May 15, 2015

Mr. Michael Gamba, Mayor
City of Glenwood Springs
101 West 8th Street
Glenwood Springs, CO 81601

Re: Draft Access Control Plan: Letter from former Mayor Leo McKinney, dated 3/6/15

Dear Mayor Gamba:

After consultation with the RFTA Board at its meeting on May 14, 2015, this is to respond to the letter of former Mayor McKinney, dated March 6, 2015, that was addressed to Stacey Bernot, Chair of the RFTA Board of Directors, and me, a copy of which can be found as Attachment A. I apologize for the delay in responding to Mr. McKinney's letter; however, the RFTA Board did not have a meeting in April; therefore, I was not able to discuss RFTA's response to Mr. McKinney's letter with the Board until the meeting held on May 14th.

Mr. McKinney's letter stated that he was authorized by a unanimous vote of the City Council members present at the March 5, 2015 City Council meeting to send the letter. As such, I believe that it would be best to meet with the newly seated City Council and applicable staff at the Council's earliest convenience to discuss and evaluate the City's expressed concerns. The RFTA's General Counsel and I have made several attempts to arrange meetings with City staff and you to discuss the City's concerns about the ACP and to hear your ideas about how RFTA could work more collaboratively with the City; however, your schedules have not permitted such meetings to take place so far.

Mr. McKinney's letter set forth five actions that the City Council strongly encouraged RFTA to consider, as indicated below. RFTA's responses are provided as follows:

1. Adopt a "purpose and need" statement at the board level, and use that as a driving force to derive policy.

Response: The RFTA Board has adopted End Statement 1.1, A-B, which states:

1.1 The Rio Grande Corridor is Appropriately Protected and Utilized

A. The valley-wide trail is completed by 2010 (completed)
B. Rio Grande Corridor open space is protected
C. Rio Grande Corridor is preserved for transit use

Please also refer to Attachments B and C for additional background regarding agreements made by the constituent governments of the Roaring Fork Railroad Holding Authority (RFRHA) and RFTA, which support the purpose and need embodied in the RFTA Board's End Statement.

2. Start over and utilize a broader public process (similar to one CDOT has employed in their ACP) to evaluate all possible solutions to satisfy the board derived "purpose and need."

Response: RFTA has invested considerable time and resources to develop the proposed update of the Access Control Plan (ACP). In addition, RFTA has made numerous presentations on the ACP to local governments that have requested them, it has conducted eight Public Open Houses attend by 46 people (some of whom were staff), and has provided a 120-day Public Comment period, which has resulted in relatively few comments. RFTA has also formed an ACP Work Group, consisting of staff from jurisdictions throughout the region (including Garfield County), to collaboratively review and recommend revisions to the ACP. The ACP Work Group will also refer policy questions identified by this process to the RFTA Board for its consideration. The proposed update of the ACP incorporates many provisions from both the 2005 and 2000 versions of the ACP, and RFTA believes that it would not be a good use of time or resources to eliminate all of these provisions and start over, but does agree that the process of finalizing the update of the ACP should become more collaborative from this point forward.

3. Obtain a 2nd outside legal opinion with respect to preserving the rail banked status of the corridor, or alternatively publicly release the legal opinion you do have that justifies the heavy-handed, economically oppressive nature of the existing draft proposal.

Response: Over the years, RFTA has relied upon the advice of Charles Montange, Esq., who has extensive experience with Rails-to-Trails programs and Railbanking. Mr. Montange assisted RFRHA with the railbanking of the corridor in 2008 and helped RFRHA maintain its ownership when an effort was made by a private entity to seize control of the corridor at that time. Mr. Montange has stated his opinion about what he believes is necessary to maintain the corridor's railbanked status several times in public

meetings at which the City Council has either been present or has been represented. The proposed update of the ACP and the proposed Design Guidelines and Standards have been developed with the intention of helping RFTA maintain the corridor's railbanked status, which is the legal mechanism that currently preserves the corridor intact. Preservation of the corridor is not only RFTA's goal, it is a fiduciary responsibility. This requires RFTA to have adequate policies and procedures in place to ensure that ongoing preservation of the corridor is not left to chance. Given the value of the corridor asset, RFTA is required to take a conservative approach to its preservation, but it is willing to consider alternative approaches, so long as they are adequate. To that end, RFTA is open to seeking other legal opinions about the policies necessary to preserve and protect the corridor. As a first step in this process, RFTA requests that the City authorize Eric Hocky, Esq. to speak with Mr. Montange about the opinion he has already provided to the City on this matter.

4. Make the policy adoptable by IGA with each member jurisdiction.

Response: The proposed update of the ACP can only be adopted by a unanimous vote of the RFTA Board members that represent the constituent governments of RFRHA; namely, Glenwood Springs, Carbondale, Eagle County, Basalt, Snowmass Village, Pitkin County, and Aspen. This very high threshold for adoption of the proposed update of the ACP will require total consensus and should generate considerable discussion, compromise, and collaboration, by and among all of the RFTA member governments. RFTA believes the current process for adoption of the proposed ACP update, as well as the impending update of the Corridor Comprehensive Plan (which was agreed to by the constituent governments of RFRHA and RFTA), should suffice and that a separate and duplicative IGA process is not necessary.

5. If restoring freight rail service as opposed to maintaining the corridor to not preclude the future reactivation of freight rail is truly the justification for the DACP as proposed:

    a. Present to the public a purpose, plan and timeline for the restoration of freight rail, and

    b. Ask the public if it wants freight rail service restored.

Response: As is set forth in agreements summarized in Attachment B, the corridor is being preserved for its primary us as a public transportation corridor. The corridor's railbanked status preserves the corridor for not only its primary use, but it is also preserving it for its secondary recreational, open space, and conservation uses. Currently, to preserve the corridor intact for any and all uses, it is essential for RFTA to maintain the

corridor's railbanked status. This requires RFTA to avoid taking actions affecting the corridor that could impair or preclude the ability to reactivate freight rail service. Although there may be alternative approaches for preserving the corridor intact other than railbanking, these will take time to evaluate and establish. Until then, RFTA must do its best to preserve the corridor's railbanked status or risk losing approximately seven miles of Federal land grant areas.

In 2000, voters in Glenwood Springs, Carbondale, Basalt, Eagle County, Snowmass Village, Pitkin County and Aspen, created RFTA pursuant to an IGA which, in addition to other provisions, included the following:

> "Section 8.03. Reorganization of RFRHA. RFRHA will be reorganized in accordance with this Section. During the period from the date the Authority is formed until the reorganization of RFRHA is complete (the "RFRHA Transition Period"):
>
> > (a) All regional transportation functions (excluding access issues), including management of the ongoing Corridor Investment Study, will be transferred to the Authority and the RFRHA Board of Directors will no longer have policy control of these planning functions.
> >
> > (b) The Authority shall have approval rights over the RFRHA annual operating budget and shall remit Authority funds to RFRHA to meet the obligations in the approved budget.
> >
> > (c) RFRHA will continue to provide access to, administration of and physical maintenance for the Denver Rio Grande Right-of-Way, maintenance of the conservation value of the right-of-way, pursue construction of regional trails through the right-of-way and ***protect public ownership of the right-of-way.***
> >
> > (d) Other financial obligations and assets of RFRHA related to acquisition of the Denver Rio Grande Right-of-Way shall remain with RFRHA unless and until the Denver Rio Grande Right-of-Way may be transferred to the Authority.
> >
> > (e) The Denver Rio Grande Right-of-Way shall, subject to compliance with contractual, legal and other requirements applicable thereto, transfer from RFRHA to the Authority, and the reorganization of RFRHA will be deemed to be complete, if and when the Authority notifies RFRHA that the Authority intends to use the right-of-way for an Authorized

Transportation Project other than trails for which funding has been approved by the electors as required by Section 6.03(d) hereof and section 612 of the Act.

(f) Provisions concerning access contained in the Roaring Fork Railroad Holding Authority Intergovernmental Agreement shall be honored by the Authority."

On June 21, 2001, the RFTA formation IGA was amended to allow the immediate assignment of RFRHA's asset, liabilities, obligations and responsibilities to RFTA, as follows:

Section 1.03. Amendment of Section 6.02(d) of Agreement. Section 6.02(d) of the Agreement is amended to read as follows:

(d). Protection and management of the Denver Rio Grande Right of Way.

The ***Authority shall be responsible for the protection and management of the Denver Rio Grande Right-of-Way***, including the preservation, maintenance, and enhancement of the conservation values of the Denver Rio Grande Right-of· Way, and including the obligations of RFRHA under that certain agreement dated January 17, 2001 between RFRHA and GOCO, and shall provide funding for and monitoring of enforcement of these conservation values, subject to compliance with the Act.

Section 1.04. Amendment of Section 6.02(e) of Agreement.

Section 6.02(e) of the Agreement is amended to read as follows:

(e). Funding, Construction and Maintenance of Regional Trails. The Authority shall provide funding for and be responsible for construction and maintenance of regional trails in cooperation with Members or other Persons.

Section 1.05. Amendment of Section 8.03 of Agreement. Section 8.03 of the Agreement is amended to read as follows:

Section 8.03. Reorganization of RFRHA. RFRHA shall be reorganized in accordance with the Assignment and Assumption Agreement between the Authority and RFRHA executed by the Authority and the members of RFRHA.

Irrespective of whether RFTA or the public favors reactivation of freight rail service, by voting to approve the RFTA formation IGA, the public entrusted RFRHA with the responsibility for protecting public ownership of the corridor. Subsequently this responsibility was assigned to and assumed by RFTA.

Protecting public ownership by maintaining the corridor's railbanked status does not mean that RFTA must have an immediate plan to reactivate freight rail service, because the primary purpose for acquiring the corridor was to preserve it as a public transportation corridor. Consistent with that purpose, a recent unscientific public opinion poll conducted by the Post Independent indicated that, of 824 total respondents, 78% favored preserving the corridor for a future passenger rail system, 14% favored doing whatever it takes to maintain the trail, and 4% thought the corridor might be useful for coal trains in the future. Only 4% indicated that the corridor should be developed instead of preserved.

In the RFTA formation IGA, **Section 6.03. (b) Limitations on Powers of the Authority** states, "The Authority shall not finance rail construction unless and until the electors of the Authority, or of the area of the Authority in which the funding is to be generated, specifically approve such financing." This provision was added to the RFTA formation IGA to assure the public that a rail system that relied upon public funding would not be constructed without a vote. Because the primary purpose for which the corridor was purchased was to preserve it as a public transportation corridor, RFTA believes that a vote should be reserved specifically for a public transportation system at such time in the future when highway congestion, population density, technological advances, and financing, make it feasible. RFTA cannot predict if or when it will become feasible for commuter rail, light rail, or another public transportation system to operate on the corridor. Nonetheless, the corridor was acquired primarily to preserve it for that possibility and railbanking is the current mechanism that is maintaining it intact.

While reasonable people may differ about the means, what is evident from the vast majority of public comments RFTA has receive recently and over the years, is that the community supports the preservation of the corridor. RFTA wants to work cooperatively with the City and other jurisdictions to identify the best approach for preserving the corridor in the hope that a solution can be found that enables all of the parties to achieve their respective goals to the greatest extent possible.

In closing, I believe it would be beneficial to meet with the Glenwood City Council, when convenient, to discuss the letter from Mr. McKinney and opportunities for collaboration.

Sincerely,

Dan Blankenship
Chief Executive Officer

ATTACHMENT A

CITY OF GLENWOOD SPRINGS
CITY COUNCIL
101 WEST 8TH STREET
GLENWOOD SPRINGS, COLORADO 81601
PHONE: (970) 384-6408 FAX: (970) 928-0980

March 6, 2015

Ms. Stacey Bernot, Chair
RFTA Board of Directors

Mr. Dan Blankenship, CEO
Roaring Fork Transportation Authority

(sent via e-mail)

RE: Draft Access Control Plan

Dear Stacey and Dan:

I have been authorized by a unanimous vote of the members present at the March 5 Council meeting to write to you today to request that the RFTA Board take the following 5 actions with regards to the Draft Access Control Plan (DACP) for the Rio Grande corridor.

While the Council acknowledges there are policy needs the draft DACP attempts to address, the Council questions the auspices of what we consider a far reaching, heavy-handed approach to establishing the draft policy.

The five actions we strongly encourage you to consider are as follows:

1. Adopt a "purpose and need" statement at the board level, and use that as a driving force to derive policy.
2. Start over and utilize a broader public process (similar to one CDOT has employed in their ACP) to evaluate all possible solutions to satisfy the board derived "purpose and need."
3. Obtain a 2nd outside legal opinion with respect to preserving the rail banked status of the corridor, or alternatively publically release the legal opinion you do have that justifies the heavy-handed, economically oppressive nature of the existing draft proposal.
4. Make the policy adoptable by IGA with each member jurisdiction.
5. If restoring freight rail service as opposed to maintaining the corridor to not preclude the future reactivation of freight rail is truly the justification for the DACP as proposed:
    a. Present to the public a purpose, plan and timeline for the restoration of freight rail, and
    b. Ask the public if it wants freight rail service restored.

We thank you for your service as RFTA board members and for the service as elected officials in your respective communities. We believe these five actions are in the best interest of everyone within the RFTA boundaries and hope you will change the current direction and follow them.

Thank you for your consideration.

Sincerely,

Leo McKinney
Mayor

CC: City Council

ATTACHMENT B

1. RFRHA INTERGOVERNMENTAL AGREEMENT, AS AMENDED, MADE THE 31ST DAY OF DECEMBER, 1994

* The second whereas clause of the original RFRHA Intergovernmental Agreement provides:

  "WHEREAS, the governments are desirous of cooperating in the purchase and ownership of a portion of what is known as the Aspen Branch of the Denver and Rio Grande Western Railroad right-of-way (the "Property"). Said purchase will satisfy the mutual immediate goal of retaining the Property for the good of the general public and will allow for the development of a comprehensive plan for the highest and best public use of the Property. The primary use for the Property under this future plan shall be as a public transportation corridor. Secondary uses can include recreational opportunities and access to adjacent public lands, provided that these secondary uses do not preclude the primary use as a public transportation corridor."

* Section 6.d of the original RFRHA Intergovernmental Agreement addresses the stewardship of the Property as follows:

  "The overall goals of the management of the Property are three-fold:

  i. To negotiate for the purchase of the Property on behalf of the Governments and to act as the Owner of the Property until the termination of this Agreement:

  ii. To operate the Property in its existing condition until a comprehensive plan of action is developed to implement a transportation use or uses appropriate and agreeable to all of the Governments, and

  iii. To develop and have approved such a comprehensive plan.

  The Governments shall continue to recognize any and all existing easements and licenses granted to any of the participating Governments by the existing Owner upon purchase of the Property. If any one Government wishes to utilize all or a portion of the Property for a new or different use within the jurisdiction of that Government, it may do so provided that such a use does not preclude the desired

future uses as determined by the Board of Directors. It is the responsibility of the Government proposing this new or different use to prove and otherwise ensure that thee use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing and proposed at-grade crossings by public rights-of-way and accesses. Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property. Attached as Exhibit "B" is an inventory of the Property identifying and locating these at-grade crossings and specific standards to be required of possible improvement."

Exhibit "B" to the original RFRHA Intergovernmental Agreement provides as follows:

* In addition, Section 6.e provides that a Comprehensive Plan for the property must be developed and approved by the Board prior to improvement of the property for public transportation uses. Also set forth is a formula to split financial and ownership participation as follows:

Aspen	23%
Snowmass Village	13%
Pitkin County	20%
Basalt	1%
Eagle County	6%
Carbondale	4%
Glenwood Springs	16%
Garfield County	17%

2. <u>FIRST AMENDED AND RESTATED RFRHA INTERGOVERNMENTAL AGREEMENT DATED JUNE 26, 1997</u>.

* The second whereas clause of this First Amended and Restated RFRHA Intergovernmental Agreement provides as follows:

"WHEREAS, the Governments, desirous of cooperating in the purchase and ownership of a portion of what is known as the Aspen Branch of the Denver and Rio Grande Western Railroad right-of-way (the "Property"), did enter into an Intergovernmental Agreement dated December 31, 1994, to create the Roaring Fork Railroad Holding Authority. The purchase will satisfy the mutual,

immediate goal of retaining the Property for the good of the general public, and will allow for the development of a comprehensive plan for the highest and best public use of the Property. The primary use for the Property under this future plan shall be as a public transportation corridor. Secondary uses can include recreational opportunities and access to adjacent public lands, provided that these secondary uses do not preclude the primary use as a public transportation corridor."

* Paragraph 1 of this First Amended and Restated RFRHA Intergovernmental Agreement provides as follows:

"1. Purpose. The purpose of the original Intergovernmental Agreement and this First Amended Intergovernmental Agreement is to establish a cooperative agreement between the Governments that establishes an entity known as the Roaring Fork Railroad Holding Authority (RFRHA). The purpose of the RFRHA is to pursue the successful purchase of the Property from the current owner, and, to the extent permitted by the Constitution and the Laws of the State of Colorado, to hold title to the Property and to manage and plan for the use of the Property for the benefit of the general public. RFRHA shall have the authority to sue and to be sued. Notwithstanding anything to the contrary contained in this Agreement, upon the purchase of the Property, the Property will continue to be managed as necessary to carry out existing uses and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the federal Surface Transportation Board, and to maintain the Property in a reasonable and prudent fashion. In addition, the Property shall be maintained and operated so as to not prejudice any rights to the receipt of additional federal funding which may require as a condition of its receipt compliance with the National Environmental Protection Act or similar federal environmental statutes and regulations. To the extent provided by Colorado law, RFRHA shall maintain, operate and keep open a public trail within the Property that meets the definition of a "public highway legally established" as used in 43 U.S.C. Section 912 and all regulation promulgated thereunder and within the meaning of a "public highway" as defined in C.R.S. Section 43-2-201. Notwithstanding any language to the contrary contained in this Agreement or appended exhibits incorporated by reference shall be read or understood to mean that any portion of the Property shall be altered, changed or designated as a "park" within the meaning of Section 4(f) of the Department of Transportation Act or Section 138 of the Federal-Aid Highway Act, until such time as the Comprehensive Plan contemplated herein is completed and the RFRHA Board of Directors passes a resolution designating portions of the Property as "parklands."

* Paragraph 4 of this First Amended and Restated RFRHA Intergovernmental Agreement pertains to the ownership of the Property and provides as follows:

  "4. Ownership of the Property. The Roaring Fork Railroad Holding Authority shall purchase the Property from the current owner based on the level of participation defined above. The Roaring Fork Railroad Holding Authority shall not sell, liquidate, transfer or encumber the Property without the consent of all the governments who are its voting members at the time, except to the extent that the Property needs to be encumbered to comply with the grant conditions referenced at Section 5, below."

* Paragraph 5 of this First Amended and Restated RFRHA Intergovernmental Agreement authorized the receipt of funding grants for the purchase price, with conditions set forth, as appended to the Agreement (Legacy Project Grant Agreement appended as Exhibit "B;" Intergovernmental Agreement between the State of Colorado ("CDOT Intergovernmental Agreement"); appended as Exhibit "C" and Agreement between the County of Eagle and County of Pitkin dated January 8, 1997 appended as Exhibit "D"; Ordinance 97-7 appended as Exhibit "E;" and Agreement between the County of Garfield and the Roaring Fork Railroad Holding Authority dated 6/30/97 appended as Exhibit "F."

* Section 6.d of the First Amended and Restated RFRHA Intergovernmental Agreement reiterates the stewardship of the Property as follows:

  "The overall goals of the management of the Property are three fold:

  i. To cooperate with the Governments to ensure compliance with the grant conditions from the various funding sources described above.

  ii. To operate the Property in its existing condition until a Comprehensive Plan of action is developed to implement a transportation use or uses appropriate and agreeable to all of the Governments, and

  iii. To develop and have approved such a Comprehensive Plan.

  The Governments shall continue to recognize any and all existing easements and licenses granted to any of the participating Governments and third parties by the existing Owner upon purchase of the Property. If any one Government wishes to utilize all or a portion of the Property for a new or different use not enumerated in the Comprehensive Plan and within the jurisdiction of that Government, it may do

so provided that such a use is approved by the Board of Directors of the Roaring Fork Railroad Holding Authority, does not preclude the desired future uses as determined by the Board of Directors, as is consistent with the obligations imposed by the funding sources referenced at Section 5, above. It is the responsibility of the Government proposing this new or different use to prove and otherwise insure that thee use will not preclude any desired future use from occurring to the satisfaction of the Board of Directors.

The Governments recognize the potential issues surrounding certain existing physical conditions of the Property, in particular existing [and][1] proposed at-grade crossings by public rights-of-way and accesses. Placement, modification, improvement and/or relocation of at-grade crossings will be allowed provided that those improvements follow generally accepted standards and do not result in negatively impacting the primary use of the Property, and are consistent with the grant conditions from the various funding sources described above. Attached as Exhibit "H" is an inventory of the Property identifying certain crossings, accesses, and uses along the Property (the "Access Plan"). This Access Plan shall assist the Roaring Fork Railroad Holding Authority in identifying current uses of the corridor, and in the adoption of the Comprehensive Plan. Notwithstanding any language to the contrary herein, nothing in this Agreement shall be construed or interpreted to mean that any illegal crossings, trespass, uses, unauthorized encroachments or homesteads upon the Property are being legalized or approved by the adoption of this Agreement."

* Section 6.e of the First Amended and Restated RFRHA Intergovernmental Agreement provides for the development of a comprehensive plan as follows:

"e. Development of a Comprehensive Plan. A Comprehensive Plan for the property (hereinafter the "Plan") shall be developed and approved by the RFRHA Board of Directors prior to improvement of the Property for public transportation uses. The parties hereto acknowledge that the Property is currently being used for certain purposes (rail transportation, utility easement, crossings for access to adjacent properties and related purposes.) Consistent with the Purpose section of this Agreement, it is not the intent of the parties hereto to interfere with the legal obligations attendant to the operation of a rail transportation corridor or the legal rights of tenants or grantees of easements upon the Property. The Plan shall include the following:

[1] The word "and" appears here in the text of the Intergovernmental Agreement but does not appear in the text of the First Amended and Restated Intergovernmental Agreement.

i. A listing and description of possible uses for the property, including but not limited to such improvements necessary to place and operate a public transportation system, public trail and/or access to public lands;

ii. A detailed improvements and operations plan for the ultimate preferred use(s) on the property, including a recommended management and funding strategy; and

iii. An interim plan which incorporates the interim use of the rail corridor for a temporary trail following approval from the Surface Transportation Board of a certificate of interim trail use pending the re-establishment of rail service.

The Plan shall be integrated and developed in conjunction with other, existing or contemplated planning processes evolving in the valley, including but not limited to the Basalt to Buttermilk Environmental Impact Statement Transit Feasibility Study, the Snowmass to Aspen Transportation Plan, the Mount Sopris Transportation Project, the Buttermilk to Aspen Environmental Impact Statement, the Glenwood Springs Alternate Route Environmental Assessment, and any environmental clearances required by current or future funding sources.

The Governments further recognize the Pitkin County presently owns approximately eight (8) miles of the Property as described within Exhibit “1". Currently, this portion of the Property is used by the public as a trail and for recreational access, and has been preserved by Pitkin County as a potential transportation corridor. Pitkin County agrees to bind this portion of the Property to the conditions of this Agreement provided that the existing conditions and policies concerning this portion of the Property are kept in force until such a time that the Agreement expires or a Comprehensive Plan for the Property is approved. Notwithstanding anything to the contrary in the preceding paragraph, this Amended Intergovernmental Agreement shall not be construed or interpreted as a conveyance of the Pitkin County property described above to the Roaring Fork Railroad Holding Authority.

The Governments shall develop, consider and approve the Comprehensive Plan for the Property within twenty-four (24) months of the date this Amended Agreement is signed, unless the Governments mutually agree to extend the time period for the formulation and adoption of such a Plan. The adoption of a Comprehensive Plan and any amendments thereto shall be consistent with the grant conditions set forth in the grant documents referenced at section 5, above. It

is anticipated that when the Comprehensive Plan for the Property is approved by all participating Governments, a new Intergovernmental Agreement will be negotiated and become effective to implement the Comprehensive Plan."

* Paragraph 15 of the First Amended and Restated RFRHA Intergovernmental Agreement provides upon full execution of this Agreement, the Agreement shall be placed of record in the real property records of the Clerk and Recorder of Pitkin County, Eagle County and Garfield County, Colorado.

This Agreement is signed by Marc Adler as Mayor of the City of Glenwood Springs, Colorado.

[The agreements referenced to actual attachments to this First Amended and Restated RFRHA Intergovernmental Amendment, although they are not identified as such. For example, the Legacy Project Grant Agreement dated 6/30/1997 may be an attachment and also the Intergovernmental Agreement with Pitkin County.]

3. <u>AGREEMENT BETWEEN THE ROARING FORK RAILROAD HOLDING AUTHORITY AND THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND DATED JANUARY 17, 2001 (hereinafter referred to as "the GOCO Agreement")</u>. (Document has been recorded in Pitkin County, Eagle County and Garfield County.) This document contains very important provisions, generally as follows:

* Section 1.3 of the GOCO Agreement references the Comprehensive Plan for the Aspen Branch of the Denver & Rio Grande Western Railroad Corridor adopted by RFRHA and approved by all voting members of RFRHA effective April 26, 2000 ("Comprehensive Plan") which is stated that the parties agree provide an accurate representation of the Property on the date of the recording of this Agreement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

* A reference in Section 1.6 of the GOCO Agreement that in consideration of the Board's agreement to amend the Grant, RFRHA agrees to grant to the Board the right to monitor and enforce RFRHA's obligation to preserve and protect the Conservation Values of the Property in perpetuity, as well as RFRHA's right and obligation to develop a trail the length of the Corridor outside of Pitkin County and to provide access to public lands adjacent to the Corridor and access to the Roaring Fork River, as described herein (collectively "Conservation and Trail Obligations").

* Section 1.7 of the GOCO Agreement states that the performance of the Conservation and Trail Obligations shall be a covenant running with the land, held by the Board in gross in perpetuity.

* Section 1.8 of the GOCO Agreement provides that RFRHA agrees to cause the preservation and protection in perpetuity of the Conservation Values of the Property for the benefit of this generation and generations to come, and to cause the construction and maintenance of a trail on the Corridor.

* Section 2.1 of the GOCO Agreement states as follows:

  "2.1 It is the purpose of this Agreement to ensure that the Corridor will be maintained as a linear, open space corridor, appropriate for trails, recreation, wildlife, environmental, and educational purposes, while also permitting the construction of trails and trail head facilities and the continuation, construction and/or operation of mass transit services and facilities, but preventing any other use of the Corridor that will significantly impair or interfere with any trail on the Corridor or the Conservation Values of the Property. RFRHA intends that unless and until terminated in accordance with the terms of this Agreement, the restrictions herein will constitute a perpetual covenant running with the land held by the Board in gross, which restrictions will confine the use of the Corridor and the Property to the activities enumerated herein and RFRHA shall enforce these use limitations against all other individuals and government entities."

* Section 2.2 of the GOCO Agreement states as follows:

  "2.2 The parties acknowledge and agree that the Corridor was originally purchased and is held by RFRHA in perpetuity not only for its Conservation Values and the construction and maintenance of a trail, but for the re-establishment of a mass transit system in the future. The Corridor was purchased by RFRHA from the Southern Pacific Transportation Company and its successors as a railroad subject to the jurisdiction of the federal Surface Transportation Board ("STB"). In addition, the Corridor was purchased subject to certain existing access easements, trails and trails facilities, easements, licenses, leases, operating agreements and utility easements. Accordingly, RFRHA shall be permitted to take all actions necessary with STB and the State of Colorado, Department of Transportation ("CDOT") and the Public Utilities Commission ("PUC"), to ensure the continuing ability of RFRHA to operate and manage the Corridor as a railroad. It is not the intent of the parties to interfere with the legal rights and obligations of RFRHA attendant to the operation of a mass transit corridor or the legal rights and obligations of tenants or grantees of easements upon the Corridor,

including the trail easement owned by the Board of County Commissioners of Pitkin County, Colorado, on the Corridor within Pitkin County; provided, however, that to the extent reasonable and practicable the design criteria and operation of mass transit improvements and rail alignments shall consider and respect the Conservation Values of the Property and trail uses of the Corridor."

* Section 2.3 of the GOCO Agreement states as follows:

"2.3 Notwithstanding any language to the contrary contained in this Agreement or appended exhibits incorporated herein by reference, nothing in this Agreement shall be read or understood to mean that any portion of the Corridor shall be altered, changed or designated as a 'park' within the meaning of Section 4(f) of the Department of Transportation Act or Section 138 of the Federal-Aid Highway Act, until such time as any Updated Comprehensive Plan (as described in Section 5.1, below) is adopted by RFRHA and approved in accordance with this Agreement and RFRHA passes a resolution designating any portion of the Property as 'parklands.' Except as necessary to carry out existing uses of the Corridor and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the Surface Transportation Board, and to maintain the Corridor in a reasonable and prudent fashion, no physical use and/or construction impacts to the Corridor shall occur unless and until appropriate National Environmental Policy Act (NEPA) documentation is completed, including satisfying the provisions of Section 4(f) of the Department of Transportation Act and Section 106 of the Federal Aid Highway Act, as appropriate, with agreement from the State Historic Preservation Officer and the Advisory Council on Historic Preservation, in accordance with the terms of the Comprehensive Plan. Notwithstanding the foregoing, the construction of an interim trail on the Corridor, which is exempt from the foregoing requirements, existing public uses of the Corridor, and those crossings and other uses planned by various governmental entities (as described in the Comprehensive Plan) shall be permitted."

* Section 5.0 of the GOCO Agreement, which is set forth below in its entirety, requires the implementation of the Comprehensive Plan and provides as follows:

"5.1 The Corridor shall be developed and operated in accordance with the terms of the Comprehensive Plan. The Comprehensive Plan will be updated and reapproved by RFRHA, all voting members of RFRHA, and the Board no less frequently than every five (5) years thereafter until such time as the mass transit and trail uses are implemented throughout the Corridor (the "Updated Comprehensive Plan"). The parties hereto acknowledge and understand that

approval of any Updated Comprehensive Plan by the Board shall be in accordance with Section 5.2, below.

5.2 The Board shall not unreasonably withhold its approval of any Updated Comprehensive Plan. In deciding whether to approve an Updated Comprehensive Plan, the Board shall consider the updated plan's impact on use of the Corridor for rail, trail, open space, wildlife, and parks purposes. Specifically, the following factors will be evaluated:

5.2.1 Whether the Updated Comprehensive Plan is consistent with the purpose and intent section (Section 2.0, above) of this Agreement and the guiding principles set forth below in Section 5.4;

5.2.1 Whether the Updated Comprehensive Plan is generally consistent with the project as initially described in the original Legacy Grant Application; and

5.2.3 Whether the Updated Comprehensive Plan includes the items that the Board has agreed it will contain (access plan, trail plan, etc.) listed in Section 5.3, below.

5.2.4 In the event that the Board does not approve an Updated Comprehensive Plan, RFRHA and/or the Board shall have the right to terminate this Agreement and all of RFRHA's obligations with respect to the Board, RFRHA's obligations to the Board may only be terminated upon the repayment of the funds granted by the Board plus interest on such sum at the rate earned by the Board's funds invested by the Treasurer of the State of Colorado from the date of this Agreement until repayment, provided that repayment is made within six (6) months of the Board's disapproval of any Updated Comprehensive Plan. In the event of RFRHA's timely repayment, the parties will cooperate in the execution and recording of such documents as either party may in its discretion deem appropriate to accomplish the formal termination of this Agreement; provided that this Agreement will not be terminated until the Grant is repaid in full as provided in this Section.

5.3 Any Updated Comprehensive Plan shall include, but is not limited to: (1) location of both a permanent continuous public recreation trail running along the entire length of the Corridor and the location of a continuous interim trail within the Pitkin County portion of the Corridor, all in accordance with Ordinance 97-26 of the Board of County Commissioners of Pitkin County and the location of an

interim trail outside of Pitkin County; (2) location and description of trail head facilities; (3) identification of public access points over the Corridor for the purpose of gaining access to the Roaring Fork River and other public lands along the Corridor for public recreation; (4) description of proposed wildlife and environmental education programs on the Property; (5) a signage plan for all activities to be developed within the Property; (6) location and existence of historic structure or areas; (7) a biologic inventory of the Property to amend and update the Comprehensive Plan; (8) identification of criteria to be considered in implementing any Updated Comprehensive Plan to protect and preserve the Conservation Values of the Property to the extent reasonable and practicable; (9) description of structures and facilities necessary to place and operate a mass transit system and their location within the Corridor; (10) the identification of all areas, other than Pitkin County, where the Corridor will not support both trail and mass transit uses (in these areas the Updated Comprehensive Plan will identify alternate routes for trails); (11) identification of all utility easements and facilities, both underground and above surface, including, but not limited to, telecommunication facilities; and (12) a detailed improvements and operations plan for all uses, including a management and funding strategy.

5.4 The principles that will guide any Updated Comprehensive Plan (including an access management plan) and optimizes the Corridor's trail, mass transit, open space, recreational, parks and wildlife uses and values are as follows:

5.4.1 The Corridor shall be managed to protect the health and safety of those using the Corridor;

5.4.2 New road crossings over the Corridor shall be minimized;

5.4.3 Existing crossings shall be consolidated so long as the trail, mass transit, open space, recreational, parks and wildlife uses and values will not be impaired by so doing; and

5.4.4 Any development permitted in the Corridor (including, but not limited to mass transit facilities, trails, road crossings, etc.) shall be located, designed, constructed and managed in a manner that avoids, minimizes or mitigates adverse impacts to the open space, recreation, scenic and wildlife values of both the Corridor and adjacent lands that add to the scenic value and enjoyment of the Corridor.

5.5 Except as necessary to carry out existing uses of the Corridor and to implement requirements imposed under the ICC Termination Act, related statutes,

regulations and orders of the STB, no facilities or structures related to mass transit uses shall occur on the Corridor that are inconsistent with the Comprehensive Plan or any Updated Comprehensive Plan, which plans shall limit and control the development, location, size and use of such mass transit facilities and structures allowed on the Corridor as well as all other uses allowed on the Corridor."

* Section 6.0 of the GOCO Agreement, which is set forth below in its entirety, discusses uses and activities that are prohibited, restricted and permitted on the Property as follows:

"6.0 Prohibited, Restricted and Permitted Uses and Activities Upon the Property. The parties hereto acknowledge and agree that certain uses of and activities upon the Property would be inconsistent with the purpose and intent of the Agreement. Accordingly, the parties agree that except to the extent permitted in this Section 6, any activity on or use of the Property inconsistent with the purposes or intent of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or permitted as specifically indicated and RFRHA agrees it shall not engage in any activities or uses nor shall it permit third parties to engage in any activities or uses on the Property that are inconsistent with the purposes and intent of the Agreement.

6.1 Construction of Buildings and/or Other Structures. The construction or reconstruction of any building or other structure or improvement, except those existing on the date of this Agreement and except as necessary to implement other approved uses set forth in the Comprehensive Plan (such as mass transit, signage for trails and trailheads, and existing licenses and easements), is prohibited except as may be permitted below.

6.2 Fences. RFRHA may repair or replace existing fences, and new fences may be built by RFRHA for purposes of reasonable and customary management of livestock and wildlife, and for separation of ownership and uses along trails to protect trail users; provided that any fences must be consistent with the Comprehensive Plan, providing for passage of the public and wildlife, where appropriate. With regard to fences for livestock or that may effect wildlife purposes only, such fences shall comply with the regulations and/or advice of the Colorado Division of Wildlife.

6.3 New Crossings, Structures and/or Improvements. New crossings, structures and/or improvements that RFRHA desires to construct which are directly related to mass transit, trails, outdoor recreation, open space, wildlife, parks, or trails, and access points shall be consistent with the Comprehensive Plan and any updated

Comprehensive Plan. Those crossings, structures and improvements consistent with the Comprehensive Plan or any Updated Comprehensive Plan may be constructed by RFRHA without the consent of the Board, but RFRHA must provide prior notice as set forth under Section 8 herein. In addition, RFRHA shall be entitled to construct without the Board's approval any crossings, structures and/or improvements necessary to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STD; however, RFRHA must provide notice to the Board as set forth under Section 8 herein, which notice shall include reference to the act or statutes requiring such improvement construction. The parties hereto acknowledge that the Property is burdened by a telecommunications easement owned by Qwest Communications Corporation ("Qwest") which authorizes the easement owner certain rights to construct certain ancillary facilities on the Property. The Property is also burdened by a subeasement agreement from Qwest to U.S. West Communications, Inc. (U.S. West). Said facilities shall not be prohibited provided they are consistent with the terms of that certain Third Amendment to Easement Agreement (Aspen Branch) between Southern Pacific Transportation Company, Qwest and RFRHA, or the First Amendment to the Subeasement Agreement between Qwest, U.S. West and RFRHA, memoranda of which are of record.

6.4 Subdivision. Any division or subdivision of title to the Property, whether by physical or legal process shall be prohibited.

6.5 Harvesting Timber. Cutting of tress shall be prohibited, except that trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and to enable construction and maintenance of permitted uses allowed to be developed within the Property. Dead trees may also be cut for firewood and other uses on the Property; however, at least three (3) dead trees per acre shall remain uncut. Commercial timber harvesting on the Property shall be prohibited. The Board shall be provided with notice prior to the cutting of trees pursuant to this provision.

6.6 Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance shall be prohibited on the Property except as permitted hereunder for the purpose of mass transit and trail improvements.

6.7 Paving and Road and Trail Construction. Except as permitted in this Agreement and as set forth in the Comprehensive Plan or any Updated Comprehensive Plan (including the proposed extension of Industry Place in the Town of Carbondale and the Glenwood By-pass), no portion of the Property shall

be paved or otherwise covered with concrete, asphalt, or any other paving material, nor shall any road crossings or trails be constructed, except that RFRHA shall be entitled to construct any road necessary for the Property to be categorized a "public highway" under 43 U.S.C. § 912 and Colorado law, in the event that the Corridor could not otherwise be maintained as a continuous linear corridor. Trails for non-motorized uses as provided in the Comprehensive Plan or any Updated Comprehensive Plan may be paved. Notice of any such paving or road or trail construction shall be provided to the Board in accordance with Section 8, herein.

6.8 Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property shall be prohibited.

6.9 Water Rights. RFRHA shall retain and reserve the right to use such water rights as may be appurtenant to the Property in order to maintain and improve the conservation Values of the Property, and shall not transfer, encumber, lease, sell or otherwise separate any such appurtenant water rights from title to the Property itself.

6.10 Commercial or Industrial Activity. No commercial or industrial uses unrelated to mass transit and associated uses shall be allowed on the Property except as provided in this section 6 or the Comprehensive Plan and except that RFRHA shall be entitled to grant underground easements; provided that (i) the utility provider's usage does not substantially diminish the Conservation Values or interfere with the purposes of this Agreement and the utility provider is required to revegetate and restore the surface of the Property to its former condition to the extent possible, and (ii) the Board first approves the form of easement agreement in accordance with the notice provisions of Section 8, herein. No part of the Property shall be used as a parking lot.

6.11 Mass Transit and Trail Improvements. It is agreed and acknowledged that the principal purpose for the preservation of the Corridor is to allow it to be used for the development of a public recreation trail, to allow public access to other public lands, to preserve open space and wildlife habitat, to provide access to the Roaring Fork River, and to allow for the development of mass transit uses. Accordingly, construction of mass transit and trail improvements shall be allowed as follows:

6.11.1 Mass Transit. The construction and maintenance of improvements on the Property directly related to and necessary for the operation of mass transit shall be permitted, provided that:

6.11.1.1 No improvements shall be made unless and until they have been provided for in the Comprehensive Plan or any Updated Comprehensive Plan, except as necessary to carry out existing uses of the Property and to implement requirements imposed under the ICC Termination Act, related statutes, regulations and orders of the STB.

6.11.1.2 The improvements must be directly related to and necessary for the operation of the mass transit. By way of example, but not limitation, such improvements on the Property would include tracks, switching stations, boarding platforms and terminal stations, and would not include ancillary uses such as shops, restaurants, and lodging facilities.

6.11.1.3 The improvements must be designed and constructed in a way so as not to interfere materially in the use of the entire length of the Corridor for trail, open space, wildlife, parks and any other recreational uses or interfere with access points to public lands.

6.11.1.4 Upon the implementation of mass transit on the Corridor, or December 31, 2020, whichever occurs first, the trail shall be grade separated by RFRHA; provided, however, that prior to December 31, 2020, RFRHA shall be required to grade separate the trail only at those points of intersection between the trail and actual mass transit operations, it being understood that mass transit may be implemented upon different segments of the Corridor and at different times prior to December 31, 2020.

6.12. Trail. The construction and maintenance of improvements directly related to and necessary for the operation of the RFRHA Trail and for access points to public lands and related recreational uses shall be permitted without the Board's approval, but upon notice as set forth in Section 8, herein. Such uses may include, but shall not be limited to: trail construction, including the paving and re-paving of a trail, trail head facilities and trail connection, between RFRHA Trail and other trails connecting to the Corridor. Trail development shall be planned and developed to avoid adverse impacts to riparian areas and other sensitive natural areas, unless there is no acceptable alternative, in which case impacts shall be mitigated."

* Paragraphs 10 and 11 of the GOCO Agreement provide for enforcement and cost of enforcement as follows:

"10.0 Enforcement. Except as provided herein, the Board shall have the right to cause the prevention or require the correction of violations of the terms and purposes of this Agreement. The Board may enter the appropriate portion of the Corridor for the purpose of inspecting for violations. If the Board finds what it believes is a violation, it shall immediately notify RFRHA in writing of the nature of the alleged violation and what steps are necessary to correct the violation. Within not more than ten (10) days following receipt of this written notice, RFRHA shall either (a) restore the Corridor to its condition prior to the violation, (b) provide a written explanation to the Board of the reason why the alleged violation should be permitted, or (c) take action to prevent any third party violations of this Agreement and cause restoration of the Corridor following notice to the Board of the actions it intends to pursue. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute at the mediation session. When, in the Board's opinion, an ongoing or imminent violation could materially diminish or impair the trail on the Corridor or Conservation Values of the Property, the Board may, at its discretion, take appropriate legal action. RFRHA shall discontinue any activity which gave rise to the Board's notice of violation from the date of receipt of such notice until the matter is decided. If there is no resolution of the dispute by the end of the mediation session, the Board may, at its discretion, take appropriate legal or equitable action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, the Board may seek any relief permitted at law or in equity, including a temporary or permanent injunction. The Board may also request a court issue an injunction to require RFRHA to restore the Corridor to its condition prior to the violation by either RFRHA or a third party.

11.0 Cost of Enforcement. Except as provided in the following sentence, any costs incurred by the Board in enforcing the terms of this Easement against RFRHA or any third party, including, without limitation, mediation fees, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by RFRHA's violation of the terms of this Easement, shall be borne by RFRHA whether or not the Board prevails. However, if a court of competent jurisdiction rules that any action brought by the Board is frivolous in nature or was vexatious or brought in bad faith, RFRHA's and the Board's costs of suit, including, without limitation, reasonable attorneys' fees, shall be borne by the Board."

* Paragraph 15 of the GOCO Agreement pertains to access as follows:

"15.0 Access. Notwithstanding anything else in this Agreement to the contrary, RFRHA shall provide the public access to and along the Corridor to the extent necessary to facilitate the Corridor's use for recreational, trail, open space, wildlife, parks and mass transit uses. To the extent provided by Colorado law, RFRHA shall maintain, operate and keep open a public trail with the Corridor that meets the definition of a "public highway legally established" as used in 43 U.S.C. § 912 and all regulations promulgated thereunder. However, with respect to public or private access laterally across the Corridor not consistent with the Comprehensive Plan or any Updated Comprehensive Plan, access shall be restricted so as to: (i) allow for the possible resumption of rail use along the Corridor as is contemplated by 16 U.S.C. § 1247(d) and the regulations promulgated thereunder; (ii) protect the health and safety of those using the Corridor for recreational purposes; and (iii) discourage the occurrence of increased vehicular traffic over the Corridor which is inconsistent with the Conservation Values, the Comprehensive Plan and any Updated Comprehensive Plan."

* Paragraph 20 provides for termination and extinguishment as follows:

"20.0 Termination and Extinguishment. In addition to RFRHA's right of termination under the circumstances and pursuant to the terms set forth in Section 5.2.4, above, which method of termination shall not require judicial proceedings, if other circumstances arise in the future such as render any purpose of this Agreement impossible to accomplish, this Agreement may be terminated and extinguished pursuant to the terms of this Section 20.0, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Each party shall promptly notify the other when it first learns of such circumstances. If this Agreement is terminated and extinguished in part, it shall remain valid as to the portion deemed not to be terminated and extinguished. In the event of condemnation, involuntary conversion, sale or exchange of any portion of the Corridor subsequent to such termination and extinguishment, the amount of the net proceeds to which **each party shall entitled, after the satisfaction all outstanding RFRHA obligations** and prior claims, shall be determined, unless otherwise provided by Colorado law at the time, as follows:

The Board, in its sole discretion, shall be entitled to receive the greater of:

(i) the gross proceeds multiplied by eighteen percent (18%), which figure represents the percentage of the original purchase price of the Corridor

paid by RFRHA ($8,500,000) which was provided by the Board ($1,500,000), or

(ii) the amount of the Grant, as amended, from the Board which was used to acquire the Corridor multiplied by a fraction, the denominator of which shall be the Consumer Price Index ("CPI") figure published for the month immediately preceding the month in which the Grant was given (June, 1997), and the numerator of which shall be the CPI figure published for the month in which the sale, exchange or involuntary conversion occurs. As used herein, the term "Consumer Price Index" or "CPI" shall mean the U.S. Department of Labor's Bureau of Labor Statistics' Consumer Price Index All Urban Consumers All Items, Denver, Colorado (1982-1984 equals 100), or the successor of such index as determined by the Board.

4. RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY AMENDING THE ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT ADOPTED ON JUNE 25, 2001. This Resolution references an Assignment and Assumption Agreement attached as Appendix "A."

* The sixth whereas clause of this RFTA Resolution dated June 25, 2001 provides that the Authority and RFRHA have agreed to reorganize RFRHA assigning all of its assets, rights and privileges to the Authority and the Authority assuming all of the obligations and liabilities of RFRHA pursuant to the Assignment and Assumption Agreement.

* The seventh whereas clause of this RFTA Resolution dated June 25, 2001 refers to the Denver Rio Grande Right of Way GOCO Covenant Enforcement Commission to facilitate compliance with and Agreement dated as of January 17, 2001 between RFRHA and the State Board of the Great Outdoors Colorado Trust Fund, a copy of which is attached as Appendix "B," the First Amendment to the Legacy Grant Agreement for the Roaring Fork Railroad Legacy Project dated January 3, 2001 between the State Board of the Great Outdoors Colorado Trust Fund and all voting members of RFRHA, a copy of which is attached as Appendix "C," and the policy adopted by RFRHA on July 5, 2000 defining the types of uses that may be permitted within the Denver Rio Grande Right-of-Way for the purpose of determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the Denver Rio Grande Right-of-Way, attached as Appendix "D."

5. RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY RESOLUTION NO. 2002-11 FINDING THAT ALL REQUIREMENTS OF THE TRANSITION PLAN MERGING THE ROARING FORK RAILROAD HOLDING AUTHORITY AND THE ROARING FORK TRANSIT AGENCY ARE COMPLETE.

6. ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT (hereinafter "Original RFTA IGA") dated September 12, 2000.

* The Original RFTA IGA document references in Section 2.01 that the Agreement has been approved by a majority of the registered electors residing within the Initial Boundaries of the Authority.

* Section 6.02(c) of the Original RFTA IGA discusses regional transportation planning as follows:

> "(c) Regional Transportation Planning. The Authority shall provide regional transportation planning services needed to Plan and direct the Authorized Transportation Projects, pursue federal funding and coordinate overall transportation policy within the area in which it provides Regional Transit Services. Regional transportation planning shall, as determined by the Board, include short range service planning as well as long range planning, corridor investment studies and related environmental impact analysis.
>
> (d) Funding for Maintenance of the Denver Rio Grande Right-of-Way. The Authority shall provide funding for the maintenance of the Denver Rio Grande Right-of-Way until it is transferred to the Authority.
>
> (e) Funding for Construction and Maintenance of Regional Trails. The Authority shall provide funding for the construction of regional trails in cooperation with Members, RFRHA and other Persons."

* Section 8.03 of the Original RFTA IGA provides as follows:

> "Section 8.03. Reorganization of RFRHA. RFRHA will be reorganized in accordance with this Section. During the period from the date the Authority is formed until the reorganization of RFRHA is complete (the "RFRHA Transition Period"):

(a) All regional transportation functions (excluding access issues), including management of the ongoing Corridor Investment Study, will be transferred to the Authority and the RFRHA Board of Directors will no longer have policy control of these planning functions.

(b) The Authority shall have approval rights over the RFRHA annual operating budget and shall remit Authority funds to RFRHA to meet the obligations in the approved budget.

(c) RFRHA will continue to provide access to, administration of and physical maintenance for the Denver Rio Grande Right-of-Way, maintenance of the conservation value of the right-of-way, pursue construction of regional trails through the right-of-way and protect public ownership of the right-of-way.

(d) Other financial obligations and assets of RFRHA related to acquisition of the Denver Rio Grande Right-of-Way shall remain with RFRHA unless and until the Denver Rio Grande Right-of-Way may be transferred to the Authority.

(e) The Denver Rio Grande Right-of-Way shall, subject to compliance with contractual, legal and other requirements applicable thereto, transfer from RFRHA to the Authority, and the reorganization of RFRHA will be deemed to be complete, if and when the Authority notifies RFRHA that the Authority intends to use the right-of-way for an Authorized Transportation Project other than trails for which funding has been approved by the electors as required by Section 6.03(d) hereof and section 612 of the Act.

(f) Provisions concerning access contained in the Roaring Fork Railroad Holding Authority Intergovernmental Agreement shall be honored by the Authority."

* Section 8.04 of the Original RFTA IGA pertaining to Maintenance of Effort provides as follows:

"Section 8.04. Maintenance of Effort. The Authority shall, regardless of the reorganization process, terms of the RFTA Transition Period or RFRHA Transition Period or any other event, use its best efforts to assure continuity of existing regional and local transit service and ongoing transportation planning efforts, including, but not limited to, the following:

(a) Continuation of (I) the existing transit services provided by RFTA within the territory of the Initial Members as set forth in RFTA's 2000 budget without any significant change in routes, schedules or equipment during the RFTA Transition Period and (ii) additional or new services negotiated during the RFTA Transition Period pursuant to Section 8.02(c)(ii) hereof. For purposes of clause (i), a significant change in a route or schedule shall mean a 5% reduction in service hours for service provided between two locations.

(b) Local funding for regional transportation planning, specifically the completion of the Corridor Investment Study, shall be provided by the Authority in an amount needed to complete the same in an expeditious manner in concert with the federal and State sponsors of and participants in the effort.

(c) Funding of trunk service up the Brush Creek Road corridor pursuant to a contract between the Authority and the Town of Snowmass Village.

(d) Continuation of senior van service in Pitkin County and transit service to Woody Creek and the Maroon Bells, with service provided at the current levels unless Pitkin County agrees to a change in such service. Pitkin County and the City of Aspen (acting jointly) also may decide to provide such services directly. If they do so decide, the payments to be made by Pitkin County pursuant to Section 7.01(c) hereof shall be reduced as described in that subsection.

(e) Financial assistance for paratransit services in the area within the Boundaries of the Authority (such as the Traveler or equivalent service) in addition to the senior van service in Pitkin County at a level of at least $25,000 per year or a higher level determined by the Board from time-to-time based on available resources and implementation of the Authority's overall service plan.

(f) As required by the terms of the ballot question of November 7, 1995 approving the Eagle County 0.5% Transportation Sales Tax, a minimum of 10% of the proceeds of the Eagle County 0.5% Transportation Sales Tax paid to the Authority pursuant to Section 7.01(b) hereof shall be used for trails construction and maintenance within Eagle County election precincts 7, 8, 24 and 25."

6. RESOLUTION 2001-6 (AS AMENDED) RESOLUTION OF THE BOARD OF DIRECTORS OF THE ROARING FORK TRANSPORTATION AUTHORITY AMENDING ROARING FORK TRANSPORTATION AUTHORITY INTERGOVERNMENTAL AGREEMENT dated September 19, 2001. Pertinent portions of the Resolution provide as follows:

"WHEREAS, the Authority and RFRHA and have agreed to reorganize RFRHA by RFRHA assigning all of its assets, right and privileges to the Authority and the Authority assuming all of the obligations and liabilities of RFRHA pursuant to an Assignment and Assumption Agreement between RFRHA and the Authority, consistent with the terms of the form agreement attached hereto as Appendix A (the 'RFRHA Assignment and Assumption Agreement'); and

WHEREAS, the Authority has agreed to create a Denver Rio Grande Right-of-Way GOCO Covenant Enforcement Commission to facilitate compliance with an Agreement dated as of January 17, 2001 between RFRHA and the State Board of the Great Outdoors Colorado Trust Fund, a copy of which is attached hereto as Appendix B, the First Amendment to the Legacy Grant Agreement for the Roaring Fork Railroad Legacy Project dated January 3, 2001 between the State Board of the Great Outdoors Colorado Trust Fund and all of the voting members of RFRHA, a copy of which is attached hereto as Appendix C, and the policy adopted by RFRHA on July 5, 2000 defining the types of uses that may be permitted within the Denver Rio Grande Right-of-Way for the purpose of determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the Denver Rio Grande Right-of-Way, a copy of which is attached hereto as Appendix D.

Section 1.03. Amendment of Section 6.02(d) of Agreement. Section 6.02(d) of the Agreement is amended to read as follows:

(d). Protection and management of the Denver Rio Grande Right-of-Way. The Authority shall be responsible for the protection and management of the Denver Rio Grande Right-of-Way, including the preservation, maintenance, and enhancement of the conservation values of the Denver Rio Grande Right-of-Way, and including the obligations of RFRHA under that certain agreement dated January 17, 2001 between RFRHA and GOCO, and shall provide funding for and monitoring of enforcement of these conservation values, subject to compliance with the Act.

ARTICLE II

AUTHORIZATION OF OFFICERS AND EMPLOYEES

The officers and employees of the Authority are hereby authorized and directed to take all actions that are necessary, convenient and in conformity with the Agreement (as amended by this Resolution), the Act and the Constitution and laws of the State, to carry out the provisions of the Agreement (as amended by this Resolution), the RFRHA Assignment and Assumption Agreement and the Environmental Covenants, including, but not limited to, the execution and delivery of a RFRHA Assignment and Assumption Agreement consistent with the terms of the form agreement attached hereto as Appendix A and agreements and instruments necessary or convenient to implement the terms hereof.

7. POLICY MEMORANDUM from Tom Newland, Executive Director Re: Corridor Encroachment Policy. A copy of the Policy Memorandum is attached below.

ATTACHMENT C

POLICY MEMORANDUM

TO: RFRHA Board of Directors

FROM: Tom Newland, Executive Director

RE: Corridor Encroachment Policy

DATE: July 5, 2000

PURPOSE: The purpose of this policy is to define the uses that can be considered in the railroad corridor under the Encroachment Permit process.

BACKGROUND: The RFRHA Comprehensive Plan allows private interests, adjacent property owners, public utilities and state and local governments to encroach upon a portion or portions of the railroad corridor. However, the Comprehensive Plan is not specific towards which types of uses would be allowed under this encroachment policy. An encroachment is defined as a use or uses by individuals or entities other than RFRHA that are consistent with and do not impact the transportation, recreation and conservation values of the corridor.

POLICY: RFRHA will consider allowing private interests, adjacent landowners, public utilities and state or local government entities to apply for use of a portion or portions of the rail corridor through the adopted encroachment permit procedures. If an encroachment is approved through this process, it will be formalized under a recorded license or lease that is revocable by RFRHA at any time within 60 days. The local jurisdiction where the encroachment is proposed will be notified and invited to submit comments prior to consideration by the RFRHA Board. Pre-existing encroachments along the corridor will be continued provided that they are formalized through a written lease agreement between the owner and RFRHA. Any and all transit and recreation facilities described under the RFRHA Comprehensive Plan will not be considered as encroachments under this policy. New encroachments will not be allowed within the Conservation Restriction Areas (see Exhibit "A"). Sale of any portion of the right-of-way to private interests is prohibited.

The following listings will be considered when determining whether or not a proposed encroachment is compatible with the transportation, recreation and conservation values of the corridor:

Allowed Encroachment Uses

1. Landscaping (earthwork, vegetation)
2. Underground Utilities (public and private)
3. Agricultural Storage (hay, vegetation, uncovered)
4. Agricultural field extensions
5. Trails and trail crossings
6. Road crossings (as per Access Plan)
7. Irrigation Improvements (ditches, ponds, dividing boxes)
8. Recreational Fields (no structures)
9. Recreational Implement Storage (uncovered)
10. Passive Open Space
11. Drainage facilities (culverts, retaining ponds or irrigation facilities)
12. Emergency response staging and/or access (flooding, wild fire and other disasters)
13. Traffic Control Devices

Prohibited Encroachment Uses:

1. Paved Roadways (other than to consolidate crossings as per Access Plan)
2. Public or Private Buildings and Covered Structures
3. Aviation take-off or landings (planes, gliders, motorized gliders, hot-air balloons)
4. Concessions, temporary or permanent (i.e. open-air markets, food stands, flea markets, farmer markets)
5. Shooting Ranges
6. Camping
7. Controlled Fires
8. Waste Deposition (i.e. yard wastes, dirt/rock, other solid waste, liquid waste)
9. Human Habitation
10. Fencing or livestock yards/kennels
11. Motorized vehicle races (or associated staging)
12. Hunting on the RFRHA Property
13. All Commercial Signage
14. Signage larger than 3′ x 2′
15. Raves

Encroachment Uses Considered Under Special Review. The use must show a potential overall benefit to the corridor and/or a hardship that can only be overcome by its placement on the corridor.

14. Telecommunication/Radio/Television Facilities (uncovered)
15. Chemical, mineral or petroleum storage (uncovered)
16. Public or Private Vehicle Storage
17. Signage (traffic, directional, and informational, no greater that 3′ x 2′)

18. Low-Impact or beneficial gatherings or events (i.e. running or biking races, Access to river boating, weed pulling, educational tours, biological studies, small memorial gatherings)
19. High-Impact gatherings or events outside of Conservation Restriction Areas (i.e. music concerts, political rallies, parades, fairs, large memorial services)
20. Transit Facilities in station locations designated by the Comprehensive Plan or adjacent to public road crossings (park-and-rides, bus shelters, etc.)
21. Commercial Recreational Staging
22. Weather or Traffic Observation Devices
23. Outdoor Lighting of any kind
24. Any use proposed that is not defined above or that is prohibited by law or jurisdictional policy
25. Storage of Agricultural Implements
26. Utility Storage (uncovered)
27. Implements Associated with Recreational Fields or Uses
28. Commercial Storage (uncovered)
29. Memorials