ACCESS AGREEMENT
Between
Roaring Fork Transportation Authority,
Evergreen Trails Inc., dba Horizon Coach Lines,
And
The Colorado Department of Transportation

This Access Agreement (this "Agreement") is made this _____ day of _____, 2015, between the Roaring Fork Transportation Authority, a Regional Transportation Authority ("RFTA"), Evergreen Trails Inc., a Washington Corporation, dba Horizon Coach Lines ("Horizon"), and the STATE of COLORADO, acting by and through the Colorado Department of Transportation ("State" or "CDOT"). RFTA, Horizon and CDOT may also be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

1. RFTA owns and operates 27th Street Station (aka South Glenwood Station) at 2718 South Glen Avenue in the City of Glenwood Springs, County of Garfield, State of Colorado, 80601 and West Glenwood Park-n-Ride at 130 Midland Avenue in the City of Glenwood Springs, County of Garfield, State of Colorado, 80601 (hereinafter individually referred to as "Facility" or "Premises", or collectively as "Facilities" or "Premises").
2. CDOT operates the Bustang Service through Horizon.
3. The lines of the Parties connect at the Facilities.
4. The purpose of this Agreement is to allow access to the Facilities for the purpose of picking up and discharging Bustang passengers.

TERMS AND CONDITIONS

A. PURPOSE
CDOT and Horizon wish to have commercial vehicle access at the Facilities for the purpose of engaging in transportation of passengers and luggage, and have requested access to the Facilities to accomplish this objective.

B. LICENSE
Subject to all the terms and conditions hereof, RFTA hereby grants to CDOT a non-exclusive license ("License") for the right of accessing the Facilities with Horizon buses, in the areas shown and described on **Exhibit A**, which is attached hereto and fully incorporated by reference herein, solely for use as a bus pick-up and drop-off location.
   1. CDOT and Horizon are prohibited from constructing any fixtures or improvements at the Facilities.
   2. This Agreement is subject to all outstanding rights, including any and all existing licenses affecting the Facilities, whether recorded or unrecorded, and is subject to RFTA's rights to renew and extend the same.
   3. CDOT and Horizon acknowledge that the Facilities are located on properties that are currently used as RFTA bus terminals. CDOT and Horizon shall not interfere with RFTA's use and/or maintenance of the Facilities, nor interfere with the public use of the Facilities.

RFTA shall retain all other rights in and usage of the Facilities not inconsistent with the reasonable enjoyment of this License.

4. CDOT and Horizon shall not permit any lien to be placed on the Facilities properties arising from performance of any work or operations hereunder, and shall promptly cause any such lien to be removed.
5. The right to use the Facilities granted hereunder is hereby contracted for and shall be granted with respect to the Facilities in their "as is" physical conditions without any further warranty, express or implied. This grant is subject to all other prior granted or reserved rights and interests in the Facilities, if any, whether of record or not.

C. CDOT ACTIVITES

CDOT shall notify RFTA of the date Horizon will commence its service at the Facilities, but such notification shall occur no ~~sooner~~ later than 3 days prior to the date CDOT would like service to commence, and RFTA shall notify CDOT in writing of the date service may commence.

1. Horizon shall utilize the locations designated in **Exhibit A** as its passenger loading and unloading points. All Bustang buses operated by Horizon shall enter and exit the Facility in accordance with the directional signage and street markings displayed at the Facilities.
2. Horizon shall operate the Bustang Service in accordance with the times of service and number of buses as provided in **Exhibit B**, which is attached and fully incorporated by reference herein.
3. Horizon drivers shall have access to all common areas of the Premises that are open to the general public, such as waiting areas, restrooms, walk ways, and any other areas required for passenger movements.
4. By written ~~notification~~agreement (**Exhibit C**), the Parties may hereunder modify the schedule and access locations, as provided in **Exhibits A** and **B**, as necessary to effectuate the Agreement.
5. Horizon drivers shall immediately notify RFTA dispatch, if applicable, at the number listed in **Exhibit A** if any accident or injury to person or property is observed at the Facilities whether or not such accident involves Horizon vehicles and/or employees or contractors. Horizon drivers, supervisors and other employees or contractors shall strictly adhere to all instructions communicated by RFTA. CDOT and its employees or Horizon and its employees agree to cooperate with RFTA in any investigation into any events at the Facility.
6. In their provision of the transportation services related to this Agreement, CDOT and Horizon shall be jointly and severally responsible for compliance with all applicable statutes, laws and regulations, including but not limited to the Americans with Disabilities Act.

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Comment [FG1]: Exhibit A requires modification to show directional signage.

Comment [MW2]: A notification and objection period is preferred as a bilateral amendment can take up to two months for execution.

Comment [FG3]: Need Exhibit C.

Comment [FG4]: No phone number is provided in Exhibit A.

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~~D. CONDITION OF PREMISES~~

~~Local Agency shall maintain Premises in the same condition they were in at the commencement of this Agreement, reasonable wear and tear excepted. The Local Agency shall maintain Premises at their sole expense with no contribution from CDOT.~~

~~E.~~D. OPERATING CONDUCT

Horizon shall (i) operate at the Facilities in compliance with all current or future laws and the rules and regulations promulgated by RFTA for the Facilities and (ii) keep the Facilities free from all trash and debris arising from Horizon's operations.

~~F.~~E. TERM OF AGREEMENT

This Agreement, including the License herein, shall become effective as of the date first written above and shall continue until terminated by one or both Parties. The Parties may terminate this Agreement, including the License granted herein, with ~~180~~30 days prior written notice.

~~G.~~F. NOTICES

For CDOT:
Mike Timlin, Bus Operations Manager
4201 East Arkansas Avenue
Denver, CO 80222
Ph: 303-757-9648
Email: michael.timilin@state.co.us

For RFTA:
David Johnson, Director of Planning
Roaring Fork Transportation Authority
1340 Main Street
Carbondale, CO 81623
Ph: 970-384-4979
Cell: 970-376-4492
Email: djohnson@rfta.com

Jason White, Assistant Planner
Roaring Fork Transportation Authority
1340 Main Street
Carbondale, CO 81623
Ph: 970-384-4968
Cell:
Email: jwhite@rfta.com

For Horizon:

Kevin O'Connor, Vice President Contract Services
Horizon Coach Lines
14000 West 44th Avenue
Golden, CO 80403
Ph: 469.236.5309
koconnor@horizoncoachlines.com

~~H.~~G. STATUS OF PARTIES

The Parties shall be solely responsible for hiring, supervising and discharging of their own employees or contractors. RFTA shall have no responsibility for, nor authority or control, except as otherwise stated in paragraph C part 5 with respect to, the supervision and management of

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the CDOT employees, Horizon employees and other employees or contractors who work in connection with the transportation service provided in this Agreement.

The Parties agree that the status of each Party shall be that of an independent contractor to each other, and it is not intended, nor shall it be construed that one Party or any officer, employee, agent or representative of that Party is an employee, partner, joint venturer or associate of any other Party. Nothing contained in the Agreement or documents incorporated by reference herein or otherwise, creates any partnership, joint venture or other association or relationship other than that of independent contractor between RFTA, CDOT and Horizon. Any approval, review, inspection, direction or instruction by RFTA or any party on behalf of RFTA shall in no way affect any Party's independent contractor status or obligation to perform in accordance with this Agreement. No Party has authorization, express or implied, to bind any other Party to any agreement, liability, or understanding except as expressly set forth in this Agreement.

~~I.~~H. INSURANCE

Horizon ("CONTRACTOR" in this Section H.), shall procure and maintain for the duration of the Agreement insurance as set forth below against claims, damages, losses, and expenses which may arise from or in connection with the performance of this Agreement. Horizon will carry all required insurance, with CDOT ("STATE" in this Section H.) and RFTA ("LOCAL AGENCY" in this Section H.) named as additional insureds.

i. GENERAL LIABILITY: Commercial General Liability Insurance shall be written on an ISO form CG 00 01 occurrence form or equivalent for hazards of: (a) Operation, (b) Subcontractors and Independent Contractors with minimum limits of $2,000,000 each occurrence and $4,000,000 aggregate. The general aggregate coverage limits shall apply per project and shall be evidenced on the Certificate of Insurance. Insurance shall include contractual liability coverage sufficient to meet the requirements of this Agreement (including defense costs and attorney's fees assumed under the Agreement, which shall be payable in addition to the limit of liability.).

a. The General Liability policy shall be endorsed to name the STATE, its agents, officers, directors, officials, employees, and volunteers, and the LOCAL AGENCY, its agents, officers, directors, officials, employees, and volunteers as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to Additional Insured parties.
b. Coverage shall be primary and non-contributory as respects to any insurance held by the STATE and the LOCAL AGENCY. Any insurance or self-insurance maintained by the STATE and the LOCAL AGENCY shall be excess of that insurance maintained by CONTRACTOR.
c. The policy shall be endorsed to waive subrogation in favor of Additional Insured parties.

ii. BUSINESS AUTOMOBILE LIABILITY: Commercial Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Scope with minimum limits of $5,000,000 Combined Single Limit. Insurance shall include coverage for bodily injury, death and property damage to Lease Vehicles arising out of ownership, maintenance or use of any motorized vehicle and Contractual Liability coverage, and contractual liability coverage sufficient to meet the requirements of this Agreement.

a. The Commercial Business Automobile policy shall be endorsed to name the STATE, its agents, officers, directors, officials, employees, and volunteers, and the LOCAL AGENCY,

its agents, officers, directors, officials, employees, and volunteers as Loss Payees and Additional Insureds.(CA 20 01 10 13 or its equivalent).

b. Coverage shall be primary and non-contributory as respects to any insurance held by the STATE and the LOCAL AGENCY. Any insurance or self-insurance maintained by the STATE and the LOCAL AGENCY shall be excess of that insurance maintained by CONTRACTOR.

c. The policy shall be endorsed to waive subrogation in favor of Additional Insured parties.

d. The policy shall be endorsed to include Motor Carrier Act endorsement-Hazardous Materials Cleanup (MSC-90), if applicable.

iii. WORKERS' COMPENSATION: Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Scope is to be performed Employers' Liability Insurance with minimum limits of $1,000,000 Each Accident, $1,000,000 Disease Each Employee $1,000,000 Disease Policy Limit.

a. Policy shall include a waiver of subrogation in favor of the STATE, its officers, directors, officials, employees, and volunteers, and the LOCAL AGENCY, its officers, directors, officials, employees, and volunteers.

iv. EXCESS/UMBRELLA LIABILITY: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over CONTRACTOR's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with minimum limits of $10,000,000 each occurrence and aggregate.

a. All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy.

b. CONTRACTOR's Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.

v. COMMERCIAL CRIME: CONTRACTOR shall provide Commercial Crime coverage in the amount of $5,000,000 covering employee dishonesty involving money, theft, disappearance, and destruction of money and securities. The Commercial Crime policy must be endorsed to cover Third Party Fidelity. Additionally to ensure payment to the State and RFTA, the policy should include the STATE and LOCAL AGENCY as Loss Payees.

vi. PRIMACY OF COVERAGE: Coverage required of CONTRACTOR and any subcontractor shall be primary over any insurance or self-insurance program carried by CONTRACTOR, the STATE, or the LOCAL AGENCY.

I. No Waiver of Governmental Immunity. RFTA and its directors, officials, officers, agents and employees and CDOT (State) are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq*., as it may be amended from time to time.

J. NO EFFECT ON SERVICE

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Nothing in this Agreement shall be construed to limit ~~Local Agency's~~RFTA's right to establish routes or services or perform any functions authorized by C.R.S. § 32-9-101, et seq. Similarly, nothing in this Agreement shall be construed to limit CDOT and Horizon's right to determine routes or service. Lastly, nothing herein guarantees any RFTA service to CDOT's, Horizon's or RFTA's passengers and fare holders.

K. ASSIGNMENT

Other than as specifically provided herein, CDOT and Horizon agree that they will not assign or transfer any of their rights or obligations under this Agreement, including but not limited to the License granted herein, without first obtaining the written consent of RFTA.

K. NO THIRD PARTY BENEFICIARY

The Parties expressly agree that enforcement of the terms and conditions of this Agreement, including but not limited to the License granted herein, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person and/or entity other than the Parties that receives funding, services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. LEGAL AUTHORITY

RFTA, Horizon and CDOT represent or warrant to each other that they have all necessary legal authority to enter into this Agreement and to perform their obligations hereunder and that this Agreement does not conflict with any other agreement that any Party is subject to or to which it may be bound. The person signing and executing this Agreement on behalf of each Party represents that he/she fully executes this Agreement to validly and legally bind a Party to all the terms, performances and provisions herein set forth. The Parties shall have the right, at their option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of a Party or the person signing the Agreement to enter into this Agreement. No Party shall be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this paragraph.

M. AMENDMENTS

This Agreement may be modified or amended only by a written document duly executed by all Parties.

N. PRIOR AMENDMENTS

The terms and provisions of this Agreement, including but not limited to the Recitals above, the Exhibits incorporated by reference herein, and the License granted herein, represent the entire understanding of the Parties with respect to the subject matter of this Agreement, and merge, incorporate and supersede all prior communications between RFTA, Horizon and CDOT

concerning that subject. No representations or warranties are made by RFTA, Horizon or CDOT except as herein set forth.

O. CONFLICT OF INTEREST

No officer, member, or employee of any Party and no members of a governing body, and no other public official or employee of the governing body of the locality or localities included within RFTA, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

P. WAIVER AND BREACH

The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

Q. GOVERNING LAW

Each and every term, provision, and condition of this Agreement is subject to the provisions of Colorado law. This Agreement is subject to such modifications as may be required by changes in Colorado or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.

R. SEVERABILITY

The Parties expressly agree that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any state or federal law, rule, or regulation, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

STATE OF COLORADO **John W. Hickenlooper, GOVERNOR** Colorado Department of Transportation **Shailen Bhatt, Executive Director** _____ By: Joshua Laipply, P.E.**, Chief Engineer** Date: _____	**LEGAL REVIEW** **Cynthia H. Coffman, Attorney General** By:_____ Signature - Assistant Attorney General Date: _____
THE LOCAL AGENCY **Roaring Fork Transportation Authority** Dan Blankenship CEO Print: _____ Title: _____ _____ *Signature Date: _____	**THE LOCAL AGENCY** **Roaring Fork Transportation Authority** **2nd Signature if Required** Print: _____ Title: _____ _____ *Signature Date: _____
Evergreen Trails Inc., dba Horizon Coach Lines, Inc. Print: _____ Title: _____ _____ Date: _____	**Evergreen Trails Inc., dba Horizon Coach Lines, Inc.** **2nd Signature if Required** Print: _____ Title: _____ _____ *Signature Date: _____

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Exhibit A - MAP

West Glenwood Park-n-Ride
130 Midland Ave., Glenwood Springs, CO 81601
[Insert phone contact here]

Aerial View

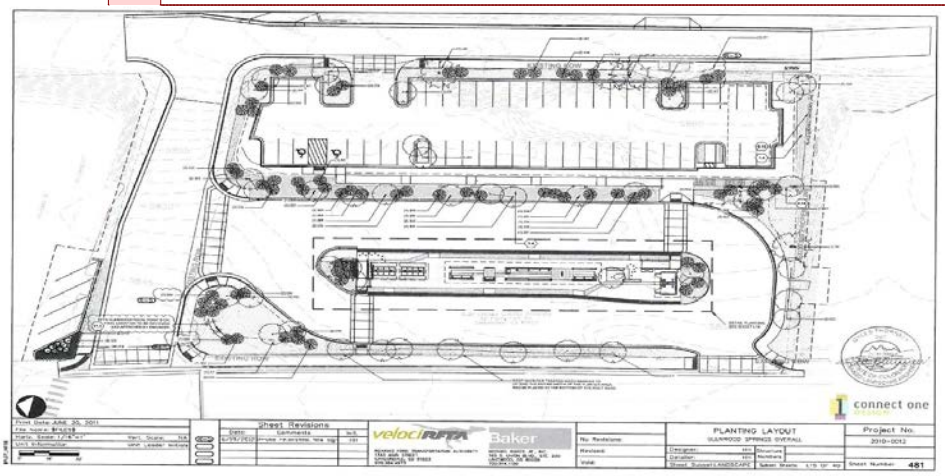
Comment [VM5]: Need guidance on enter/exit arrows.

Ground View

Exhibit A - MAP

27th Street Station (aka South Glenwood Station)
2718 S. Glen Ave., Glenwood Springs, CO 81601
[Insert phone contact here]

Aerial View



Comment [VM6]: Need guidance on enter/exit arrows.

Ground View

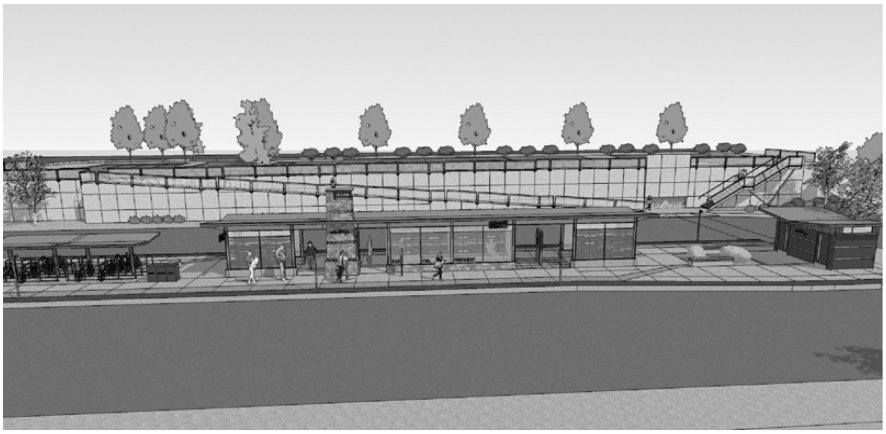


Exhibit B - SCHEDULE

WEST LINE - BLUE	EASTBOUND
	701
Glenwood Springs *(South Glenwood BRT Sta.)*	7:05 AM
Glenwood Springs*(West Glenwood Park & Ride)*	7:15 AM
Eagle *(Chambers Park & Ride)*	7:50 AM
Vail *(Vail Transportation Center)*Arr	8:20 AM
Vail *(Vail Transportation Center)*DEP	8:25 AM
Frisco *(Frisco Transfer Center)* Arrive	8:55 AM
Frisco *(Frisco Transfer Center)*Depart	8:55 AM
Lakewood - Denver Federal Center	10:05 AM
Denver Union Station ARR	10:20 AM
Denver Union Station DEP	10:25 AM
Denver Bus Center	10:35 AM

WEST LINE - BLUE	WESTBOUND
	700
Denver Bus Center	6:00 PM
Denver Union Sation Arr	6:20 PM
Denver Union Station Depart	7:35 PM
Lakewood - Denver Federal Center	7:35 PM
Frisco Arr	8:05 PM
Frisco Depart	8:10 PM
Vail Arrive	8:40 PM
Vail Depart	9:20 PM
Eagle	9:30 PM
Glenwood Springs*(West Glenwood Park & Ride)*	9:30 PM
Glenwood Springs *(South Glenwood BRT Sta.)*	9:30 PM

Except Saturdays, Sundays, and Holidays

No Passengers will be handled whose entire trip is within the RTD District. No passengers will be carried is their entire trip is between Eagle and Vail.

Exhibit C – SAMPLE CHANGE LETTER

[Date]

[Local Agency Name]
[Local Agency Contact]
[Local Agency Address]

Change Letter #:
Project #:
Original Routing # and Current Routing #:
Subject: To notify of change to Bustang Bus Schedule at [Park and Ride Name or Transit Station Name]

Dear Ms./Mr. _____

This is with regard to the contract signed between [Local Agency Name] and Evergreen Trails Inc. dba Horizon Coach Lines, Inc. ("Horizon") and the State of Colorado acting by and through the Colorado Department of Transportation ("CDOT") executed on [date of execution] with regard to the Bustang Bus Service Access to Local Agency's [Park and Ride Name or Transit Station Name].

In accordance with Section C. 4 of the original Access Agreement, CDOT and Horizon are modifying the Bustang bus schedule as shown in the attached schedule.

The modified schedule is effective on [Date] and will remain in effect for the Term of the Access Agreement or until modified by a future Change Letter. Should [Local Agency Name] disagree with the schedule changes provided by CDOT and Horizon, [Local Agency] should contact the CDOT contact listed under Section 4, Notices, within 10 days of the date of this Change Letter.

Thank you,

DTR Director