

1-217

PERMANENT EASEMENT

THIS PERMANENT EASEMENT (“Easement”) is made and entered into as of the _____ day of _____, 2011, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (“Grantor” or “City”) and the **DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO** (“Grantee” or “Department”).

A. Grantor is the owner of certain real property located in the City and County of Denver, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (“Easement Parcels”).

B. Grantee is constructing Project No. BR R600-297 at I-25 and the Bronco Arch Bridge (“Project”) pursuant to the construction plans titled I-25/Bronco Arch Bridge Replacement Plans, dated January 27, 2011, as revised February 17, 2011 (“Project Plans”).

NOW, THEREFORE, in consideration of the Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. Grantor does hereby grant to Grantee, for the benefit of I-25 and the Bronco Arch Bridge, a non-exclusive permanent easement on, under, over, upon and across Parcel Nos. PE-2A, PE-2B and PE-2C for the construction, support, operation, use, maintenance, repair, replacement and public use of transportation facilities and appurtenances, including fiber optics cable and on, under, over, upon and across Parcel No. PE-2E for the construction, operation, use, repair, maintenance, and replacement of drainage facilities, all as provided in the Project Plans, which parcels are all described in Exhibit A, attached hereto and incorporated herein (“Easement Parcels”).

2. Retained Rights. Grantor retains all rights to use, convey and enjoy the Easement Parcels in any manner that does not materially interfere with the purposes set forth in paragraph 1 above.

3. Term of Easement. The term of this Easement shall be perpetual.

4. Appurtenant. This Easement shall be appurtenant to and run with the land for the benefit of I-25 and the Bronco Arch Bridge.

5. Covenants of Grantee.

A. The Grantee’s use of the Easement Parcels shall be as set forth herein and shall not interfere with the Grantor’s ability to use the Easement Parcels that does not interfere with the purposes set forth in paragraph 1 above.

B. The Grantee shall use reasonable efforts not to disturb or alter the Easement Parcels, except as otherwise provided for in the Project. Grantee shall, at its sole cost and expense, restore the Easement Parcels and any improvements thereon after any disturbance,

to the satisfaction of the Manager of Public Works, except for improvements constructed and disturbances shown in the Project Plans.

C. All work done by the Grantee within the Easement Parcels shall be done at the Grantee's sole cost and expense, in a good and workmanlike manner, in compliance with all laws and regulations and free of mechanics' or materialmen's liens.

D. The Grantee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Easement Parcels by Grantee, Grantee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated or disposed of on or in the Easement Parcels, or if the Easement Parcels become contaminated in any manner due to the actions or inactions of the Grantee, Grantee shall cause its contractors and subcontractors to indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the Easement Parcels and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising as a result of those actions or inactions by Grantee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Grantee causes or permits the presence of any Hazardous Substance on the Easement Parcels and that results in contamination, Grantee shall promptly, at its sole expense, take any and all necessary actions to return the Easement Parcels to the condition existing prior to the presence of any such Hazardous Substance. Grantee shall first obtain the City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum, however vehicles using petroleum products may be used for construction and maintenance, repair, and replacement of the improvements to be constructed in the Project Plans. Portions of a new interstate bridge will be constructed in some of the Easement Parcels. Vehicles using petroleum products will be allowed to use the portions of the new interstate bridge in the Easement Parcels.

6. Release. Grantee shall neither hold nor attempt to hold Grantor liable for any injury or damage, either proximate or remote, occurring through or caused by injury, accident or other cause to the Project or personal property of Grantee kept or stored on the Easement Parcel(s), whether by reason of the negligence or fault of the owners or occupants thereof, or by any other person or otherwise, except resulting from the negligent acts or omissions of Grantor or its employees, agents or contractors. Grantee hereby waives any and all rights of recovery, claim, action or cause of action against Grantor, its agents, officers or employees, for any loss or damage to the Project and/or its personal property, or loss of use, occurring out of the use of the Easement Parcels, except resulting from the negligent or willful acts or omissions of Grantor or its employees, agents or contractors. Grantee covenants that no insurer shall hold any right of subrogation against Grantor or its agents, officers, employees or licensees.

7. No Representations. The City makes no representation or warranty of any kind with respect to the condition of the Easement Parcels. The Grantee accepts the Easement Parcels

in its "AS-IS" condition, WITH ALL FAULTS AND AT THE GRANTEE'S OWN RISK, without any warranty, express or implied, including without limitation, any warranty of merchantability, liability, fitness or fitness for a particular purpose, all such warranties being hereby expressly disclaimed by the City.

8. Defaults.

A. The following events are hereinafter referred to as "Defaults" or "Events of Default":

(i) Grantee shall fail in the due and punctual payment of any amounts payable hereunder and such failure shall continue for thirty (30) days following written notice that the same were due; and

(ii) Grantee shall fail to perform any of the other agreements, terms, conditions or covenants hereof on Grantee's party to be performed and such nonperformance shall continue for a period of thirty (30) days after notice from Grantor to Grantee, or if such performance cannot be reasonably had within such thirty (30) day period, Grantee shall not in good faith have commenced such performance within such thirty (30) day period and shall not diligently proceed therewith to completion.

B. In the event of any such Default, Grantor shall have the right, at Grantor's option, to perform any such item at Grantee's expense and recover the cost of such performance plus interest thereon at the rate of fifteen percent (15%) per annum from the date paid by Grantor until reimbursed by Grantee. Grantor's rights hereunder shall be in addition to, and not in lieu of, any other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to, suits for injunctive relief and specific performance.

9. Notices. All notices, consents, or other instruments or communications provided for under this Easement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received when actually delivered and received or three (3) business days after mailed, if sent by registered or certified mail, postage prepaid, to the following:

Grantor: Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, CO 80202

With a copy to: Manager of Public Works
201 W. Colfax, Dept. 608
Denver, CO 80202

With a copy to: Denver City Attorney
1437 Bannock Street, Room 353
Denver, CO 80202

Grantee: Colorado Department of Transportation
Region 6 Regional Transportation Director
2000 S. Holly Street
Denver, CO 80222

10. Successors and Assigns. Except as otherwise provided herein, Grantor and Grantee agree that the terms and provisions of this Easement shall run with the land and shall inure to the benefit of and be binding upon the Easement Parcels, the Grantor and Grantee, and their respective successors and assigns.

11. Severability. In the event any clause, sentence or any portion of the terms, conditions, covenants and provisions of this Easement are deemed illegal, null or void for any reason, or are held by any court of competent jurisdiction to be so, the remaining portions of this Easement shall remain in full force and effect if the intent of the parties can be fulfilled.

12. Subject to Local Laws; Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Easement as if fully set out herein by this reference. Venue for any legal action relating to this Easement shall lie in the District Court in and for the City and County of Denver, Colorado.

13. Appropriation by City Council. All obligations of the City under and pursuant to this Easement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Easement and paid into the Treasury of the City.

GRANTEE:

STATE OF COLORADO
COLORADO DEPARTMENT OF
TRANSPORTATION

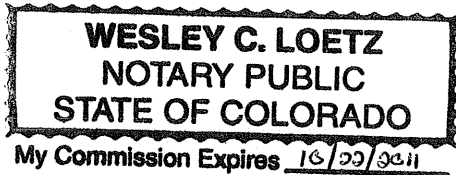
By: *Pamela Hutton*
Pamela Hutton, P.E. Chief Engineer

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 4th day of MARCH, 2011,
by PAMELA HUTTON, P.E. as CHIEF ENGINEER of the Colorado
Department of Transportation.

Witness my hand and official seal.

My commission expires: 10/22/2011.



W.C. Loetz
Notary Public

Exhibit A

(Legal Description Easement Parcels PE-2A, PE-2B, PE-2C and PE-2E)

EXHIBIT "A"

PROJECT NUMBER: BR R600-297
PERMANENT EASEMENT NO.: PE-2A

Project Code: 16212
September 21, 2010

DESCRIPTION

Permanent easement No. PE-2A of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 4,250 square feet (0.098 acres), more or less, in the southeast quarter of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being described as follows:

Commencing at the southerly corner common to Sections 32 and 33, Township 3 South, Range 68 West of the Sixth Principal Meridian; Thence N10°09'18"W, a distance of 1131.16 feet to a point on the easterly line of a tract of land commonly known as the West Side Line, Parcel 9, as described in Rule and Decree recorded under Reception No. R-92-0011975, said point being the POINT OF BEGINNING;

1. Thence N16°15'42"E, on the easterly line of said Parcel 9, a distance of 24.12 feet to the southwesterly corner of an easement (Parcel E-2) for a grade separation structure recorded in Book 6388 at page 115;
2. Thence S39°44'43"E, on the southerly line of said easement, a distance of 207.31 feet to an angle point on the westerly right-of-way line of Interstate Highway No. 25 (2010);
3. Thence S00°17'43"E, on said westerly right-of-way line, a distance of 25.42 feet to a point on the easterly line of the Official Channel of the South Platte River as described in the City and County of Denver Ordinance No. 117 of 1910;
4. Thence S18°07'49"W, on said easterly line of the Official Channel of the South Platte River, a distance of 4.54 feet to a point;
5. Thence N39°44'43"W, on a line 20.00 feet southerly of and parallel with the southerly line of said Parcel E-2, a distance of 215.87 feet to the POINT OF BEGINNING.

The above described permanent easement contains 4,250 square feet (0.098 acres), more or less, and is for the construction, support, maintenance and public use of transportation facilities and appurtenances over the South Platte River.

BASIS OF BEARINGS: Bearings are Grid bearings of the Colorado coordinate system of 1983, central zone. The line between the southeast corner of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, marked by a 3-1/4" aluminum cap "MERRICK & COMPANY", and the northeast corner of said Section 32, marked by a 2" brass disc "LS 28668", bears N00°17'43"W, a distance of 5278.67 feet.

Authored by: Donald D. Hansen, PLS 14599
CDOT, Region 6 R.O.W.
2000 S. Holly St.
Denver Co. 80222
303.757.9921

EXHIBIT "A"

PROJECT NUMBER: BR R600-297
PERMANENT EASEMENT NO.: PE-2B
Project Code: 16212
September 21, 2010

DESCRIPTION

Permanent easement No. PE-2B of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 7,449 square feet (0.171 acres), more or less, in the southeast quarter of Section 32, and in the southwest quarter of Section 33, both in Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado being described as follows:

Section 32

Commencing at the southerly corner common to Sections 32 and 33, Township 3 South, Range 68 West of the Sixth Principal Meridian; Thence N00°17'43"W, on the line common to said Sections 32 and 33, a distance of 1225.28 feet to a point, said point being the POINT OF BEGINNING;

1. Thence S00°17'43"E, on said section line, a distance of 62.95 feet to the northeasterly corner of an easement (Parcel E2) for a grade separation structure recorded in Book 6388 at page 115;
2. Thence N39°44'43"W, on the northerly line of said easement, a distance of 203.00 feet to a point;
3. Thence N00°36'58"E, on the northerly line of said easement, a distance of 0.59 feet to a point on the east-west centerline of the southeast quarter of said Section 32;
4. Thence N89°51'20"E, on said east-west centerline, a distance of 51.41 feet to a point;
5. Thence S39°44'43"E, a distance of 122.07 feet to the POINT OF BEGINNING.

The above described permanent easement contains 6,517 square feet (0.150 acres), more or less.

AND

Section 33

Commencing at the above described POINT OF BEGINNING;

1. Thence S39°44'43"E, a distance of 40.24 feet to a point on the easterly right-of-way line of Interstate Highway 25 (2010);

Thence, on said easterly right-of-way line, the following two (2) courses:

2. S18°07'49"W, on the easterly line of the Official Channel of the South Platte River per City and County of Denver Ordinance 117, Series 1910, a distance of 17.93 feet to a point;
3. S52°56'25"W, a distance of 24.84 feet to a point on the line common to said Sections 32 and 33;
3. Thence N00°17'43"W, on said common line, a distance of 62.95 feet to the POINT OF BEGINNING.

The above described permanent easement contains 932 square feet (0.021 acres), more or less, resulting in a total area of 7,449 square feet (0.171 acres) more or less, for the construction, support, maintenance and public use of transportation facilities and appurtenances, including fiber optic cable, over and under the South Platte River.

BASIS OF BEARINGS: Bearings are Grid bearings of the Colorado coordinate system of 1983, central zone. The line between the southeast corner of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, marked by a 3-1/4" aluminum cap "MERRICK & COMPANY", and the northeast corner of said Section 32, marked by a 2" brass disc "LS 28668", bears N00°17'43"W, a distance of 5278.67 feet.

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EXHIBIT "A"

PROJECT NUMBER: BR R600-297
PERMANENT EASEMENT NO.: PE-2C

Project Code: 16212
September 15, 2010

DESCRIPTION

Permanent easement No. PE-2C of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 1,330 square feet (0.031 acres), more or less, in the southeast quarter of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being described as follows:

Commencing at the southerly corner common to Sections 32 and 33, Township 3 South, Range 68 West of the Sixth Principal Meridian; Thence N05°13'33"W, a distance of 1373.87 feet to a point on the easterly line of a tract of land commonly known as the West Side Line, Parcel 10, as described in Rule and Decree recorded under Reception No. R-92-0011975, said point being the POINT OF BEGINNING;

1. Thence S39°44'43"E, a distance of 63.77 feet to a point on the east-west centerline of the southeast quarter of said Section 32;
2. Thence S89°51'20"W, on said east-west centerline, a distance of 51.41 feet to a point on the easterly right-of-way line of Interstate Highway No. 25 (2010);
3. Thence N00°36'58"E, on said easterly right-of-way line, a distance of 13.17 feet to a point on the easterly line of said Parcel 10;
4. Thence N16°15'41"E, on said easterly line of Parcel 10, a distance of 37.49 feet to the POINT OF BEGINNING.

The above described permanent easement contains 1,330 square feet (0.031 acres), more or less, for the construction, support, maintenance and public use of a transportation facilities and appurtenances, including fiber optic cable, over and under the South Platte River.

BASIS OF BEARINGS: Bearings are Grid bearings of the Colorado coordinate system of 1983, central zone. The line between the southeast corner of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, marked by a 3-1/4" aluminum cap "MERRICK & COMPANY", and the northeast corner of said Section 32, marked by a 2" brass disc "LS 28668", bears N00°17'43"W, a distance of 5278.67 feet.

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EXHIBIT "A"

PROJECT NUMBER: BR R600-297
PERMANENT EASEMENT NO.: PE-2E
Project Code: 16212
October 4, 2010

DESCRIPTION

Permanent easement No. PE-2E of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 1,790 square feet (0.041 acres), more or less, in the southeast quarter of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being described as follows:

Commencing at the section corner common to Sections 32 and 33, Township 3 South, Range 68 West of the Sixth Principal Meridian; Thence N03°37'02"W, a distance of 1513.76 feet to a point on the easterly line of a tract of land commonly known as the West Side Line, Parcel 10, as described in Rule and Decree recorded under Reception No. R-92-0011975, said point being the POINT OF BEGINNING;

1. Thence S77°46'25"E, a distance of 46.25 feet to a point;
2. Thence S12°13'35"W, a distance of 40.00 feet to a point;
3. Thence N77°46'25"W, a distance of 43.56 feet to a point on curve on the easterly line of said Parcel 10;
4. Thence on said easterly line and on the arc of a curve to the left whose center bears N80°20'36"W, having a radius of 901.95 feet, a central angle of 02°32'49", a distance of 40.09 feet (the chord of said arc bears N08°23'00"E, a distance of 40.09 feet) to the POINT OF BEGINNING.

The above described permanent easement contains 1,790 square feet (0.041 acres), more or less, for the construction and maintenance of highway drainage facilities.

BASIS OF BEARINGS: Bearings are Grid bearings of the Colorado coordinate system of 1983, central zone. The line between the southeast corner of Section 32, Township 3 South, Range 68 West of the Sixth Principal Meridian, marked by a 3-1/4" aluminum cap "MERRICK & COMPANY", and the northeast corner of said Section 32, marked by a 2" brass disc "LS 28668", bears N00°17'43"W, a distance of 5278.67 feet.

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