

1-217-A

TEMPORARY EASEMENT

THE TEMPORARY EASEMENT is granted _____, 2011 by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, located at 1437 Bannock Street, Denver, Colorado 80202 (“Grantor” or “City”) to the **DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO** (“Department” or “Grantee”).

In consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor gives and grants to the Grantee, and its successor and assigns, a temporary easement over, under, along, in and upon the real property described in **Exhibit A**, attached and incorporated herein by this reference, (the “Property”) to construct transportation facilities in the general location of I-25 and the Bronco Arch Bridge and to perform other work associated with the I-25/Bronco Arch Bridge project as described in Plans and Specifications for Project No. BR R600-297 (the “Project”), subject to and accordance with the following terms and covenants (the “Temporary Easement”):

1. The term of the Temporary Easement will commence three (3) days after the Department gives written notice to the City’s Manager of Public Works that a Notice to Proceed has been issued to its contractors and will terminate thirty (30) months from the commencement date. Upon expiration of the term, the Department shall execute a document evidencing termination of the Temporary Easement.

2. Grantee shall return the Property free from all construction debris and in a condition as nearly as practicable to its original condition, taking into consideration the nature of the work being performed for the Project. Any changes from the original condition shall be approved in writing by the Manager of Public Works.

3. The Temporary Easement allows the Department, and its successors and permitted assigns, including their respective contractors, consultants, subcontractors, sub-consultants, materialmen, suppliers, and workers to perform construction and related activities on the Property. Performance of construction and related activities includes the rights to: (a) perform construction activities for the Project, (b) enter on and have access to the Property, (c) store materials on the Property, (d) operate construction equipment on the Property, and (e) perform any other work incidental to the construction of the Project.

4. Grantee shall obtain, or cause to be obtained, all necessary regulatory permits prior to commencing use of the Property.

5. All work done by the Grantee within the Property 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.

6. The Grantee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Property by Grantee, Grantee’s agents, employees,

contractors, or invitees. If Hazardous Substances are used, stored, generated or disposed of on or in the Property, or if the Property becomes contaminated in any manner due to the actions or inactions of the Grantee, Grantee shall cause its contractors, subcontractors, agents or invitees 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 Property 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 Property and that results in contamination, Grantee shall promptly, at its sole expense, take any and all necessary actions to return the Property 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 on the Property for construction of the Project.

7. The City makes no representation or warranty of any kind with respect to the condition of the Property. The Grantee accepts the Property 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. The Grantee shall cause its contractors and subcontractors to defend, reimburse, indemnify and hold harmless the City, its appointed officials, agents and employees for, from and against any and all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the Project and the use of this Temporary Easement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of grantee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City. The duty to defend and indemnify the City shall arise at the time of written notice of the Claim first provided to the City regardless of whether the claimant has filed suit on the Claim. The duty to defend and indemnify the City arises even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages. Grantee shall cause its contractors and subcontractors to defend any and all Claims which may be brought or threatened against the City and will pay of behalf of the City any expenses incurred by reason of such 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 payments on behalf of the City shall be in addition to any other legal

remedies available to the City and shall not be considered the City's exclusive remedy. Insurance coverage shall in no way lessen or limit the liability of the Grantee and its contractors and subcontractors under this indemnification obligation. This defense and indemnification obligation shall survive the termination of this Temporary Easement.

9. Grantor reserves all rights attendant to its ownership of the Property, including: (a) the right to the use and enjoyment of the Property for all purposes insofar as these uses are consistent with and do not impair any grant or provision herein, and (b) the right to sell and convey the Property or any portion of it subject to the Temporary Easement.

10. Any obligations of the City under the Temporary Easement whether direct or contingent, extends only to funds appropriated or otherwise lawfully made available by the Denver City Council for the purpose of the Temporary Easement and paid into the Treasury of the City.

11. All notices provided for herein must be in writing and personally delivered or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, to the City and the Department at the addresses given below. Notices delivered personally are effective when sent. Notices sent by certified or registered mail are effective upon receipt. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

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

If to City: Manager
 Department of Public Works
 201 West Colfax Avenue, Department 611
 Denver, Colorado 80202
 Facsimile: 720.865.8795

With copies to: Mayor
 City and County Building, Room 350
 1437 Bannock Street
 Denver, Colorado 80202

 Director, Division of Real Estate
 201 West Colfax Avenue, Department 904
 Denver, Colorado 80202

 City Attorney's Office
 1437 Bannock Street, Room 353
 Denver, Colorado 80202

12. This Temporary Easement is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Temporary Easement in writing. No subsequent novation, renewal, addition, deletion, or other amendment may have any force or effect unless embodied in a written amendment to this agreement properly executed by the parties. No oral representation of any kind preceding the date of the Temporary Easement by any officer, employee, or agent of the City at variance with the terms and conditions of this Agreement, or with any written amendment to this Agreement, may have any force or effect nor bind the City.

13. The Temporary Easement is subject to and is to be construed in accordance with the laws of the State of Colorado, the Denver Charter, the Denver Revised Municipal Code, and including all Denver ordinances, rules and regulations and Executive Orders. The aforementioned provisions are incorporated into the Temporary Easement by this reference. Venue for any action arising out of the Temporary Easement will be in the Denver District Court in the City and County of Denver, Colorado. Nothing in this Temporary Easement shall impair the police power of the City.

14. The Department has the right to assign its rights and obligations set forth in the Agreement, upon the prior written approval of the Manager of Public Works. The Manager hereby approves assignment of this Temporary Easement to any Project contractors or subcontractors.

15. The Temporary Easement runs with the land and the benefits and burdens thereof inure to the benefit of and without further action become binding upon the parties hereto and their respective successors and permitted assigns.

Project Code: 16212
Parcel Nos. TE-2, TE-2A,
TE-2B, TE-2C and TE-2D
CDOT Project No. BR R600-297
Location: I-25/Bronco Arch Bridge

IN WITNESS WHEREOF, the parties have executed the Temporary Easement on the date first written above.

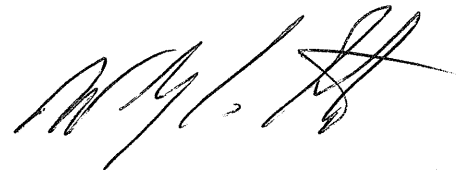
DEPARTMENT OF TRANSPORTATION,
STATE OF COLORADO

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



NOTARY PUBLIC

WESLEY C. LOETZ
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 10/22/2011

Project Code: 16212
Parcel Nos. TE-2, TE-2A,
TE-2B, TE-2C and TE-2D
CDOT Project No. BR R600-297
Location: I-25/Bronco Arch Bridge

CITY AND COUNTY OF DENVER

ATTEST

By: _____
Clerk and Recorder, Ex-Officio
Clerk of the City and County of Denver

By: _____
MAYOR

APPROVED AS TO FORM:
Denver City Attorney,
Attorney for the City and County

By: _____
Assistant City Attorney

“CITY”

Project Code: 16212
Parcel Nos. TE-2, TE-2A,
TE-2B, TE-2C and TE-2D
CDOT Project No. BR R600-297
Location: I-25/Bronco Arch Bridge

Exhibit A

(Legal Descriptions of Parcels TE-2, TE-2A, TE-2B, TE-2C and TE-2D)

EXHIBIT "A"

PROJECT NUMBER: BR R600-297
TEMPORARY EASEMENT NO.: TE-2

Project Code: 16212

August 21, 2010

DESCRIPTION

Temporary easement No. TE-2 of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 17,561 square feet (0.403 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;

1. Thence S16°15'42"W, on said easterly line, a distance of 170.00 feet to a point;
2. Thence N73°44'18"W, a distance of 67.30 feet to a point on curve on the easterly right-of-way line of Mile High Stadium Circle;
3. Thence, on said easterly right-of-way line, on the arc of a curve to the left whose center bears S87°43'49"W, having a radius of 651.00 feet, a central angle of 13°15'26", a distance of 150.63 feet, (the chord of said arc bears N09°13'54"W, a distance of 150.29 feet) to a point on curve;
4. Thence N00°17'43"W, a distance of 14.41 feet to a point on curve;
5. Thence on the arc of a curve to the right whose center bears S56°20'30"E, having a radius of 40.00 feet, a central angle of 37°20'30", a distance of 26.07 feet, (the chord of said arc bears N52°19'45"E, a distance of 25.61 feet) to a point of tangent;
6. Thence N71°00'00"E, a distance of 19.20 feet to a point on the westerly right-of-way line of Interstate Highway No. 25;
7. Thence S40°16'44"E, on said westerly right-of-way line, a distance of 60.34 feet to a point on the southerly line of easement E-4 described in Book 6495 at page 373;

Thence on the southerly line of said easement E-4, the following three (3) courses:

8. S39°44'43"E, a distance of 18.09 feet to a point;
9. N16°15'42"E, a distance of 59.10 feet to a point;
10. S39°44'43"E, a distance of 48.24 feet to the POINT OF BEGINNING.

The above described temporary easement contains 17,561 square feet (0.403 acres), more or less, for activities associated with the construction of transportation 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.

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
TEMPORARY EASEMENT NO.: TE-2A

Project Code: 16212

October 4, 2010

DESCRIPTION

Temporary easement No. TE-2A of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 19,381 square feet (0.445 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;

1. Thence S39°44'43"E, a distance of 215.87 feet to a point on the easterly line of the Official Channel of the South Platte River (Ord. 117, Series 1910);
2. Thence S18°07'49"W, on said easterly line, a distance of 31.70 feet to a point on the westerly right-of-way line of Interstate Highway No. I-25;

Thence on said westerly right-of-way line, the following three (3) courses:

3. N21°04'16"W, a distance of 23.09 feet to a point;
4. S16°25'38"W, a distance of 12.03 feet to a point on curve;
5. On the arc of a curve to the left, whose center bears N79°20'32"E, having a radius of 165.00 feet, a central angle of 09°48'01", a distance of 28.22 feet, (the chord of said arc bears S15°33'28"E, a distance of 28.19 feet) to a point on curve;
6. Thence N73°44'18"W, a distance of 178.77 feet to a point on the easterly line of said Parcel 9;
7. Thence N16°15'42"E, on said easterly line, a distance of 170.00 feet to the POINT OF BEGINNING.

The above described temporary easement contains 19,381 square feet (0.445 acres), more or less, for activities associated with the construction of transportation 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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EXHIBIT "A"

**PROJECT NUMBER: BR R600-297
TEMPORARY EASEMENT NO.: TE-2B**

Project Code: 16212

October 4, 2010

DESCRIPTION

Temporary easement No. TE-2B of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 444 square feet (0.010 acres), more or less, in the southwest quarter of Section 33, 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 N01°43'51"E, a distance of 1,251.00 feet to a point on the easterly line of the Official Channel of the South Platte River (Ord. 117, Series 1910), said point being the POINT OF BEGINNING;

1. Thence S28°52'30"E, a distance of 25.34 feet to a point on the easterly right-of-way line of Interstate Highway No. I-25;
2. Thence S49°18'23"W, on said easterly right-of-way line, a distance of 35.80 feet to a point on the easterly line of said Official Channel;
3. Thence N18°07'49"E, on said easterly line, a distance of 47.91 feet to the POINT OF BEGINNING.

The above described temporary easement contains 444 square feet (0.010 acres), more or less, for activities associated with the construction of transportation facilities 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
TEMPORARY EASEMENT NO.: TE-2C**

Project Code: 16212

October 4, 2010

DESCRIPTION

Temporary easement No. TE-2C of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 6,296 square feet (0.145 acres), more or less, in the southwest quarter of Section 33 and the southeast quarter of Section 32, both in 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 N00°17'43"W, on the line common to said Sections, a distance of 1,225.28 feet to a point, said point being the POINT OF BEGINNING;

Section 32

1. Thence N39°44'43"W, a distance of 122.07 feet to a point on the east-west centerline of the southeast quarter of said Section 32;
2. Thence N89°51'20"E on said east-west centerline, a distance of 64.89 feet to a point;
3. Thence S39°44'43"E, a distance of 19.95 feet to a point on the line common to said Sections;
4. Thence S00°17'43"E, on said common Section line, a distance of 78.69 feet to the POINT OF BEGINNING.

The above described temporary easement contains 3,550 square feet (0.082 acres),

And

Section 33

From the above described POINT OF BEGINNING;

1. Thence N00°17'43"W, on said common Section line, a distance of 78.69 feet to a point;
2. Thence S39°44'43"E, a distance of 69.61 feet to a point on the easterly line of the Official Channel of the South Platte River (Ord. 117, Series 1910);
3. Thence S18°07'49"W, on said easterly line, a distance of 59.04 feet to a point;
4. Thence N39°44'43"W, a distance of 40.24 feet to the POINT OF BEGINNING.

The above described temporary easement contains 2,746 square feet (0.063 acres), more or less, resulting in a total area of 6,296 square feet (0.145 acres), more or less, for activities associated with the construction of transportation facilities 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
TEMPORARY EASEMENT NO.: TE-2D
Project Code: 16212
October 4, 2010

DESCRIPTION

Temporary easement No. TE-2D of the Department of Transportation, State of Colorado, Project No. BR R600-297, containing 14,952 sq. ft. (0.343 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 1,373.87 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 N39°44'43"W, a distance of 30.31 feet to a point on curve on the westerly right-of-way line of said Parcel 10, said point also being on the easterly right-of-way line of Interstate highway I-25;

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

2. On the westerly right-of-way line of said Parcel 10 and the arc of a curve to the left, whose center bears N04°44'00"W, having a radius of 876.95 feet, a central angle of 02°42'14", a distance of 41.39 feet, (the chord of said arc bears N13°54'52"E, a distance of 41.38 feet) to a point on curve;
3. N00°36'58"E, a distance of 46.54 feet to a point;
4. Thence S77°46'25"E, a distance of 77.04 feet to a point;
5. Thence N12°13'35"E, a distance of 40.00 feet to a point;
6. Thence N77°46'25"W, a distance of 85.25 feet to a point on the westerly line of the Official Channel of the South Platte River as defined in Ordinance 117, Series 1910, City and County of Denver;
7. Thence N03°59'11"E, on said westerly line, a distance of 20.21 feet to a point;
8. Thence S77°46'25"E, a distance of 108.15 feet to a point;
9. Thence S12°13'35"W, a distance of 152.99 feet to a point;
10. Thence S39°44'43"E, a distance of 61.71 feet to a point on the east-west centerline of the southeast quarter of said Section 32;
11. Thence S89°51'20"W, on said east-west centerline, a distance of 64.89 feet;
12. Thence N39°44'43"W, a distance of 63.77 feet to the POINT OF BEGINNING.

The above described temporary easement contains 14,952 square feet (0.343 acres), more or less, for the construction of transportation and drainage facilities and their appurtenances over, under, and to 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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