

## JOINT USE AGREEMENT

(Clyfford Still Museum)

THIS JOINT USE AGREEMENT (this "Agreement" or "Joint Use Agreement") is entered into as of the Effective Date (defined below), by and among CLYFFORD STILL MUSEUM, a Colorado nonprofit corporation, whose address is 1250 Bannock St., Denver, Colorado 80204 ("CSM"), the DENVER ART MUSEUM as the City's agency for art, a Colorado nonprofit corporation, whose address is 100 West 14<sup>th</sup> Avenue Parkway, Denver, Colorado, 80204 ("DAM Nonprofit"), and the CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city, whose address is 1437 Bannock Street, Denver, Colorado, 80202 (the "City").

### RECITALS

A. CSM is the owner of the real property legally described in **Exhibit A** attached hereto and incorporated herein (the "CSM Property"), on which is being built the Clyfford Still Museum (the "Still Museum").

B. The City is the owner of the real property legally described in **Exhibit B** attached hereto and incorporated herein, adjacent to portions of the CSM Property and generally located at the southeast corner of 13<sup>th</sup> Avenue and Bannock Street, Denver, Colorado (the "North Easement Area").

C. The City is the owner of the real property and building used for art museum facilities, including what is commonly referred to as the Hamilton Building located east of and adjacent to the North Easement Area and more particularly described in **Exhibit C** attached hereto and incorporated herein (the "City Museum Parcel").

D. DAM Nonprofit is currently the City's agency for art.

E. Numerous departments and agencies of the City are involved with CSM including, without limitation, the Departments of Public Works and General Services and Arts and Venues Denver.

F. The City is also the owner of the real property legally described in **Exhibit D** attached hereto and incorporated herein, located south of and adjacent to the CSM Property, the "City's South Parcel" and together with the City Museum Parcel and the North Easement Area, the "City Parcels". Portions of the City South Parcel as described on **Exhibit D** will be used for landscaping and related improvements (the "South Easement Area").

G. A portion of the City Museum Parcel drains into the North Easement Area as generally shown in the Drainage Plan prepared by V3 Companies of Colorado, Ltd., last revised March 15, 2010 (DES Project No. 2008-0123), (the "City Drainage Area").

H. The City, CSM, and DAM Nonprofit desire to enter into this Agreement in order to provide for: (1) the ongoing operation and maintenance of detention and drainage facilities in the North Easement Area for the mutual benefit of the City Parcels and other City facilities and the CSM Property (the "Drainage Facilities"); (2) the ongoing maintenance of walkways, stairs, seating areas, landscaping and other items detailed in Section 3(a)(iii) below in the North Easement Area as generally shown in the Landscape Design Plans prepared by Reed Hildebrand Associates, Inc. dated July 23, 2010 (as modified by ASI-33 of Allied Works Architecture, Inc. dated July 6, 2011)

("Landscape Plans") for the mutual benefit of the CSM Property and the City Parcels and other City facilities (the "North Landscaping," and together with the Drainage Facilities, the "North Easement Improvements"); (3) the ongoing maintenance of landscaping and other items detailed in Section 3(a)(iii) below on the South Easement Area as shown on the Landscape Plans, for the mutual benefit of the CSM Property and the City Parcels and other City facilities (the "South Landscaping"); (4) the installation, maintenance, operation, repair, relocation, use and replacement of the Exterior Water Infrastructure on or under the City Parcels for the benefit of the CSM Property and the City Parcels and other City facilities, as described in the Utility Agreement with an effective date of September 15, 2011 between the City and CSM (and DAM Nonprofit for limited purposes only) ("Utility Agreement"); (5) the installation, maintenance, operation, repair, use, relocation and replacement of the Chilled Water Infrastructure and the Heating Hot Water Infrastructure on or under the City Parcels for the benefit of the CSM Property as described in the Utility Agreement; and (6) the installation, maintenance, operation, repair, use, relocation and replacement of the infrastructure necessary for the provision of electricity to service the North Easement Area, the South Easement Area, the North Easement Improvements and the South Landscaping area (the "Electric Utilities Infrastructure") for the mutual benefit of the CSM Property and the City Parcels and other City facilities. The North Easement Improvements, the South Landscaping and the Exterior Water Infrastructure are collectively referred to herein as the "Joint Use Area Improvements." The North Easement Area and the South Easement Area are collectively referred to herein as the "Joint Use Area".

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Allocation of Costs.

(a) CSM shall be responsible for (i) its proportionate share of the Maintenance Costs for the Joint Use Area Improvements, as described in Section 3 below; and (ii) other costs described in Section 3 below.

(b) DAM Nonprofit as the current City's agent for art shall be responsible for (i) its proportionate share of the Maintenance Costs for the Joint Use Area Improvements, as described in Section 3 below; and (ii) other costs described in Section 3 below.

(c) The City shall not be responsible for any costs hereunder.

2. Joint Use Area Utilities.

(a) Exterior Water (as defined in the Utility Agreement) and Exterior Water Infrastructure (as defined in the Utility Agreement) shall be provided to the North Landscaping and the South Landscaping in accordance with the terms set forth in the Utility Agreement. As between DAM Nonprofit and CSM, notwithstanding Section 2(b) in the Utility Agreement to the contrary, DAM Nonprofit shall operate and maintain the Exterior Water Infrastructure under the terms of this Agreement on behalf of CSM who is required to perform such activities under the Utility Agreement. As between DAM Nonprofit and CSM, if there is any conflict between this Section 2(a) and Section 2(b) of the Utility Agreement, this Section 2(a) shall control.

(b) Electricity (as defined in the Utility Agreement) is required to operate, maintain and secure the Joint Use Area Improvements and the Joint Use Area. The Electric Utilities Infrastructure shall be designed, constructed and installed by CSM at its sole cost and expense pursuant to plans approved by the Managers of General Services and Public Works and the Director of Arts and Venues Denver. The City shall own all Electric Utilities Infrastructure that is situated on or under the City Parcels upon acceptance of the same by the Managers of General Services and Public Works and the Director of Arts and Venues Denver (or successor agency). CSM shall own all Electric Utilities Infrastructure, if any, that is situated on or under the CSM Property.

3. Operation and Maintenance of Joint Use Area Improvements and Joint Use Area.

(a) Operation and Maintenance.

(i) Exterior Water provision shall be accomplished in accordance with the Utility Agreement. As between DAM Nonprofit and CSM, the operation, maintenance, repair, relocation and replacement of the Exterior Water Infrastructure by CSM, as required by the Utility Agreement, shall be performed by DAM Nonprofit as a component of the Joint Use Area Improvements pursuant to this subsection.

(ii) Electric Utilities Infrastructure installation, operation, maintenance, repair, relocation, use and replacement shall be the responsibility of CSM.

(iii) Operation, maintenance, repair, relocation and replacement of the Joint Use Area Improvements shall be the responsibility of DAM Nonprofit as the City's agency for art.

(iv) All costs to maintain, operate, repair, relocate and replace the Joint Use Area Improvements (the "Maintenance Costs") shall be shared equally (50% each) by DAM Nonprofit and CSM. The process for invoicing and payment of the shared Maintenance Costs shall be set forth in a separate agreement to be entered into between DAM Nonprofit and CSM.

(v) Notwithstanding the foregoing, the cost of any maintenance, repair, replacement, relocation or remediation necessitated by an act or omission attributable solely to DAM Nonprofit or CSM, such as misuse or excessive or improper use, shall be the sole responsibility of such party. The Joint Use Area Improvements shall be maintained in accordance with a landscape maintenance plan or as otherwise agreed to by the Director of Arts and Venues Denver, CSM and DAM Nonprofit and generally in good working order, condition and repair, including without limitation equipment maintenance and repair, grounds and landscaping upkeep, irrigation, cleaning, snow and refuse removal, removal of debris and excess silt from the Detention Pond and replanting, reseeding or resodding thereof as necessary, and making any necessary repairs or replacements. Notwithstanding anything to the contrary stated or implied herein, DAM Nonprofit shall not replace or repair any benches or landscape materials without prior notice to and approval by CSM and the Director of Arts and Venues Denver, such approval to not be unreasonably withheld, conditioned, or delayed. If DAM Nonprofit as the City's agency for art does not maintain, repair, relocate or replace any of the Joint Use Area Improvements as required by this Section 3, then CSM shall have the right, after providing ten (10) days prior written notice (except in the case of an emergency) to the City and DAM Nonprofit as the City's agency for art and without limiting any other remedies it may have hereunder, to undertake such maintenance, repair, relocation or replacement, as applicable. If CSM performs any such maintenance, repair, relocation or replacement, then DAM Nonprofit shall reimburse CSM for fifty percent (50%) of the cost thereof. If the City undertakes any such

maintenance, repair, relocation or replacement of the Joint Use Area Improvements as required by this Section 3, the City shall invoice CSM for fifty percent (50%) of all costs thereof, reasonably detailing the work performed and the cost thereof. CSM shall pay such invoiced amount to the City within thirty (30) days of receipt of such invoice. Invoices between the City and DAM Nonprofit shall be handled in accordance with other agreements between the City and DAM Nonprofit.

(b) Utility Usage Costs.

(i) All charges for Exterior Water supplied to the North Landscaping and the South Landscaping shall be paid for as set forth in the Utility Agreement.

(ii) All charges for Electricity supplied to the Joint Use Area Improvements shall be borne by CSM.

(c) If there is any conflict between this Section 3 and the Utility Agreement, the Utility Agreement shall control.

4. License to CSM over City Parcels.

The City hereby grants to CSM a revocable non-exclusive license ("License") over, under, upon and in the City Parcels for the purpose of installing, operating, maintaining, repairing, relocating, using and replacing the Electric Utilities Infrastructure, Exterior Water Infrastructure, Chilled Water Infrastructure and the Heating Hot Water Infrastructure for the benefit of the CSM Property as permitted or required under the Utility Agreement and this Agreement. The term of this License shall be until June 30, 2025.

5. Insurance.

(a) CSM shall comply with the insurance provisions set forth in **Exhibit E** attached hereto and incorporated herein. DAM Nonprofit shall comply with the insurance provisions set forth in **Exhibit F** attached hereto and incorporated herein. Annually, the City's Risk Management Office shall review CSM and DAM Nonprofit insurance coverages as required herein. Based on such annual review and on any Risk Management Office recommendations for modification in coverage that reflect current risk and commercially available insurance coverages, the City reserves the right to modify the insurance requirements of Exhibits E and F.

(b) CSM and DAM Nonprofit recognize that the City is self-insured for liability in accordance with the provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120. Notwithstanding the foregoing or any other provision of this Agreement, the parties hereto understand and agree that the City, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by such Act, or otherwise available to the City, its officers, officials and employees.

6. Indemnification.

(a) Except as expressly provided in other sections of this Agreement, CSM hereby releases, indemnifies and saves harmless the City and DAM Nonprofit, and each of their respective officers, agents and employees, from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City and DAM Nonprofit, and shall defend, indemnify and save harmless the City and

DAM Nonprofit, and each of their respective officers, agents and employees, from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including without limitation, worker's compensation claims, of or by anyone whomsoever (collectively, "Claims"), which, with respect to any of the foregoing, in any way results from, or arises out of, directly or indirectly, CSM's breach of its obligations under this Agreement, including negligent or wrongful acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of CSM; provided, that CSM shall not release, indemnify or save harmless the City and DAM Nonprofit, nor any of their respective officers, agents and employees from damages resulting solely from the negligence or wrongful acts or omissions of the City's and DAM Nonprofit's officers, agents and employees as determined by a trier of fact. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of CSM under the terms of this indemnification obligation. In addition to the foregoing, CSM will defend and indemnify DAM Nonprofit and the City from all Claims, including, but not limited to court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such indemnification of the City and DAM Nonprofit shall be in addition to any other legal remedies available to the City and DAM Nonprofit and shall not be considered the City's or DAM Nonprofit's exclusive remedy.

(b) Except as expressly provided for in other provisions of this Agreement, DAM Nonprofit hereby releases, indemnifies and saves harmless the City and CSM, and each of their respective officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City and CSM, and shall defend, indemnify and save harmless the City and CSM, and each of their respective officers, agents and employees, from any and all Claims, which, with respect to any of the foregoing, in any way results from, or arises out of, directly or indirectly, DAM Nonprofit's breach of its obligations under this Agreement, including negligent or wrongful acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of DAM Nonprofit; provided, that DAM Nonprofit shall not release, indemnify or save harmless the City and CSM, nor any of their respective officers, agents and employees from damages resulting solely from the negligence or wrongful acts or omissions of the City's and CSM's officers, agents and employees as determined by a trier of fact. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of DAM Nonprofit under the terms of this indemnification obligation. In addition to the foregoing, DAM Nonprofit will defend and indemnify the City and CSM from all Claims including, but not limited to court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such indemnification of the City and CSM shall be in addition to any other legal remedies available to the City and CSM and shall not be considered the City's or CSM's exclusive remedy.

7. Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below (except as otherwise provided in this Agreement) or at such other address that may be specified by written notice in accordance with this Section:

If to City:

Mayor  
1437 Bannock St., Room 350  
Denver, Colorado 80202

With copies to:

Denver City Attorney  
1437 Bannock Street, Room 353  
Denver, Colorado 80202

and

Manager of Public Works – City and County of Denver  
201 W. Colfax Avenue, Department 601  
Denver, Colorado 80202

and

Director of Arts and Venues Denver  
Attn: Director of Program Development  
1245 Champa  
Denver, Colorado 80204

and

Manager of General Services – City and County of Denver  
201 W. Colfax Avenue, Department 1110  
Denver, Colorado 80202

If to DAM Nonprofit:

Denver Art Museum  
Attention: Director  
100 West 14<sup>th</sup> Avenue Parkway  
Denver, Colorado 80204

If to CSM:

Clyfford Still Museum  
Attn: Director  
1250 Bannock St.  
Denver, Colorado 80204

8. Parties' Liabilities. Except as expressly provided elsewhere herein, each party shall be responsible for any and all suits, demands, claims, costs, or actions proximately resulting from its own individual acts or omissions or from the acts or omissions of any of its officers, agents or employees.

9. Agreement as Complete Integration; Amendments. This Agreement and the Utility Agreement are intended as the complete integration of all understandings between the parties regarding the subject matter hereof, except for the existing agreements between the City and DAM Nonprofit as the City's agency for art and the Permanent Easement related to the North Easement Area and the South Easements Area between the City and CSM. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other

amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by all of the parties. Denver City Council approval shall not be required unless approval is mandated by the Charter, the Revised Municipal Code or any relevant Ordinances of the City and County of Denver.

10. 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 and the State of Colorado, the Charter, the Revised Municipal Code and any relevant Ordinances of the City and County of Denver, and regulations enacted pursuant to any of them. The Charter, the Revised Municipal Code and any relevant Ordinances of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

11. Compliance with Laws. All persons or entities utilizing the North Easement Area or the South Easement Area pursuant to this Agreement must observe and comply with the applicable provisions of the Charter, the Revised Municipal Code and any relevant Ordinances, rules and regulations of the City and County of Denver, and with all applicable Colorado and federal laws.

12. Caption Headings. The Section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

13. Third-Party Beneficiary. It is the intent of the parties that no third party beneficiary interest is created in or by this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event each of them expressly disclaims any such acts or actions, particularly in view of the integration of this Agreement.

14. Appropriation by Denver City Council. All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the Denver City Council for the purposes of this Agreement and paid into the Treasury of the City. This Agreement does not, and is not intended to create a multi year direct or indirect debt or financial obligation of the City.

15. Examination of Records. The parties agree that any duly authorized representative of the City, including the Denver Auditor or his or her designee, shall, until three (3) years after termination of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of CSM and DAM Nonprofit directly related to this Agreement upon at least ten (10) calendar days prior written notice.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; provided however if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

17. No Personal Liability. No elected official, director, officer, agent or employee of any party shall be charged personally or held contractually liable by or to another party under any term or

provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

18. Conflict of Interest by City Officer. CSM and DAM Nonprofit, each represent that to the best of their information and belief no officer or employee of the City, is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

19. No Intentional Partnership. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture or any other association between the parties, or any portion thereof, other than the relationships expressly described herein or contained in other agreements.

20. Assignment. No obligations under this Agreement may be assigned without the prior written consent of the non-assigning parties. Consent on behalf of the City shall be given by the Managers of General Services and Public Works and the Director of Arts and Venues Denver (or successor agency).

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

22. Effective Date and Term. The effective date of this Agreement shall be October 15, 2011 ("Effective Date"). This Agreement shall terminate on June 30, 2025 unless otherwise extended by the parties. Notwithstanding anything to the contrary contained herein, the parties agree to cooperate in good faith to execute an amendment prior to February 28, 2025 to extend this Agreement on terms consistent with both this Agreement and the terms and conditions imposed by third-party utilities related hereto; provided, however, that this shall not be interpreted as a binding obligation on any party.

23. Termination of the DAM Nonprofit as the City's Agency for Art. In the event that DAM Nonprofit is terminated as the City's agency for art, all rights and obligations of DAM Nonprofit shall become the rights and obligations of the City and DAM Nonprofit shall no longer have any rights and obligations hereunder.

24. Electronic Signatures and Electronic Records. Parties hereto consent to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

25. Breach and Remedies.

(a) In the event of a breach of any of its obligations hereunder by the City, CSM shall have the right to seek specific performance against the City as the exclusive remedy



hereunder. CSM waives all rights to damages, actual, punitive and consequential, any monetary award, and attorney's fees, costs or otherwise. Failure to appropriate shall not constitute a breach of this Agreement. Rights of DAM Nonprofit are as set forth in other agreements between the City and DAM Nonprofit.

(b) In the event of a breach by DAM Nonprofit of the obligation to pay invoices received from CSM or the City hereunder, in addition to any other remedies hereunder, the non-breaching party may charge ten percent (10%) interest compounded monthly on any unpaid amounts, in addition to the non-breaching party's right to seek any remedy available at law or equity, including actual, punitive and consequential damages and attorney's fees. In the event of a breach by DAM Nonprofit of any of its other obligations hereunder, CSM and the City shall have the right to seek any relief or remedy permitted under law or in equity.

(c) In the event of a breach by CSM of the obligation to pay any invoices received from the City or DAM Nonprofit hereunder, in addition to any other remedies hereunder, the non-breaching party may charge ten percent (10%) interest compounded monthly on any unpaid amounts, in addition to the non-breaching party's right to seek any remedy available at law or equity, including actual, punitive and consequential damages and attorney's fees. In the event of a breach by CSM of any of its other obligations hereunder, DAM Nonprofit and the City shall have the right to seek any relief or remedy permitted under law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGES FOLLOW]**

ATTEST:

CITY AND COUNTY OF DENVER, a Colorado  
municipal corporation

\_\_\_\_\_  
DEBRA JOHNSON Clerk and Records, *Ex-Officio*  
Clerk of the  
City and County of Denver

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:  
DOUGLAS J. FRIEDNASH  
City Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Manager of Finance

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Auditor

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, Mayor of the CITY AND COUNTY OF DENVER, a Colorado municipal corporation.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[SEAL]

CLYFFORD STILL MUSEUM,  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, as \_\_\_\_\_ of Clyfford Still Museum, a Colorado nonprofit corporation.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

THE DENVER ART MUSEUM,  
a Colorado nonprofit corporation and the City's agency for art

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by \_\_\_\_\_, as \_\_\_\_\_ of The Denver Art Museum, a Colorado nonprofit corporation.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## EXHIBITS

Exhibit A – Legal Description of the CSM Property

Exhibit B – Legal Description of the North Easement Area

Exhibit C – Legal Description of the City Museum Parcel

Exhibit D – Legal Description of the City's South Parcel and the South Easement Area

Exhibit E – CSM Insurance Requirements

Exhibit F – DAM Insurance Requirements

**EXHIBIT A**

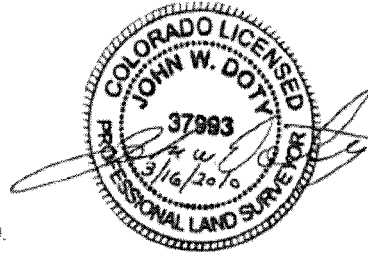
**CSM PROPERTY**

PARCEL DESCRIPTION:

A PARCEL OF LAND BEING: THE NORTH 15.00 FEET OF LOT 31 AND LOTS 32 THROUGH 36 INCLUSIVE, TOGETHER WITH THE WEST 10.00 FEET OF THE ADJACENT ALLEY VACATED BY ORDINANCE NO. 761, SERIES OF 2009.

THE DESCRIBED PORTIONS ARE WITHIN BLOCK 44, EVANS ADDITION TO THE CITY OF DENVER RECORDED IN CLERK AND RECORDER BOOK 1, PAGE 4, LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY DENVER, STATE OF COLORADO.

CONTAINING 22,399 SQUARE FEET OR 0.514 ACRES MORE OR LESS.



JOHN W. DOTY, P.L.S. 37993  
FOR AND ON BEHALF OF V3 COMPANIES, LTD.  
PROJECT NO. D07039  
2399 BLAKE STREET, SUITE 130  
DENVER, CO 80205

DES PROJECT NO. 2008-0123



*Engineers*  
*Surveyors*  
*Scientists*  
*Construction*  
*Advisors*  
COMPANIES, LTD.

2399 Blake Street, Suite 130  
Denver, CO 80205  
303.989.8588 voice  
303.989.9932 fax  
V3co.com

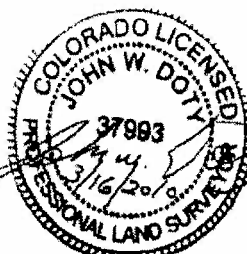
**CSM PROPERTY**  
3/16/2010  
D07039 SCALE - N/A  
DENVER SHEET 1 OF 2 COLORADO

# CSM PROPERTY

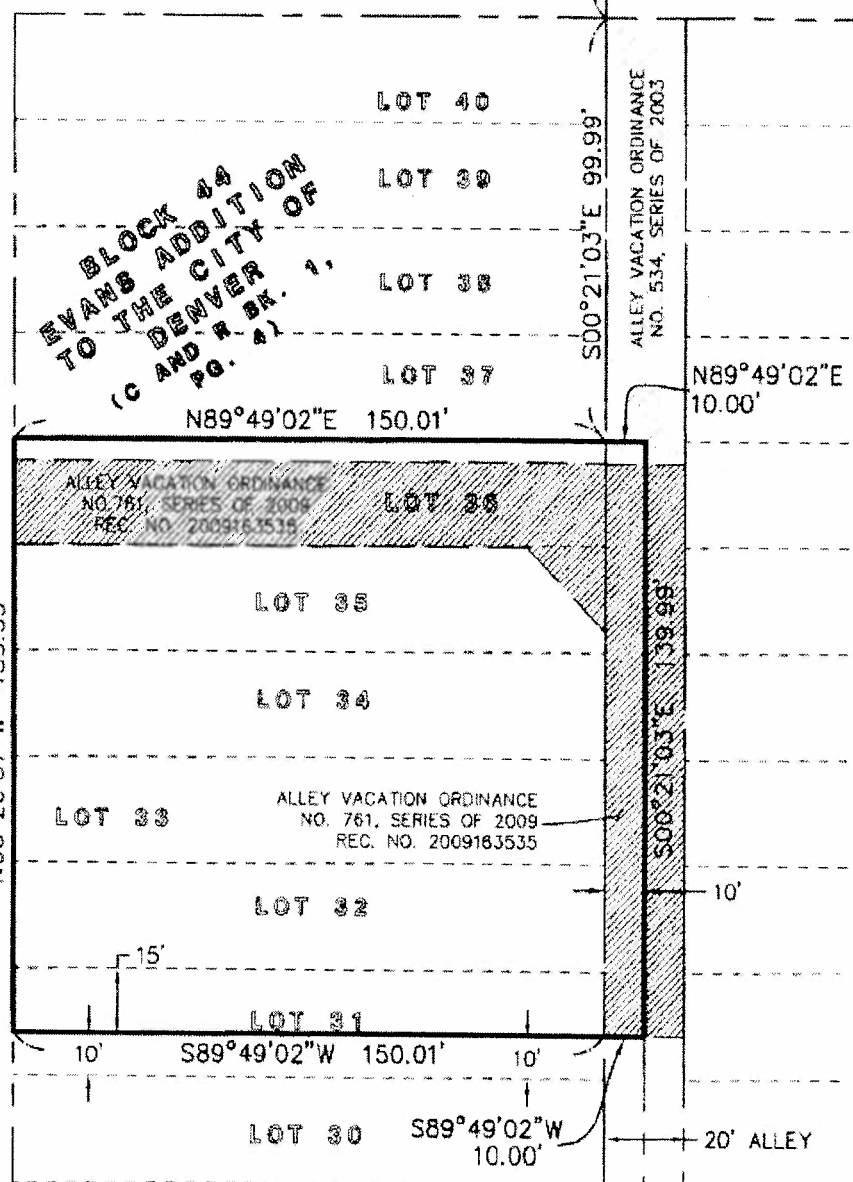
NW COR. SEC. 3  
T.4S., R.68W., 6th P.M.  
RECOVERED 3-1/4" ALUM. CAP  
STAMPED "PLS 16401"

N/4 COR. SEC. 3  
T.4S., R.68W., 6th P.M.  
LOCATION WAS  
DETERMINED FROM RECOVERED  
REFERENCE MONUMENTS.  
STAMPED "V3 PLS 35585"

BASIS OF BEARINGS - S89°50'00"W 2646.94'(M)  
NORTH LINE OF THE NW QUARTER SEC. 3



BANNOCK STREET  
(80' R.O.W.)



DES PROJECT NO. 2008-0123



PARCEL CONTAINS 22,399 SQUARE FEET  
OR 0.514 ACRES±

A PART OF THE NW QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH,  
RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
CITY AND COUNTY OF DENVER, STATE OF COLORADO



Engineers  
Surveyors  
Scientists  
Construction  
Advisors  
COMPANIES, LTD.

2399 Blake Street, Suite 130  
Denver, CO 80205  
303.989.8588 voice  
303.989.9932 fax  
V3co.com

## CSM PROPERTY

3/16/2010  
D07039 1" = 40'  
DENVER SHEET 2 OF 2 COLORADO

**EXHIBIT B**

**NORTH EASEMENT AREA**

PARCEL DESCRIPTION:

A PARCEL OF LAND LOCATED WITHIN BLOCK 44, EVANS ADDITION TO THE CITY OF DENVER, RECORDED IN CLERK AND RECORDER BOOK 1, PAGE 4, LOCATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTH QUARTER CORNER OF SAID SECTION 3, DETERMINED FROM RECOVERED REFERENCE MONUMENTS STAMPED "V3 PLS 35585" RESPECTIVELY, WHENCE THE NORTHWEST CORNER OF SAID SECTION 3, AS MONUMENTED BY A RECOVERED 3-1/4" ALUMINUM CAP STAMPED "PLS 16401" BEARS S 89°50'00" W, A DISTANCE OF 2646.94 FEET FORMING THE BASIS OF BEARINGS USED IN THIS DESCRIPTION WITH ALL BEARINGS BEING RELATIVE THERETO;

**THENCE** ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3, S 89°50'00" W, A DISTANCE OF 537.20 FEET;

**THENCE** PERPENDICULAR TO SAID NORTH LINE S 00°10'00" E, A DISTANCE OF 1282.26 FEET TO THE NORTHEAST CORNER OF LOT 40 WITHIN SAID BLOCK 44 AND THE **POINT OF BEGINNING**;

**THENCE** ALONG THE NORTH LINE OF SAID BLOCK 44, N 89°49'02" E, A DISTANCE OF 20.00 FEET TO THE NORTHWEST CORNER OF LOT 1, OF SAID BLOCK 44;

**THENCE** CONTINUING ALONG SAID NORTH LINE, N 89°49'02" E, A DISTANCE OF 50.96 FEET± TO A POINT ON SAID NORTH LINE, SAID POINT BEING ON THE NORTHEASTERLY PROJECTION OF THE DENVER ART MUSEUM BUILDING'S WESTERLY FOUNDATION LINE;

**THENCE** ALONG SAID PROJECTION LINE AND SAID WESTERLY FOUNDATION LINE, S 14°26'37" W, A DISTANCE OF 148.07 FEET± TO THE SOUTHWESTERLY CORNER OF SAID FOUNDATION LINE;

**THENCE** CONTINUING ALONG SAID FOUNDATION LINE, S 70°37'18" E, A DISTANCE OF 3.65 FEET± TO A POINT ON THE EASTERLY EDGE OF AN EXISTING CONCRETE RETAINING WALL;

**THENCE** ALONG SAID EASTERLY EDGE, S 20°41'55" W, A DISTANCE OF 31.12 FEET± TO AN ANGLE POINT IN SAID CONCRETE WALL;

**THENCE** DEPARTING SAID ANGLE POINT AND CONTINUING ALONG THE SOUTHERLY EDGE OF SAID CONCRETE WALL, S 72°03'01" W, A DISTANCE OF 0.46 FEET± TO AN ANGLE POINT IN SAID CONCRETE WALL;

**THENCE** DEPARTING SAID CONCRETE WALL LINE ON A LINE PERPENDICULAR TO THE EAST LINE OF A NORTH-SOUTH ALLEY AS VACATED BY ORDINANCE NO. 761, SERIES OF 2009, S 89°38'57" W, A DISTANCE OF 4.97 FEET TO A POINT ON THE EAST LINE OF SAID VACATED NORTH-SOUTH ALLEY;

**THENCE** ALONG SAID EAST LINE, S 00°21'03" E, A DISTANCE OF 66.26 FEET;

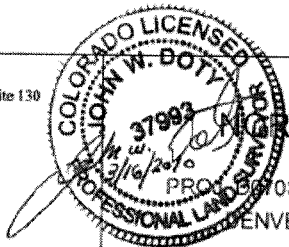
**THENCE** DEPARTING SAID EAST LINE AND ALONG A LINE PARALLEL WITH THE SOUTH LINE OF ALLEY VACATION ORDINANCE NO. 534, SERIES OF 2003, S 89°49'02" W, A DISTANCE OF 10.00 FEET TO THE CENTER OF SAID VACATED NORTH-SOUTH ALLEY AS VACATED BY ORDINANCE NO. 761, SERIES OF 2009;

DES PROJECT NO. 2008-0123



Engineers  
Surveyors  
Scientists  
Construction  
Advisors  
COMPANIES, LTD.

2399 Blake Street, Suite 130  
Denver, CO 80205  
303.989.8588 voice  
303.989.9932 fax  
V3co.com



**NORTH EASEMENT AREA**

3/16/2010

SCALE-N/A

DENVER SHEET 1 OF 4 COLORADO



# NORTH EASEMENT AREA

PARCEL DESCRIPTION (CONTINUED):

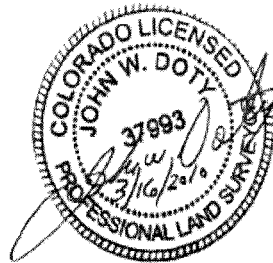
**THENCE** ALONG THE CENTER OF SAID VACATED NORTH-SOUTH ALLEY, N 00°21'03" W, A DISTANCE OF 139.99 FEET TO A POINT ON SAID CENTERLINE, SAID POINT BEING ON THE EASTERLY PROJECTION OF THE SOUTH LINE OF LOT 37 WITHIN SAID BLOCK 44;  
**THENCE** DEPARTING SAID CENTERLINE AND ALONG THE PROJECTED SOUTH LINE OF SAID LOT 37, S 89°49'02" W, A DISTANCE OF 160.01 FEET TO THE SOUTHWEST CORNER OF SAID LOT 37;  
**THENCE** ALONG THE WEST LINE OF LOTS 37 THROUGH 40 WITHIN SAID BLOCK 44, N 00°20'57" W, A DISTANCE OF 99.99 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 44;  
**THENCE** ALONG THE NORTH LINE OF SAID BLOCK 44, N 89°49'02" E, A DISTANCE OF 150.00 FEET MORE OR LESS TO THE **POINT OF BEGINNING**.

CONTAINING 23,333 SQUARE FEET OR 0.536 ACRES MORE OR LESS.

NOTE:

BEARINGS AND DISTANCES SHOWN ON THE WESTERLY FOUNDATION OF THE DENVER ART MUSEUM BUILDING AND THE EXISTING CONCRETE WALL ARE SHOWN FOR AREA COMPUTATION ONLY AND MAY OR MAY NOT REPRESENT THE TRUE LOCATION OF THE FEATURES. THE ABOVE DESCRIPTION IS INTENDED TO FOLLOW THE MENTIONED FEATURES AS THEY EXIST ON THE GROUND.

JOHN W. DOTY, P.L.S. 37993  
FOR AND ON BEHALF OF V3 COMPANIES, LTD.  
PROJECT NO. D07039  
2399 BLAKE STREET, SUITE 130  
DENVER, CO 80205



DES PROJECT NO. 2008-0123



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*Surveyors*  
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NORTH EASEMENT AREA

3/16/2010

SCALE - N/A

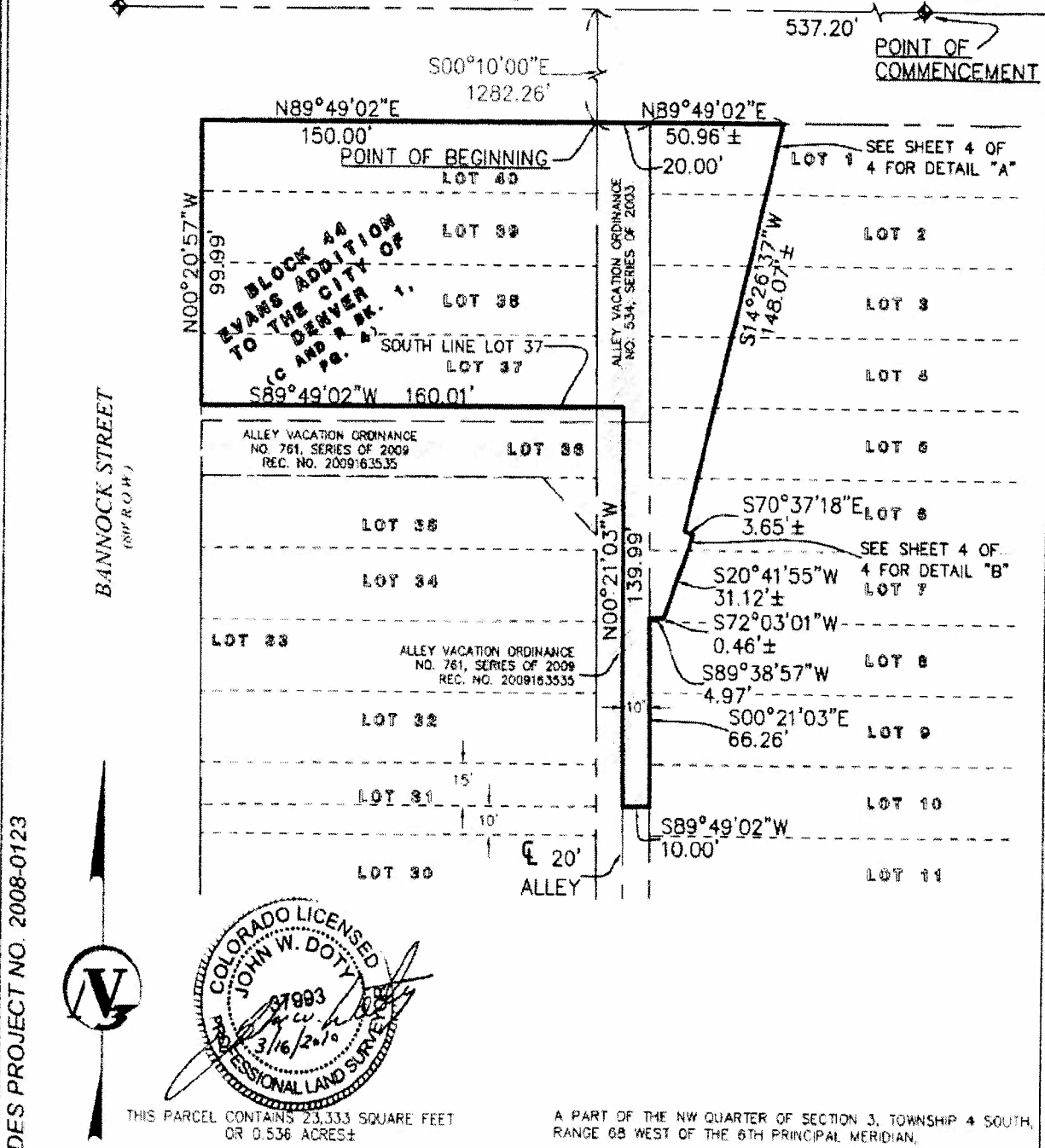
DENVER SHEET 2 OF 4 COLORADO

NW COR. SEC. 3  
T.4S., R.68W., 6th P.M.  
RECOVERED 3-1/4" ALUM. CAP  
STAMPED "PLS 16401"

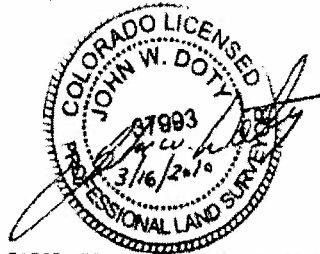
# NORTH EASEMENT AREA

BASIS OF BEARINGS - S89°50'00"W 2646.94'(M)  
NORTH LINE OF THE NW QUARTER SEC. 3

N1/4 COR. SEC. 3  
T.4S., R.68W., 6th P.M.  
LOCATION WAS  
DETERMINED FROM RECOVERED  
REFERENCE MONUMENTS  
STAMPED "V3 PLS 35585"



DES PROJECT NO. 2008-0123



THIS PARCEL CONTAINS 23,333 SQUARE FEET  
OR 0.536 ACRES±

A PART OF THE NW QUARTER OF SECTION 3, TOWNSHIP 4 SOUTH,  
RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN.

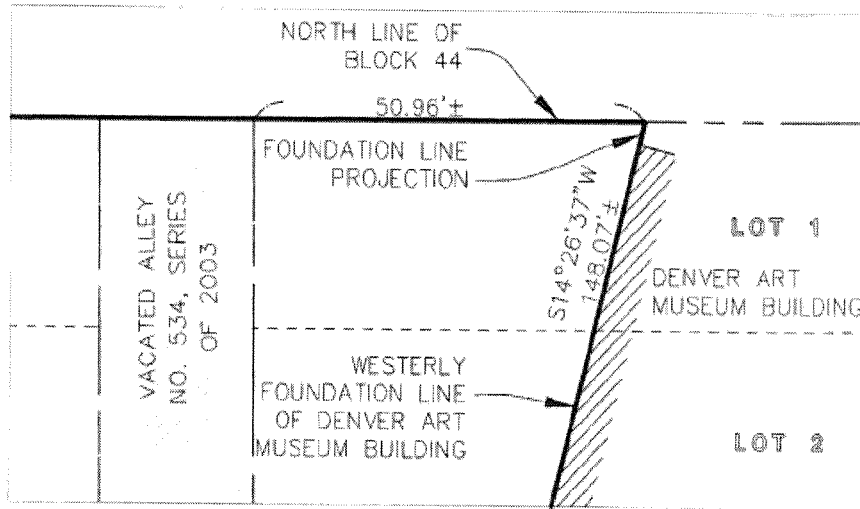


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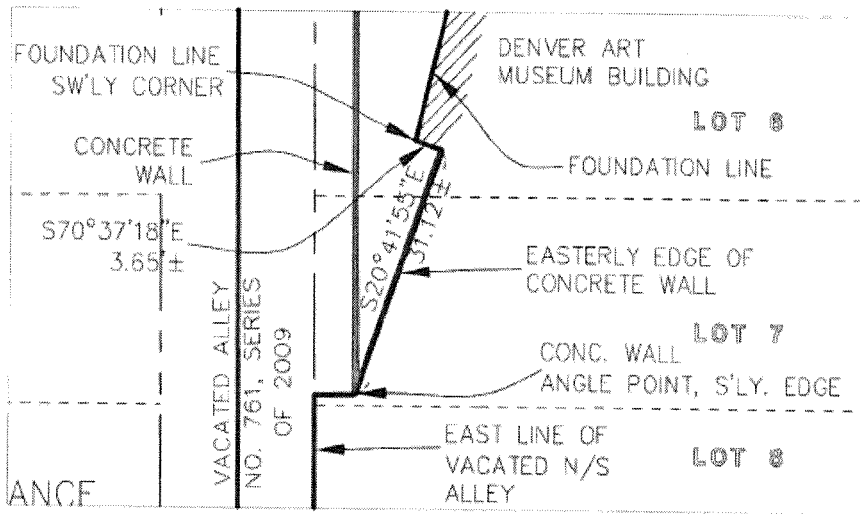
**NORTH EASEMENT AREA**  
3/16/2010  
D07039 1" = 50'  
DENVER SHEET 3 OF 4 COLORADO

# NORTH EASEMENT AREA

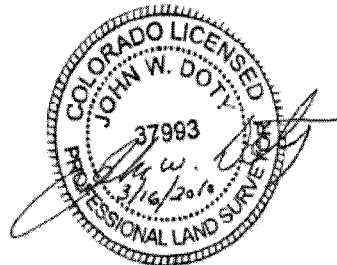
DETAIL "A"



DETAIL "B"



DES PROJECT NO. 2008-0123



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Surveyors  
Scientists  
Construction  
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## NORTH EASEMENT AREA

3/16/2010

D07039 1"=20'

DENVER SHEET 4 OF 4 COLORADO

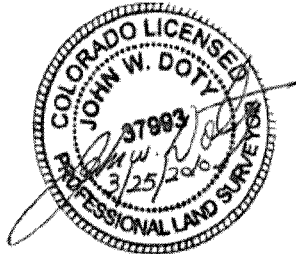
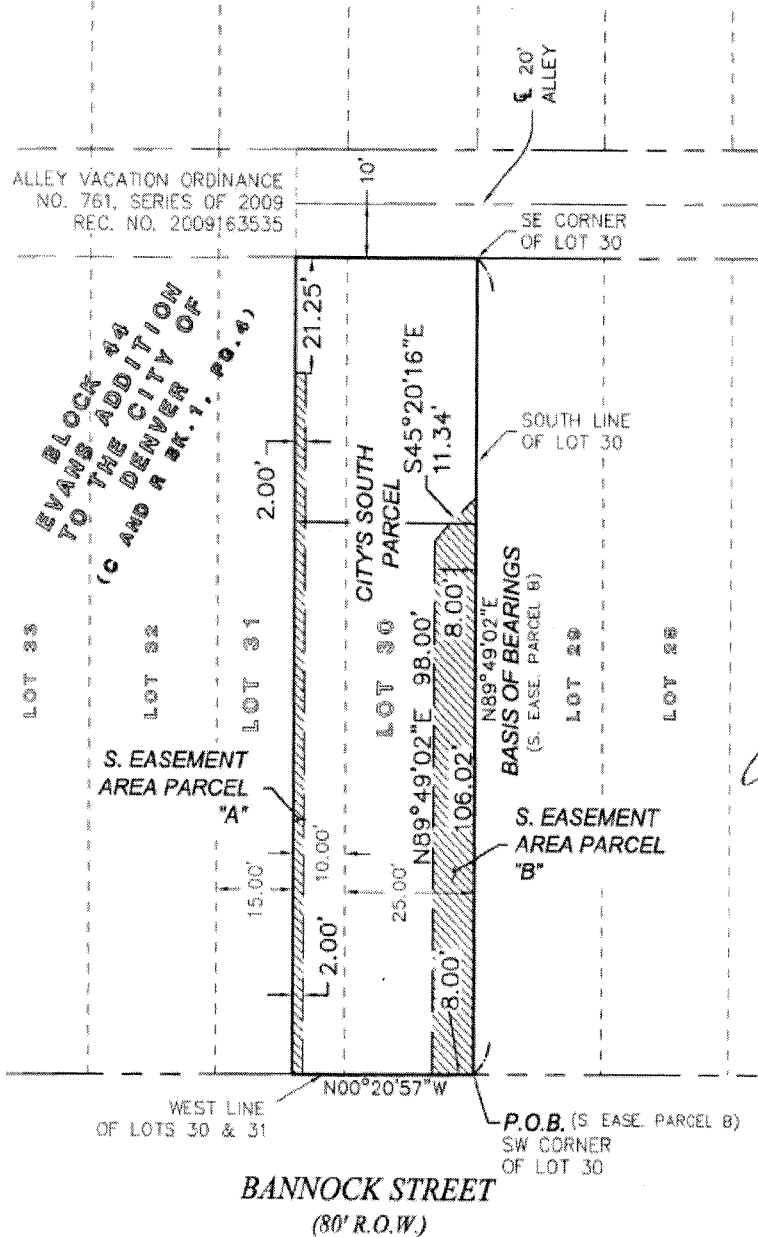
## **EXHIBIT C**

### **Legal Description of the City Museum Parcel**

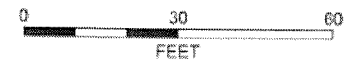
Lots 1 to 20, Block 44, Subdivision of Block 44 in Evans' Addition to Denver, City and County of Denver, State of Colorado, plus the vacated portion of Acoma Street vacated pursuant to Ordinance 2003-55, the east half of the vacated alley adjacent to Lots 6 through 9, the south 19.82 feet of Lot 5, and the north 15 feet of Lot 10, pursuant to Ordinance 2009-0761.

EXHIBIT D

**CITY'S SOUTH PARCEL  
AND SOUTH EASEMENT AREA**



Scale: 1"=30'



DES PROJECT NO. 2008-0123

CITY'S SOUTH PARCEL CONTAINS 5,251 SQUARE FEET, OR 0.121 ACRES±  
 S. EASEMENT PARCEL "A" CONTAINS 258 SQUARE FEET, OR 0.006 ACRES±  
 S. EASEMENT PARCEL "B" CONTAINS 816 SQUARE FEET, OR 0.019 ACRES±  
 THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.  
 IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

A PART OF THE NW QUARTER OF SECTION 3,  
 TOWNSHIP 4 SOUTH, RANGE 68 WEST  
 OF THE 6TH PRINCIPAL MERIDIAN.

**V<sub>3</sub>**  
**Engineers  
 Surveyors  
 Scientists  
 Construction  
 Advisors**  
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**CITY'S SOUTH PARCEL & SOUTH EASEMENT AREA**

3/25/2010  
 PROJECT - D07039 SCALE -1" = 30'  
 DENVER COLORADO  
 SHEET 2 OF 2

## Exhibit E

### CSM Insurance Requirements

**A. General Conditions.** CSM agrees to secure, or cause to be secured, at or before the Effective Date of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. CSM shall keep the required insurance coverage in force at all times during the term of this Agreement, or any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City and DAM Nonprofit in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, CSM shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, the City and DAM Nonprofit must be notified by CSM. CSM shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of CSM. CSM shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance.** CSM shall provide proof of insurance upon receipt of Certificate of Occupancy and annually thereafter, and shall certify that the certificates or evidences of insurance comply with all insurance requirements of this Agreement. The City and DAM Nonprofit's acceptance of a certificate or evidence of insurance or other proof of insurance that does not comply with all insurance requirements set forth herein shall not act as a waiver of CSM's breach of this Agreement or of any of the City or DAM Nonprofit's rights or remedies under this Agreement. The City's Risk Management Office and DAM Nonprofit may require additional proof of insurance, including but not limited to, policies and endorsements.

**C. Waiver of Subrogation.** For all coverages, the policies shall contain a waiver of subrogation rights against the City and DAM Nonprofit (TBD).

**D. Subcontractors and Subconsultants.** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of CSM. CSM shall ensure that all such subcontractors and subconsultants maintain the required coverages. CSM agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City and DAM Nonprofit.

**E. Workers' Compensation/Employer's Liability Insurance.** CSM shall maintain Workers' Compensation coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim,

\$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**F. Commercial General Liability.** CSM shall maintain Commercial General Liability insurance with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. For this insurance, the City, its elected and appointed officials, employees and volunteers, and the Denver Art Museum, as the City's agency for art, its officers, agents, employees and volunteers, shall be named as additional insureds.

**G. Business Automobile Liability.** CSM shall maintain Business Automobile Liability insurance with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. For this insurance, the City, its elected and appointed officials, employees and volunteers, and the Denver Art Museum, as the City's agency for art, its officers, agents, employees and volunteers, shall be named as additional insureds.

**H. Additional Provisions.**

- (i) For Commercial General Liability, the policy must provide the following:
  - (a) That this Agreement is an Insured Contract under the policy;
  - (b) Defense costs in excess of policy limits;
  - (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and DAM Nonprofit.

(ii) For claims-made coverage: The retroactive date must be on or before the Effective Date or the first date when goods or services were provided to the City and DAM Nonprofit, whichever is earlier.

(iii) CSM shall advise the City and DAM Nonprofit in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the CSM will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

## Exhibit F

### DAM Insurance Requirements

**A. General Conditions.** DAM Nonprofit agrees to secure, or cause to be secured, at or before the Effective Date of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. DAM Nonprofit shall keep the required insurance coverage in force at all times during the term of this Agreement, or any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City and DAM Nonprofit in the event any of the required policies be canceled or non-renewed before the expiration date thereof,. Such notice shall be sent to the parties identified in the Notices section of this Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, DAM Nonprofit shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, the City and CSM must be notified by DAM Nonprofit. DAM Nonprofit shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of DAM Nonprofit. DAM Nonprofit shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance.** DAM Nonprofit shall provide proof of insurance and certify that the certificates or evidences of insurance comply with all insurance requirements of this Agreement. The City and CSM's acceptance of a certificate or evidence of insurance or other proof of insurance that does not comply with all insurance requirements set forth herein shall not act as a waiver of DAM Nonprofit's breach of this Agreement or of any of the City and CSM's rights or remedies under this Agreement. The City and CSM may require additional proof of insurance, including but not limited to, policies and endorsements.

**C. Waiver of Subrogation.** For all coverages, the policies shall contain a waiver of subrogation rights against the City and CSM.

**D. Subcontractors and Subconsultants.** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of DAM Nonprofit. DAM Nonprofit shall ensure that all such subcontractors and subconsultants maintain the required coverages. DAM Nonprofit agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City and CSM.

**E. Workers' Compensation/Employer's Liability Insurance.** DAM Nonprofit shall maintain Workers' Compensation coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury



claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**F. Commercial General Liability.** DAM Nonprofit shall maintain Commercial General Liability insurance with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. For this insurance, the City and County of Denver, its elected and appointed officials, employees and volunteers and CSM, its officers, agents, employees and volunteers shall be named as additional insureds.

**G. Business Automobile Liability.** DAM Nonprofit shall maintain Business Automobile Liability insurance with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement. For this insurance, the City and County of Denver, its elected and appointed officials, employees and volunteers and CSM, its officers, agents, employees and volunteers shall be named as additional insureds.

**H. Additional Provisions.**

- (i) For Commercial General Liability, the policy must provide the following:
  - (a) That this Agreement is an Insured Contract under the policy;
  - (b) Defense costs in excess of policy limits;
  - (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and CSM.

(ii) For claims-made coverage: The retroactive date must be on or before the Effective Date or the first date when goods or services were provided to the City and CSM, whichever is earlier.

(iii) DAM Nonprofit shall advise the City and CSM in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the DAM Nonprofit will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.