"DRAFT"

ROARING FORK TRANSPORTATION AUTHORITY TO CITY OF GLENWOOD SPRINGS 14TH STREET PEDESTRIAN STAIRS AND LANDING EASEMENT AGREEMENT

THIS 14TH STREET PEDESTRIAN STAIRS AND LANDING EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2016 by and between the ROARING FORK TRANSPORTATION AUTHORITY, a Colorado regional transportation authority organized pursuant to Title 43 of the Colorado Revised Statutes ("RFTA"), and the CITY OF GLENWOOD SPRINGS, COLORADO, a Colorado home rule municipal corporation (the "City") (individually, a "Party"; collectively, the "Parties").

WHEREAS, RFTA is the record title owner of the former Aspen Branch of the Denver and Rio Grande Western Railroad Company (DRGW) Right-of-Way from Glenwood Springs to Woody Creek, said parcel of land being a railroad right-of-way corridor approximately 33.5 miles in length of variable width, continuous along its length (the "Corridor");

WHEREAS, the Corridor includes a portion of land lying at the western terminus of 14th Street at the intersection with Coach Miller Drive;

WHEREAS, it is the desire of the City to establish a stair connection to the "14th Street Pedestrian Bridge" spanning the Roaring Fork River and originating west of the intersection of 14th Street and Coach Miller Drive;

WHEREAS, the City desires to obtain a permanent, non-exclusive easement to establish, construct, and maintain stairs, a stair landing, and related facilities for the public's use and enjoyment, said stairs to form a direct pedestrian connection from the 14th Street Pedestrian Bridge to the Rio Grand Trail; and

WHEREAS, RFTA believes it is appropriate to grant such an easement to the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant and Acceptance of Easement.** RFTA hereby grants to the City, and the City hereby accepts, a perpetual, non-exclusive "Easement" to construct, maintain, use, operate, relocate, reconstruct, and renew stairs and a stair landing connection to the Rio Grand Trail, and related facilities for the public's use and enjoyment in the **"14th Street Pedestrian Bridge Stair Easement Area"** more particularly described in **Exhibit A**, to be attached and incorporated herein upon the Parties' mutual agreement to the legal description thereof. The City's use of the

Easement shall be limited to the sole purposes of a pedestrian facilities for non-motorized use. The Easement granted hereby is expressly conditioned upon the performance by the City of all the covenants and agreements hereinafter set forth, and it is also hereby stipulated that a waiver by RFTA of any breach of any such covenant or agreement shall in no way impair the right of RFTA to avail itself of any subsequent breach of the same or any other covenant or agreement.

RESERVING, however, unto RFTA, its successors and assigns, the right to construct, maintain, use, operate, relocate, reconstruct, and renew any facilities on the 14th Street Pedestrian Bridge Stair Easement Area and within the Corridor deemed in RFTA's sole discretion appropriate for the use of the Corridor for transportation, shipping, trail, and/or conservation purposes as it may at any time, and from time-to-time, desire within the Corridor including the right and privilege to use the Corridor for any and all purposes, including the construction, use and maintenance of a grade separated crossing, free of any liability whatsoever to City; and also reserves, the exclusive right to construct, place, operate, maintain, alter, repair, replace, renew, improve, and remove communications and utility lines above, below and on the surface of the 14th Street Pedestrian Bridge Stair Easement Area, including without limitation transmission by conduit, pipe, fiber optics, cable, wire or other means, of electricity, voice data, video, digitized information, or other materials, information or utilities; and all right and privileges as RFTA, its successors and assigns may require to investigate and remediate any and all hazards on the Rail Corridor, including, without limitation, environmental contamination.

3. **Maintenance**. The City shall, at its own cost, own, maintain, repair, renew, replace, or remove the stairs and the stair landing connection to the Rio Grand Trail, and related facilities made pursuant to this Agreement. However, should RFTA need to extend, modify, or relocate the City's stairs, connection, or related facilities located in the 14th Street Pedestrian Bridge Stair Easement Area to accommodate the activation of passenger or rail service on the Corridor by RFTA, RFTA shall be entitled to do so as long as the extension, modification, or relocation does not materially interfere with the City's use of the Easement and after review and approval of plans detailing the extension, modification, or relocation by the City, which approval will not be unreasonably withheld. 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 the City should desire to extend, modify, replace, relocate, or remove the stairs, Rio Grand Trail connection, and related facilities to further the City's needs, then such cost shall be borne by the City. Any such extension, modification, relocation, or replacement or repair by the City shall only be made in accordance with plans prepared by City and reviewed and approved by RFTA, which approval will not be unreasonably withheld. 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 PUC in a hearing.

4. **No Additional Easement Rights Reserved**. Nothing contained herein shall be construed to grant any other easement over or across any other real property owned by RFTA. RFTA reserves the right of title, use, and occupancy of the Corridor, subject to the rights granted herein, provided that RFTA shall not unreasonably interfere with the City's exercise of the rights granted hereunder. RFTA shall have the continuing right to all other uses of the Corridor, including the right to construct, use, maintain, repair, relocate (subject to the provisions of Paragraph 3 above) and renew in RFTA's sole discretion any and all improvements, including without limitation tracks, overhead lines, pipelines, bus ways, trails and other facilities upon,

along, over, under or across any or all parts of the Corridor, all of which may be done at any time by RFTA without prior notice and without liability to City or to any other party for compensation or damages. This Easement is subject and subordinate to all existing leases, licenses, easements, permits, claims of title or other interests of any description whatsoever and by whomever held and as may in the future be modified, renewed or extended by RFTA, including, but not limited to, any fiber optic cable.

5. **Non-Interference**. The Parties agree that their individual uses of the Easement shall be managed in a way that is reasonably undertaken to avoid interference with the other Party's use of the Easement as contemplated by this Agreement. City acknowledges that RFTA's Corridor is not abandoned and is under the jurisdiction of the federal Surface Transportation Board. City further acknowledges that the Corridor is "railbanked" under the National Trails System Act, 16 U.S.C. §1247(d), so that RFTA is required to preserve the Corridor for future rail use. City's improvements and use shall not interfere with RFTA's use of the Corridor for transportation, shipping, trail, and/or conservation purposes and that no disturbance or interference of said any such uses shall be allowed hereunder without the prior written approval of RFTA. This Easement Agreement shall not be deemed to give City exclusive possession of any part of the Easement area described, and nothing shall be done or suffered to be done by City 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 or to be constructed thereon by RFTA in the future.

6. **Good Faith**. There is an obligation of good faith on the part of the Parties, including the obligation to make timely communication of information that may reasonably be believed to be material to the other Party.

7. **No Waiver of Governmental Immunity Act**. Nothing herein shall be deemed a waiver of the Colorado Governmental Immunity Act by either Party. C.R.S. § 24-10-101 et seq.

8. **No Joint Venture**. Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither Party shall have the express or implied right to act for, on behalf of, or in the name of the other Party.

9. **No Third-Party Beneficiary**. No third party may enforce or rely upon this Agreement.

10. **Term**. This Agreement shall become effective upon signature of the last Party to sign, and the Easement provided for herein shall exist in perpetuity or until altered by the mutual agreement of the Parties.

11. **Amendment**. This Agreement may be amended by the Parties solely through a written agreement signed by both Parties

12. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the same instrument. Facsimile or photographic signatures of either Party to this Agreement or subsequent modifications thereto, shall be effective for all purposes.

13. **Governing Law, Venue and Survival**. The laws of the State of Colorado, to the extent not preempted by federal law as a result of the railbanked status of the Corridor and exclusive jurisdiction of the Surface Transportation Board over railbanked rail corridors shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal action for enforcement of this Agreement, venue of such action shall be in the United States District Court for the District of Colorado, if that court has jurisdiction; otherwise, any such legal action shall be filed in Garfield County, Colorado.

14. **Whole Agreement**. This Agreement sets forth the whole agreement of the Parties. No representations, either verbal or written, shall be considered binding on either Party to the extent not set forth herein.

15. **Section Headings**. The section headings in this Agreement are inserted only for the purpose of convenient reference and are in no way to define, limit or prescribe the scope or intent of this Agreement or any part thereof.

16. **Authority**. Each person signing this Agreement represents and warrants that the individual is fully authorized to enter into and execute this Agreement and to bind the Party it represents to the terms and conditions thereof.

17. **Notice and Representatives**. All notices required under this Agreement shall be transmitted in writing and shall be deemed duly given when hand-delivered or sent by certified mail, return receipt requested and postage prepaid, or by electronic communication, addressed to the designated representative(s) as follows:

To City: City of Glenwood Springs
Attn.: City Manager
101 West 8th Street
Glenwood Springs, CO 81601

With copy to: City of Glenwood Springs
Attn.: City Attorney
101 West 8th Street
Glenwood Springs, CO 81601

To RFTA: Roaring Fork Transportation Authority
Attn: Chief Executive Officer
2307 Wolfsohn Road
Glenwood Springs, CO 81601

With copy to: Roaring Fork Transportation Authority
Attn.: RFTA General Counsel
2307 Wolfsohn Road
Glenwood Springs, CO 81601

18. **Change of Representatives.** Either Party may, in its sole discretion, change its individual designated representative and the address to which future notices shall be sent by providing written notice to the other Party.

19. **Severability.** Should any provision of this Agreement be found to be in conflict with any law of the United States or the State of Colorado or to otherwise be unenforceable, the remaining provisions shall be deemed severable and the validity of such shall not be affected provided that the remaining provisions can be construed in substance to constitute the agreement which the Parties intended to enter into under this Agreement.

20. **Railbanking Protection.** Notwithstanding anything in this Agreement to the contrary, no action by either Party shall result in the Corridor being severed from the main interstate rail line. If RFTA in its sole discretion upon advice of legal counsel believes that an action permitted by this Easement has or will cause a severance of the Corridor from the UPRR main line, RFTA shall notify the City and RFTA and the City 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.

21. **Great Outdoors Colorado Trust Fund.** This Agreement may be conditional upon and subject to all applicable requirements of the Agreement made the 17th day of January, 2001 by the Roaring Fork Railroad Holding Authority (the predecessor to RFTA) and the State Board of the Great Outdoors Colorado Trust Fund, recorded November 5, 2001 in the Office of the Garfield County Clerk and Recorder at Reception No. 591339. City agrees not to undertake any further activity within the Property other than customary maintenance and repair without first obtaining the written approval of RFTA.

22. **Indemnification.** To the extent permitted by law, City shall defend, indemnify, and hold RFTA harmless from any and all claims, suits, costs, and liability occasioned by its acts or neglects, or its agents, employees, or invitees, arising out of the easement granted hereby. To the extent permitted by law, City shall also defend and hold harmless RFTA from and against any injury, claim or damage to any third party arising out of or in connection with City's operations under this Agreement.

23. **No Assignment.** City shall not assign this Agreement or any rights granted pursuant to this Agreement without the prior written consent of RFTA.

24. **Protection of Drainage.** Any work undertaken by the City related to the easement shall be undertaken in compliance with all federal, state, and local inspections and requirements and subject to approval of RFTA, which approval will not be unreasonably withheld.

25. **Protection of Underground Utilities.** City acknowledges that Qwest Communications Corporation or its successor and other utilities operate under and along the Rail Corridor and that fiber optic cable and is buried through the Rail Corridor and possibly under the Tunnel. City, at least five (5) days prior to performing any excavation activities in the 14th Street Easement Area shall notify RFTA at (970) 384-4971 and shall notify Qwest Communication at 1-800-AT-FIBER (a 24-hour number) at least three (3) business days before doing any digging.

Prior to beginning any work on the stairs, connection, or related facilities, City shall determine where any utilities are buried in or about the 14th Street Easement Area. City shall pay special attention to fiber optic cable and determine the names of the telecommunications and utility company(ies) involved, arrange for a utility locator, determine whether arrangements for relocation or other protection of the fiber optic cable or other utilities is required and shall so notify RFTA. Any such relocation or protection shall be at City's expense.

26. **City's Duty to Install Improvements**. If at any time after the installation of the improvements identified herein, any Local, State or Federal law or regulation, or any Local, State, or Federal officer or regulatory board or commission having jurisdiction shall require any alterations, changes, or improvements, as herein described, or any additional safeguards, protection, signals or warnings, the same shall be constructed, maintained, and operated at the sole expense of City.

27. **Subject To Appropriation.** Any monetary obligations of RFTA or City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by RFTA's Board and City Council respectively and encumbered for the purposes of this Agreement.

28. **Contractor Insurance.** In the event that the Corridor is activated for rail use by RFTA, and prior to commencing any excavation work or work that places people or equipment at or above the track and within 25 feet of the centerline of said track within the 14th Street Easement Area pursuant to this Agreement, the City agrees that it shall require any Contractor retained by City to perform any such work to procure and maintain at the Contractor's own expense, with a company reasonably acceptable to RFTA, Comprehensive General Liability Insurance (including automobile), to be maintained during the period of any construction activities, in amounts not less than those required for Class I Railroads operating in Colorado, or such other mandatory insurance requirements as may be established by applicable federal, state, or local agencies having jurisdiction over such activities, whichever is highest. Such Comprehensive General Liability Insurance policy shall, at a minimum, be maintained for:

A. All damages arising out of bodily injuries to or death of one (1) person and subject to that limit for each person;

B. All damages arising out of bodily injuries to or death of two (2) or more persons in any one occurrence;

C. Regular Contractor's Property Damage Liability Insurance for all damages arising out of injury to or destruction of property in any one occurrence and subject to the same limit per occurrence; and

D. All damages arising out of injury to or destruction of property during the policy period. If the tracks in the 14th Street Easement Area are being used in active railway operations, Contractor shall also provide Railroad Protective Liability insurance naming only the ***Railway*** as the Insured with coverage for each occurrence and in an annual

aggregate amount. The policy must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the ***Railway*** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

Such insurance policy shall contain no exclusions the effect of which are to exclude or defeat assumed contractual liability and/or indemnity; and said policy shall specifically reference this Easement Agreement and its indemnity provisions and shall insure the liability assumed by City in this Agreement, below. Furthermore, said insurance policy shall name RFTA as an additional insured; however, there shall be no exclusion the effect of which is to exclude any personal injury or death or damage to property sustained by any directors, officers, agents, attorneys or employees of RFTA. Any exclusion for working on or near a railroad must be deleted from the policy. City shall furnish RFTA with certificates of insurance evidencing such insurance to be in full force and effect and that same will not be canceled without at least thirty (30) days advance written notice by the insurance carrier to RFTA.

29. **No Warranty.** RFTA does not warrant its title to the 14th Street Pedestrian Bridge Stair Easement Area nor undertake to defend City in the peaceable possession, use, or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interests of others and as they may be extended or renewed.

30. **Easement Vacation.** If at any time the use of the Easement area for the purposes herein should be discontinued by City for a continuous period of one year, this License shall thereupon cease and City shall surrender or cause to be surrendered to RFTA, or its successors or assigns, the peaceable possession of the Easement and surrender all rights and claims of City or of the public for use and occupancy of the said 14th Street Pedestrian Bridge Stair Easement Area.

IN WITNESS WHEREOF, the Parties hereto have executed this 14TH STREET PEDESTRIAN STAIRS AND LANDING EASEMENT AGREEMENT in duplicate originals on the day and year first written above.

CITY OF GLENWOOD SPRINGS, COLORADO

ATTEST:

_____
Catherine Mythen, City Clerk

By:_____
Michael Gamba, Mayor

APPROVED AS TO FORM:

Date: _____

_____
Karl Hanlon, City Attorney

ROARING FORK TRANSPORTATION AUTHORITY

ATTEST:

_____
Secretary

By:_____
Jeanne McQueeney, Chair

APPROVED AS TO FORM:

Date: _____

_____
Paul J. Taddune, General Counsel

14TH STREET PEDESTRIAN STAIRS AND LANDING EASEMENT AGREEMENT

Exhibit A

- Exhibit A -

Parcel Number: 2185-0940-0011
Location: Glenwood Springs, CO
Mailing Address: 530 E. Main Street, Aspen, CO 81611
Owner: Roaring Fork Transportation Authority

Access Easement Description

An Access Easement situated entirely within that parcel of land described in the Correction Bargain and Sale Deed recorded as Reception No. 755399 in the office of the Garfield County Clerk and Recorder (herein after referred to as the RFTA ROW), also lying, for reference, in the NW1/4NE1/4 of Section 16, Township 6 South, Range 89 West of the 6th Principal Meridian, County of Garfield, State of Colorado, more particularly described as follows:

Commencing at the North Center Sixteenth Corner of Section 16, being monumented with a No. 6 Rebar and 3 1/4" Aluminum Cap, LS 24662, properly marked; Thence S87°23'59"E along the South Line of said NW1/4NE1/4 of Section 16 a distance of 70.20 feet to a point on the West Line of said RFTA ROW, being monumented with a No. 5 Rebar and 3 1/4" Aluminum Cap, LS 24662 (Basis of Bearings for this description). Thence N15°14'30"E along the West Line of said RFTA ROW a distance of 568.40 feet to the TRUE POINT OF BEGINNING

Thence N15°14'30"E along the West Line of the RFTA ROW a distance of 20.00 feet;

Thence S73°47'12"E a distance of 28.36 feet;

Thence S15°51'12"W a distance of 20.00 feet;

Thence N73°47'12"W a distance of 28.15 feet to the POINT OF BEGINNING

The above described Access Easement contains 0.013 acres (565 square feet), more or less.

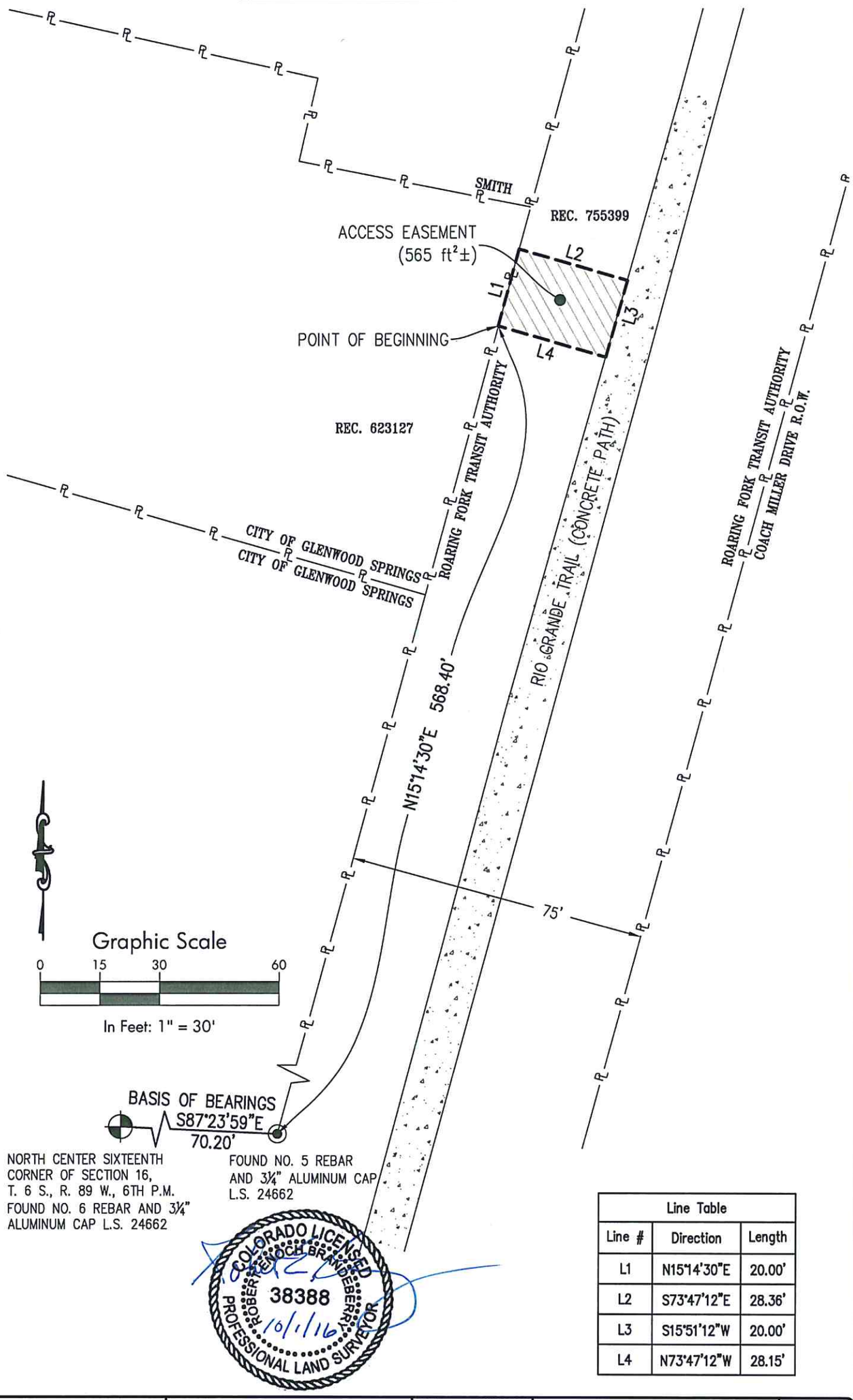
Legal Description Created By:

Robert E. Brandeberry
Colorado PLS # 38388
For, and on behalf of SGM Inc.
and the City of Glenwood Springs

COLORADO LICENSED
ROBERT ENOCH BRANDEBERRY
38388
PROFESSIONAL LAND SURVEYOR

10/1/16

- Exhibit A -



Line Table		
Line #	Direction	Length
L1	N15°14'30"E	20.00'
L2	S73°47'12"E	28.36'
L3	S15°51'12"W	20.00'
L4	N73°47'12"W	28.15'

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SGM
118 West Sixth Street, Suite 200
Glenwood Springs, CO 81601
970.945.1004 www.sgm-inc.com

City of Glenwood Springs
Garfield County, CO

Job No.	2015-314-001
Drawn by:	TB
Date:	9/30/16
Approved:	REB
File:	GAPB_RFTA_AccessEasement

Access Easement
Exhibit Map