5/6/16

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

THIS AGREEMENT (or "IGA") is made and entered into effective as of the _____ day of _____, 2016, by and between the CITY OF GLENWOOD SPRINGS, COLORADO (the "City"), a Colorado home rule municipal corporation and the ROARING FORK TRANSPORTATION AUTHORITY ("RFTA"), a Colorado regional transportation authority organized pursuant to Title 43 of the Colorado Revised Statutes, (individually, a "Party", collectively, the "Parties").

WHEREAS, Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-201 *et seq.*, authorize the City and RFTA to enter into intergovernmental agreements to cooperate with one another to acquire, develop, construct, operate, maintain, and manage property, and to provide for the financing thereof;

WHEREAS, the City and RFTA entered into an Intergovernmental Agreement regarding land exchanges on July 18, 2002;

WHEREAS, RFTA is the owner of a railroad corridor known as the Aspen Branch that extends from Glenwood Springs to Woody Creek, Colorado (the "Corridor");

WHEREAS, RFTA's predecessor, the Roaring Fork Railroad Holding Authority ("RFRHA"), purchased from the Southern Pacific Transportation Company ("SPTC", now Union Pacific Railroad Company or "UPRR") the Corridor and associated lands in Glenwood Springs where the Corridor intersects the main UPRR interstate line in a railroad "Wye" (the "Wye Area");

WHEREAS, SPTC excepted and reserved from its deed to RFRHA a perpetual, exclusive freight rail easement on, under, over, and through the the Wye Area, for the purpose of maintaining, repairing, replacing, installing, operating, storing, and using present and future railroad related systems, infrastructure, and appurtenances, including, but not limited to rails, facilities, equipment, transportation systems, and communications systems (the "UPRR Easement");

WHEREAS, the Corridor's operation and management are limited by restrictive covenants imposed by agreement with the State Board of the Great Outdoors Colorado Trust Fund ("GOCO") and Section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d) ("Railbanking Act");

WHEREAS, the Railbanking Act requires preservation of railroad rights-of-way for potential future reactivation of rail service;

WHEREAS, the Parties desire to extinguish the UPRR Easement as identified generally in that RFTA WYE AREA – UPRR FREIGHT RAIL EASEMENT PARCELS EXHIBIT prepared by the Farnsworth Group, Inc., and attached as **RFTA/GWS IGA – Exhibit 1** and incorporated herein by this reference;

WHEREAS, the Parties desire that the Wye Area be used for rail and trail purposes and to cooperate in the development and construction of a grade-separated connection of 8th Street from approximately Pitkin Avenue westward to the 8th Street Bridge and under the tracks of the Wye (the "8th Street Connection");

WHEREAS, the Parties recognize that development of the 8th Street Connection will require the installation of certain structures to meet clearance requirements of the Colorado Public Utilities Commission ("PUC") to allow the Wye Area to continue to be used for rail purposes and to preserve RFTA's connection to the UPRR main interstate line;

WHEREAS, the Parties desire to exchange parcels of property and refine property descriptions provided herein so as to better accomplish the respective needs of the Parties as generally depicted in **RFTA/GWS IGA – Exhibit 1**, whereby the area identified in green shall be owned and controlled by City and the area in blue shall be controlled and owned by RFTA;

WHEREAS, the Parties have agreed that they shall execute a Correction Quit Claim Deed and Agreement substantially in the form of that CORRECTION QUITCLAIM DEED AND AGREEMENT, **RFTA/GWS IGA – Exhibit 2**, attached and incorporated herein by this reference, to correct a scrivener's error in the signature block of the Quit Claim Deed dated October 28, 2002, which was recorded in the office of the Garfield County Clerk and Recorder on November 7, 2002 in Book 1404 on Page 681 as Reception No. 614255 ("the 2002 Deed"). The 2002 Deed identifies RFTA as Grantor and the City as Grantee; however, it was signed by T. Michael Manchester, as the Chairman of RFRHA, notwithstanding the fact that RFRHA's assets had been assigned to RFTA on June 21, 2001 pursuant to RFTA Resolution 2001-6, which amended the RFTA Formation Intergovernmental Agreement, and dissolved RFRHA. The Parties also wish to correct the property description referred to, but not specifically labeled, as Exhibit A attached to the 2002 Deed which corrected description shall supersede the description in the referenced 2002 Quit Claim Deed. The Parties agree that the description of the Correction Quit Claim Deed and Agreement in **RFTA/GWS IGA – Exhibit 2** hereto is the accurate description which was intended for conveyance by the 2002 Quit Claim Deed, and to the extent that any property was erroneously conveyed to the City, it is the intent of the City to re-convey and re-establish in RFTA that property as described in the Correction Quit Claim Deed and Agreement, which is also generally depicted in **RFTA/GWS IGA – Exhibit 1** hereto as parcels D1, D2, D3, and D4.

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

1. <u>Incorporation and Confirmation of Recitals.</u> The Parties confirm the statements set forth in the foregoing Recitals and incorporate such Recitals herein as an integral part of this Agreement.

2. <u>Exchange of Easements/Property/Correction Deed/IGA For Crossing Easements.</u> Upon the mutual execution of this IGA, RFTA and the City shall execute and record the Correction Deed and Agreement substantially in the form of **RFTA/GWS IGA – Exhibit 2**. The Correction Deed and Agreement shall affirm and re-convey to RFTA, to the extent any re-conveyance is necessary, all areas identified in **RFTA/GWS IGA – Exhibit 1** as D1, D2, D3, and D4 that may have erroneously been included in the description of the 2002 Deed. Simultaneous with the delivery of the Correction Quit Claim Deed and Agreement fully executed by the City to RFTA, RFTA shall execute and deliver to the City a bargain and sale deed substantially in the form of that BARGAIN AND SALE DEED, **RFTA/GWS IGA – Exhibit 3**, attached and incorporated herein by this reference, thereby conveying all of RFTA's right, title, and interest in the parcels depicted in **RFTA/GWS IGA – Exhibit 1** as B, E.1.1, E.2.1, and R.2.1. Further, simultaneously with the execution of this Agreement, RFTA and the City shall enter into Easement Agreements, substantially in the form of the draft Agreements labeled as **RFTA/GWS IGA – Exhibits 4 and 5**, each attached and incorporated herein by this reference, by which RFTA shall grant to the City easements sufficient for grade-separated crossings under the RFTA owned tracks and right-of-way within parcels D1, D2, D3, and D4 for the 8th Street Connection generally as described in that ROARING FORK TRANSPORTATION AUTHORITY TO CITY OF GLENWOOD SPRINGS 8TH STREET EASEMENT AGREEMENT, **RFTA/GWS IGA – Exhibit 4**, and under the tracks and right-of-way within parcels 5, 6, and R1 for the existing and in-place pedestrian tunnel north of 7th Street, as generally described in that ROARING FORK TRANSPORTATION AUTHORITY TO CITY OF GLENWOOD SPRINGS PEDESTRIAN TUNNEL EASEMENT AGREEMENT, **RFTA/GWS IGA – Exhibit 5**.

3. <u>UPRR Easement on East Leg.</u> Upon exchange of deeds as set forth above, and if the City deems the extinguishment of the UPRR Easement on the East Leg of the Wye as being in the City's best interest, the Parties shall cooperate in the exercise of all rights to extinguish the UPRR Easement over the East Leg of the railroad Wye Area, which is depicted in **RFTA/GWS IGA – Exhibit 1** as parcels A1, A2, and A3.

4. <u>Construction of 8th Street Connection.</u> City shall design or cause the design of the 8th Street Connection and provide plans for the same to RFTA for its approval, which shall not be unreasonably withheld, as early in the design process as reasonably possible. The City shall also inform RFTA of its anticipated date for the commencement of construction upon its determination. The City shall construct the 8th Street Connection in a manner that allows for a

rail bridge structure to be installed on the West Leg of the railroad Wye, if such rail bridge is, in the sole discretion of RFTA, necessary to meet the future needs of RFTA or if the UPRR Easement on the West Leg of the Wye is not acquired or extinguished. The City shall install, at its expense, abutments to accommodate the bridge. For such purposes RFTA, in its discretion, shall reserve in its contingency fund an amount equal to the cost of the bridge up to $500,000 (the "Bridge Reserve Fund").

5. **Confluence Area Development.** The City is in the process of redeveloping the confluence area which includes the area around the 8th Street Connection. Such redevelopment may include the development of an inter-modal transit facility. The Parties agree to work in good faith on developing a location for the Transit Facility which may include future land exchanges to facilitate its development.

6. **UPRR Easement.** Should the Parties agree to renew negotiations with UPPR to purchase the UPRR Easement in the Wye, they shall continue to use and share the costs of a joint negotiator to negotiate with UPRR regarding its current easement rights in the Wye Area with the goal of extinguishing UPRR's rights in the Wye Area. Any fees, including legal and other professional fees, charges, or costs associated with such negotiation shall be paid by the Parties in equal portions.

7. **Cost of UPRR Easement Acquisition.** In the event RFTA and the City are successful in negotiating an acceptable price with UPRR for the purchase of the UPRR Easement in the Wye, RFTA and the City will work together in good faith to establish an equitable allocation of such purchase price, which allocation will take into consideration the exchange of parcels contemplated herein, the ratio of value of land ownership between the City and RFTA within the Wye, the relative benefits to each Party from extinguishment of the UPRR Easement in the Wye, and other factors to be agreed upon between the Parties.

8. **Permanent Crossing.** RFTA shall not object to and shall support the City's application for a permanent grade-separated crossing of the West Leg of the Wye with the PUC, as may be necessary, provided the application satisfactorily complies with the following parameters:

- the application shall not impede or otherwise jeopardize in any manner RFTA's ability to maintain the Corridor as a "rail-banked" rail corridor, as defined in the Railbanking Act; and

- the design and cost of the bridge, the proposed allocation of costs for the same, and the terms of maintenance, repair, alteration, and relocation, and the costs of the same are acceptable to the Parties.

9. **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.

10. **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.

11. **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.*

12. **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.

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

14. **Term of Agreement.** This IGA shall become effective upon signature of the last Party to sign and will terminate upon completion of the 8th Street Connection project and the acquisition or extinguishment of the UPPR Easement in the Wye except as otherwise provided for herein. All rights concerning remedies, fees and costs shall survive termination of this IGA.

15. **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.

16. **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.

17. **Governing Law, Venue and Survival.** The laws of the State of Colorado to the extent not preempted by federal law as a result of the STB's exclusive jurisdiction over railbanked property 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.

18. **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.

19. **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.

20. **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.

21. **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 Transproation Authority
RFTA General Counsel
2307 Wolfsohn Road
Glenwood Springs, CO 81601

22. **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.

22. **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.

23. **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 main interstate rail line.

24. **GOCO Approval.** The Parties recognize that this Agreement may be impacted by and/orsubject to requirements of the Agreement made the 17th day of January, 2001 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 IGA.

CITY OF GLENWOOD SPRINGS, COLORADO

ATTEST:

_____ By:_____

Catherine Mythen, City Clerk Michael Gamba, Mayor

Date: _____

ROARING FORK TRANSPORTATION AUTHORITY

ATTEST:

_____ By:_____

Clerk Stacey Patch Bernot, Chair

Date: _____

RFTA-GWS IGA - Exhibit 1

RFTA WYE AREA - UPRR FREIGHT RAIL EASEMENT PARCELS EXHIBIT

APPROXIMATE AREAS

PARCEL	± AREA FEET	± AREA ACRES	PARCEL	± AREA FEET	± AREA ACRES
A1	54,368	1.248	E1.1	36,741	0.843
A2	25,160	0.578	E1.2	2,246	0.052
A3	33,679	0.773	E2.1	7,404	0.170
B	28,734	0.660	E2.2	11,479	0.264
C1	1,621	0.037	R1	26,988	0.620
C2	1,305	0.030	R2.1	281	0.006
C3	2,990	0.069	R2.2	2,308	0.053
C4	1,750	0.040	R3	119,549	2.744
D1	3,312	0.076	3-R	56,599	1.299
D2	3,882	0.089	3-R.1	583	0.013
D3	8,983	0.206	4	84,267	1.935
D4	1,802	0.041	5	11,694	0.268
D5	3,892	0.089	6	16,534	0.380
6.1	724	0.017	TOTAL AREA = 548875± SQ.FT. (12.6004 ± AC.)		

RFTA Parcels = 355,559± SQ.FT. (8.1625± AC)
Glenwood Parcel 193,316± SQ.FT. (4.4379± AC)

EXCHANGE PARCELS

RFTA GAINS PARCELS	GLENWOOD GAINS
D1 - 3312± SQ.FT.	B - 28734± SQ.FT.
D2 - 3882± SQ.FT.	C4 - 1750± SQ.FT.
D3 - 8983± SQ.FT.	E1.1 - 36741± SQ.FT.
D4 - 1802± SQ.FT.	E2.1 - 7404± SQ.FT.
AREA: 17979± SQ.FT.	R2.1 - 281± SQ.FT.
(0.4127± ACRES)	3-R.1 - 583± SQ.FT.
	6.1 - 724± SQ.FT.
	AREA: 76217± SQ.FT.
	(1.7497± ACRES)

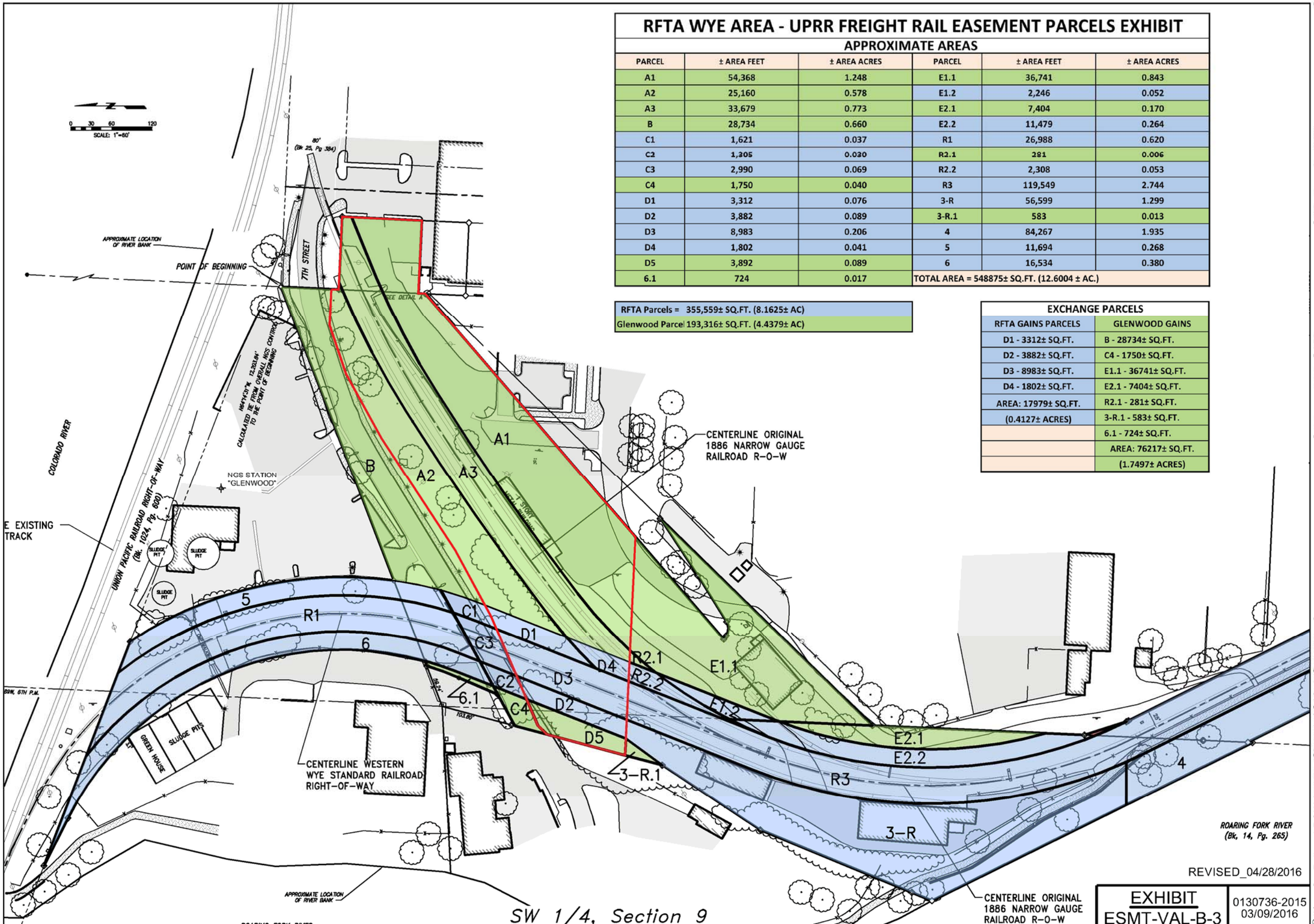


EXHIBIT
ESMT-VAL-B-3

0130736-2015
03/09/2016

Farnsworth GROUP

Railroad ROW Survey - Glenwood Springs Segment
Portion of Former Denver & Rio Grande Railroad
Aspen Branch Right-Of-Way
Sections 9, 16, 21, 22
Township 6 South, Range 89 West, 6th P.M.
Garfield County, State of Colorado

Roaring Fork Transportation Authority
0766 Industry Way
Carbondale, CO 81623

Date: 8-03-07
Drawn: MCG
Checked: MCG
Book No.: 2195

Project No.: 305007.7
SHEET 3 OF 10
OVERALL SHEET 3 OF 126

RFTA/GWS IGA – Exhibit 2

CORRECTION QUIT CLAIM DEED AND AGREEMENT

THIS CORRECTION QUIT CLAIM DEED AND AGREEMENT, is made and entered into effective this _____ day of _____, 2016, between Roaring Fork Transportation Authority, Aspen, Colorado, as Grantor, and the City of Glenwood Springs, Colorado, a Colorado Home Rule municipal corporation whose address is 101 W. 8th Street, Glenwood Springs, Colorado 81601, as Grantee.

RECITALS

1. By that Quit Claim Deed made the 28th day of October, 2002 between the Roaring Fork Transportation Authority, the successor in interest to the Roaring Fork Railroad Holding Authority (hereinafter referred to as "RFTA"), as Grantor and the City of Glenwood Springs, Colorado as Grantee, certain property was conveyed to the City of Glenwood Springs with an erroneous property description attached thereto as Exhibit A that included a parcel that was intended to be retained by RFTA. The Quit Claim Deed was recorded in the office of the Garfield County Clerk and Recorder on November 7, 2002 as Reception No. 614255 ("the 2002 Deed"), a copy of which is attached hereto for easy reference.

2. The Grantor listed in the Quit Claim Deed made the 28th day of October, 2002 is the Roaring Fork Transportation Authority, while it was incorrectly signed by T. Michael Manchester, as Chairman of the Roaring Fork Holding Authority.

3. RFTA and the City of Glenwood Springs desire to correct the legal description in the 2002 Deed to confirm in RFTA (and to any extent necessary reconvey to RFTA any property erroneously included in the property description attached to the 2002 Deed), and to also confirm the conveyance to the City of Glenwood Springs by RFTA of the correct property.

W I T N E S S E T H:

RFTA, for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and Quit Claimed, and by these presents does remise, release, sell, and Quit Claim unto the City of Glenwood Springs, its successors and assigns, forever, all the right, title interest, claim, and demand which the Grantor has in and to the property described on the PARCEL DESCRIPTION CORRECTION QUIT CLAIM DEED dated March 30, 2016 and prepared by the Farnsworth Group, Inc., attached as **Correction Quit Claim Deed Exhibit A** and made a part hereof, and the property description in the 2002 Deed is hereby corrected as appears on said **Correction Quit Claim Deed Exhibit A**, and the City of Glenwood Springs confirms ownership of RFTA and to the extent necessary reconveys any interest it might have in that property set forth on **Correction Quit Claim Deed Exhibit A** described as that "one hundred (100) foot wide railroad right-of-way parcel centered on the west leg of the WYE" ("EXCEPTION PARCEL").

The City of Glenwood Springs and RFTA shall hold their respective property interests as corrected and confirmed hereby, together with all appurtenances and privileges thereunto

belonging or in anywise thereunto appertaining, and all the estate, right, title and interest unto the City of Glenwood Springs and RFTA and their successors and assigns forever.

IN WITNESS WHEREOF, the City of Glenwood Springs and RFTA have executed this Correction Quit Claim Deed and Agreement on the date set forth above.

CITY OF GLENWOOD SPRINGS	ROARING FORK RAILROAD HOLDING AUTHORITY
By:_____	By:_____
Michael Gamba, Mayor	Stacey Bernot, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed and sworn to before me this _____ day of _____, 2016, by Michael Gamba, as Mayor of the City of Glenwood Springs.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed and sworn to before me this _____ day of _____, 2016, by Stacey Bernot, as Chairman of the Roaring Fork Transportation Authority, the successor in interest to the Roaring Fork Railroad Holding Authority.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

CORRECTION QUIT CLAIM DEED
Exhibit A

PARCEL DESCRIPTION
CORRECTION QUIT CLAIM DEED
March 30, 2016

The following description is intended to replace that description contained in Quit Claim Deed recorded 11/07/2002 at Reception No. 614255, in Book 1404, Page 681 of the records of Garfield County, Colorado, and exclude a one hundred (100) foot wide railroad right-of-way parcel centered on the west leg of the wye;

A Parcel of Land being a portion of that property described in deed recorded 7/03/1997 at Reception No. 510445, in Book 1024, Page 600, and the Correction Bargain and Sale Deed recorded 9/09/2008 at Reception No. 755399 in the records of Garfield County, State of Colorado, situated in Section 9, Township 6 South, Range 89 West of the Sixth Principal Meridian, described as follows:

All that portion of the Roaring Fork Transportation Authority (RFTA) railroad right of way property, as successor to the Roaring Fork Railroad Holding Authority, described in the above said deeds recorded at Reception No's. 510445 and 755399, lying between the Southerly right-of-way line of 8th Street extended westerly from its existence west of Pitkin Avenue, and the Southerly right-of-way line of West 7th Street, as said right-of-way is depicted on a Plat numbered 0109 in the records of Garfield County, Colorado, titled "Map of the County Road through Lot No. 3 and the N.E. ¼ of the S.W. ¼ of Section 9, T. 6 S., R. 89 W., as traveled and used since 1890", **EXCEPT** that one hundred (100) foot wide railroad right-of-way parcel centered on the west leg of the WYE, further described as follows:

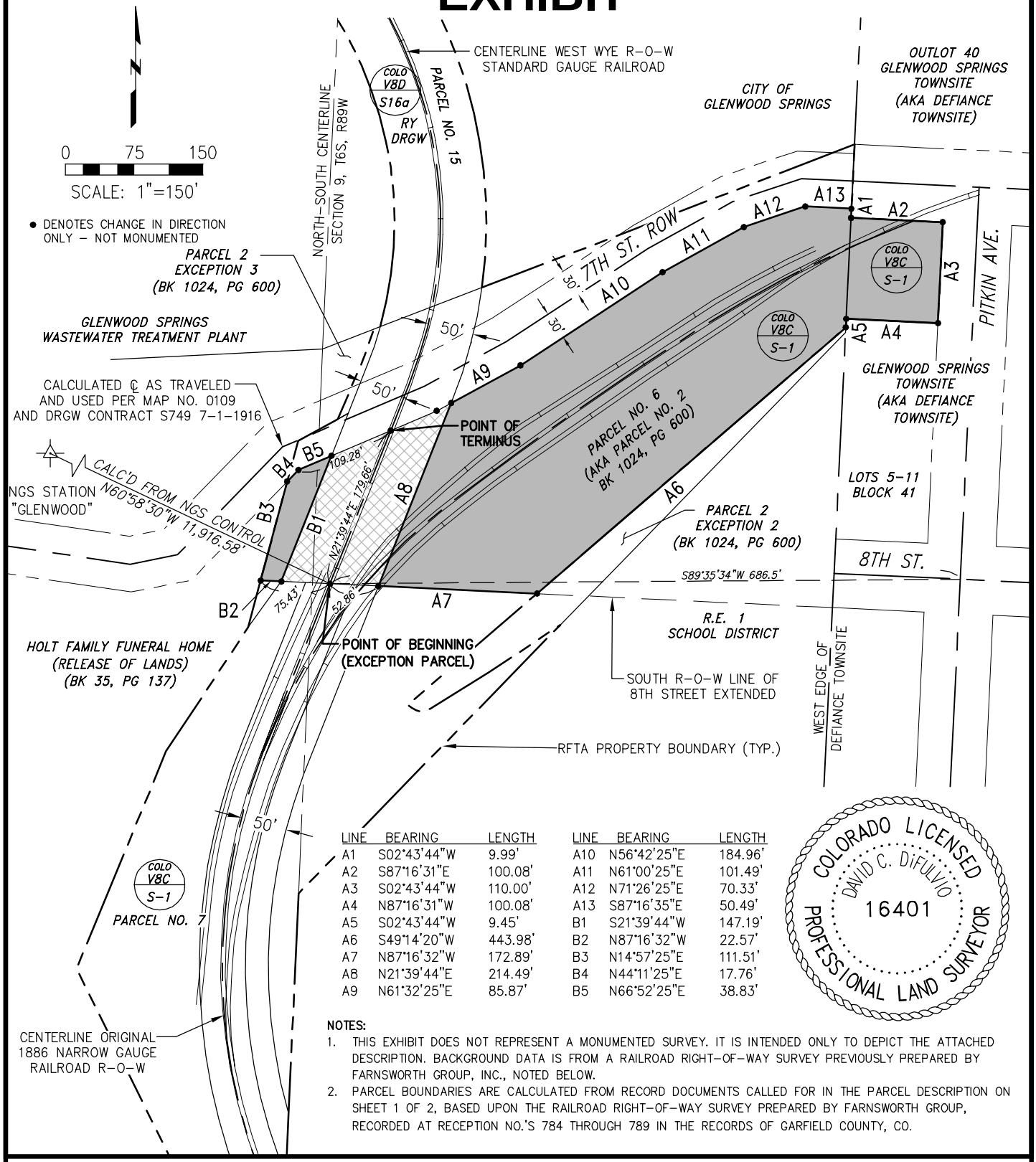
> A 100 foot wide strip being 50 feet Northwesterly and 50 feet Southeasterly, at right angles from the centerline of the right-of-way of the West leg of the wye track of the former Denver and Rio Grande Western Railroad Aspen Branch right-of-way in Garfield County, Colorado, being Interstate Commerce Commission (ICC) Track No. 102, as shown on the ICC Valuation Map 8-D (Colorado); Map Sheet S-16a, Rv. (ICC Parcel 15) and ICC Valuation Map 8-C (Colorado); Map Sheet S-1, (ICC Parcel 6), described as follows:
>
> **Beginning** at the intersection of said centerline with said Southerly right-of-way line of 8th Street extended Westerly, said intersection being S 89° 35' 34" W, 686.5 ft., more or less, from the centerline intersection of 8th Street and Pitkin Avenue; Thence N 21° 39' 44 E, 179.66 ft., along said centerline, to the said Southerly right-of-way line of West 7th Street, being the **Point of Terminus**; the sidelines of the above described one hundred (100) ft. wide parcel to be extended and/or shortened to terminate at the intersecting parcel boundaries.

The above described parcel is estimated to contain 2.688 acres, more or less, and is depicted on the attached exhibit.

This description was calculated from the Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County. The Basis of Bearings for this description are from said Survey and are based on a bearing of N 48° 23" 29" W, with a distance of 196,251.75 U.S. Feet, between National Geodetic Survey Colorado High Accuracy Reference Network (CHARN) Stations "S 159" and "Glenwood" was utilized as the Basis of Bearings for the Survey. Said Bearing is based on a NAD 83 (1992) Colorado State Plane Central Zone Coordinate System modified to ground by a factor of 1.00035556. The bearing from the Point of Beginning of the Exception Parcel as noted in the above description to the NGS Station "Glenwood" bears N 60°58'30" W, with a distance of 11,916.58 U.S. Feet.

The above description was prepared by David C. DiFulvio, LS# 16401
For and on behalf of FARNSWORTH GROUP, INC.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO, 80111
303-692-8838.

EXHIBIT



LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
A1	S02°43'44"W	9.99'	A10	N56°42'25"E	184.96'
A2	S87°16'31"E	100.08'	A11	N61°00'25"E	101.49'
A3	S02°43'44"W	110.00'	A12	N71°26'25"E	70.33'
A4	N87°16'31"W	100.08'	A13	S87°16'35"E	50.49'
A5	S02°43'44"W	9.45'	B1	S21°39'44"W	147.19'
A6	S49°14'20"W	443.98'	B2	N87°16'32"W	22.57'
A7	N87°16'32"W	172.89'	B3	N14°57'25"E	111.51'
A8	N21°39'44"E	214.49'	B4	N44°11'25"E	17.76'
A9	N61°32'25"E	85.87'	B5	N66°52'25"E	38.83'

COLORADO LICENSED
DAVID C. DiFULVIO
16401
PROFESSIONAL LAND SURVEYOR

NOTES:

1. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION. BACKGROUND DATA IS FROM A RAILROAD RIGHT-OF-WAY SURVEY PREVIOUSLY PREPARED BY FARNSWORTH GROUP, INC., NOTED BELOW.
2. PARCEL BOUNDARIES ARE CALCULATED FROM RECORD DOCUMENTS CALLED FOR IN THE PARCEL DESCRIPTION ON SHEET 1 OF 2, BASED UPON THE RAILROAD RIGHT-OF-WAY SURVEY PREPARED BY FARNSWORTH GROUP, RECORDED AT RECEPTION NO.'S 784 THROUGH 789 IN THE RECORDS OF GARFIELD COUNTY, CO.

Farnsworth GROUP
5613 DTC Parkway, Suite 1100
GREENWOOD VILLAGE, CO 80111
(303) 692-8838 / (303) 692-0470 Fax

ROARING FORK TRANSPORTATION AUTHORITY
GLENWOOD SALES PARCEL CORRECTION DEED
PARCEL DESCRIPTION AND EXHIBIT
LOCATED IN SECTION 9,
TOWNSHIP 6 SOUTH, RANGE 89 WEST, SIXTH PRINCIPAL MERIDIAN

Project No:	0130736
Drawn by:	CCP
Approved:	DCD
Date:	03/30/16
Revised:	

3 OF 3

614255 11/07/2002 03:58P B1404 P681 M ALSDORF
1 of 2 R 11.00 D 0.00 GARFIELD COUNTY CO

QUIT CLAIM DEED

THIS QUIT CLAIM DEED made this 28 day of October, 2002, between Roaring Fork Transportation Authority, Aspen, Colorado ("RFTA")(hereinafter "Grantor") and the City of Glenwood Springs, Colorado ("Glenwood Springs" or "City"), a Colorado Home Rule Municipality whose address is 101 W. 8th Street, Glenwood Springs, Colorado 81601(hereinafter "Grantee");

WITNESSETH:

That the Grantor, for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUIT CLAIMED, and by these presents does remise, release, sell and QUIT CLAIM unto the Grantee, its successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the property described on the attached Exhibit A.

TO HAVE AND TO HOLD the same, together with all its appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

ROARING FORK RAILROAD HOLDING AUTHORITY

By: _____
T. Michael Manchester, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Acknowledged, subscribed and sworn to before me this 28th day of October, 2002, by T. Michael Manchester, as Chairman, Roaring Fork Railroad Holding Authority.

WITNESS my hand and official seal.

My Commission expires: 01-31-03.

_____
Notary Public

MICHELLE PIPER NOTARY PUBLIC STATE OF COLORADO

Please return to: City of Glenwood Springs
101 West 8th Street, Glenwood Springs, CO 81602

LEGAL DESCRIPTION
RTA PARCEL IN WYE AREA
PROPOSED LAND EXCHANGE

BEGINNING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF THE ROARING FORK RAILROAD HOLDING AUTHORITY RIGHT-OF-WAY WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF 8TH STREET, EXTENDED WESTERLY, SAID POINT OF BEGINNING BEARS S 86° 41' 37" W, A DISTANCE OF 444.47 FEET FROM THE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF 8TH STREET AND PITKIN AVENUE; THENCE N 88° 28' 00" W, ALONG THE PROJECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF 8TH STREET, A DISTANCE OF 318.58 FEET TO A POINT ON THE EASTERLY BOUNDARY OF A TRACT OF LAND DESCRIBED AS PARCEL A, IN THE WARRANTY DEED RECORDED AS RECEPTION NUMBER 433165 IN BOOK 827 AT PAGE 421 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER; THENCE N 12° 15' 00" E, ALONG SAID WESTERLY BOUNDARY, A DISTANCE OF 82.10 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE CONTINUING N 12° 15' 00" E, A DISTANCE OF 15.59 FEET, MORE OR LESS, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST 7TH STREET, AS SAID RIGHT-OF-WAY IS DEPICTED ON THE PLAT NUMBERED 0109 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO, CLERK AND RECORDER, SAID PLAT IS TITLED "MAP OF THE COUNTY ROAD THROUGH LOT # 3 AND THE NE1/4SW1/4 OF SECTION 9, T 6 S, R 89 W, AS TRAVELED AND USED SINCE 1890"; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING SEVEN (7) COURSES: (1) N 61° 48' 00" E, A DISTANCE OF 23.54 FEET; (2) N 64° 29' 00" E, A DISTANCE OF 168.86 FEET; (3) N 59° 09' 00" E, A DISTANCE OF 103.78 FEET; (4) N 54° 19' 00" E, A DISTANCE OF 184.96 FEET; (5) N 58° 37" 00" E, A DISTANCE OF 101.48 FEET; (6) N 69° 03' 00" E , A DISTANCE OF 70.33 FEET; (7) S 89° 40' 00" E, A DISTANCE OF 49.86 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY, S 01° 32' 00" W, 9.99 FEET TO THE NORTHWESTERLY CORNER OF LOT 1, BLOCK 41 OF THE ORIGINAL TOWNSITE; THENCE S 88° 28' 00" E, ALONG THE NORTHERLY LINE OF SAID BLOCK 41 A DISTANCE OF 100.00 FEET TO THE NORTHEASTERLY CORNER OF LOT 4 OF SAID BLOCK 41; THENCE S 01° 32' 00" W, ALONG THE EASTERLY LINE OF SAID BLOCK 41, A DISTANCE OF 110.00 FEET TO THE SOUTHEASTERLY CORNER OF LOT 4 OF SAID BLOCK 41; THENCE N 88° 28' 00" W, ALONG THE SOUTHERLY LINES OF LOTS 1, 2, 3 AND 4 OF SAID BLOCK 41, A DISTANCE OF 100.00 FEET TO THE SOUTHWESTERY CORNER OF LOT 1,OF SAID BLOCK 41; THENCE S 01° 32' 00" W, A DISTANCE OF 9.39 FEET, MORE OR LESS TO A POINT ON THE WESTERLY LINE OF SAID BLOCK 41; THENCE S 46° 31' 00" W, ALONG THE WESTERLY LINE OF A TRACT OF LAND DESCRIBED IN THE QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 240084 IN BOOK 392 AT PAGE 92 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER A DISTANCE OF 89.19 FEET TO THE NORTHERNMOST POINT OF A PARCEL OF LAND DESCRIBED IN THE QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 577868 IN BOOK 1238 AT PAGE 879 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER; THENCE CONTINUING S 46° 31' 00" W, ALONG SAID WESTERLY LINE DESCRIBED IN THE QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 240084 IN BOOK 392 AT PAGE 92 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER AND THE WESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 577868 IN BOOK 1238 AT PAGE 879 IN THE RECORDS OF THE GARFIELD COUNTY, COLORADO CLERK AND RECORDER, A DISTANCE OF 342.89 FEET, MORE OR LESS, TO THE BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 132,753.38 SQUARE FEET OR 3.05 ACRES, MORE OR LESS.

614255 11/07/2002 03:58P B1404 P682 M ALSDORF
2 of 2 R 11.00 D 0.00 GARFIELD COUNTY CO

RFTA/GWS IGA – Exhibit 3

BARGAIN AND SALE DEED

THIS BARGAIN AND SALE DEED, made effective as of the ____day of _____, 2016, between ROARING FORK TRANSPORTATION AUTHORITY, Aspen, Colorado ("RFTA") (hereinafter "Grantor") and THE CITY OF GLENWOOD SPRINGS, COLORADO, a Colorado Home Rule Municipality, whose address is 101 W. 8th Street, Glenwood Springs, CO 81601 (hereinafter "Grantee").

Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and conveyed, and by these presents does remise, release, sell, and convey unto the Grantee and Grantee's successors and assigns, forever, all of Grantor's right, title, interest, claim, and demand, if any, in and to the real property, together with improvements, if any, situate, lying and being in the County of Garfield and State of Colorado, and more fully described as follows:

Parcels A & B and C & D, as described on the PARCEL DESCRIPTION GLENWOOD SPRINGS WYE AREA – PARCELS A & B and PARCEL DESCRPTION GLENWOOD SPRINGS WYE AREA – PARCELS C & D, each prepared by the Farnsworth Group, Inc. and dated March 30, 2016, collectively the **Bargain and Sale Deed Exhibit A**, attached and incorporated by this reference.

Garfield County, Colorado

SIGNED AND DELIVERED this _____ day of _____, 2016.

ROARING FORK TRANSPORTATION AUTHORITY

By:_____
Title

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing Bargain and Sale Deed was acknowledged before me this _____ day of _____, 2016, by _____ as _____ of the Roaring Fork Transportation Authority.

Witness my hand and official seal.
My commission expires: _____

_____
Notary Public

BARGAIN AND SALE DEED
Exhibit A

PARCEL DESCRIPTION
GLENWOOD SPRINGS WYE AREA – PARCELS A & B

March 30, 2016

A Parcel of Land being a portion of that property described in deed recorded 7/03/1997 at Reception No. 510445, in Book 1024, Page 600, and the Correction Bargain and Sale Deed recorded 9/09/2008 at Reception No. 755399 in the records of Garfield County, State of Colorado, situated in Section 9, Township 6 South, Range 89 West of the Sixth Principal Meridian, in the City of Glenwood Springs, Colorado, described as follows:

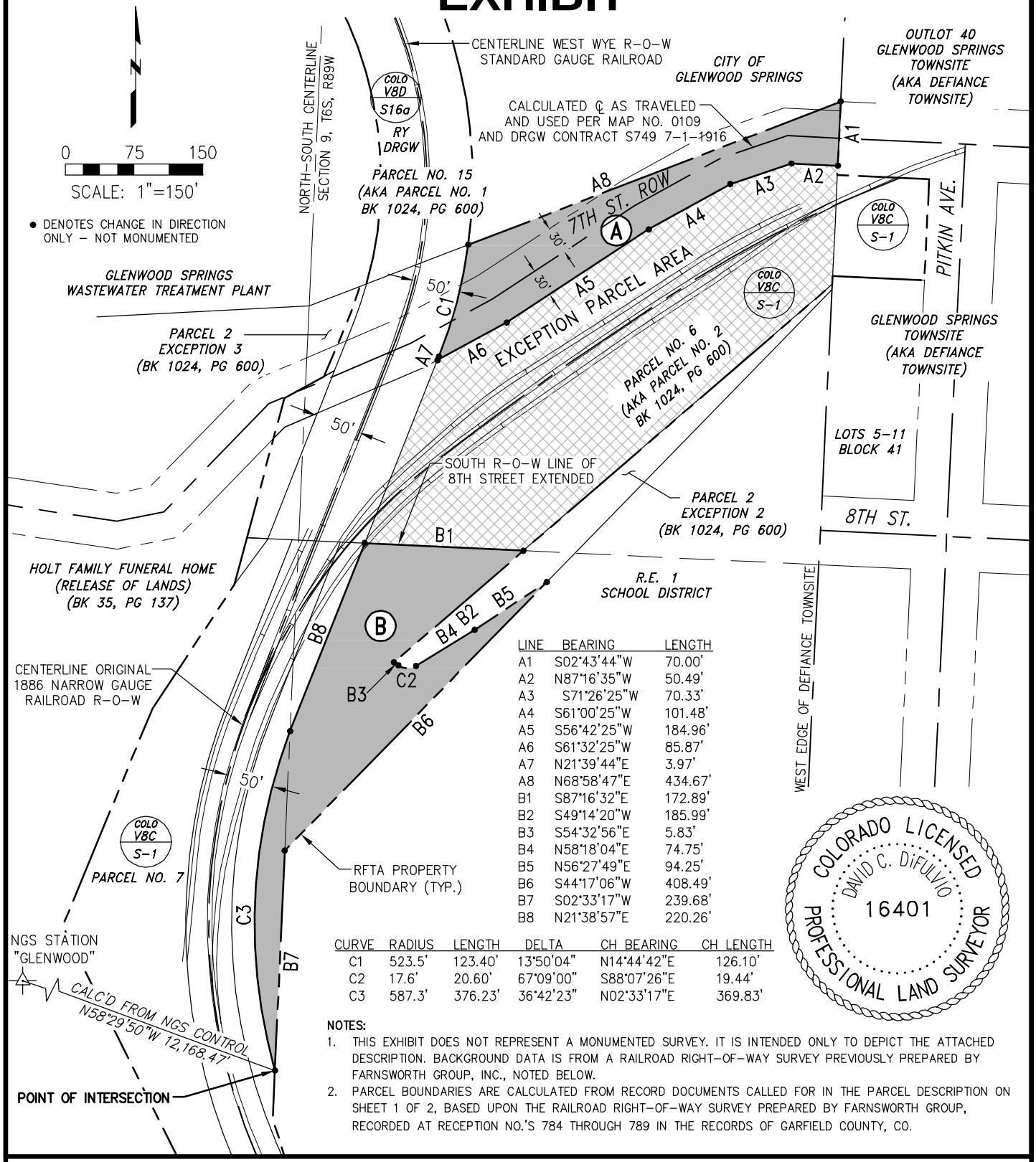
All that portion of the Roaring Fork Transportation Authority (RFTA) railroad right of way property, as successor to the Roaring Fork Railroad Holding Authority, described in the above said deeds recorded at Reception No's. 510445 and 755399, lying easterly of a line (offset line) fifty (50) feet easterly, at right angles to and parallel with the centerline of the former Denver and Rio Grande Western Railroad Aspen Branch right-of-way, as said centerline is surveyed and documented on a Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County, north of the Point of Intersection of said fifty (50) ft. offset line, with the North-South Center of Section Line of said Section 9; **EXCEPT** that portion described in that Quit Claim Deed recorded at Reception No.614255 on 11/07/2002, also at Book 1404 at Page 681 of Garfield County Records.

The above described parcel is estimated to contain 1.679 acres, more or less, and is depicted as Parcels A and B on the attached exhibit.

This description was calculated from the Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County, and that parcel described in that Quit Claim Deed recorded at Reception No.614255 on 11/07/2002, also at Book 1404 at Page 681 of Garfield County Records. The Basis of Bearings for this description are from said Survey and are based on a bearing of N 48° 23' 29" W, with a distance of 196,251.75 U.S. Feet, between National Geodetic Survey (NGS) Colorado High Accuracy Reference Network (CHARN) Stations "S 159" and "Glenwood" was utilized as the Basis of Bearings for the Survey. Said Bearing is based on a NAD 83 (1992) Colorado State Plane Central Zone Coordinate System modified to ground by a factor of 1.00035556. The bearing from the Point of Intersection as noted in the above description to the NGS Station "Glenwood" bears N 58°29'50" W, with a distance of 12,168.47 U.S. Feet.

The above description was prepared by David C. DiFulvio, LS# 16401
For and on behalf of FARNSWORTH GROUP, INC.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO, 80111
303-692-8838.

EXHIBIT



LINE	BEARING	LENGTH
A1	S02°43'44"W	70.00'
A2	N87°16'35"W	50.49'
A3	S71°26'25"W	70.33'
A4	S61°00'25"W	101.48'
A5	S56°42'25"W	184.96'
A6	S61°32'25"W	85.87'
A7	N21°39'44"E	3.97'
A8	N68°58'47"E	434.67'
B1	S87°16'32"E	172.89'
B2	S49°14'20"W	185.99'
B3	S54°32'56"E	5.83'
B4	N58°18'04"E	74.75'
B5	N56°27'49"E	94.25'
B6	S44°17'06"W	408.49'
B7	S02°33'17"W	239.68'
B8	N21°38'57"E	220.26'

CURVE	RADIUS	LENGTH	DELTA	CH BEARING	CH LENGTH
C1	523.5'	123.40'	13°50'04"	N14°44'42"E	126.10'
C2	17.6'	20.60'	67°09'00"	S88°07'26"E	19.44'
C3	587.3'	376.23'	36°42'23"	N02°33'17"E	369.83'

COLORADO LICENSED
DAVID C. DiFULVIO
16401
PROFESSIONAL LAND SURVEYOR

NOTES:

1. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION. BACKGROUND DATA IS FROM A RAILROAD RIGHT–OF–WAY SURVEY PREVIOUSLY PREPARED BY FARNSWORTH GROUP, INC., NOTED BELOW.
2. PARCEL BOUNDARIES ARE CALCULATED FROM RECORD DOCUMENTS CALLED FOR IN THE PARCEL DESCRIPTION ON SHEET 1 OF 2, BASED UPON THE RAILROAD RIGHT–OF–WAY SURVEY PREPARED BY FARNSWORTH GROUP, RECORDED AT RECEPTION NO.'S 784 THROUGH 789 IN THE RECORDS OF GARFIELD COUNTY, CO.

Farnsworth GROUP
5613 DTC Parkway, Suite 1100
GREENWOOD VILLAGE, CO 80111
(303) 692-8838 / (303) 692-0470 Fax

ROARING FORK TRANSPORTATION AUTHORITY
WYE AREA PARCEL TRANSACTIONS - PARCELS A & B
PARCEL DESCRIPTION AND EXHIBIT
LOCATED IN SECTION 9,
TOWNSHIP 6 SOUTH, RANGE 89 WEST, SIXTH PRINCIPAL MERIDIAN

Project No:	0130736
Drawn by:	CCP
Approved:	DCD
Date:	03/30/16
Revised:	

2 OF 2

PARCEL DESCRIPTION
GLENWOOD SPRINGS WYE AREA – PARCELS C & D

March 30, 2016

A Parcel of Land being a portion of that property described in deed recorded 7/03/1997 at Reception No. 510445, in Book 1024, Page 600, and the Correction Bargain and Sale Deed recorded 9/09/2008 at Reception No. 755399 in the records of Garfield County, State of Colorado, situated in Section 9, Township 6 South, Range 89 West of the Sixth Principal Meridian, in the City of Glenwood Springs, Colorado, described as follows:

PARCEL C
All that portion of the Roaring Fork Transportation Authority (RFTA) railroad right of way property, as successor to the Roaring Fork Railroad Holding Authority, described in the above said deeds recorded at Reception No's. 510445 and 755399, lying westerly of a line (offset line) fifty (50) feet westerly, at right angles to and parallel with the centerline of the former Denver and Rio Grande Western Railroad Aspen Branch right-of-way, as said centerline is surveyed and documented on a Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County, north of that parcel described in that Quit Claim Deed recorded at Reception No.614255 on 11/07/2002, also at Book 1404 at Page 681 of Garfield County Records.

The above described Parcel C is estimated to contain 0.057 acres, more or less, and is depicted on the attached exhibit.

PARCEL D
All that portion of the Roaring Fork Transportation Authority (RFTA) railroad right of way property, as successor to the Roaring Fork Railroad Holding Authority, described in the above said deeds recorded at Reception No's. 510445 and 755399, described as follows:

Commencing at the intersection of said railroad centerline with the Southerly right-of-way line of 8th Street extended Westerly, said intersection being S 89° 35' 34" W, 686.5 ft., more or less, from the centerline intersection of 8th Street and Pitkin Avenue; Thence N 87° 16' 32" W, 52.86 ft. along said Southerly right of way line extended, to the **Point of Beginning**, being fifty (50) feet westerly, at right angles to and parallel with the centerline of the former Denver and Rio Grande Western Railroad Aspen Branch right-of-way, as said centerline is surveyed and documented on a Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County;

Thence, continuing along said Southerly right of way line extended, N 87° 16' 32" W, 22.57 ft., to the westerly line of the said RFTA property noted herein;

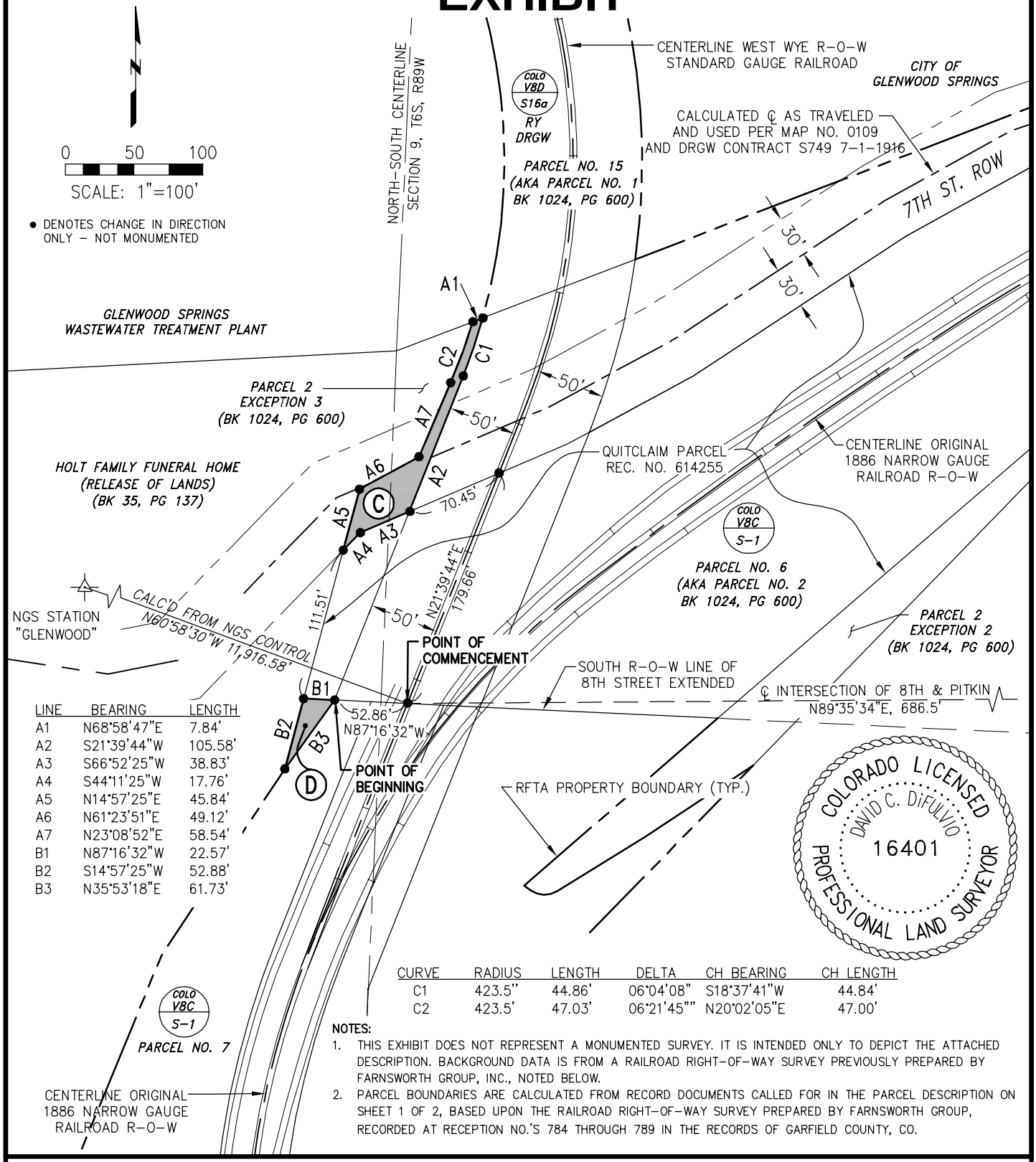
Thence, S 14° 57' 25" W, 52.88 ft.;
Thence, N 35° 53' 18" E, 61.73 ft. to the **Point of Beginning**,

The above described Parcel D is estimated to contain 0.013 acres, more or less, and is depicted on the attached exhibit.

The above descriptions were calculated from the Railroad Right of Way Survey prepared by Farnsworth Group, Inc., last revised 12/02/08 and recorded at Reception No's 784 through 789 in the records of Garfield County, and that parcel described in that Quit Claim Deed recorded at Reception No.614255 on 11/07/2002, also at Book 1404 at Page 681 of Garfield County Records. The Basis of Bearings for this description are from said Survey and are based on a bearing of N 48° 23' 29" W, with a distance of 196,251.75 U.S. Feet, between National Geodetic Survey (NGS) Colorado High Accuracy Reference Network (CHARN) Stations "S 159" and "Glenwood" was utilized as the Basis of Bearings for the Survey. Said Bearing is based on a NAD 83 (1992) Colorado State Plane Central Zone Coordinate System modified to ground by a factor of 1.00035556. The bearing from the Point of Commencement as noted in the above description to the NGS Station "Glenwood" bears N 60°58'30" W, with a distance of 11,916.58 U.S. Feet.

The above description was prepared by David C. DiFulvio, LS# 16401
For and on behalf of FARNSWORTH GROUP, INC.
5613 DTC Parkway, Suite 1100
Greenwood Village, CO, 80111
303-692-8838.

EXHIBIT



LINE	BEARING	LENGTH
A1	N68°58'47"E	7.84'
A2	S21°39'44"W	105.58'
A3	S66°52'25"W	38.83'
A4	S44°11'25"W	17.76'
A5	N14°57'25"E	45.84'
A6	N61°23'51"E	49.12'
A7	N23°08'52"E	58.54'
B1	N87°16'32"W	22.57'
B2	S14°57'25"W	52.88'
B3	N35°53'18"E	61.73'

CURVE	RADIUS	LENGTH	DELTA	CH BEARING	CH LENGTH
C1	423.5"	44.86'	06°04'08"	S18°37'41"W	44.84'
C2	423.5'	47.03'	06°21'45""	N20°02'05"E	47.00'

NOTES:

1. THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION. BACKGROUND DATA IS FROM A RAILROAD RIGHT–OF–WAY SURVEY PREVIOUSLY PREPARED BY FARNSWORTH GROUP, INC., NOTED BELOW.
2. PARCEL BOUNDARIES ARE CALCULATED FROM RECORD DOCUMENTS CALLED FOR IN THE PARCEL DESCRIPTION ON SHEET 1 OF 2, BASED UPON THE RAILROAD RIGHT–OF–WAY SURVEY PREPARED BY FARNSWORTH GROUP, RECORDED AT RECEPTION NO.'S 784 THROUGH 789 IN THE RECORDS OF GARFIELD COUNTY, CO.

Farnsworth GROUP
5613 DTC Parkway, Suite 1100
GREENWOOD VILLAGE, CO 80111
(303) 692-8838 / (303) 692-0470 Fax

ROARING FORK TRANSPORTATION AUTHORITY
WYE AREA PARCEL TRANSACTIONS - PARCELS C & D
PARCEL DESCRIPTION AND EXHIBIT
LOCATED IN SECTION 9,
TOWNSHIP 6 SOUTH, RANGE 89 WEST, SIXTH PRINCIPAL MERIDIAN

Project No:	0130736
Drawn by:	CCP
Approved:	DCD
Date:	03/30/16
Revised:	

3 OF 3

RFTA/GWS IGA – Exhibit 4

ROARING FORK TRANSPORTATION AUTHORITY TO CITY OF GLENWOOD SPRINGS 8TH STREET EASEMENT AGREEMENT

THIS 8TH STREET EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2016 by and between the ROARING FORK TRANSPORTATION AUTHORITY, a Colorado regional transportation authority organized pursuant to Title 43 of the Colorado Revised Statutes ("RFTA"), and the CITY OF GLENWOOD SPRINGS, COLORADO, a Colorado home rule municipal corporation (the "City") (individually, a "Party", collectively, the "Parties").

WHEREAS, RFTA is the record title owner of the former D&RGW right-of-way and tracks known as the Aspen Branch that extends from Glenwood Springs to Woody Creek, Colorado (the "Corridor"), which includes an area located in Glenwood Springs in the vicinity of 8th Street where the Corridor intersects the Union Pacific Railroad ("UPRR") main interstate line in a "Wye" (the "Wye Area") , more specifically identified on **8th Street Connection Easement Agreement Exhibit A**, attached and incorporated herein by this reference;

WHEREAS, the City has for over 15 years desired to connect that portion of 8th Street lying to the east of the Wye to the 8th Street Bridge crossing the Roaring Fork River via a grade-separated structure under the RFTA tracks and right-of-way in the Wye (the "8th Street Connection") to provide for continuity along 8th Street through the City and over the Roaring Fork River;

WHEREAS, the City has undertaken a project to replace the Grand Avenue Bridge, which will significantly impact traffic in the City;

WHEREAS, it is the intent of the City to construct the 8th Street Connection to alleviate the additional traffic created by the Grand Avenue Bridge project, and in perpetuity for the benefit of the City; and

WHEREAS, RFTA desires to grant an "Easement," consistent with the **8th Street Connection Easement Agreement Exhibit A**, attached and incorporated by this reference, to the City, and the City desires to develop and maintain said Easement as a public right-of-way to be used for vehicular, utility, and pedestrian purposes.

NOW, THEREFORE, for and in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. <u>Incorporation of Recitals</u>. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **<u>Grant and Acceptance of Easement</u>.** RFTA hereby grants to the City, and the City hereby accepts, a perpetual, non-exclusive Easement across, over, and under the Property described in **8th Street Connection Easement Agreement Exhibit A**. The City's use of the Easement shall be limited to the sole purposes of (a) installing, constructing, maintaining, repairing, replacing, modifying, and reconstructing a public, grade-separated railroad crossing and appurtenant infrastructure, including utilities, necessary to the 8th Street Connection, while maintaining the rights of RFTA and the UPRR, as well as public safety; and (b) subsequent maintenance of all such improvements and utilities.

RESERVING, however, unto RFTA, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct, and renew any facilities in the Wye Area and within the Corridor deemed in RFTA's sole discretion appropriate for the use of the Corridor for transportation, shipping, trail, and/or conservation purposes as it may at any time, and from time-to-time, desire within the Corridor including the right and privilege to use the Corridor for any and all purposes, including the construction, use, and maintenance of the 8th Street Connection grade-separated structure, free of any liability whatsoever to the City; and also reserves, the exclusive right to construct, place, operate, maintain, alter, repair, replace, renew, improve, and remove communications and utility lines above, below, and on the surface of the Wye Area, including without limitation transmission by conduit, pipe, fiber optics, cable, wire, or other means, of electricity, voice data, video, digitized information, or other materials, information, or utilities; and all right and privileges as RFTA, its successors and assigns may require to investigate and remediate any and all hazards on the Corridor, including, without limitation, environmental contamination.

3. **<u>Maintenance</u>.** The City shall, at its own cost, maintain and repair the 8th Street Connection grade-separated structure from the underside of the bridge deck down, including the bridge abutments. RFTA or UPRR, if UPRR retains its operating easement within the Wye, will maintain the bridge from the deck of the bridge up, including waterproofing, ballast, ties, and rail. Should RFTA need to extend, modify, or relocate the 8th Street Connection grade-separated structure to accommodate the activation of passenger or rail service on the Corridor by RFTA, RFTA shall be entitled to do so as long as the extension, modification, or relocation does not materially interfere with the connectivity of 8th Street and the 8th Street Bridge and after review and approval of plans detailing the extension, modification, or relocation by the City, which approval will not be unreasonably withheld, and approval by the Colorado Public Utilities Commission (the "PUC"). If the sole cause of the need for such extension, modification, or relocation is the needs of RFTA, such cost will be borne by RFTA if RFTA approves the project and costs thereof, it being understood that any funding for such a project is subject to appropriation of funding. If the City should desire to extend, modify, replace, relocate, or remove the 8th Street Connection to further the City's needs, then such cost shall be borne by the City. Any such extension, modification, relocation, or replacement or repair by the City shall only be made in accordance with plans prepared by City and reviewed and approved by RFTA, which approval will not be unreasonably withheld, and approval by the PUC. For

extensions, modifications, or relocations that are jointly caused and will benefit both parties, the allocation of costs shall be by further agreement or if no agreement, then as determined by the PUC in a hearing. Unless otherwise agreed to by the Parties, replacement of the bridge due to obsolescence or ordinary wear and tear will be proportionally assessed based on the Parties' individual contributions to the Bridge Reserve Fund (as identified in Section 4 of the Intergovernmental Agreement Between the City of Glenwood Springs and the Roaring Fork Transportation Authority to Acquire Easements and Develop Transportation Infrastructure entered into May, 2016).

4. **Subject To Appropriation.** Any monetary obligations of RFTA or City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by RFTA's Board and City Council respectively and encumbered for the purposes of this Agreement.

5. **No Additional Easement.** Nothing contained herein shall be construed to grant any other easement across the Property, or across any other real property owned by RFTA.

6. **Non-Interference.** The Parties agree that their individual uses of the Easement shall be managed in a way that is reasonably undertaken to avoid interference with the other Party's use of the Easement as contemplated by this Agreement.

7. **Restoration.** The City shall, at its sole cost, promptly restore all portions of the Property not used for the 8th Street Connection to substantially the same condition that existed immediately prior to any disturbance or damage caused by the City through its construction on the Property.

8. **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.

9. **Non-Interference.** The Parties agree that their individual uses of the Easement shall be managed in a way that is reasonably undertaken to avoid interference with the other Party's use of the Easement as contemplated by this Agreement. City acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the federal Surface Transportation Board. City further acknowledges that the Corridor is "railbanked" under the National Trails System Act, 16 U.S.C. §1247(d), so that RFTA is required to preserve the Corridor for future rail use. City's improvements and use shall not interfere with RFTA's use of the Corridor for transportation, shipping, trail, and/or conservation purposes and that no disturbance or interference of said any such uses shall be allowed hereunder without the prior written approval of RFTA. This Easement shall not be deemed to give City exclusive possession of any part of the Easement area described, and nothing shall be done or suffered to be done by City at any time

that shall in any manner impair the usefulness or safety of the Corridor or of any track or other improvement on the Corridor or to be constructed thereon by RFTA in the future.

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

11. **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.

12. **No Third-Party Beneficiary.** No third party may enforce or rely upon this Agreement.

13. **Term.** This Agreement shall become effective upon signature of the last Party to sign, and the Easement provided for herein shall exist in perpetuity or until altered by the mutual agreement of the Parties.

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

15. **Counterparts.** This Agreement 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 Agreement or subsequent modifications thereto, shall be effective for all purposes.

16. **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 Agreement. Should either Party institute legal action for enforcement of this Agreement, venue of such action shall be in the United States District Court for the District of Colorado if the court has jurisdiction; if not, then all actions shall be filed in Garfield County, Colorado.

17. **Whole Agreement.** This Agreement 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.

18. **Section Headings.** The section headings in this Agreement 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.

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

20. **Notice and Representatives.** All notices required under this Agreement 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

21. **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.

22. **Severability.** Should any provision of this Agreement 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 Agreement.

23. **<u>Approval by the PUC</u>.** This Agreement is contingent on approval by the PUC of the City's application to construct the 8th Street Connection based on a design, cost, and cost allocation acceptable to the Parties.

24. **<u>Contractor Insurance</u>.** Following completion of the 8th Street Connection and in the event that the Corridor is activated for rail use by RFTA or the UPRR continues to operate on the western leg of the Wye, and prior to commencing any excavation work or work that places people or equipment at or above the track and within 25 feet of the centerline of said west leg Wye track within the Easement area pursuant to this Easement, the City agrees that it shall require any Contractor retained by City to perform any such work to procure and maintain at the Contractor's own expense, with a company reasonably acceptable to RFTA, Comprehensive General Liability Insurance (including automobile), to be maintained during the period of any construction activities, in amounts not less than those required for Class I Railroads operating in Colorado, or such other mandatory insurance requirements as may be established by applicable federal, state, or local agencies having jurisdiction over such activities, whichever is highest. Such Comprehensive General Liability Insurance policy shall, at a minimum, be maintained for:

A. All damages arising out of bodily injuries to or death of one (1) person and subject to that limit for each person;

B. All damages arising out of bodily injuries to or death of two (2) or more persons in any one occurrence;

C. Regular Contractor's Property Damage Liability Insurance for all damages arising out of injury to or destruction of property in any one occurrence and subject to the same limit per occurrence; and

D. All damages arising out of injury to or destruction of property during the policy period. If the tracks on the Property are being used in active railway operations, Contractor shall also provide Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage for each occurrence and in an annual aggregate amount. The policy must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

Such insurance policy shall contain no exclusions the effect of which are to exclude or defeat assumed contractual liability and/or indemnity; and said policy shall specifically reference this Easement Agreement and its indemnity provisions and shall insure the liability assumed by City in this Agreement, below. Furthermore, said insurance policy shall name RFTA as an additional insured; however, there shall be no exclusion the effect of which is to exclude any personal injury or death or damage to property sustained by any directors, officers, agents, attorneys or employees of RFTA. Any exclusion for working on or near a railroad must be deleted from the policy. City shall furnish RFTA with certificates of insurance evidencing such insurance to be in full force and effect and that same will not be canceled without at least thirty (30) days advance written notice by the insurance carrier to RFTA.

IN WITNESS WHEREOF, the Parties hereto have executed this 8TH STREET EASEMENT AGREEMENT in duplicate originals on the day and year first written above.

CITY OF GLENWOOD SPRINGS, COLORADO

ATTEST:

_____ By:_____

Catherine Mythen, City Clerk Michael Gamba, Mayor

APPROVED AS TO FORM: Date: _____

_____

Karl Hanlon, City Attorney

ROARING FORK TRANSPORTATION AUTHORITY

ATTEST:

_____ By:_____

Secretary Stacy Patch Bernot, Chair

APPROVED AS TO FORM: Date: _____

_____

Paul J. Taddune, General Counsel

EIGHTH STREET EASEMENT AGREEMENT

Exhibit A

RFTA/GWS IGA – Exhibit 5

ROARING FORK TRANSPORTATION AUTHORITY TO CITY OF GLENWOOD SPRINGS PEDESTRIAN TUNNEL EASEMENT AGREEMENT

THIS PEDESTRIAN TUNNEL EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2016 by and between the ROARING FORK TRANSPORTATION AUTHORITY, a Colorado regional transportation authority organized pursuant to Title 43 of the Colorado Revised Statutes ("RFTA"), and the CITY OF GLENWOOD SPRINGS, COLORADO, a Colorado home rule municipal corporation (the "City") (individually, a "Party", collectively, the "Parties").

WHEREAS, RFTA is the record title owner of the former Aspen Branch of the Denver and Rio Grande Western Railroad Company (DRGW) Right-of-Way from Glenwood Springs to Woody Creek, said parcel of land being a railroad right-of-way corridor approximately 33.5 miles in length of variable width, continuous along its length (the "Corridor");

WHEREAS, the Corridor includes the western leg of the railroad Wye in Glenwood Springs area and a private "Pedestrian Tunnel" lying beneath the western leg of the Wye located in the vicinity of the confluence of the Colorado and Roaring Fork Rivers ("the Property") and being more particularly described on the **Pedestrian Tunnel Easement Agreement Exhibit A**, attached and incorporated by this reference;

WHEREAS, it is the desire of the City to convert the use of the Pedestrian Tunnel from private use to public use and RFTA supports the City's desire;

WHEREAS, the City will file an application with the Colorado Public Utilities Commission ("PUC") to convert the use of the Pedestrian Tunnel from a private to a public crossing, which RFTA will not oppose and will support:

WHEREAS, the City desires to obtain a permanent, non-exclusive easement to establish and provide for the public's lawful, continuing use of the Pedestrian Tunnel under the western leg of the Wye; and

WHEREAS, RFTA believes it is appropriate to grant such an easement to the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. <u>Grant and Acceptance of Easement</u>. RFTA hereby grants to the City, and the City hereby accepts, a perpetual, non-exclusive "Easement" for the use of the Pedestrian Tunnel under the western leg of the Wye as such easement is described on the **Pedestrian Tunnel Easement Agreement Exhibit A** subject to the terms and conditions hereinafter set forth and pursuant to C.R.S. § 33-41-101 et seq. The City's use of the easement shall be limited to the sole purposes of a recreational pedestrian trail for non-motorized use under the western leg of the Wye. The easement granted hereby is expressly conditioned upon the performance by the City of all the covenants and agreements hereinafter set forth, and it is also hereby stipulated that a waiver by RFTA of any breach of any such covenant or agreement shall in no way impair the right of RFTA to avail itself of any subsequent breach of the same or any other covenant or agreement.

RESERVING, however, unto RFTA, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct, and renew any facilities on the Property and within the Corridor deemed in RFTA's sole discretion appropriate for the use of the Corridor for transportation, shipping, trail, and/or conservation purposes as it may at any time, and from time-to-time, desire within the Corridor including the right and privilege to use the Corridor for any and all purposes, including the construction, use and maintenance of a grade separated crossing, free of any liability whatsoever to City; and also reserves, the exclusive right to construct, place, operate, maintain, alter, repair, replace, renew, improve, and remove communications and utility lines above, below and on the surface of the Property, including without limitation transmission by conduit, pipe, fiber optics, cable, wire or other means, of electricity, voice data, video, digitized information, or other materials, information or utilities; and all right and privileges as RFTA, its successors and assigns may require to investigate and remediate any and all hazards on the Rail Corridor, including, without limitation, environmental contamination.

3. <u>Maintenance</u>. The City shall, at its own cost, own, maintain, repair, renew, replace, or remove the Pedestrian Tunnel. However, should RFTA need to extend, modify, or relocate the Pedestrian Tunnel to accommodate the activation of passenger or rail service on the Corridor by RFTA, RFTA shall be entitled to do so as long as the extension, modification, or relocation does not materially interfere with the City's use of the Easement and after review and approval of plans detailing the extension, modification, or relocation by the City, which approval will not be unreasonably withheld. If the sole cause of the need for such extension, modification, or relocation is the needs of RFTA, such cost will be borne by RFTA. If the City should desire to extend, modify, replace, relocate, or remove the Pedestrian Tunnel to further the City's needs, then such cost shall be borne by the City. Any such extension, modification, relocation, or replacement or repair by the City shall only be made in accordance with plans prepared by City and reviewed and approved by RFTA, which approval will not be unreasonably withheld. For extensions, modifications, or relocations that are jointly caused and will benefit both parties, the allocation of costs shall be by further agreement or if no agreement, then as determined by the PUC in a hearing.

4. <u>No Additional Easement Rights Reserved</u>. Nothing contained herein shall be construed to grant any other easement over or across any other real property owned by RFTA. RFTA reserves the right of title, use, and occupancy of the Corridor, subject to the rights granted herein, provided that RFTA shall not unreasonably interfere with the City's exercise of the rights granted hereunder. RFTA shall have the continuing right to all other uses of the

Corridor, including the right to construct, use, maintain, repair, relocate (subject to the provisions of Paragraph 3 above) and renew in RFTA's sole discretion any and all improvements, including without limitation tracks, overhead lines, pipelines, bus ways, trails and other facilities upon, along, over, under or across any or all parts of the Corridor, all of which may be done at any time by RFTA without prior notice and without liability to City or to any other party for compensation or damages. This Easement is subject and subordinate to all existing leases, licenses, easements, permits, claims of title or other interests of any description whatsoever and by whomever held and as may in the future be modified, renewed or extended by RFTA, including, but not limited to, any fiber optic cable.

5. **Non-Interference.** The Parties agree that their individual uses of the Easement shall be managed in a way that is reasonably undertaken to avoid interference with the other Party's use of the Easement as contemplated by this Agreement. City acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the federal Surface Transportation Board. City further acknowledges that the Corridor is "railbanked" under the National Trails System Act, 16 U.S.C. §1247(d), so that RFTA is required to preserve the Corridor for future rail use. City's improvements and use shall not interfere with RFTA's use of the Corridor for transportation, shipping, trail, and/or conservation purposes and that no disturbance or interference of said any such uses shall be allowed hereunder without the prior written approval of RFTA. This Easement shall not be deemed to give City exclusive possession of any part of the Easement area described, and nothing shall be done or suffered to be done by City at any time that shall in any manner impair the usefulness or safety of the Corridor or of any track or other improvement on the Corridor or to be constructed thereon by RFTA in the future.

6. **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.

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

8. **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.

9. **No Third-Party Beneficiary.** No third party may enforce or rely upon this Agreement.

10. **Term.** This Agreement shall become effective upon signature of the last Party to sign, and the Easement provided for herein shall exist in perpetuity or until altered by the mutual agreement of the Parties.

11. **Amendment.** This Agreement may be amended by the Parties solely through a written agreement signed by both Parties

12. Counterparts. This Agreement 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 Agreement or subsequent modifications thereto, shall be effective for all purposes.

13. Governing Law, Venue and Survival. The laws of the State of Colorado, to the extent not preempted by federal law as a result of the railbanked status of the Corridor and exclusive jurisdiction of the Surface Transportation Board over railbanked rail corridors shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal action for enforcement of this Agreement, venue of such action shall be in the United States District Court for the District of Colorado, if that court has jurisdiction; otherwise, any such legal action shall be filed in Garfield County, Colorado.

14. Whole Agreement. This Agreement 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.

15. Section Headings. The section headings in this Agreement 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.

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

17. Notice and Representatives. All notices required under this Agreement 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

Attn.: RFTA General Counsel
2307 Wolfsohn Road
Glenwood Springs, CO 81601

18. **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.

19. **Severability.** Should any provision of this Agreement 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 Agreement.

20. **Railbanking Protection.** Notwithstanding anything in this Agreement to the contrary, no action by either party shall result in the Corridor being severed from the main interstate rail line. If RFTA in its sole discretion upon advice of legal counsel believes that an action permitted by this Easement has or will cause a severance of the Corridor from the UPRR main line, RFTA shall notify the City and RFTA and the City shall work together to revise this Easement to correct the potential severance or impediment to freight rail service. Only in the event no modification can be agreed upon, my RFTA terminate this Easement

21. **Great Outdoors Colorado Trust Fund.** This Agreement is conditional upon and subject to all applicable requirements of the Agreement made the 17th day of January, 2001 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. City agrees not to undertake any further activity within the Property other than customary maintenance and repair without first obtaining the written approval of RFTA.

22. **Indemnification.** To the extent permitted by law, City shall defend, indemnify, and hold RFTA harmless from any and all claims, suits, costs, and liability occasioned by its acts or neglects, or its agents, employees, or invitees, arising out of the easement granted hereby. To the extent permitted by law, City shall also defend and hold harmless RFTA from and against any injury, claim or damage to any third party arising out of or in connection with City's operations under this Agreement.

23. **No Assignment.** City shall not assign this Agreement or any rights granted pursuant to this Agreement without the prior written consent of RFTA.

24. **Protection of Drainage.** Any work undertaken by the City related to the easement shall be undertaken in compliance with all federal, state, and local inspections and requirements and subject to approval of RFTA, which approval will not be unreasonably withheld.

25. **Protection of Underground Utilities.** City acknowledges that Qwest Communications Corporation or its successor and other utilities operate under and along the Rail

Corridor and that fiber optic cable and is buried through the Rail Corridor and possibly under the Tunnel. City, at least five (5) days prior to performing any excavation activities on the Property or the Tunnel shall notify RFTA at (970) 384-4971 and shall notify Qwest Communication at 1-800-AT-FIBER (a 24-hour number) at least three (3) business days before doing any digging. Prior to beginning any work on the Tunnel, City shall determine where any utilities are buried on or about the Tunnel. City shall pay special attention to fiber optic cable and determine the names of the telecommunications and utility company(ies) involved, arrange for a utility locator, determine whether arrangements for relocation or other protection of the fiber optic cable or other utilities is required and shall so notify RFTA. Any such relocation or protection shall be at City's expense.

26. **City's Duty to Install Improvements**. If at any time after the installation of the Tunnel, any Local, State or Federal law or regulation, or any Local, State, or Federal officer or regulatory board or commission having jurisdiction shall require any alterations, changes or improvements of the Tunnel, as herein defined, or any additional safeguards, protection, signals or warnings, the same shall be constructed, maintained, and operated at the sole expense of City.

27. **Subject To Appropriation.** Any monetary obligations of RFTA or City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by RFTA's Board and City Council respectively and encumbered for the purposes of this Agreement.

28. **Contractor Insurance.** In the event that the Corridor is activated for rail use by RFTA or the UPRR continues to operate on the western leg of the Wye, and prior to commencing any excavation work or work that places people or equipment at or above the track and within 25 feet of the centerline of said west leg Wye track within the Easement area pursuant to this Easement, the City agrees that it shall require any Contractor retained by City to perform any such work to procure and maintain at the Contractor's own expense, with a company reasonably acceptable to RFTA, Comprehensive General Liability Insurance (including automobile), to be maintained during the period of any construction activities, in amounts not less than those required for Class I Railroads operating in Colorado, or such other mandatory insurance requirements as may be established by applicable federal, state, or local agencies having jurisdiction over such activities, whichever is highest. Such Comprehensive General Liability Insurance policy shall, at a minimum, be maintained for:

A. All damages arising out of bodily injuries to or death of one (1) person and subject to that limit for each person;

B. All damages arising out of bodily injuries to or death of two (2) or more persons in any one occurrence;

C. Regular Contractor's Property Damage Liability Insurance for all damages arising out of injury to or destruction of property in any one occurrence and subject to the same limit per occurrence; and

D. All damages arising out of injury to or destruction of property during the policy period. If the tracks on the Property are being used in active railway operations, Contractor shall also provide Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage for each occurrence and in an annual aggregate amount. The policy must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

Such insurance policy shall contain no exclusions the effect of which are to exclude or defeat assumed contractual liability and/or indemnity; and said policy shall specifically reference this Easement Agreement and its indemnity provisions and shall insure the liability assumed by City in this Agreement, below. Furthermore, said insurance policy shall name RFTA as an additional insured; however, there shall be no exclusion the effect of which is to exclude any personal injury or death or damage to property sustained by any directors, officers, agents, attorneys or employees of RFTA. Any exclusion for working on or near a railroad must be deleted from the policy. City shall furnish RFTA with certificates of insurance evidencing such insurance to be in full force and effect and that same will not be canceled without at least thirty (30) days advance written notice by the insurance carrier to RFTA.

29. <u>No Warranty</u>. RFTA does not warrant its title to the Property nor undertake to defend City in the peaceable possession, use, or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interests of others and as they may be extended or renewed.

30. <u>Easement Vacation</u>. If at any time the use of the Easement area for the purposes herein should be discontinued by City for a continuous period of one year, this License shall thereupon cease and City shall surrender or cause to be surrendered to RFTA, or its successors or assigns, the peaceable possession of the Easement and surrender all rights and claims of City or of the public for use and occupancy of the said Easement area.

IN WITNESS WHEREOF, the Parties hereto have executed this PEDESTRIAN TUNNEL EASEMENT-AGREEMENT in duplicate originals on the day and year first written above.

CITY OF GLENWOOD SPRINGS, COLORAOD

ATTEST:

_____
Catherine Mythen, City Clerk

By:_____
Michael Gamba, Mayor

APPROVED AS TO FORM:

Date: _____

_____
Karl Hanlon, City Attorney

ROARING FORK TRANSPORTATION AUTHORITY

ATTEST:

_____
Secretary

By:_____
Stacy Patch Bernot, Chair

APPROVED AS TO FORM:

Date: _____

_____
Paul J. Taddune, General Counsel

PEDESTRIAN TUNNEL EASEMENT AGREEMENT

Exhibit A