Irrigation Pipeline Maintenance Agreement

This Irrigation Pipeline Maintenance Agreement (the "Agreement") is made and entered into effective _____, 2016 by and between THE ROARING FORK TRANSPORTATION AUTHORITY ("RFTA"), as the Grantor hereunder, and Myers & Associates Properties, LLC, a Colorado limited liability company (the "Grantee").

RFTA is the owner of that certain real property described as Lot O and P of the Final Plat of Basalt Business Center South, Town of Basalt, County of Pitkin, State of Colorado, as such plat has been filed for record in the Office of the Clerk and Recorder of Pitkin County, Colorado on the 4th day of May 1993 as Reception No. 356525 in Book 31 at Page 80 Grantee is the owner of that certain real property described as Lot V and Lot W of the aforementioned Final Plat of Basalt Business Center South.

RFTA hereby grants and conveys to Grantee, a non-exclusive right to improve and maintain the Irrigation Pipeline that was placed in the 10 ft Utility and Drainage Easement depicted by the arrow labeled "Irrigation Pipeline" on that Basalt Park and Ride Special Review and PUD Site Plan (project 2010-0012) recorded in the Pitkin County real estate records on the 16th day of January, 2013 in Book 101, Page 73 attached hereto and made a part hereof as Exhibit "A ".

The Irrigation Pipeline constructed by Grantee shall be repaired and maintained by Grantee at the sole cost and expense of Grantee and such repairs and maintenance shall be subject to the following conditions:

- **Notice:** Grantee shall provide RFTA with ten (10) working days' notice prior to the commencement of any work on the Irrigation Pipeline.

- **Traffic Control and Safety:** Grantee shall be responsible for all traffic control associated with the repair of the Irrigation Pipeline and shall provide RFTA with a safety plan appropriate for the work being done.

- **Locates:** Grantee shall be responsible for locating all underground utilities prior to the commencement of work.

- **Repair of Parking Lot:** Grantee shall repair and restore RFTA's property to its condition existing prior to the commencement of the work, including but not limited to the landscaping, irrigation, asphalt, drainage, striping and concrete. Grantee shall protect the asphalt surface of the park and ride from damage by equipment.

- **Minimal Interference with RFTA Use:** Grantee shall not and shall not close more than one-half (½) of the RFTA Park and Ride as any time and shall maintain traffic flow to all unaffected portions of the Park and Ride

- **Staging and Storage for Material:** Grantee may use a portion of the RFTA Park and Ride for staging and storage of materials with the permission of the RFTA Director of Facilities.

- **Insurance:** Grantee shall maintain adequate insurance during the life of the repair and maintenance project.

This Agreement and the rights to Grantee herein are granted herein solely for the purposes described herein and shall terminate if Grantee abandons the Irrigation Pipeline.

Limitations on Rights Granted: This Agreement is subject and subordinate to a reservation by RFTA of the prior and continuing right of RFTA to all other uses of the Utility and Drainage Easement not inconsistent with the rights granted to Grantee hereby.

Environmental Protection**:** Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of RFTA only with regard to Grantee's activities pursuant to this Agreement. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the maintenance agreement solely as a result of Grantee's use, presence, operations or exercise of Grantee's rights granted hereunder, Grantee shall immediately notify RFTA and shall, at Grantee's expense, clean all portions of the RFTA's property affected thereby, to the reasonable satisfaction of RFTA (insofar as property owned or controlled by RFTA is concerned) and any governmental body having jurisdiction in the matter. RFTA may, at its option, clean RFTA's property of such discharge referred to above, and Grantee shall indemnify, defend and hold RFTA harmless from and against all claims, liability, costs and expenses (including without limitation, any fines, penalties, judgments, litigation costs and attorneys' and consultants' fees and expenses) incurred by RFTA as a result of any such discharge, leakage, spillage, emission or pollution by Grantee on RFTA's property.

No Liens to be Filed: Grantee shall pay in full all persons who perform labor on any portion of the Irrigation Pipeline, or any other portion of the real property upon which the Irrigation Pipeline has been constructed, for Grantee or at Grantee's request and will not allow any mechanics' or materialmen's liens to be enforced against RFTA for work done or materials furnished thereon at Grantee's request. If any such liens are filed thereon, Grantee agrees to remove the same at Grantee's sole cost and expense and to pay any judgment which may be entered thereon or thereunder. Should Grantee fail, neglect or refuse to do so, RFTA (may pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Grantee shall be liable to RFTA the payment of any such liens or judgment and any and all costs, expenses, damages, attorneys' and consultant's fees and expenses, and any other amounts expended by RFTA in defending any such proceedings. Grantee shall either reimburse RFTA or pay directly for any work which is required to be performed by Grantee.

Grantee's Assumption of Liability: Grantee assumes all liability for damage to or destruction of property, injury to or the death of persons resulting from Grantee's use of the Irrigation Pipeline.

Indemnification: Grantee, to the extent permitted by law and to the extent of their duties and obligations herein, shall at all times protect, indemnify, defend and save RFTA harmless from any and all claims, demands, judgments, cost, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any claim for injury to or death of any person, or any claim for damage to property of any person or persons whomsoever, including the parties hereto and their officers, families, servants and employees, in any manner arising from the maintenance, operation, repair, extension, renewal, existence, or use by Grantee or of the Irrigation Pipeline as provided or required in this Agreement, or the failure by Grantee to properly maintain the same as agreed herein, and from all costs and expenses, including attorneys' fees and consultants' fees and expenses, connected in any way with the matters and things which are the specific obligations of Grantee as specifically set forth in this Agreement.

Headings: The section headings contained in this Agreement are inserted for convenience only and are not intended to in any way affect the meaning or interpretation of any such section or provision of this Agreement.

Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

Amendments and Waivers: No amendment of any provision of this Easement Agreement shall be valid unless the same shall be in writing and signed by RFTA and Grantee . No waiver by RFTA of any default or breach of any covenant or agreement by Grantee shall be deemed to extend to any prior or subsequent default or affect in any way any of RFTA's rights arising by virtue of any prior or subsequent default.

Severability: Any term or provision of this Agreement that is held by a court of competent jurisdiction to be invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

Entire Agreement: This Agreement constitutes the entire agreement between RFTA and Grantee pertaining to the Irrigation Pipeline and supersedes all prior understandings, agreements or representations among them, written or oral, that may have related in any way to the Irrigation Pipeline, except for the Rule and Order which shall control under all circumstances.

No Third Party Beneficiaries: This Agreement defines the rights and duties of the parties hereto and their respective successors and assigns, and may not be relied upon by any third party as the basis of a claim.

Attorneys' Fees: If any action or proceeding is instituted for enforcement or interpretation of any term of this Agreement, the prevailing party or parties shall be entitled to recover from the other non-prevailing party or parties all reasonable costs and expenses incurred by the prevailing party or parties in said action and any appeal therefrom, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

Notices: All notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, or by overnight express delivery by a nationally recognized overnight courier directed as follows:

GRANTEE:

Myers & Associates Properties, LLC
c/o Robert H. Myers
555 Basalt Ave.
Basalt, CO 81621

RFTA:

Roaring Fork
Transportation Authority
2307 Wulfsohn Road
Glenwood Springs, CO 81601
Attn: CEO

Such notice delivered by (a) certified mail in accordance with the foregoing procedures shall be deemed to have been duly given three (3) business days after such notice is deposited with the United States Post Office, or (b) overnight express delivery by a nationally recognized overnight courier shall be deemed to have been duly given one (1) business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day. Any party may specify a different address for notices by delivery of written notice to the other party.

Representations and Warranties: RFTA and Grantee each warrant and represent to the other parties hereto that each, respectively, has the power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement, this Agreement has been duly authorized by all actions of each such party, and the person (or persons) signing for each party has (have) been duly and legally authorized by such party to do so.

Governmental Immunity Act: Notwithstanding anything to the contrary herein, RFTA shall not be deemed to have waived in any manner the rights, obligations, and protections afforded or imposed on RFTA by law including the Colorado Governmental Immunity Act or the Colorado Constitution.

Construction: Whenever appropriate from the context, the use of any gender (including, but not limited to, neuter) shall include any other or all genders, and the singular number shall include the plural, and the plural shall include the singular. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

Recording: This Agreement, when fully executed, shall be recorded in the Office of the Pitkin County Clerk and Recorder.

Permitted Assignees of Grantee: Grantee shall be permitted to lease or assign, as applicable, the rights and obligations of Grantee under this Agreement to any tenant or purchaser of the Benefitted Parcels; provided however, that the lessee's/assignee's use of the irrigation pipeline agreement does not exceed (and will not be permitted to exceed) the scope of the irrigation pipeline agreement and Grantee's prior use as defined in Exhibit A thereof in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first set forth above.

GRANTOR:	**GRANTEE:**
ROARING FORK TRANSPORTATION AUTHORITY	MYERS & ASSOCIATES PROPERTIES, LLC, a Colorado limited liability company
By: _____	By: _____
Dan Blankenship	Name printed: _____
Title: CEO	Title: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Daniel Blankenship, CEO for the **Roaring Fork Transportation Authority**.

Witness my hand and official seal.

My commission expires: _____. _____

Notary Public

STATE OF COLORADO)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____, as _____ of **Myers & Associates Properties, LLC**, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____. _____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

EXHIBIT A

Basalt Park and Ride PUD site plan and Depiction of Utility and Drainage Easement.

[See attached pages.]

EXHIBIT B

Park and Ride Repair Specifications

[See attached pages.]