Roaring Fork Transportation Authority
Railroad Right of Way Corridor

ACCESS CONTROL PLAN

RFTA ACCESS CONTROL PLAN UPDATE

May 11, 2017

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VII. Appendices: Except for those that must be approved by the RFTA Board due to contract or agreement, the Appendices are advisory or informational and non-binding and can be revised and/or updated as needed without RFTA Board action:

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Appendix A – Listing of All existing uses, proposed uses and potential uses (including crossings)

Appendix B – RFTA Rio Grande Railroad Corridor Design Guidelines (Preliminary draft attached)

Appendix C – Map of Federal Land Grant Areas, Conservation Covenant Areas, and Section 6f Land and Water Conservation Fund Areas. (Still in development)

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I. OVERVIEW

This document contains the Access Control Plan ("ACP") for the historic Aspen Branch of the Denver & Rio Grande Western Railroad Corridor between Glenwood Springs and Woody Creek, Colorado (hereinafter the terms "Corridor", "Railroad", "Railroad Corridor", "Rail Trail", "Right of Way" ("ROW)", and "Property", all refer to the above noted Aspen Branch of the Denver & Rio Grande Western Railroad, are one and the same and used interchangeably throughout this document) as now owned by the Roaring Fork Transportation Authority ("RFTA"). The ACP applies to the entirety of RFTA's ownership area. The ownership area is approximately 33.4 miles in length and the width of the property varies from 50' to 200' with the predominant width of 100' covering approximately 460 acres of land.

The Roaring Fork Railroad Holding Authority ("RFRHA") acquired the Railroad Corridor in 1997 as an operating line of railroad pursuant to authority granted by the Surface Transportation Board ("STB"). RFRHA subsequently "railbanked" the line, which preserved it for future freight rail reactivation and allowed the Corridor to be used in the interim as a public trail and for open space purposes. Pursuant to 16 U.S.C. 1247(d), a "Notice of Interim Trail Use" ("NITU") was issued to RFRHA by the STB in 1998. RFRHA transferred ownership of the corridor to the RFTA in 2001 pursuant to a NITU substituting RFTA for RFRHA as the railbanking entity. The residual common carrier obligation and the right to reactivate rail service was also transferred to RFTA pursuant to a 2004 STB order. This ACP is adopted to define the responsibilities and expectations of the sponsors of projects proposed to cross or encroach upon the Corridor, and to ensure reasonable access to the Railroad Corridor consistent with the Corridor's interim trail, open space, and other lawful public uses, including possible freight rail reactivation and/or commuter rail use.

RFTA's intent is to facilitate the interim use of the Corridor for public trail, open space, and other lawful uses and to enable reasonable access to and crossing of the Railroad Corridor, while preserving the Corridor's railbanked status for future commuter and/or freight rail service. The ACP takes into consideration the interests of RFTA's constituent-members as well as private property owners and allows for reasonable, planned access into and across the Corridor in keeping with this ACP and RFTA's Design Guidelines ("DG"). It is not the RFTA's intent, by this document, to interfere with any constituent member or other local governments land use, control or authority over private or public development other than to protect and preserve RFTA's rights and obligations to the corridor. Insofar as necessary to ensure RFTA's obligations for the Railroad Corridor related to its railbanked status, this ACP includes an explanation of "railbanking" and the requirements necessary to maintain that status.

The ACP also includes a brief summary outlining the obligations related to use of the Great Outdoors Colorado ("GOCO") funding, and a brief summary of key findings of the Recreational Trails Plan.

II. Background

Train operations in the Roaring Fork Valley decreased in phases between the 1960s and the mid-1990s. Recognizing its potential value as a future public transportation corridor, RFRHA was created in 1994 by means of an Intergovernmental Agreement between the City of Glenwood Springs, Garfield County, Town of Carbondale, Eagle County, Town of Basalt, Town of Snowmass Village, Pitkin County, the City of Aspen and the Colorado Transportation Commission, for the express purpose of acquiring the Aspen Branch of the Denver & Rio Grande Western Railroad right-of-way (33.4 miles from Woody Creek to Glenwood Springs) from the Southern Pacific Transportation Company. In 1997, RFRHA purchased the corridor for $8.5 million funded by a consortium of state and local interests, including RFRHA's members, the Pitkin County Open Space and Trails Program, the Colorado Department of Transportation ("CDOT"), and GOCO.

State of Colorado Rural Transportation Authority enabling legislation, enacted in 1997, (i.e. 43-4-601 et. seq., now known as the Regional Transportation Authority Law), was the impetus for creating a more effective regional transportation authority structure. In November 2000, voters in Glenwood Springs, Carbondale, Eagle County, Basalt, Snowmass Village, Pitkin County and Aspen approved the creation of RFTA, the successor to the Roaring Fork Transit Agency, and dedicated sales taxes to support the ongoing operation and development of transit and trails programs. Subsequently, over the next two years, the employees and assets of the Transit Agency and RFRHA were merged into RFTA. Currently, RFTA manages the Corridor and is preserving it for future rail/transportation purposes pursuant to the federal rail banking provision of the National Trails System Act, thus limiting activities that might preclude re-introduction of rail or other mass transportation systems in the Roaring Fork Valley. The interim use is an extremely popular 10' wide paved trail, known as the Rio Grande Trail (RGT), from Glenwood Springs to Woody Creek. A paved and soft surface trail, owned by Pitkin County, connects Woody Creek with Aspen.

The Corridor, bounded by approximately 500 adjacent private property owners, traverses three municipalities and three counties, and it is encumbered by multiple licenses, leases, contracts, or easements. It is the intent of RFTA by means of this ACP to address the reasonable access needs of RFTA constituent-members in a cooperative fashion, while protecting the Corridor and fulfilling RFTA's regulatory and other contractual obligations given the best information and legal precedent now available.

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RAILBANKING

Under 16 U.S.C. 1247(d), Congress acted to encourage interim uses of otherwise-to-be abandoned railroad lines for trail and other compatible public purposes while preserving potential future use of such railroad lines for freight and other consistent commuter or passenger rail uses. As such, Railbanking provides a mechanism that allows RFTA and local jurisdictions to maintain the Rio Grande Railroad Corridor for alternative public uses, while preserving the contiguous 33.4-mile Railroad Corridor intact, so long as the Corridor is maintained in a manner allowing for future freight rail use.

An underlying concern is the interests of individual property owners along the Railroad Corridor, who maintain property interests subservient to the Corridor's Railbanked status. In 2014, the Supreme Court of the United States ruled that federally granted rights of way that comprise many of the nation's railroad corridors may revert to adjacent property owners upon STB approved abandonment and the consummation of that abandonment authority. If the Corridor was removed from Railbanked status and RFTA exercised its underlying abandonment authority through consummation of the abandonment, then the Corridor would no longer be subject to STB jurisdiction and approximately seven miles of Federal Land Grant areas could revert to adjacent property owners. This would render the Corridor unsuitable for a future public transportation system, and also negatively impact the existing recreational trail. In order to ensure compliance with 16 U.S.C. 1247(d) and preserve the Corridor's Railbanked status, any agreement, crossing, or interim use of the established Corridor must be constructed and maintained in a manner that would allow for the right to restore and reactivate freight rail service and would not preclude or permanently interfere with the restoration and reconstruction of the Corridor for freight railroad purposes. This is necessary to avoid any potential determination that the corridor has been abandoned. Regulatory and interpretive guidelines create conditions to which proposed uses (including crossings) of the Corridor should adhere. In most instances, compatibility with freight rail will also ensure compatibility with possible future commuter rail use, as well as current and future trail uses. However, compatibility with trail uses does not necessarily mean that a proposed use or crossing is compatible with freight rail reactivation or future commuter rail uses. For this reason, parties seeking to use the Corridor for crossings or other purposes are encouraged, while in the early planning stages, to consider whether their proposed crossings or other uses are compatible with freight rail reactivation and commuter rail uses before they file an application for such uses with RFTA.

III. RFTA Philosophy Regarding Proposed Public and Private Crossings and Other Uses of the Rail Corridor:

This ACP and the accompanying DG are intended to guide sponsors of crossing projects and other uses of the Corridor, from the outset of their planning processes, on the design of their projects in ways that will not create concerns for RFTA with respect to future freight rail reactivation or commuter rail uses. Subject to CPUC approval, and while rail service is inactive on the Corridor, RFTA will generally approve public at-grade crossings that meet its DG, so long as such crossings would not preclude or permanently interfere with RFTA's ability to reactivate freight rail or initiate commuter rail service.

RFTA recognizes and appreciates that the constituent governments of RFRHA, from whom RFTA inherited the Corridor, are also members of RFTA and that they, too, are committed to preserving the contiguous Railroad Corridor intact for its future and current uses. For this reason, RFTA agrees that it will not withhold approval of proposed public crossings and other Corridor uses that are consistent with RFTA's ACP and DG and would not preclude or permanently interfere with RFTA's ability to reactivate freight or initiate commuter rail service. However, the corridor is subject to obligations associated with CDOT, Federal Highways Administration ("FHWA"), GOCO, and Land and Water Conservation Funding ("LWCF") 6(f) designation grants involved in its acquisition and the construction of the recreational trail , which may require consultation with these agencies for certain actions involving the corridor.

RFTA acknowledges that no plans, policies, or guidelines, can foresee every condition or situation that could potentially arise with respect to all proposed future uses of the Corridor. RFTA intends that its application of the ACP and DG will be flexible enough to adapt to the unique circumstance presented by Corridor uses that are proposed in the future. RFTA will also endeavor to use a reasonable approach when working with crossing sponsors to help them design their projects to be cost effective, so long as in the absolute discretion of RFTA, its legal counsel, and railroad engineers, the preservation of the Corridor's Railbanked status would not be jeopardized.

RFTA assures parties proposing public or private uses of the corridor that it will endeavor to work cooperatively with them, consistent with the policies stated herein, to help them achieve their objectives in the most efficient and cost-effective manner possible, including collaborating with sponsors during the planning and design processes for their projects.

IV. GREAT OUTDOORS COLORADO (GOCO) – hyperlink to the current CEC reports will be set up as soon as the document is finalized

On June 30, 1997, RFRHA, a public entity created in 1993 by the towns and counties within the Roaring Fork Valley, purchased the Aspen Branch of the Denver & Rio Grande Western Railroad right-of-way from the Southern Pacific Transportation Company. The purchase was funded by a consortium of state and local interests. In exchange for financial participation of the property using some funding from GOCO, each of the funding participants agreed to the placement of a Conservation Easement on the Corridor to protect the "conservation values" of the property.

The conservation covenants of the Conservation Easement required that no new structures, fences, crossings, or pavement be placed, or that any mining or harvesting of timber occur on the Corridor. The Aspen Valley Land Trust ("AVLT") was designated as the steward of the Conservation Easement and was responsible for correcting any of the violations to the satisfaction of GOCO.

On February 3, 2000, a Comprehensive Plan for the Railroad Corridor was adopted by the then RFRHA. One of the recommendations of the plan was to reduce the size and scope of the Conservation Easement on the Corridor. The plan cited that upon careful inspection and assessment of the Corridor through the Corridor Investment Study ("CIS") process, many portions did not contain the attributes described as "conservation values" by the Conservation Easement. As such, these portions of the Corridor did not warrant protection under the Conservation Easement. In addition to the reduction of the size of the conservation areas, RFRHA received strong advice from a member of its federal legislative contingent that a conservation easement on the Corridor would significantly hinder RFRHA's ability to receive federal funding participation for future transportation improvements. In response to this issue, the Comprehensive Plan did the following:

A. It changed the Conservation Easement to a Restrictive Covenant. The covenant on the deed of the property requires the owner to abide by its terms through self-regulation. (This is different from the previous conservation easement, which was an encumbrance that ran with the land and required an entity other than the owner to regulate compliance.)

B. It reduced the size of the area covered by the restrictive covenant to encompass only those areas of the Corridor that contain the "conservation values" described within the

original conservation easement. The size was reduced from 33.4 miles (the full length of the Corridor from Glenwood Springs to Woody Creek) to 17.3 miles (slightly more than one-half of the Railroad Corridor).

On January 17, 2001, an Agreement was reached between RFRHA and GOCO that replaced the Conservation Easement with the Restrictive Covenants. On November 15, 2001, RFTA accepted ownership of the Railroad Corridor from RFRHA, and RFRHA was dissolved. RFTA then replaced RFRHA as a party to the Restrictive Covenant Agreement. RFTA created a Covenant Enforcement Commission made up of representatives of each of its constituent entities that the Authority serves. It is the responsibility of the Commission to meet annually to make an assessment of the Rail Corridor and to recommend to RFTA that it make any corrections necessary to ensure that the conservation values of the areas described within the Covenant Agreement are not compromised as long as such corrections are consistent with this ACP.

V. Rio Grande Trail – Recreational Trails Plan hyperlink to the Recreational Trails Plan will be set up as soon as the document is finalized.

The overall intent of the Recreational Trails Plan is to develop a trails and recreation plan for the Corridor that provides a wide range of public recreational opportunities including trails, river access, wildlife viewing, habitat conservation, and educational and interpretive activities.

The purpose of the Recreational Trails Plan is as follows:

A. To provide a continuous trail between Glenwood Springs and Woody Creek within the Railroad Corridor that has been environmentally cleared through a National Environmental Policy Act (NEPA) process;

B. To work with other Trails organizations in the Roaring Fork Valley to explore additional recreational and commuter connection opportunities;

C. To meet the expressed community recreational needs;

D. To develop trails programming and design principles that will provide a quality trail experience;

E. To plan for support facilities such as trailheads and parking;

F. To minimize impacts on adjacent landowners; and

G. To develop implementation costs.

The Rio Grande Trail construction was completed in 2008. The RFTA Trails Department continues to work with RFTA's member jurisdictions, other local jurisdictions, and other trails consortiums to stay up to date on the latest recommended safety improvements and recommendations for trail construction and amenities to keep the Rio Grande Trail one of the best and most widely used trails in the state.

VI. POLICIES FOR MANAGING RAILROAD CORRIDOR CROSSINGS AND ENCROACHMENTS

1.0 Title

This Policy shall officially be known, cited, and referred to as the "Access Control Plan." (ACP)

2.0 Purpose, Intent, and Audiences.

A. **This Policy is intended to promote stewardship of the Railroad Corridor by RFTA, RFTA's member jurisdictions, CDOT, GOCO, and adjacent property owners, in an attempt to preserve the Railroad Corridor consistent with 16 U.S.C. 1247(d).**

B. **The purpose of this policy is to:**

1. Preserve the Railroad Corridor for future private and public transportation options and to maintain the Corridor's railbanked status under 16 U.S.C. 1247(d) and under the jurisdiction of the STB for future freight and/or commuter rail reactivation.

2. Establish guidelines to ensure reasonable access into and across the Corridor for present and future users which are consistent with its status as a railbanked corridor.

3. Support, promote, and maintain the Corridor's trail, open space, and public

uses.

4. Ensure the safe operation of existing Railroad Corridor crossings.

5. Ensure the safety of trail users of the Railroad Corridor at private and public at-grade crossings of the Railroad Corridor.

6. Minimize and consolidate new or existing at-grade road crossings over the Railroad Corridor whenever practicable in light of the Corridor's purpose and use optimization and costs.

7. Implement the Restrictive Covenant objectives, by avoiding adverse impacts to the open space, recreation, scenic, and wildlife values of the Corridor, and adjacent lands that add to the scenic value and enjoyment of the Corridor. When adverse impacts cannot be avoided, they shall be mitigated to the extent practicable.

8. Minimize, to the extent feasible, future financial liability and costs to RFTA and constituent-member jurisdictions arising from third party use of the Railroad Corridor, including the expense of upgrading any existing or approved crossings of the Railroad Corridor, as practicable. Approval may include obtaining financial security.

C. The intended audiences for the ACP are:

1. RFTA's member jurisdictions, Garfield County, CDOT, GOCO, the RFTA Board of Directors, and RFTA staff tasked with the management of the Railroad Corridor;

2. Adjacent property owners currently holding a license, lease, contract, or easement for access across or encroachment upon the Railroad Corridor or adjacent property owners requesting a license, lease, contract, or easement for access across or encroachment upon the Railroad Corridor; and

3. Local, State, or Federal jurisdictions and/or Utility Companies currently holding a license, lease, contract, or easement for access across or encroachment upon the RFTA Railroad Corridor or requesting new access to

the RFTA Railroad Corridor.

3.0 Authority

The RFTA Board of Directors, (the "Board") has the authority to review, approve, conditionally approve, and disapprove applications for construction, reconstruction, realignment, consolidation, and modification of Railroad Corridor crossings. The Board's authority emanates from intergovernmental agreements, adopted pursuant to the Rural Transportation Authority Act, Section 43-4-601, et seq. The Board's authority also stems from RFTA's status as "Interim Trail Manager" and holder of rights to reactivate freight rail service arising under federal law pertaining to the Railroad Corridor's railbanked status under the jurisdiction of the STB. RFTA acknowledges that this authority is exercised subject to the rights of public and private interests underlying and adjacent to the Corridor.

4.0 Jurisdiction

The ACP applies to the entirety of the Railroad Corridor owned by RFTA, generally from the Railroad Corridor's connection with the Union Pacific Railroad main line (WYE area) in Glenwood Springs to County Road 18 in Woody Creek.

5.0 Interpretation, Conflict, and Severability

A. **Interpretation**. This ACP shall be interpreted to be consistent with all applicable federal requirements and orders of the STB or applicable court decisions. The ACP shall be interpreted consistent with RFTA's objectives to operate a public trail on the Corridor while preserving the Corridor for future freight rail and/or compatible commuter rail reactivation in order to ensure its continued eligibility for federal railbanking status, to otherwise maintain the Corridor for open space and park uses consistent with its obligations under the GOCO agreement, the Corridor's 6(f) designation under the Land and Water Conservation Fund, its eligibility for listing on the National Register of Historic Places in 1999, and to promote other compatible and lawful public uses. This Policy shall be construed broadly to promote the purposes for which it is adopted.

Notwithstanding anything in this document to the contrary, because this ACP is advisory, nothing herein is intended to grant to or permit any adjacent landowner or public entity any greater rights of access over, under, along or

across the Corridor than they would otherwise have under Colorado law or to impair or limit RFTA's rights as a public entity and landowner in managing its Corridor.

B. **Conflict.**

1. **Public Provisions**. The STB has exclusive jurisdiction over transportation by rail, including railbanked right of way such as the Railroad Corridor (16 U.S.C. 1247(d)). In addition, 49 U.S.C. 10501(b) expressly preempts state and local law inconsistent with keeping railroad corridors intact for future freight rail reactivation and interim trail use.

2. **Private Provisions**. To the extent consistent with 16 U.S.C. 1247(d) and 49 U.S.C. 10501(b) this ACP is not intended to abrogate any, license, lease, easement, covenant, or any other private agreement or restriction, provided that where the provisions of the ACP are more restrictive or impose higher guidelines or regulations than an existing license, lease, contract, easement, covenant, or other private agreement or restriction, then the requirements of this ACP shall apply upon termination or expiration of such license, lease, easement, covenant, or other private agreement. RFTA will not unreasonably withhold the issuance of new licenses to new owners when properties are sold as long as such licenses are consistent with this ACP and DG.

C. **Severability**. If any part or provision of this Policy or the application of the Policy to any person or circumstance is adjudged invalid by any court of competent jurisdiction and such judgment is upheld on appeal, if applicable, notwithstanding the federal jurisdiction of the STB, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of the Policy or the application of them to other persons or circumstances. The Board hereby declares that it would have enacted the remainder of the Policy even without any such part, provision, or application that is judged to be invalid.

6.0 Amendments

The ACP cannot anticipate every circumstance or question arising from RFTA's management of the Railroad Corridor and the Rio Grande Trail and the need may

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arise to change the policies, procedures, or guidelines described in the ACP policy. The RFTA Board of Director's reserves the right to adopt amendments to the ACP pursuant to RFTA Procedures at the time of any proposed amendment. Unless an emergency exists, amendments of the ACP will require two readings by the RFTA Board of Directors prior to adoption and can only be adopted in the same manner that the ACP is adopted, i.e. by a unanimous vote of the seven original RFRHA member jurisdictions.

7.0 Owner Defined

"Owner" means the legal owner of real property or right-of-way, including easements, or the person or entity that holds fee title to the property or right-of-way or their designee. Owners may include public bodies, as in the case of a street right-of-way, or a private entity (e.g., private landowners and utility companies).

8.0 Great Outdoors Colorado Requirements and Locations Defined

RFTA created a Covenant Enforcement Commission made up of representatives from each of its constituent entities that the Authority serves. It is the responsibility of the Commission to meet annually to make an assessment of the Railroad Corridor and to recommend to RFTA that it make any corrections necessary to insure that the conservation values of the areas described within the Conservation Agreement are not compromised. The restrictive covenants require, among other things, that no new structures, fences, crossings, or pavement be placed on and that no mining or harvesting of timber occur within the Corridor.

The assessment of the nine conservation areas will generally be conducted annually while this ACP is in effect. The full report includes a spreadsheet that summarizes the observed violations, the remedies recommended, and the actions taken to address each violation. The spreadsheet is a living document, a checklist to be used by RFTA to track violations and take actions to resolve them.

The following is a list and brief description of the nine conservation areas:

1. **Conservation Area #1: Railroad (RR) Milepost 362.90 to 363.82 or RFTA Milepost 2.68 to 3.60 (0.92 miles – 21.3 acres)** - Running from the Glenwood Springs City limits south to the intersection of Highway 82 and Grand Avenue (old Highway 82),

this area is well vegetated by native, scrub oak dominated mountain-shrub vegetation that offers excellent habitat for birds and small animals.

2. **Conservation Area #2: RR Milepost 365.40 to 366.47 or RFTA Milepost 5.18 to 6.25 (1.07 miles – 14.7 acres)** - This section begins at the crossing of County Road 107 (known as Coryell Ranch Road) to a location about one-fourth-mile below the CMC Road/Highway 82 intersection. This area is well vegetated by mature native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals

3. **Conservation Area #3: RR Milepost 368.50 to 369.00 or RFTA Milepost 8.28 to 8.78 (0.50 miles – 6.1 acres)** - This section of the Railroad Corridor covers the broad bend in the Roaring Fork River between the River Edge property and the ranchette parcels near Aspen Glen. There are mature sage shrubs in this section and the mountain shrub ecosystem on the Corridor in this area provides excellent habitat for birds and small animals.

4. **Conservation Area #4: RR Milepost 370.50 to 370.92 or RFTA Milepost 10.28 to 10.70 (0.42 miles - 7.4 acres)** - This section goes from about a three-fourths-mile south (up valley) of the Aspen Glen entrance to a private crossing located just below the confluence of the Crystal River and the Roaring Fork River. This area is well vegetated by mature native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals.

5. **Conservation Area #5: RR Milepost 371.69 to 371.83 or RFTA Milepost 11.47 to 11.61 (0.14 miles – 3.4 acres)** - This section surrounds the Railroad Bridge at Satank and offers excellent river and recreation access opportunities and preserves wetland and riparian habitat. Views of Mt. Sopris are provided on the bridge.

6. **Conservation Area #6: RR Milepost 376.14 to 381.82 or RFTA Milepost 15.92 to 21.60 (5.68 miles – 85.7 acres)** - This section begins near the Catherine Store Bridge (County Road 100) and continues southwest to Emma Road including the Rock Bottom Ranch property. Rock Bottom Ranch is owned by a non-profit entity, the Aspen Center for Environmental Studies, as a nature preserve. The nature preserve is also encumbered by a Conservation Easement held by the Aspen Valley Land Trust (AVLT). The Railroad Corridor is nestled between a broad, riparian area

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of the Roaring Fork River and Bureau of Land Management property. A number of conservation values are provided within this section of the Corridor including riparian and wetland habitat protection; access to river recreation opportunities; access to public lands; preservation of habitat critical to eagle, hawk and heron populations in the valley; and preservation of winter range migratory patterns for macro fauna (mule deer and elk).

7. **Conservation Area #7: RR Milepost 382.19 to 384.90 or RFTA Milepost 21.97 to 24.68 (2.71 miles – 33.1 acres)** - This section begins shortly east of the Emma Road/Highway 82 intersection, continues toward the Basalt High School between ranch properties and federal lands and ends just west of the Wingo pedestrian bridge over Highway 82. A parcel of land owned by the Pitkin County Open Space and Trails Program along the Corridor contains a conservation easement to preserve a known migratory route for mule deer and elk. Another portion of private property in this area contains a golf course and very low-density housing. The area is well vegetated by mature, native, mountain-shrub and related plant species that offer excellent habitat for birds and small animals.

8. **Conservation Area #8: RR Milepost 384.90 to 388.05 or RFTA Milepost 24.68 to 27.83 (3.15 miles – 36.6 acres)** - This section starts at the east side of the Wingo Subdivision and continues southeast to the end of the Dart Ranch on Lower River Road. Several conservation values are present on this section of the Corridor, including habitat for birds and small animals along the interface between mountain shrub and grassland habitat; access to the Roaring Fork River for recreation; access to National Forest lands; and preservation of critical habitat for macro fauna (mule deer and elk). A significant portion of this section is surrounded by a conservation easement held by Pitkin County on the Dart Ranch. Riparian vegetation along the Roaring Fork is also present. The Railroad Corridor can access several fisherman easements along the Roaring Fork River.

9. **Conservation Area #9: RR Milepost 390.58 to 393.67 or RFTA Milepost 30.36 to 33.45 (3.09 miles – 37.2 acres)** - This section begins near the crossing of Lower River Road, continues through the Woody Creek area until the end of the Corridor at Woody Creek Road. The river side of this section contains mountain shrub and riparian vegetation that offers excellent habitat for birds and small animals. The Railroad Corridor is situated on a steep slope that comes down from Triangle Mountain (National Forest lands) and ends at the Roaring Fork River. The Railroad

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Corridor affords access to both the Roaring Fork River and National Forest lands. In addition, the Railroad Corridor can access several fisherman easements along the Roaring Fork River. The uphill side of the Railroad Corridor contains primarily steep shale hillside and includes or is adjacent to Lower River Road. In the Woody Creek area, the Railroad Corridor is perched on a short but steep hillside that affords excellent views of the Elk Mountain range and Aspen-area ski resorts.

9.0 Rio Grande Trail within the Railroad Corridor Requirements.

Trail Use: The Rio Grande Trail is designed, built, and operated within the Railroad Corridor and is operated for multi-purpose use. Trail uses, including walking, running, biking, skating, equestrian, and cross-country skiing, should be encouraged. No motorized use except for emergency access and maintenance vehicles and authorized electrically-assisted bicycles will be allowed. No camping or open fires will be allowed on the Railroad Corridor.

Linkages: Access and increased connections to the trail should be encouraged to maximize use by, between, and among neighborhoods and communities. Insofar as connections are consistent with the ACP and DG, and would not degrade the overall quality of the RGT user experience or safety, every effort will be made to allow for easy, convenient, and direct access to the trail. Connections will be coordinated to provide access consistent with the purposes of this policy. A regional recreational experience for all individuals and non-motorized modes will be emphasized as a part of the trail experience. Trail access is governed by RFTA's Recreational Trails Plan and administered by RFTA's Assistant Director, Project Management & Facilities Operations & RFTA's Trails Manager and staff. Design principles are located in:

- RFTA's Recreational Trails Plan and RFTA's DG
- AASHTO "Guide for the Development of Bicycle Facilities, 4th Edition" https://bookstore.transportation.org/collection_detail.aspx?ID=116 or Appendix A
- FHWA – FTA – United States Department of Transportation Policy Statement on Bicycle and Pedestrian Accommodation Regulations and recommendations http://www.fhwa.dot.gov/environmet/bicycle_pedestrian/overview/policy_accom.cfmhttp://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/bp-guid.cfm (see section 10, Design Guidance);

http://www.dhwa.dot.gov/environment/recreational_trails/guidance/manuals.cfm

Environmental Impacts/Mitigation: The overriding goal of trail design and management has been to protect the natural quality of the Corridor. This was done through minimization of impacts to the natural environment through design, management, and education. Sensitive areas were identified and mitigation measurements were and will continue to be implemented where appropriate.

Safety: Safety of the trail user and the adjacent landowners has been addressed through design and management techniques. This includes providing adequate width to avoid user conflicts, situating trail access points so that they are sensitive to safety, and should include providing barrier protection where appropriate between trail and transit, when transit returns to the Railroad Corridor. Perimeter fencing may also be used in various locations to reduce conflicts with livestock and wildlife.

Implementation: Implementation of the overall trail system has been a regional effort that included the local, federal, and state government agencies. RFTA was responsible for implementation of the sections of trail not developed by local jurisdictions.

10.0 Types of Crossings and Encroachments Defined

A. Private Crossings and Encroachments shall include:

1. **Private Road Crossing** - means a crossing of the Railroad Corridor by a private driveway or road at a single point for ingress and egress to an adjacent property for a homeowner and/or business. A private driveway or road must be approved by RFTA and granted by license, lease, contract. Failure to obtain approval from RFTA for the encroachment, failure to pay the license, lease, contract fee, or failure to comply with RFTA DG guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 16.0)**

2. **Private Utility Crossing** – means a crossing of the Railroad Corridor by a utility service for a single point service to serve an adjacent homeowner and/or a

business whether above ground or below ground. A private utility crossing must be approved and licensed, leased, contracted by RFTA. Failure to obtain approval from RFTA for the encroachment, failure to pay the license, lease, contract fee, or failure to comply with the RFTA DG may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 15.0)**

3. **Private Encroachment** is any use of any portion of the Railroad Corridor other than a Private Road Crossing or Private Utility Crossing without the permission of RFTA. Typical encroachments include fences, buildings, retaining walls, or temporary construction accesses that encroach upon the Corridor, or agricultural or landscaping activities or uses by adjoining landowners that encroach upon the Corridor. RFTA shall treat any private encroachment similar to a crossing and shall require a license, lease, contract for it. Failure to obtain approval from RFTA for the encroachment, failure to pay the license, lease, contract fee, or failure to comply with RFTA DG guidelines may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. The Storage of vehicles, debris, trash, fences, etc. are examples of encroachments incompatible with open space, trails, rail, wildlife and aesthetic uses of the Railroad Corridor that will not be licensed, leased, contracted by RFTA. **(Refer to process in section 15.0)**

B. **Public Crossings and Encroachments shall include:**

1. **Public Road Crossing** means a road-rail crossing where the road on both sides of the crossing is under the jurisdiction of and/or maintained by the state, county, city or town. Public road crossings may be granted by easement, so long: (1) as the designs are consistent with RFTA's ACP and DG or such other design as may be approved by the RFTA Board of Directors; (2) the road authority obtains any necessary PUC approval of the crossing; and (3) the easement is approved by the RFTA Board of Director's. Failure to obtain approval from RFTA for the public crossing may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. The design for a public crossing must be reviewed, approved by RFTA, and to the extent the

Colorado Public Utilities Commission (CPUC) has jurisdiction over railbanked crossings, require approval by the CPUC. **(Refer to process in section 16.0)**

2. **Public Utility Crossing** means a crossing of the Railroad Corridor by a public utility meant to serve more than one residence or business. Unless otherwise ordered by a court, a public utility crossing must be approved by RFTA. To the extent CPUC has jurisdiction over utility crossings of railbanked corridors, such a crossing will also require approval by the CPUC and RFTA shall have the right to oppose that approval request unless such crossing is consistent with this ACP and DG or is appropriately approved by the RFTA Board of Directors. Failure to obtain approval from RFTA for the utility crossing, failure to pay the license, lease or contract fee, or failure to comply with the RFTA DG or any applicable court, CPUC, or STB order may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of a crossing or as a waiver of RFTA's rights. **(Refer to process in section 16.0)**

3. **Public Encroachment** means any use of any portion of the Railroad Corridor with the permission of RFTA. Typical encroachments include fences, buildings, retaining walls, or temporary construction access that encroach upon the Corridor, or agricultural or landscaping activities or uses by adjoining landowners that encroach upon the Corridor. It is RFTA's policy to treat any encroachment as similar to a crossing and to require a license, lease, or contract for any encroachment. An unapproved encroachment is a trespass and must either be approved by lease, license or contract by RFTA or removed. Failure to obtain approval from RFTA for the encroachment, failure to pay the license, lease or contract fee may result in RFTA pursuing all available remedies. Failure to pursue a remedy in no event shall be construed as an approval of an encroachment or as a waiver of RFTA's rights. The storage of vehicles, debris, trash, fences, etc. are examples of encroachments incompatible with open space, trails, rail, wildlife and aesthetic uses of the Railroad Corridor that will not be, licensed, leased or contracted by RFTA. **(Refer to process in section 16.0**)

11.0 Permitted Crossings Defined

A “crossing” means any crossing of the Railroad Corridor by a public street, private drive, trail, utility, or similar facility.

“Permitted crossings are crossings approved by license, lease, contract, or easement by RFTA and for public crossings also approved by the CPUC.

Permitted crossings include, but are not limited to, the following:

A. Crossings that had a license, lease, contract, or easement in place and effective at the time of RFTA’s (previously RFRHA’s) purchase of the Railroad Corridor from Southern Pacific Transportation Company (Appendix A – List A); or

B. Crossings for which RFTA has granted a license, lease or contract, to the extent the crossings comply with the terms of the licenses, leases, contracts, including crossings used exclusively by RFTA (Appendix A – List A); or

C. Crossings that RFTA (previously RFRHA), CDOT, and GOCO have approved as a “proposed new crossing” (Appendix A – List B) or

D. New Crossings that RFTA may approve upon further review (Appendix A – List C)

E. “Existing Crossings” shall include all permitted and unpermitted crossings in Existence at the time of the adoption of the ACP. All existing crossings are subject to the terms of the ACP.

F. Any crossing that is not a “permitted crossing” may be closed at the direction of the RFTA Board of Directors discretion at any time.

12.0 Improvements and Maintenance for Existing Crossings

A. **Improvements.**

1. Owner initiated: The costs of owner-initiated improvements to crossings shall be borne by the owner, and owners will be responsible for improving their existing crossings consistent with this ACP and DG, so as to allow and not preclude or permanently interfere with future freight rail reactivation. To the extent RFTA will benefit from such improvements or maintains a significant

interest in the condition or manner of improvements to be made, RFTA may collaborate with the owner and negotiate a proposed contribution to the cost of improvements. However, nothing in this document, paragraph, or section, is intended to obligate RFTA to make any contributions or otherwise obligate RFTA to collaborate on such improvements.

2. RFTA initiated: In the event of other general transit system improvements initiated by RFTA, RFTA will bear the costs of such improvements. To the extent RFTA's improvements provide a significant, discrete benefit to identifiable owners, above the benefit conferred to other owners, RFTA shall cooperate with said owners and negotiate the parties' equitable contributions to the cost of improvements.

3. In the event that a proposed public or private project causes a verifiable increase in either the peak hour vehicular volume or the total vehicular volume using the corridor crossing, or a documented safety issue exists, the need for rail/trail and/or safety improvements shall be assessed. RFTA may cooperate with owners to allocate the cost of the safety improvements between the owners and RFTA as equitably as practicable. However, nothing in this document, paragraph, or section, is intended to obligate RFTA to make any contributions or otherwise obligate RFTA to collaborate on such improvements.

4. In instances in which improvements have been agreed to under the terms of a license, lease, contract, or easement agreement or by separate proceedings.

RFTA shall review and approve the design for conformance with RFTA's DG, and will also review and approve the materials to be used and specifications for all construction, in accordance with this ACP. No improvements shall be made unless a permit therefore has been issued by RFTA in accordance with Section 16.B.2.

B. **Private Crossing Maintenance Responsibility.** Owners shall maintain their roadway approach in a state of good repair. Maintenance shall include, but not be limited to, removing rocks, soil, vegetation and other material that may fall, slide, wash, or be placed onto crossing areas; and maintaining the railroad or trail crossing free of other obstructions (e.g., snow storage, parked vehicles, equipment, etc.); maintaining the approach grades and acceptable pavement

condition to the end of the ties; proper drainage in the crossing area; maintaining clear view, or site distances required in the DG; and maintaining any gate crossing appurtenances. As a last resort and after reasonable notice, RFTA retains the right to undertake supplemental maintenance at the owner's expense, as necessary.

C. **Public Crossing Maintenance Responsibility** - All public and utility crossings shall be maintained by the roadway authority or public utility in good condition, and in a manner that is consistent with maintaining the Corridor pursuant to 16 U.S.C. 1247(d) and does not preclude or permanently interfere with RFTA's ability to reactivate freight or initiate commuter rail service. The owner(s) of a public street or utility crossing shall be responsible for:

1. maintaining and repairing their respective crossing(s);

2. Obtaining approvals from RFTA and any other applicable permitting authority (ies) (e.g., local government or CDOT) prior to commencing work on an existing crossing or altering an existing crossing. (If creating a new crossing, RFTA will also require a signed maintenance and operating agreement to be negotiated between the road authority and RFTA prior to final approval for any such public or utility crossing of the Railroad Corridor); and

3. To the extent the CPUC has jurisdiction over railbanked Corridor crossings, obtaining required approval for new public or utility crossings and/or alterations to existing public or utility crossings from the CPUC.

D. Any construction shall include the obligation to revegetate disturbed areas according to RFTA's Revegetation Policy, which is available through RFTA's website, www.rfta.com, or on file in the RFTA office.

13.0 Design Guidelines for Proposed New Crossings or Up-Grading, Modifying, and Improving Existing Crossings.

In addition to the specific requirements contained below in this Section 13.0, all upgraded, modified, or improved crossings, and all new crossings, shall meet the current minimum DG adopted by RFTA, included as Appendix B of this Policy, and shall be constructed in a manner consistent with this ACP. Any upgrades, modifications, or improvements to existing crossings and any new crossings shall be constructed in a

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manner that does not preclude or permanently interfere with RFTA's ability to reactivate freight rail service or initiate commuter rail service.

The general types of crossings are listed in subsections A through E below. Pursuant to 12.0, above, an owner may be required to upgrade an existing crossing that does not comply with the DG, and may also require safety improvements when freight or commuter rail activation takes place, a subdivision or site development is proposed, or when the crossing itself is proposed to be improved, realigned, or reconstructed. RFTA shall coordinate with the crossing owner, local, state jurisdictions and the CPUC to determine when improvements are required and develop cost allocations for the improvements. In those cases where crossings require safety improvements, RFTA may collaborate with the owner(s) and other parties' in determining equitable contributions in making such improvements. However, nothing in this document, paragraph, or section, is intended to obligate RFTA to make any contributions or otherwise obligate RFTA to collaborate on such improvements.

A verifiable change in vehicular use of an existing crossing, which may include safety concerns, an increase in traffic, any physical changes proposed for the crossing location, or a change from a private crossing to a public crossing, may also result in the requirement to upgrade the crossing, or revocation/removal of the crossing and improvements.

A. **Grade-Separated Crossings**. A grade-separated crossing is a railroad or highway intersection consisting of an overpass or underpass structure that employs an elevation difference to avoid a direct connection of two physical alignments. An existing grade-separated crossing may require safety improvements in accordance with RFTA's DG, as well as review and approval by RFTA. To the extent the CPUC has jurisdiction of public road crossings over railbanked corridors; any safety improvements done in accordance with RFTA's DG may also require approval by the CPUC. RFTA may collaborate with the owner(s) of grade-separated crossings requiring safety improvements in order to determine RFTA's and other parties' equitable contributions in making such improvements. Any safety improvements may also require a license, lease, contract, or easement agreement with RFTA. Grade-separated crossings will most likely not be necessary or required until freight or commuter rail is imminent or active in the corridor, and in any event, will only be required if deemed necessary following review of projected traffic volumes, the DG, and other safety concerns. If a new grade-separated crossing is

proposed by a project sponsor before rail is active in the corridor, it should be constructed in accordance with RFTA's DG and must be consistent with this ACP

B. **Public At-Grade Street and Highway Crossings**. All public at-grade street and highway crossings that require improvements in accordance with the DG shall, insofar as reasonably necessary and possible, be constructed and maintained in conformance with this ACP and the DG; are subject to review and approval by RFTA; may require a license, lease, contract, or easement agreement with RFTA; and to the extent CPUC has jurisdiction over public crossings of railbanked corridors, require approval and an allocation of costs by the CPUC.

C. **Private At-Grade Vehicle Crossings**. Private at-grade vehicular crossings may require safety improvements in accordance with the RFTA DG. Such improvements shall, insofar as reasonably necessary and possible, be constructed and maintained in conformance with this ACP and the DG; are subject to review and approval by RFTA; and shall also require a license, lease, contract agreement with RFTA.

D. **Trail Crossings**. Requests for new Trail crossings of the Railroad Corridor shall comply with the Recreational Trails Plan; RFTA's obligations under the 2001 GOCO Agreement on file with RFTA; and RFTA's DG. Trail connections designed and built in conformance with RFTA's DG may be approved unless unique circumstances would create unreasonable safety concerns, expenses, or would otherwise preclude or permanently interfere with RFTA's ability to reactivate freight rail service or initiate commuter rail service; and also require a license, lease, contract agreement with RFTA

E. **Utility Crossings.** All existing underground utility crossings shall continue to be underground. Newly proposed underground utilities shall be designed, constructed, and maintained in conformance with the RFTA DG and this ACP. Any above-ground utilities may continue to cross the Railroad Corridor above ground, but shall comply with RFTA's DG; include vertical clearance standards per the CPUC, as a minimum; are subject to review and approval by RFTA; and unless RFTA otherwise has consented, shall not create a future financial obligation or physical obstruction that would preclude or permanently interfere with RFTA's ability to reactivate freight rail service or initiate commuter rail service; and also require a license, lease, contract agreement with RFTA

14.0 Crossing Repair Permits – Existing Crossings

All repairs to an existing crossing or other improvements in RFTA's right of way shall require a permit. RFTA may issue Repair Permits only after receipt of a written application. Applications for a permit shall describe the kind of repair to be made, the material to be used, and sketches, plans, and specifications therefore. Emergency repairs to critical infrastructure or necessary utilities may be performed without RFTA's prior approval. Any utility or local jurisdiction undertaking emergency repairs shall return the right of way to pre-repair conditions and notify RFTA of the event of such repairs as soon as practicable but no later than 24 hours. Ensuring the safety of trail users will be the responsibility of the entity making emergency repairs.

15.0 Requirements for Approval of New Crossings.

A. **New Crossing Defined.** A "new crossing" means a crossing of the Railroad Corridor by a public street, private drive, trail, utility, or similar facility approved by RFTA pursuant to this ACP and to the extent the CPUC has jurisdiction over crossings of railbanked corridors, approved by the CPUC.

B. **Policy and Design Guidelines for New Crossings**

RFTA must exercise caution not to preclude or permanently interfere with RFTA's ability to reactivate freight rail service. Until freight or commuter rail is imminent or active in the corridor, RFTA will generally consider new public at-grade crossings that are consistent with its DG or otherwise are approved by the RFTA Board of Directors.

When considering requests for new crossings, RFTA will first review the request for conformance with its primary obligations, which are to:

1. Preserve the Railroad Corridor for freight rail reactivation and interim trail use by preserving the Railroad Corridor's railbanked status under 16 U.S.C. 1247(d), under the jurisdiction of the STB;

2. Implement the conservation requirements of the Great Outdoors Colorado Restrictive Covenants and insure the safety of recreational trail users.

3. Reference the DG (Appendix B) to insure that to the greatest extent feasible the design meets the minimum DG developed by RFTA.

RFTA may attempt to negotiate and agree with crossing sponsors to an equitable allocation of design, construction, and maintenance costs for new crossings. If the Parties are unable to reach such an agreement, if applicable, they may seek the same by determination of the CPUC, as necessary. Nothing in this paragraph, however, is intended to obligate RFTA to pay any costs or to support such approvals at the CPUC.

C. **Restriction on New Crossings to Serve New Parcels or Lots.** RFTA desires to limit new at-grade crossings to serve any new parcels or lots, and to attempt to consolidate new crossings with existing crossings whenever practicable. The DG will be considered during review of any proposed new crossing. "New parcel" means a lot or parcel that was created pursuant to state or local laws and regulations, after the approval of this ACP.

D. **Denial of Private Crossings**. RFTA retains the right to deny a private crossing request where another existing or proposed crossing provides reasonable access.

16.0 Process for the application for approval of a New Crossing.

A. **General Considerations**. For a private crossing, road, utility, or encroachment that will utilize any portion of the RFTA Railroad Corridor, property owners shall review the DG, (see Appendix B) submit an application to RFTA for a new crossing and, if approved by RFTA, obtain a license, lease, contract and construction permit from RFTA prior to commencing work on any Railroad Corridor crossing, improvements and/or consolidations. In addition to seeking approval from RFTA, if the crossing will tie into either the CDOT right-of-way or one of the local jurisdictions street right of way, then owners will also need to obtain permission from CDOT and/or the local jurisdiction prior to commencing any work within the RFTA Railroad Corridor, or the CDOT and/or jurisdictional street right of way.

For a public crossing that is being proposed, in addition to the requirements listed above for a private crossing, the applicant shall also obtain any permits required by CDOT, and to the extent the CPUC has jurisdiction over crossings of railbanked corridor crossings, require approval and an allocation of costs by the CPUC. If a public crossing is designed consistent with RFTA's DG or otherwise approved by

the RFTA Board of Directors, RFTA will grant an easement to the project sponsor, subject to the approval of the RFTA Board of Directors and/or the CPUC. Until freight or commuter rail is imminent or active in the corridor, RFTA will generally approve new public at-grade crossings that are consistent with the DG or otherwise are approved by the RFTA Board of Directors, insofar as such crossings would not preclude or permanently interfere with RFTA's ability to reactivate freight rail service

B. **Process. The following review and permitting process applies to the RFTA Railroad Corridor only. It is the applicant's responsibility to check with local, state and federal agencies for any additional requirements related to working in their Rights of Way (ROW).**

1. **Approval Criteria.** Leases, Licenses, Contracts for Railroad Corridor crossing improvements and consolidations and new crossings shall comply with the following approval criteria:

a. In order to ensure compliance with 16 U.S.C. 1247(d) as construed by the STB and the courts, access to and across the Corridor should be designed by the project proponent to maintain the Corridor and its interim uses in such a manner so as to preclude or permanently interfere with RFTA's right to reactivate or reconstruct freight and/or commuter rail. Significant irreversible alterations and unfunded or unaccounted for financial obligations burdening the Corridor, including significant alterations in the alignment and/or elevations of the roadbed, property sales or transfers, and physical obstructions of the railroad line that are incompatible with freight rail reactivation, would be of significant concern to RFTA and would require greater assurances from crossing sponsors with respect to how such issues would be addressed or mitigated. Any upgrades, modifications, improvements or consolidations should be constructed in a manner that does not preclude or permanently interfere with RFTA's ability to reactivate freight rail service or initiate commuter rail service;

b. To the extent feasible, the DG as applicable, unless otherwise approved by the RFTA Board of Directors;

c. The State Highway Access Code, as applicable;

d. Any applicable local government land use and access permit requirements (e.g., permit to construct in the public way);

e. Restrictive Covenant requirements, including, but not limited to: Avoidance of adverse impacts to the open space, recreational, parks, and wildlife uses and values of the Railroad Corridor to the extent practicable. This shall be accomplished through careful consideration of alternative access alignments, consolidations, construction techniques, materials, and appropriate mitigation measures (e.g., erosion control, landscaping, screening, buffering, etc.);

f. The agreement of the applicant to enter into a license, lease, contract, easement, or other agreement to memorialize the crossing.

2. **Applications for crossings, encroachments, utilities**. Permit applications for Railroad Corridor crossings, encroachments, utilities, repairs, improvements, and consolidations within the RFTA Railroad Corridor right-of-way shall provide the following:

a. Complete application form. RFTA shall provide standard application forms for proposed crossings, crossing improvements and crossing consolidations. The application forms (available online or from RFTA offices) shall provide the address and contact information for the owner and his/her contractor(s); the contractor license/registration number(s); a description of the proposed improvements; the construction schedule; proposed traffic control measures; and other pertinent information as deemed necessary by RFTA.

b. Payment of an application fee to cover the cost of processing the application. The fee schedule will be kept on file at RFTA offices and may also include costs for RFTA's, legal, engineering consultant reviews and survey services.

c. Submission of a site plan and related engineering drawings that include the Railroad ROW, prepared by a qualified licensed professional (e.g., engineer, surveyor, planner, landscape architect). The site plan and engineering drawings shall be drawn to a scale of at least 1 inch equals 40 feet. The

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plans and drawings shall be prepared in accordance with RFTA's DG and be designed as a crossing of a freight railroad. Applications shall list all materials to be used, and provide section details and construction specifications.

d. Applications for crossing consolidations shall include two sets of plans: one for the proposed Corridor crossing and one for the Corridor crossing to be closed, and shall be provided in both hard copy plot and electronic .pdf file format. Once approved, Digital CAD drawing files will be required in addition to the hard copy and .pdf, in accordance with the design guidelines.

e. The RFTA CEO or his/her designee shall be responsible for determining when an application is deemed complete.

C. **RFTA Review Process for New Railroad Corridor Crossings.** The following review procedures shall apply to applications for new crossings and encroachments. Public crossing application procedures will also require a Maintenance and Operating Agreement to be executed and, to the extent the CPUC has jurisdiction over railbanked Rail Corridors, submission to the CPUC for its review, approval and an allocation of costs.

1. The RFTA Chief Executive Officer or his/her designee shall review the applications submitted as per Section 16.0 (B.2) based on the approval criteria in Section 16.0 (B.1)

a. RFTA may refer the application to its engineering consultant for review of conformance with the DG.

b. The RFTA Chief Executive Officer or his/her designee shall prepare an administrative determination recommending approval of or denying the application.

c. The determination is final unless the applicant timely files an appeal in accordance with this subparagraph. The applicant may appeal the decision of the Chief Executive Officer or his/her designee by filing an appeal of the administrative determination in writing to the RFTA Board of Directors

within thirty (30) days of receipt of the determination by the Chief Executive Officer and/or his designee. The thirty (30) day appeal period shall commence upon applicant's receipt of the determination decision, which determination decision will be emailed and posted on the RFTA website. Upon receipt of a timely written appeal, RFTA staff will forward the appeal to the RFTA Board of Director's for its consideration, along with the determination by the staff as to why the application was denied.

d. The determination shall be final unless appealed to the RFTA Board of Directors. If an appeal to the Board is made, a hearing will be scheduled at a subsequent Board meeting to take place no later than (90) days from the date a timely appeal is filed. Both the RFTA Chief Executive Officer and his/her designee and the applicant will be allowed to present his/her reasons for the upholding or overturning the staff determination.

e. The RFTA Board of Directors will make a final determination on an appeal and provide the appellant with a written determination thirty (30) days from the date the appeal hearing is concluded. .

D. Other Requirements.

1. Easements for public roadway crossings and utilities, which are conveyed by RFTA to jurisdictions shall contain the following provision:

Railbanking Protection. "Jurisdiction" acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the federal Surface Transportation Board. "Jurisdiction" further acknowledges that the Corridor is "railbanked" under the National Trails System Act, 16 U.S.C.§1247(d) and is subject to the reactivation and restoration of rail service. This Easement shall not be deemed to give "Jurisdiction" exclusive possession of any part of the Easement area described, and nothing shall be done or suffered to be done by "Jurisdiction" at any time that shall in any manner impair the usefulness or safety of the Corridor or of any track or other improvement on the Corridor constructed thereon by RFTA in the future. If RFTA in its sole discretion upon advice of legal counsel believes that an action permitted by this Easement has or will preclude or permanently interfere with the reactivation of rail

service or jeopardize the rail banked status of the Corridor RFTA shall notify the "Jurisdiction" and RFTA and the " Jurisdiction" shall work together to revise this Easement to correct the potential severance or impediment to freight rail service. Only in the event no modification can be agreed upon, may RFTA terminate this Easement.

***Please note that all crossings are crossing a railroad that is railbanked for the preservation of the Corridor for reactivation of freight rail service and must be considered as such even though rail service may not be active on the Corridor at the time of submittal of applications for crossings*.**

2. Should RFTA need to extend, modify, or relocate a previously approved public roadway or public utility crossing easement in order to accommodate the reactivation of freight or passenger rail service on the Corridor, RFTA shall be entitled to do so; however, RFTA shall use its best efforts to ensure that the extension, modification, or relocation does not substantially and materially interfere with the connectivity of the crossing. RFTA shall submit for review and discussion any plans detailing the extension, modification, or relocation to the public entity holding the easement, and if required, obtain consent or approval by the public entity, which consent will not be unreasonably withheld, and if applicable, approval by the CPUC. If the sole cause of the need for such extension, modification, or relocation is the needs of RFTA, such cost will be borne by RFTA if RFTA approves the project and costs thereof; it being understood that any funding for such a project is subject to appropriation of funding. If the public entity holding the easement should desire to extend, modify, replace, relocate, or remove the crossing to further its needs, then such cost shall be borne by the public entity. Any such extension, modification, relocation, or replacement or repair by the public entity shall only be made in accordance with plans prepared by the public entity and reviewed and approved by RFTA, which approval will not be unreasonably withheld, and if CPUC jurisdiction is exercised, approval by the CPUC. For extensions, modifications, or relocations that are jointly caused and will benefit both parties, the allocation of costs shall be by further agreement, or if no agreement, then as determined by the CPUC or other applicable government entity.

17.0 Coordination of Development Review with Local Jurisdictions.

RFTA is and should remain a referral agency for land use and development applications that may affect the Railroad Corridor, including potential rail reactivation,

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RFTA's interim trail and public recreational uses, and restrictive covenants; therefore, RFTA desires to participate in the review of planning, zoning, and development applications to continue to secure its interests and to work cooperatively with RFTA's constituent-members and other local jurisdictions. It is not RFTA's intent to exercise its authority over the Corridor to limit or control local land use decisions along the Corridor unless such decisions will preclude or permanently interfere with the potential for future freight or commuter rail reactivation, interim trail and public recreational uses, and conservation covenants. Land use and development decisions are and should remain within the authority of the local jurisdiction with development review authority, but any applications or actions inconsistent with this ACP or DG will not be approved.

RFTA will coordinate with property owners, local governments, CDOT, and other affected agencies to identify areas of concern in any proposed crossing or improvement during the early stages of development, preferably before a formal development application has been submitted. RFTA will not withhold approval of any application, easement, license, lease, or other contract relating to a crossing or improvement that is consistent with RFTA's ACP and DG, and approved by the RFTA Board of Directors. RFTA will work cooperatively with all interested parties to maximize efficient, reasonable access to and across the Railroad Corridor while securing RFTA's rights as necessary for potential rail reactivation and continued interim uses.

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