

**INTERGOVERNMENTAL AGREEMENT
BETWEEN GARFIELD COUNTY AND THE TOWN OF SILT
FOR MAIN STREET INFRASTRUCTURE IMPROVEMENTS**

This Intergovernmental Agreement is entered into by and between **Garfield County, State of Colorado** ("County") and the **Town of Silt** ("Town") (collectively, the "Parties") to provide financial support for qualifying infrastructure improvements (the "IGA" or "Agreement").

RECITALS

WHEREAS, the County is a body politic and corporate of the State of Colorado whose powers are exercised by the Board of County Commissioners ("BOCC"); C.R.S. §§ 30-5-125 and 30-11-103 (2011); and

WHEREAS, the Town is a Colorado home rule municipality; Colo. Const., art. XX, § 6; and

WHEREAS, the Parties are authorized and encouraged to cooperate with each other to make the most efficient and effective use of their powers and responsibilities; Colo. Const. art. XIV, § 18(2) (a)-(c) and art. XI, § 2; C.R.S. § 29-1-201 (1971); and

WHEREAS, the County maintains an Oil and Gas Mitigation Fund ("Fund") for the receipt and expenditure of certain specifically designated monies to be used "for the purpose of directly mitigating adverse property, social and environmental impacts of oil and gas related activities and conducting or contracting to conduct studies, assessments, and research related to potential or actual impacts"; BOCC Resolution No. 2011-13 ¶ 2; C.R.S. § 29-1-102(10); and

WHEREAS, the BOCC is empowered to authorize payment from the Fund to mitigate certain impacts, which can include construction of infrastructure; BOCC Resolution No. 2011-13, ¶ 4.c; and

WHEREAS, the Town has requested financial support from the County to assist with the final phase of construction of certain Main Street infrastructure improvements, referred to as Qualifying Improvements as more specifically defined below; and

WHEREAS, the Qualifying Improvements are public improvements for public purposes to be owned, maintained, and operated by the Town for the benefit of the Citizens of the Town and the County; and

WHEREAS, on or about June 13, 2016, the BOCC made a preliminary commitment of funds to assist the Town in completing these Qualifying Improvements and the Parties desire to set forth the terms and conditions of the Town's receipt of such monies in this IGA;

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

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

2. **Oil and Gas Mitigation Fund Award.** Subject to the terms and conditions set forth in this IGA, the BOCC hereby designates an amount not to exceed TWO HUNDRED SIXTY-THOUSAND SIX HUNDRED THIRTY EIGHT DOLLARS (**\$260,638.00**) to be awarded and used to reimburse the Town for qualifying infrastructure improvements (the "Grant").

3. **Grant and Project.** The Grant shall be used by the Town solely to complete infrastructure improvements defined in paragraph 4.

4. **Main Street Infrastructure Qualifying Improvements.** Projects eligible for reimbursement pursuant to this Agreement are limited to the construction of 1050 lineal feet of Main Street to include turn lanes and relocation of an existing bike path, installation of 310 lineal feet of potable water main with isolation valves and two fire hydrants, 110 lineal feet of sanitary sewer main, 4 to 6 storm sewer inlets with 160 lineal feet of sanitary sewer main, 300 lineal feet of electric, natural gas, telephone and cable lines, and 250 lineal feet of automated irrigation lines ("Qualifying Improvements").

5. **Completion Date.** The Town shall complete all Qualifying Improvements no later than December 31, 2017. Financial obligations of the County payable after the current fiscal year are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available.

6. **Conditions for Disbursement of Funds.** Disbursement of Grant funds shall be conditioned as follows:

- a. The Grant shall be disbursed on the basis of costs actually incurred by the Town and supported by written documentation (paid invoices, etc.). Upon presentment of sufficient written documentation that the Town has received and paid eligible invoices, the Town shall then be eligible to receive disbursement of Grant funds.
- b. The BOCC or its designated County staff shall authorize disbursement of Grant funds up to the amount of the written documentation and as nearly as practicable in increments of \$100,000.00 or more.
- c. Disbursement of Grant funds based on presentment of sufficient written documentation shall continue in this manner until the Qualifying Improvements are completed or the Grant is exhausted, whichever occurs first.

7. **Project Operation and Maintenance.** The BOCC and Garfield County shall not be liable for any cost of maintenance, management or operation of the Qualifying Improvements.

8. **Audits and Accounting.** The Town shall maintain standard financial accounts, documents, and records relating to the use, management and operation of the Qualifying Improvements. The accounts, documents, and records related to the Qualifying Improvements shall be retained by the Town for not less than three years following the date of disbursement of Grant funds under this Agreement. The BOCC or its designated agent shall have the right, upon reasonable notice to the Town to audit the books and records of the Town which pertain to the Qualifying Improvements and to the use and disposition of the funds.

9. **Inspection.** Throughout the term of this Agreement, the BOCC shall have the right to inspect the Qualifying Improvements to ascertain compliance with this Agreement.

10. **Payments Subject to Annual Appropriations.** The BOCC's financial obligations under this IGA are subject to annual appropriation and budgeting. This IGA is not intended to, nor does it create a multi-year fiscal obligation as defined by Section 20, Article X of the Constitution of the State of Colorado.

11. **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. 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.

12. **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.

13. **Indemnity/No Waiver of Governmental Immunity Act.** The BOCC and the Town acknowledge that each is subject to the constitutional prohibitions against indemnification pursuant to Colorado Constitution article XI, § 1 and that governmental entities neither party can agree to indemnify the other. 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.* (1963) as amended.

14. **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.

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

16. **Term of Agreement.** This IGA shall become effective upon signature of the last party to sign and will terminate on December 31, 2017. All rights concerning remedies, fees and costs shall survive termination of this IGA.

17. **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.

18. **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.

19. **Governing Law, Venue and Survival.** The laws of the State of Colorado 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 Garfield County, Colorado.

20. **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.

21. **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.

22. **Authority.** Each person 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.

23. **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:

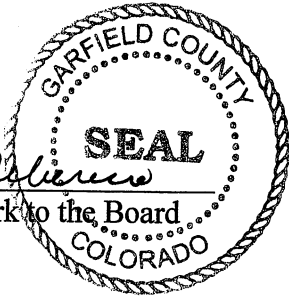
Town of Silt:	Silt Town Manager 231 N. 7 th Street P.O. Box 70 Silt, CO 81652
Garfield County:	County Manager Garfield County, Colorado 108 8 th Street, Suite 100 Glenwood Springs, CO 81601

Either Party may change the identity of its designated representative and the address to which future notices shall be sent by providing written notice in accordance with this paragraph. Formal amendment of this IGA to affect such a change is not required.

24. **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.

IN WITNESS WHEREOF, the County and the Town have executed duplicate originals of this IGA.

ATTEST:



Jean M Alberico
Jean Alberico, Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS OF
GARFIELD COUNTY, COLORADO**

By: _____

John Martin, Chairman

ATTEST:

TOWN OF SILT, COLORADO

Eda D. D. D. D.
Clerk

By: _____

Richard J. Lewis
Mayor

