ENCROACHMENT EASEMENT AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of _____, 2020 by and between Eagle County, Colorado, a body corporate and politic, by and through its Board of County Commissioners (hereinafter "Eagle County") and the Roaring Fork Transportation Authority (hereinafter "RFTA").

WITNESSETH:

WHEREAS, Eagle County is the owner of certain property located in Sections 34, T 7 S, R 87 W of the 6th principal meridian in Eagle County, Colorado (hereinafter "ROW Property ").

WHEREAS, RFTA desires to construct and maintain two (2) RFTA bus stops in the Eagle County road right-of-way at locations adjoining J W Drive and El Jebel Road (the "ROW"). As the major aspect of this construction, RFTA is widening and paving the southern and the northern shoulders of J W Drive in the two (2) bus stop locations per the plans dated February 27, 2020, and submitted in conjunction with Eagle County right-of-way permit ROW-018438-2020. The construction will be along J W Drive and west approximately 80 feet of the intersection. The surface will be paved to join and be flush with the surface of J W Drive.

WHEREAS, Eagle County is willing to allow RFTA to construct and maintain the two (2) RFTA 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 agree as follows:

ENCROACHMENT EASEMENT GRANT:

Eagle County hereby grants and conveys to RFTA, its successors and assigns, non-exclusive easements on, over and through the ROW Property for the purposes of constructing and maintaining two (2) 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 used by RFTA 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 ten (10) 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 RFTA to remove

and/or relocate the two (2) bus stops at RFTA sole expense upon sixty (60) 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 two (2) 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 RFTA's use of the Encroachment 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 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 RFTA to use the same for the purposes herein granted.

The encroachment of the two (2) 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 two (2) bus stops and any related sidewalks will be at the sole responsibility and expense of RFTA. 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 February 27, 2020, and Eagle County right of way permit ROW – 018438-2020.

RFTA agrees to be responsible for all removal of snow that may accumulate on or around the two (2) bus stops shown on "Exhibit "A" as the result of natural accumulation or snowplowing operations.

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

INDEMNIFICATION:

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, this Agreement and the Encroachment Easement, or are based upon any performance or nonperformance by RFTA hereunder; and RFTA shall reimburse Eagle County for any and all legal and other expenses incurred by Eagle County in connection with investigating or defending any such loss, claim, damage, liability or action. 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 ROW Property, as a burden thereon, for the benefit of, and shall be specifically enforceable by Eagle County against RFTA, its successors and assigns.

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

Eagle County agrees 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, RFTA commits itself to perform pursuant to these terms contained herein.

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, Colorado.

This Agreement, and the rights and obligations created hereby shall be binding upon and inure to the benefit of Eagle County, RFTA 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 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.

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 and RFTA. This Agreement represents the full and complete understanding of Eagle County and RFTA and supersedes any prior agreements, discussions, negotiations, representations or understandings of Eagle County and RFTA 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 have executed this Encroachment Easement Agreement this _____day of _____, 2020.

ATTEST:

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

BY: _____
Clerk to the Board of County Commissioners

BY: _____
Kathy Chandler-Henry, Chairman

ROARING FORK TRANSPORTATION AUTHORITY

BY: _____
Chief Executive Officer

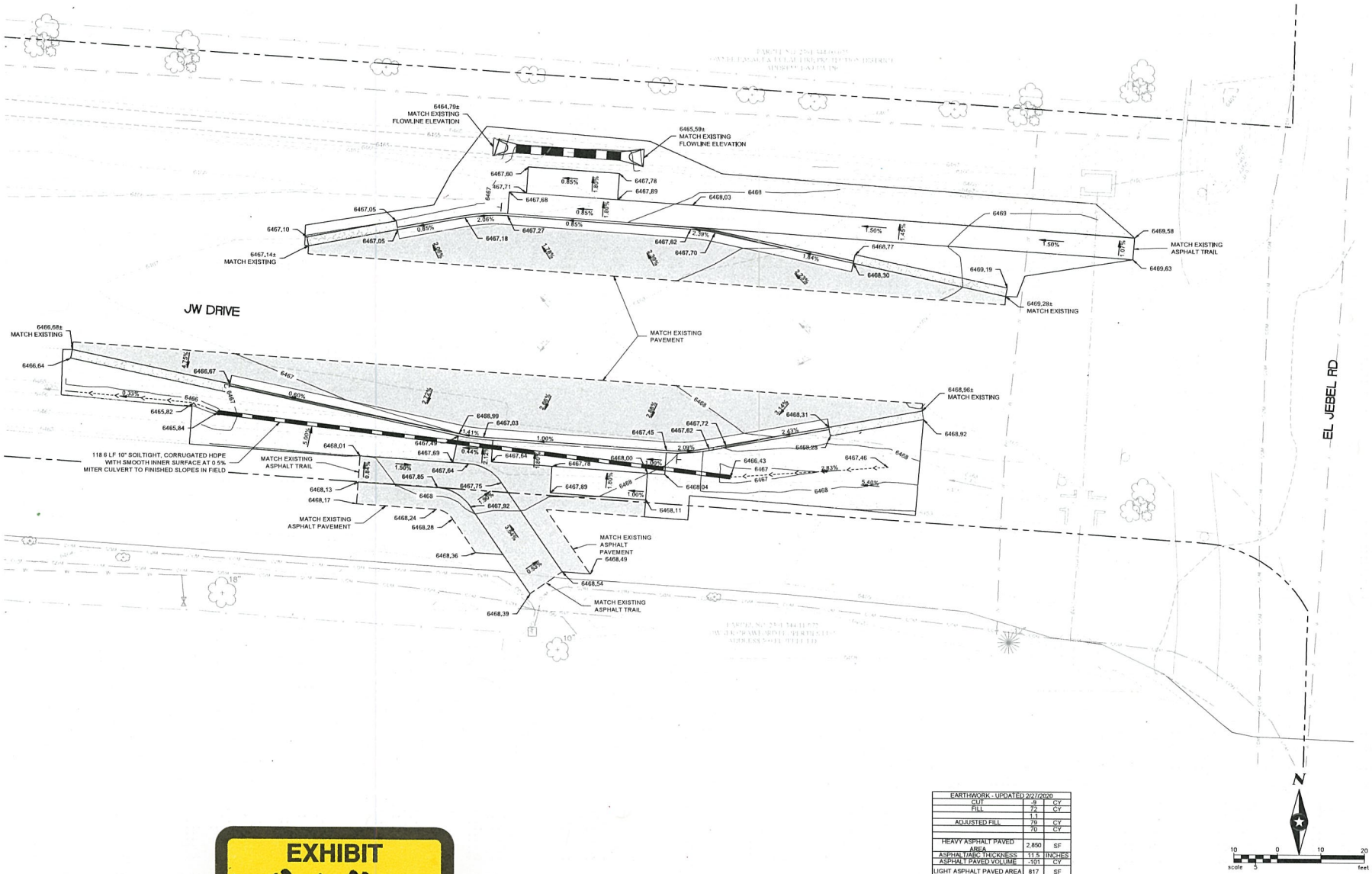
STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____, this_____ day of_____, 2020.

My commission expires: _____

_____
Notary Public

EXHIBIT A



EARTHWORK - UPDATED 2/27/2020		
CUT	-9	CY
FILL	72	CY
	1.1	
ADJUSTED FILL	79	CY
	70	CY
HEAVY ASPHALT PAVED AREA	2,850	SF
ASPHALT/ABC THICKNESS	11.5	INCHES
ASPHALT PAVED VOLUME	-101	CY
LIGHT ASPHALT PAVED AREA	817	SF
ASPHALT/ABC THICKNESS	9	INCHES
ASPHALT PAVED VOLUME	-23	CY
CONCRETE PAVED AREA	1,041	SF
CONCRTE THICKNESS	4	INCHES
CONCRETE PAVED VOLUME	-13	CY
NET EARTHWORK VOLUME	-97	CY

NOTES:

1. POSITIVE NUMBERS INDICATE AN IMPORT OF MATERIAL NEEDED. NEGATIVE NUMBERS INDICATE AN EXPORT OF MATERIAL NEEDED

NOTES:

1. ALL ELEVATIONS AT CURB ARE FLOWLINE UNLESS OTHERWISE NOTED.

EXHIBIT "A"

tabbies

SEH
Short Elliott Hendrickson, Inc.
2000 South Colorado Boulevard
Tower One, Suite 6000
Denver, Colorado 80222
720.540.6800

COLORADO REGISTERED PROFESSIONAL ENGINEER
2-27-2020

Owner
Roaring Fork Transportation Authority
1340 Main Street
Carbondale, Colorado 81623
970.384.4982

Architect/Structural
Short Elliott Hendrickson
2000 South Colorado Blvd.
Suite 6000, Colorado Center Tower One
Denver, Colorado 80222
720.540.6800

Civil
Short Elliott Hendrickson
2000 South Colorado Blvd.
Suite 6000, Colorado Center Tower One
Denver, Colorado 80222
720.540.6800

Electrical
CMO
11646 Sun Bear Trail
Golden, Colorado 80403
303.875.4837

Roaring Fork Transportation Authority

SH82 MID-VALLEY BUS STOPS

TASK ORDER NO. 2019-18-002-002
RFTA CONTRACT NO. 18-002

1340 MAIN STREET
CARBONDALE, COLORADO 81623

RFTA

This drawing is an instrument of service and shall remain the property of SEH Inc. This drawing and the concepts and ideas contained herein shall not be used, reproduced, revised, or reduced without the express written approval of SEH, Inc.

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SEH Project	148921
Ch-1/Engineer	TN
Drawn By	JJ
Project Status	Issue Date
PERMIT DOCUMENTS	02.27.2020

Revision Issue

Rev #	Description	Date

JW DRIVE GRADING PLAN

C303

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