ENCROACHMENT EASEMENT AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of _ , 2019 by and between Eagle County, Colorado, 500 Broadway, P.O. 850, Eagle, CO, 81631a body corporate and politic, by and through its Board of County Commissioners (hereinafter "Eagle County") The Roaring Fork Transportation Authority, a Colorado regional transportation authority created pursuant to section43-4-601, Colorado Revised Statutes, with an office located at 2307 Wulfshon Road, Glenwood Springs, Colorado, 81601 (hereinafter "RFTA") and The Blue Lake Owners' Association, a Colorado Nonprofit Corporation, 0189 JW Drive, Suite A, Carbondale. Colorado 81623 (hereinafter "Association").

WITNESSETH:

WHEREAS, Association is the manager of that portion of Blue Lake PUD, Filing No's I, II, IV, and V located in Sections 33 & 34, T 7 S, R 87 W of the 6th principal meridian in Eagle County, Colorado (hereinafter "Subject Property").

WHEREAS, Association desires to construct four (4) RFTA bus stops in the Eagle County road right-of-way at locations adjoining J W Drive in Blue Lake PUD, Filing No's I, II, IV, V ("ROW"). A major portion of this construction, is the widening and paving of the southern and the western shoulders of J W Drive in the four (4) bus stop locations per the plans dated April 15, 2019, prepared by Roaring Fork Engineering_____ and submitted in conjunction with Eagle County right-of-way permit ROW-016429-2019, which plans are attached hereto as Exhbit "A" and incorporated herein by this reference. The construction will be along J W Drive and Badger Road East and West approximately 110 feet east and or south of the intersection list. The surface will be paved to join and be flush with the surface of J W Drive.

WHEREAS, Eagle County is willing to allow construction of the four (4) bus stops in Eagle County's ROW pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms and covenants stated herein, the sufficiency of which is hereby acknowledged, Eagle County, RFTA and Association agree as follows:

ENCROACHMENT EASEMENT GRANT:

For the consideration and mutual agreements of the parties set forth herein, the sufficiency of which is hereby acknowledged, Eagle County hereby grants and conveys to RFTA, its successors and assigns, nonexclusive easements for the purposes of constructing and maintaining four (4) bus stops within the Eagle County ROW at the locations shown on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter "Encroachment Easement"). The Encroachment Easement shall not be used for any other purpose except as described herein.

The Encroachment Easement granted in this Agreement shall be possessed and enjoyed by RFTA, its successors and assigns, so long as the Encroachment Easement is being used in accordance with the terms and conditions of this Agreement. In the event that RFTA ceases to use the Encroachment Easement in accordance with the terms and conditions of this Agreement or otherwise, fails to comply with any and all of the terms and conditions of this Agreement, this Agreement and Encroachment Easement may be terminated upon 90 (90) days' notice by Eagle County, in its sole discretion.

Notwithstanding the foregoing paragraph, Eagle County, in its sole discretion, reserves the right to terminate this Agreement and the Encroachment Easement and to require Association to remove and/or relocate the four (4) bus stops at RFTA and Association's sole expense upon ninety (90) days' notice by Eagle County. Upon notice of termination, RFTA agrees to restore the Encroachment Easement area to its original condition, or as close thereto as possible, and RFTA shall re-grade and re-vegetate the disturbed area within the Encroachment Easement area within ninety (90) days of termination. If RFTA shall fail to timely remove the four (4) bus stops and restore the Encroachment Easement upon such notice and within such time period, Eagle County may do so at RFTA's expense and RFTA shall reimburse Eagle County for its reasonable costs incurred within ninety (90) days of demand.

The Encroachment Easement granted by this Agreement is non-exclusive and Eagle County reserves the right to use for itself and to grant for others rights-of-way over, under, across or through the Encroachment Easement herein granted, provided that they do not materially interfere with Association's easement herein. Eagle County reserves the right to use and enjoy the premises to the fullest possible extent without unreasonable interference with the exercise by RFTA and Association of the rights granted in this Agreement. Without limiting the foregoing, Eagle County reserves the right to place along, across, under, over and through the Encroachment Easement as many electric lines, power lines, water lines, sewer lines, gas lines, telephone lines and other utilities as Eagle County may desire subject only to the right of Association to use the same for the purposes herein granted.

The encroachment of the four (4) bus stops into the County's ROW shall not constitute any relinquishment of the County's property rights whether through claims of adverse possession or any other means.

CONSTRUCTION AND MAINTENANCE OF ENCROACHMENT EASEMENT:

Construction, including replacement or significant alterations, and repair and maintenance of the four (4) bus stops shall be the sole responsibility and expense of RFTA and Association as set forth in the Memorandum between the Association and RFTA dated April 12, 2019, a copy of which is attached hereto and made a part hereof as Exhibit B ("Memorandum of Understanding"). No construction shall be commenced until approved in writing by Eagle County, such approval not to be unreasonably withheld or delayed. All construction shall be conducted in accordance with the Eagle County Land Use Regulations and the plan set dated April 15, 2019, and Eagle County right of way permit ROW – 016429-2019.

RFTA and Association agree to be responsible in accordance with their duties and obligations as set forth in the Memorandum of Understanding for all removal of snow that may accumulate on or around the four (4) bus stops shown on "Exhibit "A" as the result of natural accumulation or snowplowing operations.

Association shall be responsible for all ongoing repair and maintenance costs associated with the current and any future use of the Encroachment Easement. Whenever possible, RFTA and Association shall notify and coordinate with Eagle County prior to performing any maintenance to avoid disruption within the County's ROW.

INDEMNIFICATION:

1. The Association and RFTA shall, to the fullest extent permitted by law, indemnify and hold harmless Eagle County and any of its officers, agents and employees against any losses, claims, damages or liabilities for which Eagle County or any of its officers, agents, or employees may become subject to, insofar as any such losses, claims, damages or liabilities arising out of, directly or indirectly the negligence of the respective parties under this Agreement or are based upon any performance or nonperformance by RFTA and Association hereunder. The parties hereto understand and agree that RFTA is relying on, and does not waive or intend to waive by any provision of this Agreement the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act et seq., C.R.S. § 24-10-101 et seq. as from time to time amended, or any other rights, protections, immunities, defenses or limitations on liability provided by law or any applicable provisions of the Colorado Constitution and other applicable laws or otherwise available to RFTA, its subsidiary, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.;

ENFORCEMENT REMEDIES:

This Agreement shall be recorded with the Eagle County Clerk and Recorder's Office and shall constitute covenants running with the Subject Property, as a burden thereon, for the benefit of, and shall be specifically enforceable by Eagle County against RFTA and Association, their successors and assigns, including but not limited to any future Association of the Subject Property.

The Association's and RFTA obligations for restoration, repair, and indemnification shall survive termination of this Agreement and the Encroachment Easement.

Eagle County and Association agree that this Agreement may be enforced for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws and statutes of the State of Colorado. It is specifically understood that by executing this Agreement, both RFTA and the Association commit themselves to perform pursuant to these terms contained herein. In the event that an action is brought to enforce this Agreement, the prevailing party shall be entitled to the recovery of its costs and fees, including reasonable attorney’s fees.

MISCELLANEOUS:

This Agreement shall be governed and construed in accordance with the laws of Colorado. Venue for any action arising out of any dispute pertaining to this Agreement shall be in Eagle County Colorado.

This Agreement, and the rights and obligations created hereby shall be binding upon and inure to the benefit of Eagle County, RFTA and Association and their respective successors and assigns. Nothing herein expressed or implied is intended or should be construed to confer or give to any person or entity other than Eagle County, RFTA or Association and their respective successors and assigns, any right, remedy or claim under or by reason hereof or by reason of any covenant or condition herein contained.

If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction, such portion shall be deemed severable and its invalidity or its

unenforceability shall not affect the remaining provisions; such remaining provision shall be fully severable and this Agreement shall be construed and enforced as if such invalid provision had never been inserted into this Agreement

RFTA's financial obligations under the Agreement shall be contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. No legal liability on the part of RFTA for any payment may arise until funds are appropriated and made available by RFTA's Board of Directors.

This Agreement may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by Eagle County, RFTA and Association. This Agreement represents the full and complete understanding of Eagle County, RFTA and Association and supersedes any prior agreements, discussions, negotiations, representations or understandings of Eagle County, RFTA and Association with respect to the subject matter contained herein.

The parties hereto agree that neither has made or authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party or its agents or employees hereto.

All of the covenants herein contained shall be binding upon and inure to the benefits of the parties hereto, their respective heirs, personal representatives, successors and assigns.

This Encroachment Easement is granted subject to prior grants of easements and other ownership interests of record. Eagle County makes no warranties as to the title of the easement conveyed.

IN WITNESS WHEREOF, EAGLE COUNTY, RFTA and ASSOCIATION have executed this Encroachment Easement Agreement this _____ day of_____ , 2019.

ATTEST:

COUNTY OF EAGLE, STATE OF COLORADO, by and through its BOARD OF COUNTY COMMISSIONERS

BY: _____
Clerk to the Board of County Commissioners

BY:_____
Jeanne McQueeney, Chairman

BLUE LAKE OWNERS ASSOCIATION

BY:_____
Gina Shaw Office Manager

STATE OF _____)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me by _____, this_____ day of _____ , 2019.

My commission expires:

_____
Notary Public

ROARING FORK TRANSPORTATION AUTHORITY

BY: _____
Chief Executive Officer

STATE OF _____)
) SS.
C O U N T Y O F)

The foregoing instrument was acknowledged before me by _____, this_____ day of _____ , 2019.

My commission expires: _____

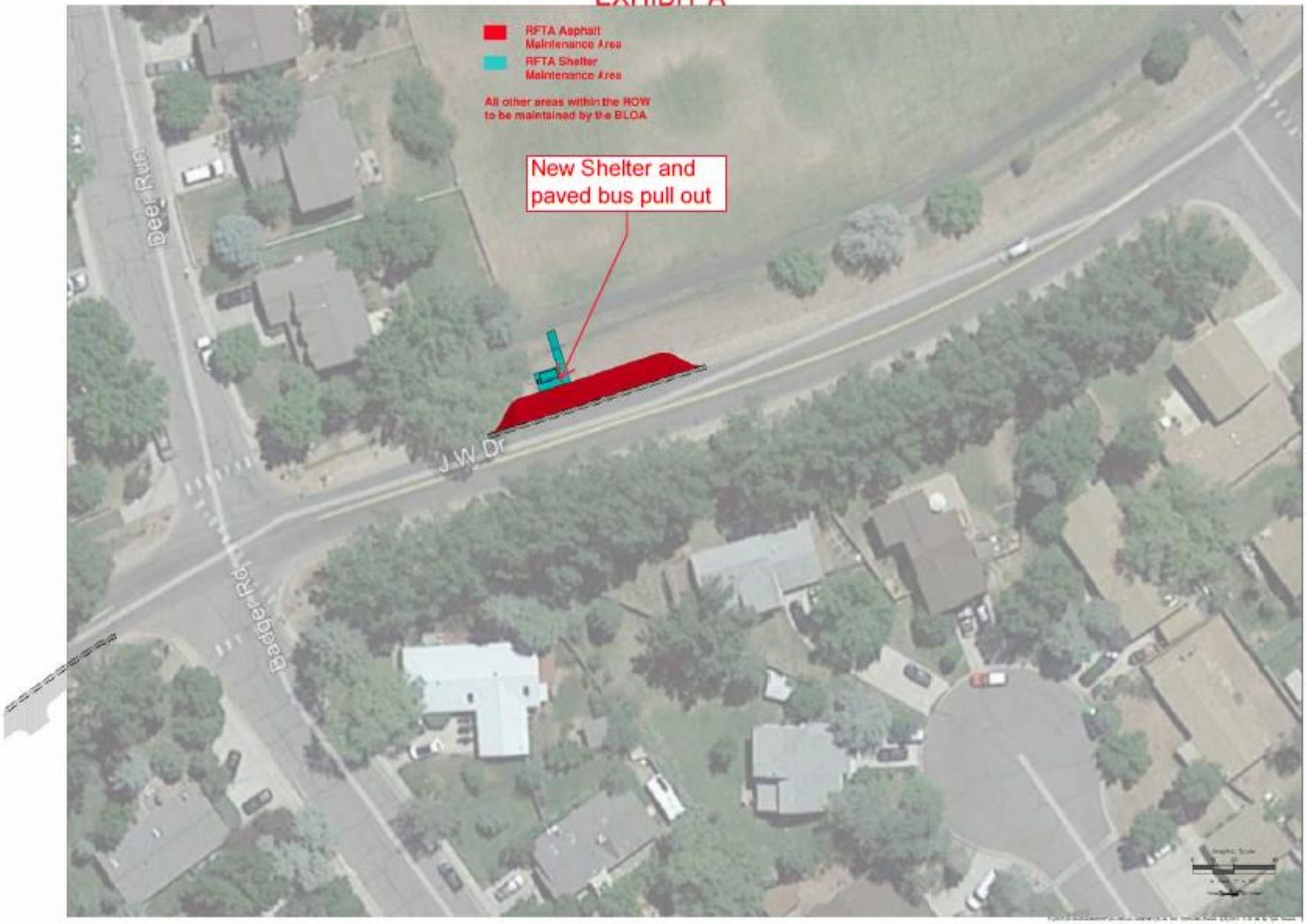
_____
Notary Public

EXHIBIT A

ROARING FORK ENGINEERING

BLUE LAKE BUS STOPS
EAGLE COUNTY, COLORADO

EXHIBIT A

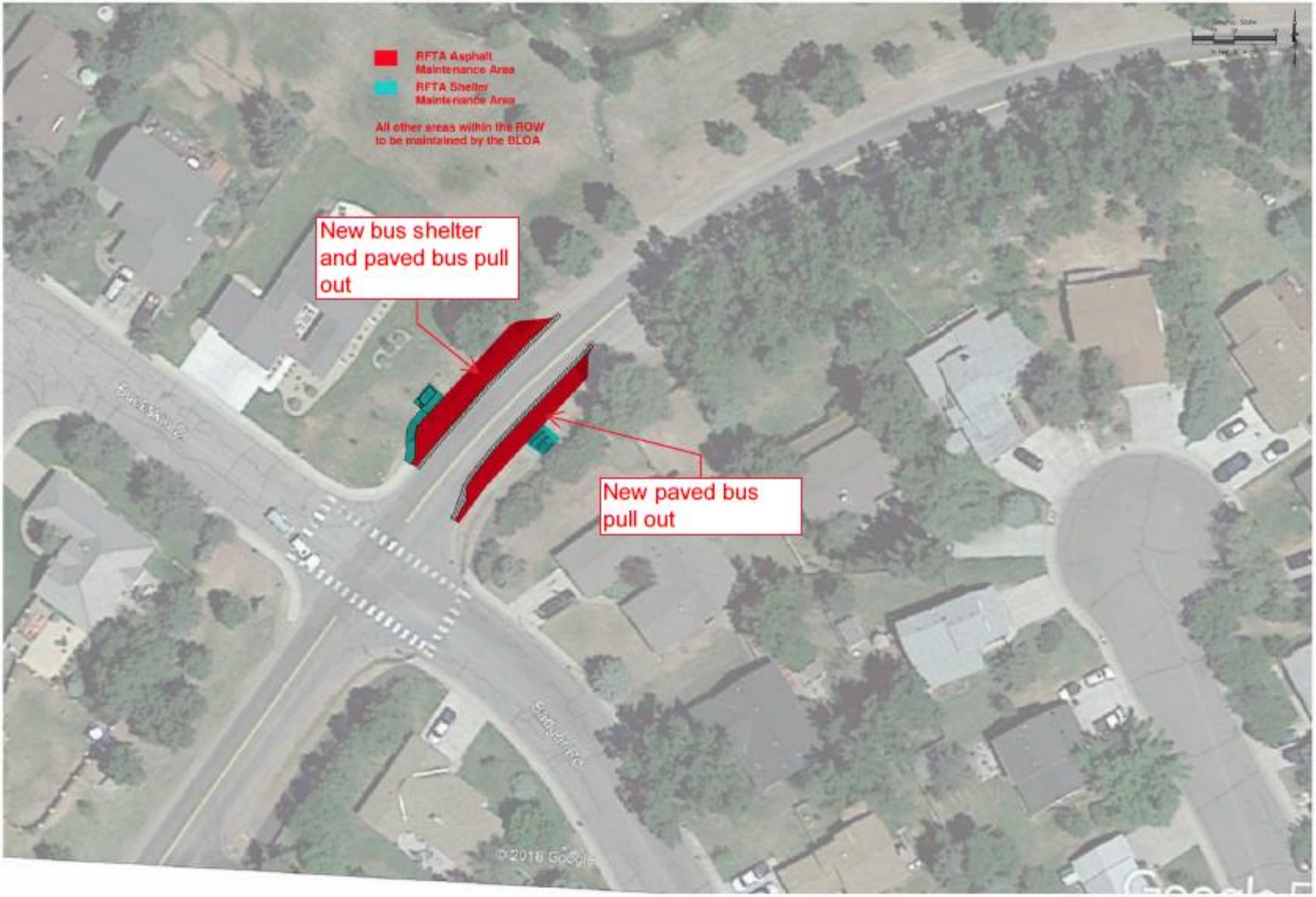


ROARING FORK ENGINEERING

BLUE LAKE BUS STOPS

EAGLE COUNTY, COLORADO

EXHIBIT A



ROARING FORK ENGINEERING

BLUE LAKE BUS STOPS

EAGLE COUNTY, COLORADO