed by the City. The purchase of the OEC charging equipment has been completed prior to the date of this Agreement, via a competitive procurement process managed by RFTA.
4. City shall manage the design, permitting, commissioning and construction of the OEC Project, and for ensuring a functional facility at the substantial completion of the Project to occur no later than December 31, 2023.
5. City and RFTA each 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 and could also affect the overall cost of the Project.

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, City and RFTA agree as follows.

1. Purpose:

The purpose of this Agreement is to define and clarify the method and process by which the parties have agreed to fund and implement the Project.

2. PROJECT FUNDING AND CASHFLOW:

A. The City and RFTA understand that the project is currently funded by the following Funding Commitments in section two of the recitals(hereinafter also known as the "Funding"):

i. City and RFTA agree that construction of the Project will not commence until such time as the Funding required to complete the Project has been fully appropriated by both Parties.

ii. The $480,000.00 in CDOT FASTER grant funds will be used exclusively for purchasing equipment and for the construction and permitting costs associated with the Project. Construction costs do not include consultant construction management fees associated with the Project as defined in the grant.

iii. Commencement of the Project and this Agreement are expressly contingent on receipt of an acceptable construction bid equal to or less than the proposed Funding.

B. If the apparent low bid for the construction of the Project exceeds the Funding, the commencement of the Project shall be held in abeyance until the City and RFTA enter into a written amendment to this IGA regarding one of the following actions:

i. City receives in writing from RFTA the authority to use RFTA's project contingencies to cover the deficit and proceed with the Project;

ii. A supplemental appropriation from the City Council or RFTA Board of Directors is approved in an amount sufficient to cover the deficit between the Funding and the lowest bid for construction of the Project;

iii. City receives from RFTA the authorization to re-solicit bids for construction of the Project; or

iv. City receives from RFTA authorization to request additional time to expend the CDOT grants and/or to reduce the scope of the Project to reflect the budget.

C. If the apparent low bid for the construction of the Project is less than the amount budgeted by RFTA for construction of the project, then RFTA's construction contingency shall be increased by the difference between the low bid and the budgeted amount.

D. RFTA is wholly responsible for grant administration related to the FASTER funds. City agrees to follow all of the construction management requirements associated with the CDOT grant and upon request by RFTA to supply to RFTA all the construction documentation required to meet the requirements for reimbursements and closeout of the grant. RFTA agrees to the following related to the FASTER grant:

i. RFTA will not incur costs associated with the FASTER grant until it receives an executed grant agreement from CDOT and written authorization from CDOT that will enable RFTA to be reimbursed for costs incurred in connection with the anticipated FASTER grant, prior to execution of the grant agreement.

ii. FASTER grant will require a 25% ($120,000) total local match, making the amount of funding encumbered by the FASTER grant a total of $480,000. It is understood by the City and RFTA that until CDOT authorizes RFTA to incur construction costs associated with the FASTER grant, RFTA also cannot expend the local match value of the Construction Contract.

iii. RFTA will expend its $270,000 contribution to the Project as the last $270,000 in construction costs. This shall ensure that RFTA does not become the cash flow entity during the life of the Project due to delayed payments from CDOT or their retainage of funds by those parties until the Project's final completion.

iv. If additional funds in excess of the original budget and Funding for the completion of the Project are required, either during the bid process or throughout the construction of the Project, RFTA shall be responsible for identifying and securing additional funds. It is understood that the City's financial commitment for the Project shall not exceed $350,000.00; however, in the event additional funds are needed to complete the Project, the City Council may, solely at its discretion, authorize additional appropriations for increased contributions from the City.

E. Overall Project expense reports and forecasts will be prepared and distributed by City's Project Manager as often as practicable, but at least on a monthly basis, during the life of the construction project.

F. RFTA and City will not incur costs for the Project in excess of the initial Funding without prior written authorization from RFTA and the City.

G. If, for any reason, it appears that the cost of completing construction of the Project could exceed the initial Funding, City will notify RFTA and request written instructions as to whether it should continue or discontinue constructing mutually agreed upon nonessential portions of the Project.

H. All consultant services provided prior to award of a construction contract (i.e. Engineering, Environmental Clearances, ROW services, Utility Engineering) shall be paid for by RFTA as incurred.

3. PROJECT BID AND AWARD

A. RFTA will solicit competitive bids from potential contractors for constructing the Project using the RFTA/CDOT procurement procedures. RFTA shall structure the RFP and resulting contract to ensure segregation of all Project costs between paying entities as directed in the grant agreements.

B. The Project Construction Contract will not exceed Funding unless there is an additional appropriation from the City Council or the RFTA Board as outlined hereinabove.

C. Project Managers representing both City and 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 project, construction management by consultants and all required permits.

D. No construction contract shall be awarded and entered into with regard to the construction of the Project without the written approval of the City's Director of Parking and Transportation and RFTA's Project Manager, which approval shall not be unreasonably withheld.

E. Contingent upon the City's written authorization, and subject to RFTA's satisfaction that it meets FASTER grant requirements, RFTA shall execute the construction contract with the selected construction contractor (hereinafter, "Contractor") with the goal of obtaining substantial completion of the Project by the December 31, 2023.

4. PROJECT CONSTRUCTION

A. The Project shall be constructed under the management and supervision of City, with direct input from the RFTA.

B. City, shall contract with a 3rd party engineering firm to provide independent construction management, construction oversight and inspections. This will ensure that design specifications are followed, testing protocols are met, and the Project is constructed in accordance with the engineered plans and specifications. This expense will be considered a project construction cost.

C. City shall manage all required utility connections necessary construction, all of which are located on City rights of way, property or easements.

D. RFTA shall pay the Contractor as appropriate for work satisfactorily performed pursuant to the Construction Contract and shall request reimbursement from CDOT by means of monthly or periodic pay applications.

E. City shall:

i. Obtain all required permits, including permits for all required utility connections, from the City
ii. obtain and/or provide all Rights of Way (ROW) clearances;

F. RFTA's Project Manager or a designee of RFTA's Director of Facilities shall be available when needed to evaluate and approve proposed modifications to the approved design and to authorize any necessary change orders no later than five (5) working days after presentation by the City and before the City issues any change orders to the Contractor.

G. City shall be responsible for and manage and approve in writing the design, commissioning, coordination, permits, testing and inspections, cost allocation, approval of change orders, and funding of its portion of the construction of the Project.

5. PROJECT COLLABORATION AND CHANGE ORDER APPROVAL

A. City and RFTA shall cooperate in forming a collaborative Construction Management Team (hereinafter "Team") that will meet as agreed upon throughout the life of the Project to address construction issues and changes as they develop throughout construction.

B. Project design modifications and other project decisions will be made on a consensus basis by the Team.

C. All change orders with regard to the Project must be approved by the RFTA's Project Manager or a designee of RFTA's Director of Facilities prior to execution by the City and the Contractor.

D. RFTA's Project Manager, or a designee of RFTA's Director of Facilities 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.

E. All disbursement shall be subject to the approval of each of the Party's Project Managers, which approval shall not be unreasonably withheld.

F. Disputes, if any arising under this Agreement shall be considered in the context of each Party's stated missions and will be resolved by discussion among the staffs of the Parties at elevating levels as follows:

i. Project Managers
ii. Department Directors
iii. City Manager and RFTA Chief Executive Officer
iv. Legal Counsel

G. Conflicts that cannot be resolved at a staff level should be elevated to Aspen City Council and the RFTA Board of Directors. Notwithstanding the foregoing, each Party reserves the right to pursue available legal remedies.

6. PROJECT COMPLETION AND FINAL PAYMENTS

A. Project acceptance and final payment for the construction of the Project shall be approved by RFTA, CDOT, and the City's Director of Parking and Transportation. Once approved, any outstanding balances to City for work performed by the Contractor and Consultants, will be made by the RFTA as per the approved Contractor's contract.

B. The City and RFTA agree that the IGA for Rubey Park Operations and Maintenance shall be updated and amended to address all issues related to ownership, maintenance, payments and replacement of the Project, as appears in the amendment to the IGA attached hereto.

C.. All Warranties for materials and equipment furnished under construction of the Project shall follow the requirements of section 3.5 of the RFTA/Contractor construction contract. Notification of defects discovered by t City personnel shall be delivered to RFTA for pursuance of remedy by the Contractor.

7. Standard Clauses

A. Assignability. This Agreement is not assignable by either Party.

B. Modification. This Agreement may be changed or modified only in writing by an agreement approved by the respective Boards of the Parties and signed by authorized officers of each Party.

C. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and all other promises and agreements relating to the subject of this Agreement, whether oral or written, are merged herein.

D. Severability. Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.

E. Notice. Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below and by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each Party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

TO: City of Aspen
City of Aspen
c/o_____
Aspen, Colorado 81611
[e-mail address]

TO: RFTA
CO: Director of Facilities
1340 Main Street
Carbondale CO, 81623

F. Governmental Immunity. The Parties agree and understand that both parties are relying on and do not waive, by any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the parties or any of their officers, agents, or employees.

G. Current Year Obligations. The Parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the Parties. The Parties' obligations under this Agreement are subject to each individual Party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall be construed or interpreted as creating a multiple fiscal year direct or indirect debt or other financial obligation of either or both Parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not be construed to pledge or create a lien on any class or source of either Parties' bonds or any obligations payable from any class or source of each individual Party's money.

H. Binding Rights and Obligations. The rights and obligations of the Parties under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

I. Agreement made in Colorado. This Agreement shall be construed according to the laws of the State of Colorado, and venue for any action shall be in the state courts in and for Pitkin County, Colorado.

J. Attorney Fees. In the event that legal action is necessary to enforce any of the provisions of this Agreement, the substantially prevailing Party, whether by final judgment or out of court settlement, shall recover from the other Party all costs and expenses of such action or suit including

reasonable attorney fees.

K. No Waiver. The waiver by any Party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

L. Authority. Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

M. This Agreement may be executed in counterparts, the sum of which shall constitute the whole of this Agreement.

City of Aspen, Colorado

By: _____

Attest:

_____

Approved as to Form:

_____

The Roaring Fork Transportation Authority

By:

_____

Date