

**AGREEMENT CONCERNING UNIVERSITY / JOSEPHINE STREET AND SEWER PROJECT**

**THIS AGREEMENT CONCERNING UNIVERSITY / JOSEPHINE STREET AND SEWER PROJECT** ("Agreement") is made this \_\_\_\_\_ day of November, 2013, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), **TAUBMAN-CHERRY CREEK LIMITED PARTNERSHIP** a Colorado Limited Partnership with its principal office located at 200 E. Long Lake Road, Suite 300, Bloomfield Hills, MI 48304 ("TCCLP"), and **THE TEMPLE HOYNE BUELL FOUNDATION**, a Colorado Nonprofit Corporation with a principal office street address of 1666 South University Boulevard, Suite B, Denver, CO 80210 (the "Foundation"), collectively, the "Parties."

**RECITALS**

WHEREAS, The City is constructing a road and storm water project that includes reconstruction of portions of University Boulevard and Josephine Street from Cherry Creek to East 6<sup>th</sup> Avenue (the "Overall Project"); and

WHEREAS, the Project includes construction of a storm sewer that will start at approximately East 2<sup>nd</sup> Avenue and Columbine Street and discharge into Cherry Creek, and requires that construction staging and other construction activities related to the Project will occur on property owned by the Foundation and occupied by TCCLP ("the Property"); and

WHEREAS, TCCLP requested and the City agreed to upsize the diameter of the storm sewer to 90" (the "Upsizing Project"); and

WHEREAS, TCCLP requested that City relinquish a permanent easement hereinafter described; and

WHEREAS, TCCLP agrees to pay the City the amount identified below for upsizing the storm sewer and releasing certain easement(s) identified below; and

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the parties agree as follows:

**1. CITY UPSIZING OF STORM SEWER PIPE DIAMETER:**

a. As part of the Project, the City will install a 90” diameter storm sewer that will start at approximately 2<sup>nd</sup> Avenue and Columbine Street and discharge into Cherry Creek. The 90” diameter storm sewer will generally follow the path shown on the plan sheet attached as **Exhibit A1** (“Upsized Storm Sewer”), and will be constructed according to the plan sheets attached as **Exhibit A2**. In issuing permits for work to be performed on the Upsizing Project, the City will comply with its holiday moratorium. In addition, the City shall ensure that construction does not occur from November 20, 2014 to January 2, 2015 south of Manhole #A4 shown on Exhibit A1 so as not to impede full movement access at the intersection of First Avenue and University.

b. The City agrees and acknowledges that the work of the Project is not being performed at the instance of TCCLP or the Foundation. Accordingly, no person who furnishes or supplies laborers, machinery, tools, or equipment in the prosecution of the Project, and no mechanic, materialman, contractor, subcontractor, builder, or person of any class performing labor upon or furnishing labor, laborers, or materials to be used in the Project is entitled to a lien pursuant to C.R.S. § 38-22-101, et seq.

## **2. CITY RELINQUISHMENT OF PERMANENT WEST END EASEMENT:**

Upon execution of this Agreement, the Manager of Public Works will initiate a request to City Council to relinquish the permanent easement (“the Permanent Easement Relinquishment”) created by that certain Deed of Easement, dated July 7, 1987, and recorded on August 11, 1987, at Reception No. 00170735 of the Denver County Records, which is located to the east of, and parallel to, University Boulevard between East 1<sup>st</sup> Avenue and Cherry Creek North Drive as depicted on **Exhibit B**, attached hereto and incorporated herein by this reference (“Permanent West End Easement”). The City will diligently pursue said relinquishment.

## **3. TCCLP AND THE FOUNDATION GRANT OF TEMPORARY WEST END EASEMENT:**

Upon execution of this Agreement, TCCLP and the Foundation will execute the temporary easement attached as **Exhibit C**, at no cost to the City, but permitting the continued operation of the existing storm sewer in the area depicted on **Exhibit B** (“Temporary West End Easement”). The Temporary West End Easement will authorize the Manager of Public Works to

relinquish the Temporary West End Easement upon the occurrence of the events set forth in Section 5 of this Agreement.

**4. CITY RELINQUISHMENT OF TEMPORARY WEST END EASEMENT:**

The Manager of Public works shall execute a notice relinquishing the Temporary West End Easement (“Temporary West End Easement Relinquishment”) when the construction of the Upsized Storm Sewer shall have been approved by the City as being in conformance with Exhibit A2, the conditions of the construction contract, and the applicable City rules and regulations and the existing storm sewers located within the Temporary West End Easement shall have been abandoned by the City, both as evidenced by a notice so stating, signed by the Manager of Public works. The City acknowledges that the City Council’s approval of the Temporary Easement Relinquishment shall have the effect of also transferring ownership of any storm sewer or other City owned utility facilities located within the Temporary West End Easement to the underlying property owner by operation of law and without further action by any Party.

**5. TCCLP PAYMENT FOR UPSIZING:** TCCLP shall pay the City, as consideration for the City’s construction of the Upsized Storm Sewer, the amount the City is billed, not to exceed Five Hundred Forty Five Thousand Eight Hundred and Two Dollars and Six Cents (\$545,802.06), for Add Alternate 1, as defined by the Project bid documents (“TCCLP Share”) within fifteen (15) days of TCCLP’s written notice that the Upsized Storm Sewer is in service and has been accepted by the City and the existing storm sewer been abandoned as set forth in Section 4 of this Agreement. In all negotiations related to the Upsizing Project, the City shall use its reasonable efforts to reduce costs included in the TCCLP Share, and shall provide TCCLP with the relevant documentation for its review. Once the City has quantified the costs included in the TCCLP Share, the value of such costs shall be adjusted to include Parson’s eleven percent (11%) fee. Upon TCCLP’s payment of the TCCLP Share to the City, TCCLP shall have no further obligations or responsibilities with respect to the Upsized Storm Sewer or pursuant to this Agreement.

**6. RECORDING OF TEMPORARY WEST END RELINQUISHMENT:**

Concurrently with the receipt of the TCCLP Share, the City will record the Temporary West End Easement Relinquishment.

7. **TERM:** This Agreement will commence on execution and terminate when fully performed or earlier terminated.

**8. TERMINATION:**

a. The City has the right to terminate the Agreement without cause any time prior to TCCLP tendering payment pursuant to this Agreement.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if TCCLP or the Foundation any of their respective partners or officers are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with their business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement TCCLP and the Foundation shall have no claim against the City by reason of, or arising out of, incidental or relating to termination. However, in the event of a termination by the City for any reason, the City shall have the obligation to restore the Property to the status quo prior to the commencement of this Agreement, including but not limited to the following:

- (1) Restoration of the Property to substantially the same condition as existed prior to the commencement of this Agreement;
- (2) Restoration of the Permanent West End Easement, to the extent that it has already been relinquished as of the date of the City's termination pursuant to this Section 8;

- (3) Termination and relinquishment of any new temporary or permanent easements granted to any Party pursuant to this Agreement; and
- (4) Termination of TCCLP's obligation to pay the TCCLP Share.

**9. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of TCCLP involving transactions directly related to this Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations, except documents which contain confidential, proprietary business information or which are subject to attorney client privilege.

**10. INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns to the extent that the City, by its manager of Public Works, consents in writing to the assignment, which consent shall not be unreasonably withheld; however, the City hereby consents to an assignment by TCCLP to an affiliate, defined for purposes of this Agreement as an entity that is substantially owned, managed or controlled, directly or indirectly, by TCCLP or the partners or officers of TCCLP, or an entity in which TCCLP is the managing member or partner. Additionally, the City may not assign this Agreement without the consent in writing of TCCLP.

**11. NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Parties are incidental beneficiaries only.

**12. CONFLICT OF INTEREST:** The Parties each represent that to their information and belief no officer or employee of such Party 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.

**13. 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, or by overnight courier to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to City:

Manager of Public Works or Designee  
201 West Colfax Avenue, Dept. 608  
Denver, Colorado 80202

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

If to TCCLP:

200 East Long Lake Road, Suite 300  
Bloomfield Hills, Michigan 48304  
Attention: SVP, Development

With a copy to:

The Taubman Company LLC  
200 East Long Lake Road, Suite 300  
Bloomfield Hills, Michigan 48304  
Attention: General Counsel

If to the Foundation:

The Temple Hoyne Buell Foundation  
1666 South University Boulevard, Suite B  
Denver, CO 80210

**14. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any

reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

**15. LEGAL AUTHORITY:**

**a.** TCCLP and the Foundation represent and warrant that they possess the legal authority to enter into the Agreement. Each person signing and executing the Agreement on behalf of TCCLP and the Foundation represent and warrant that he has been fully authorized to execute the Agreement and to validly and legally bind TCCLP or the Foundation to all the terms, performances and provisions of the Agreement

**b.** The City represents and warrants that it possesses the legal authority to enter into this Agreement upon the approval of City Council and signature of the Auditor, City Clerk, and Manager of Finance (“Charter Officers”), and that, upon such signatures and the signature of the Charter Officers, all terms, performances and provisions of the Agreement are validly and legally binding on the City.

**16. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**17. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**18. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other

modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of any Party at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the Parties.

**19. APPROPRIATION:** All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. The City hereby represents and warrants that the funds necessary to carry out this Agreement have been appropriated as of the effective date of this Agreement.

**20. POLICE POWERS:** Nothing herein shall impair the City's powers or the right to enforce all laws, ordinances and regulations.

**21. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Parties consent to the use of electronic signatures by all Parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by any Party. 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.

**22. COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PWADM-201415154-00

**Contractor Name:** Taubman-Cherry Creek Limited Partnership

By: Please see attached signature pages

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

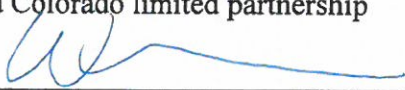
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**TAUBMAN-CHERRY CREEK  
LIMITED PARTNERSHIP,**  
a Colorado limited partnership



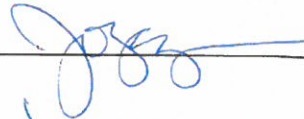
By: \_\_\_\_\_  
Its: Authorized Signatory

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing instrument was acknowledged before me this 19th day of November, 2013, by William S. Taubman as Authorized Signatory of Taubman-Cherry Creek Limited Partnership, a Colorado limited partnership.

My commission expires: Oct 5, 2019.

WITNESS my hand and official seal.



Joy E. Piper

Notary Public

JOYE. PIPER  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Oct 5, 2019  
ACTING IN COUNTY OF



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**FOUNDATION:**

**THE TEMPLE HOYNE BUELL  
FOUNDATION**, a Colorado nonprofit corporation

By: Susan J. Steele  
Printed Name: Susan J. Steele  
Title: Executive Director & Assistant Secretary

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

The foregoing instrument was acknowledged before me this 30 day of November, 2013, by Susan J. Steele as Executive Director of The Temple Hoyne Buell Foundation, a Colorado nonprofit corporation.

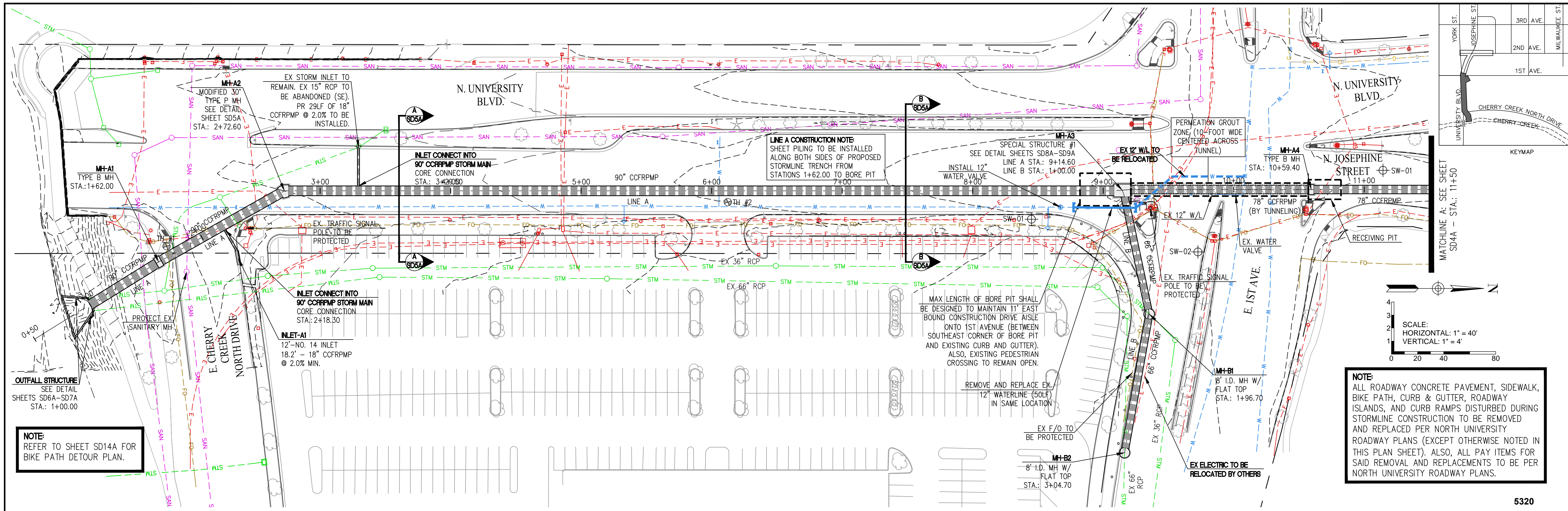
My commission expires: March 10, 2014.

WITNESS my hand and official seal. \_\_\_\_\_

Celestina E Pacheco  
Notary Public



# **EXHIBIT A-1**



**NOTE:**  
REFER TO SHEET SD14A FOR BIKE PATH DETOUR PLAN.

**LINE A CONSTRUCTION NOTE:**  
SHEET PILING TO BE INSTALLED ALONG BOTH SIDES OF PROPOSED STORMLINE TRENCH FROM STATIONS 1+62.00 TO BORE PIT 7+00

MAX LENGTH OF BORE PIT SHALL BE DESIGNED TO MAINTAIN 11" EAST BOUND CONSTRUCTION DRIVE AISLE ONTO 1ST AVENUE (BETWEEN SOUTHEAST CORNER OF BORE PIT AND EXISTING CURB AND GUTTER). ALSO, EXISTING PEDESTRIAN CROSSING TO REMAIN OPEN.

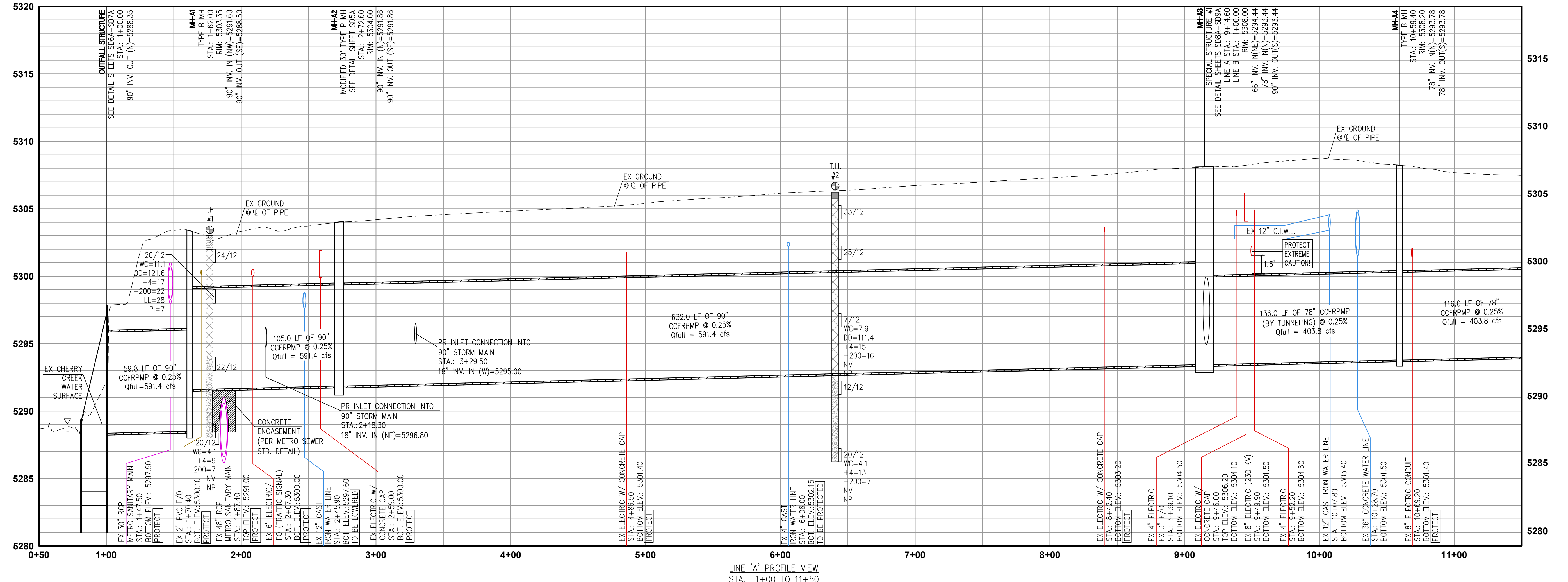
**NOTE:**  
ALL ROADWAY CONCRETE PAVEMENT, SIDEWALK, BIKE PATH, CURB & GUTTER, ROADWAY ISLANDS, AND CURB RAMPS DISTURBED DURING STORMLINE CONSTRUCTION TO BE REMOVED AND REPLACED PER NORTH UNIVERSITY ROADWAY PLANS (EXCEPT OTHERWISE NOTED IN THIS PLAN SHEET). ALSO, ALL PAY ITEMS FOR SAID REMOVAL AND REPLACEMENTS TO BE PER NORTH UNIVERSITY ROADWAY PLANS.

NO.	DATE	BY	DESCRIPTION OF REVISIONS

CALL UNCC  
TWO WORKING DAYS  
BEFORE YOU DIG

UTILITY VERIFICATION CENTER  
1-800-922-1987

CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION  
CAPITAL PROJECTS MANAGEMENT  
2000 W. 3RD AVE. DENVER, CO 80223  
TEL.: (303) 446-3617 FAX: (303) 446-3647



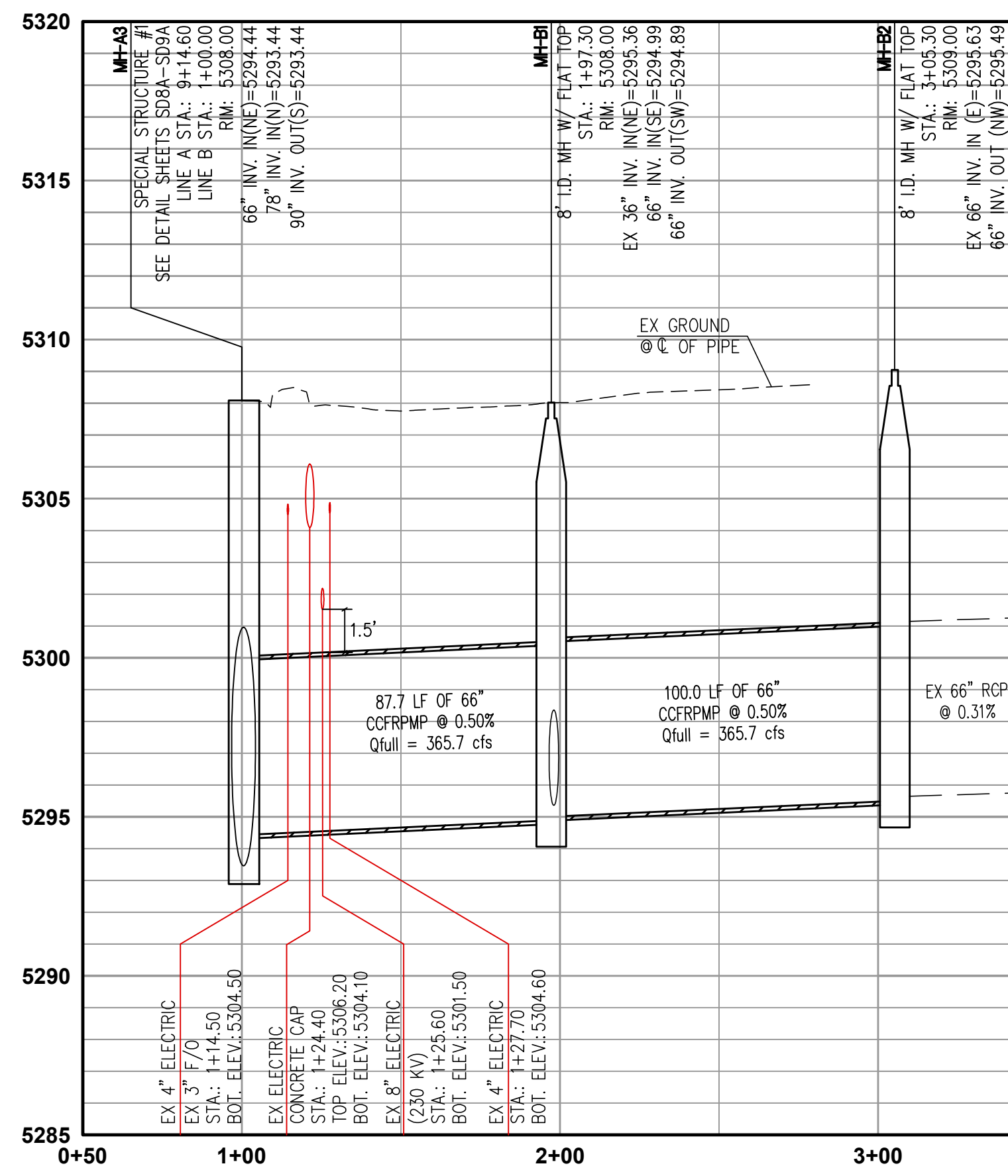
LINE 'A' PROFILE VIEW  
STA. 1+00 TO 11+50

STREET RECONSTRUCTION OF UNIVERSITY AVE. & JOSEPHINE ST. FROM 1ST AVE TO 6TH AVE AND NORTH UNIVERSITY OUTFALL (CCN)  
PCO CONTROL NO: PWC2009-1171  
PILAR REVIEW NO: 2010-0446-01

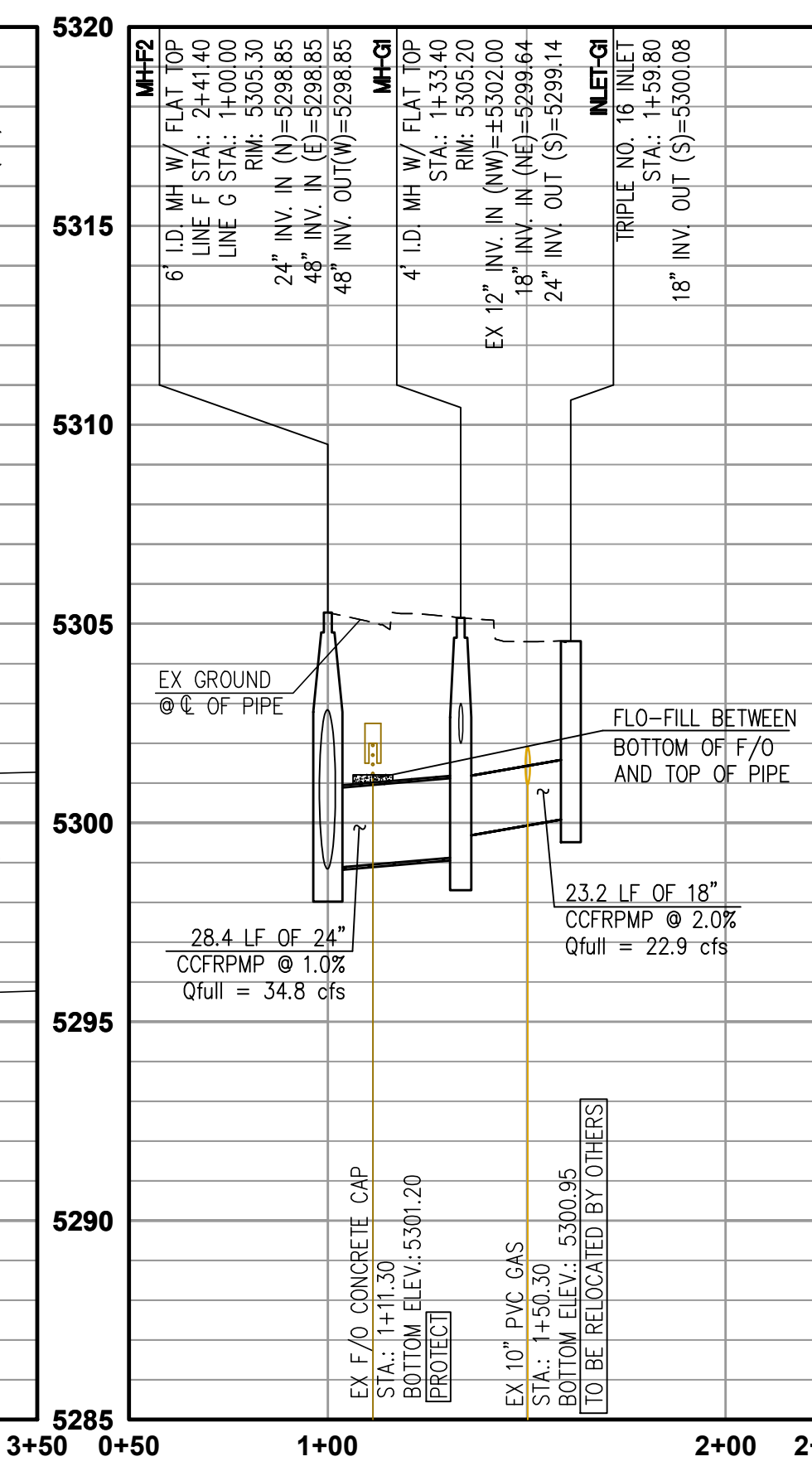
DRAWN BY:	JWR
DESIGNED BY:	JWR
APPROVED BY:	SIC
DRAWING NAME:	SD3-SDS STORM PLAN AND PROFILE.dwg
DATE:	9-25-13
SHEET NO.:	SD3A OF SD14A

STORMLINE PLAN & PROFILE

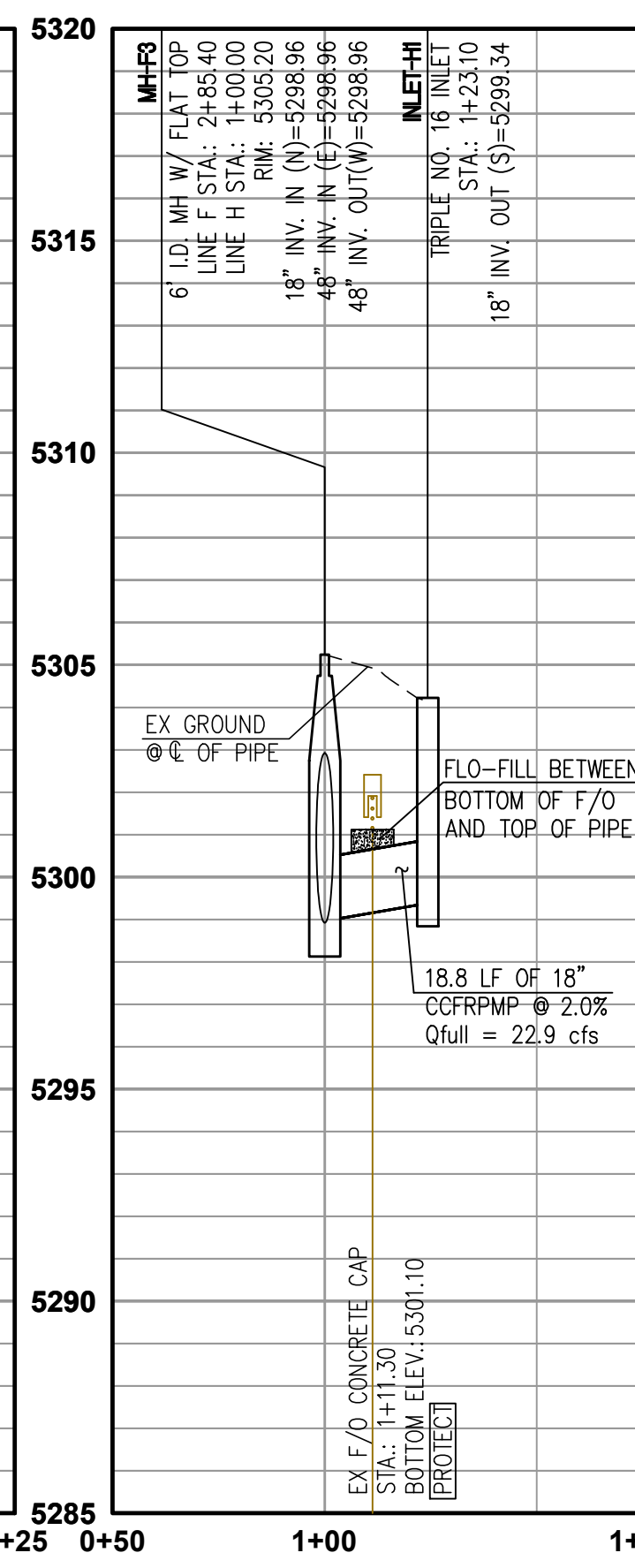
## **Exhibit A-2**



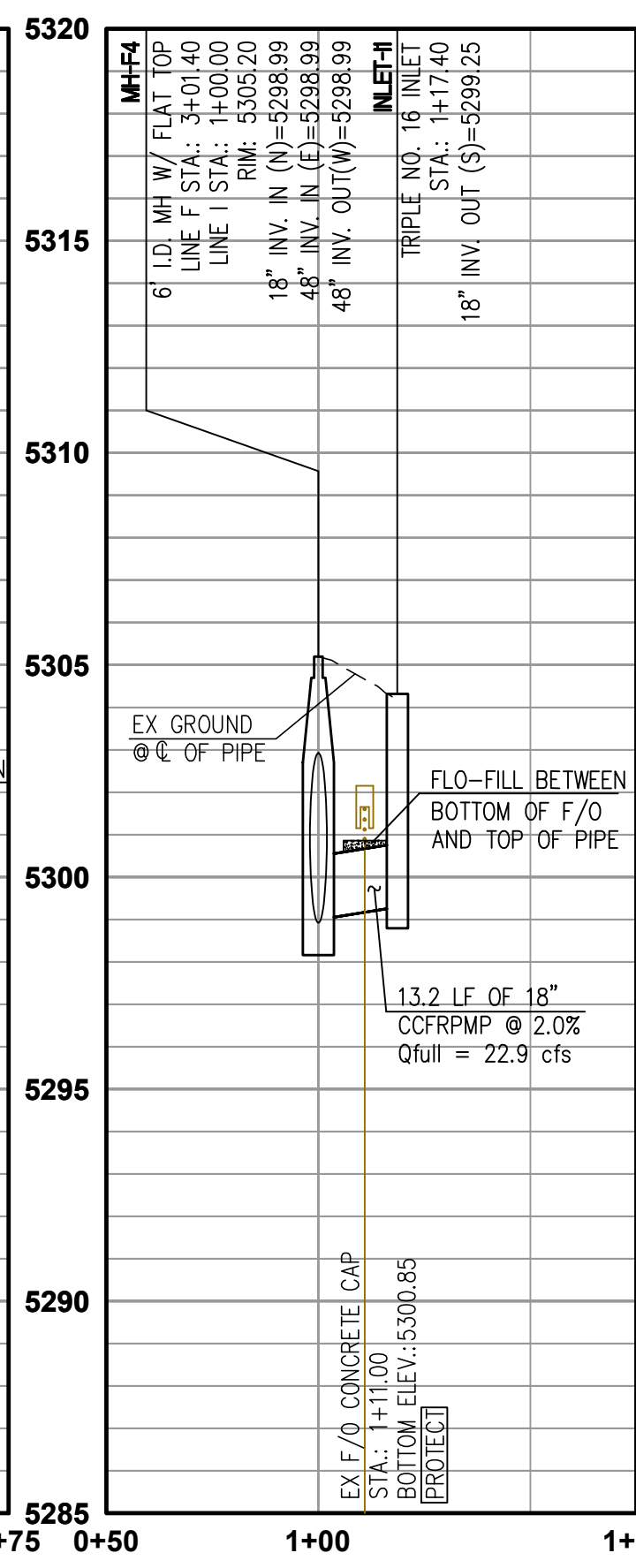
LINE 'B' PROFILE VIEW  
STA. 1+00 TO 3+04.30



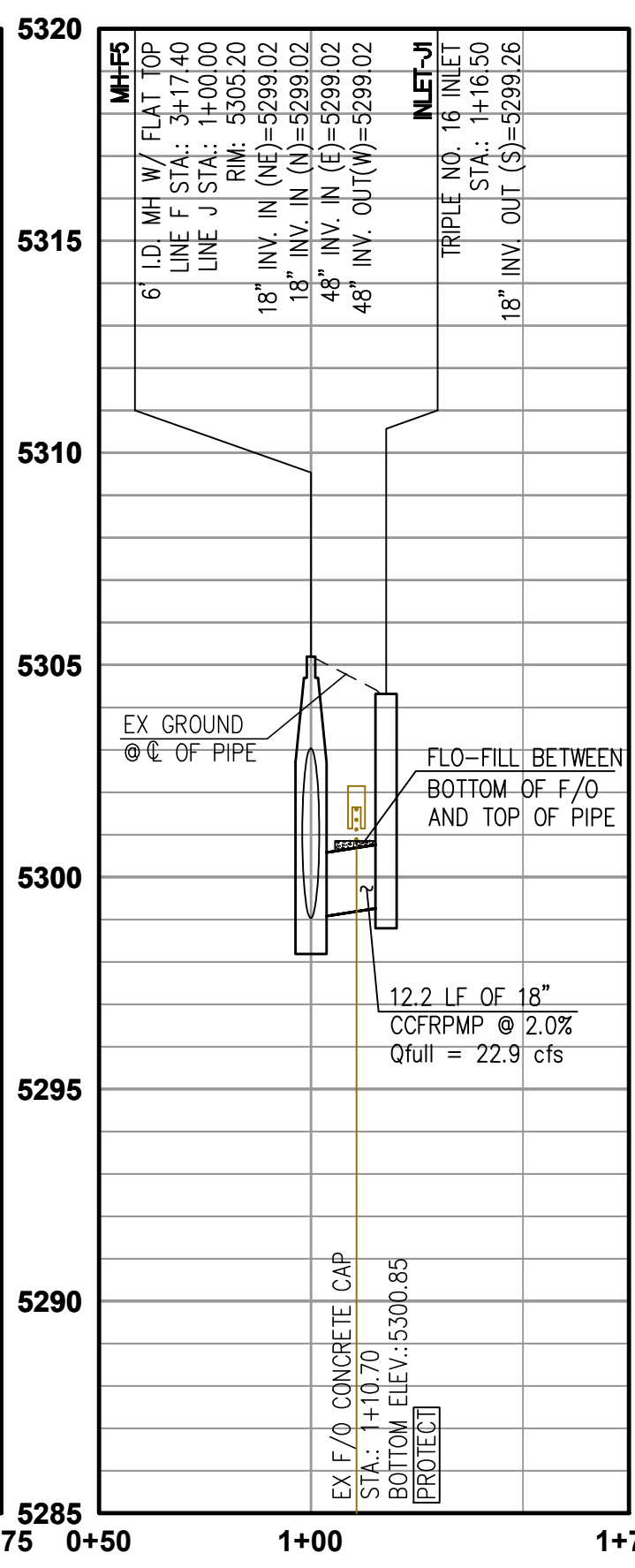
LINE 'G' PROFILE VIEW  
STA. 1+00 TO 1+59.80



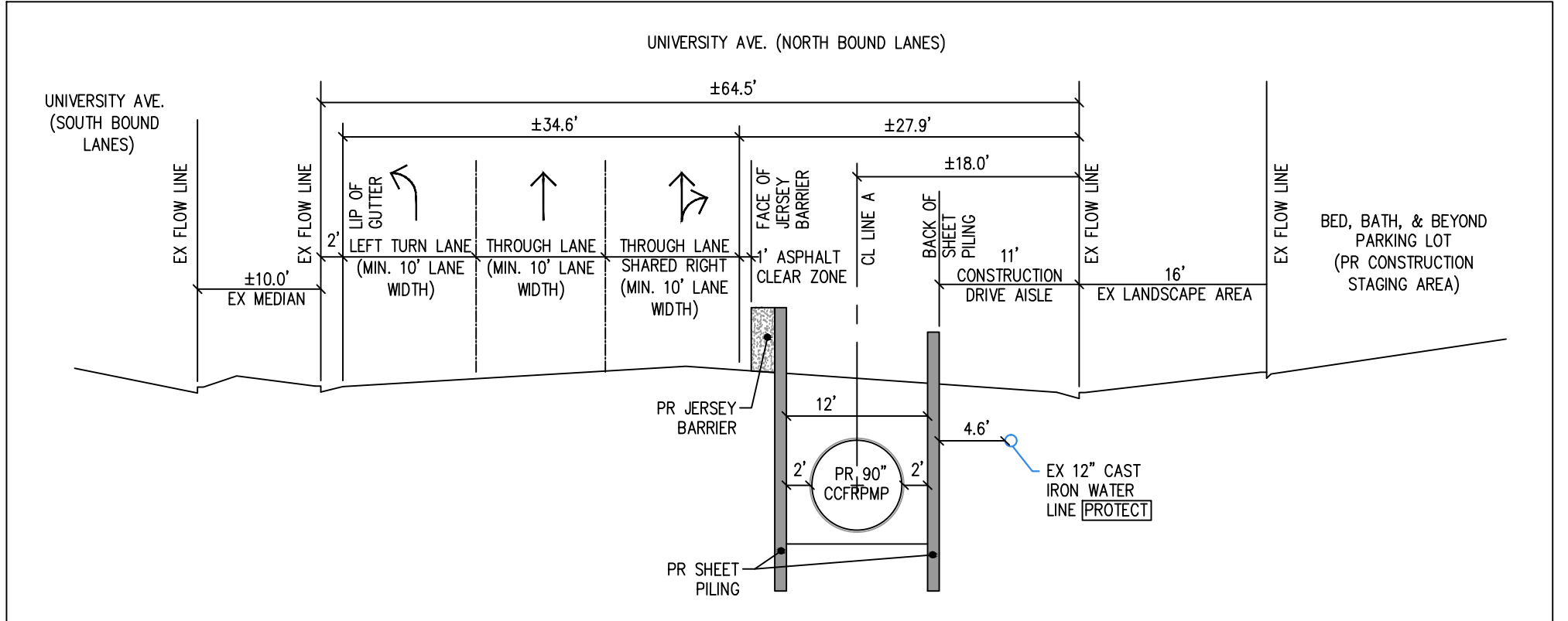
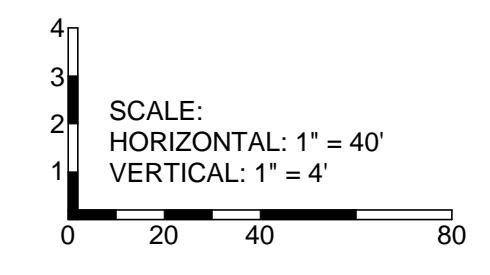
LINE 'H' PROFILE VIEW  
STA. 1+00 TO 1+23.10



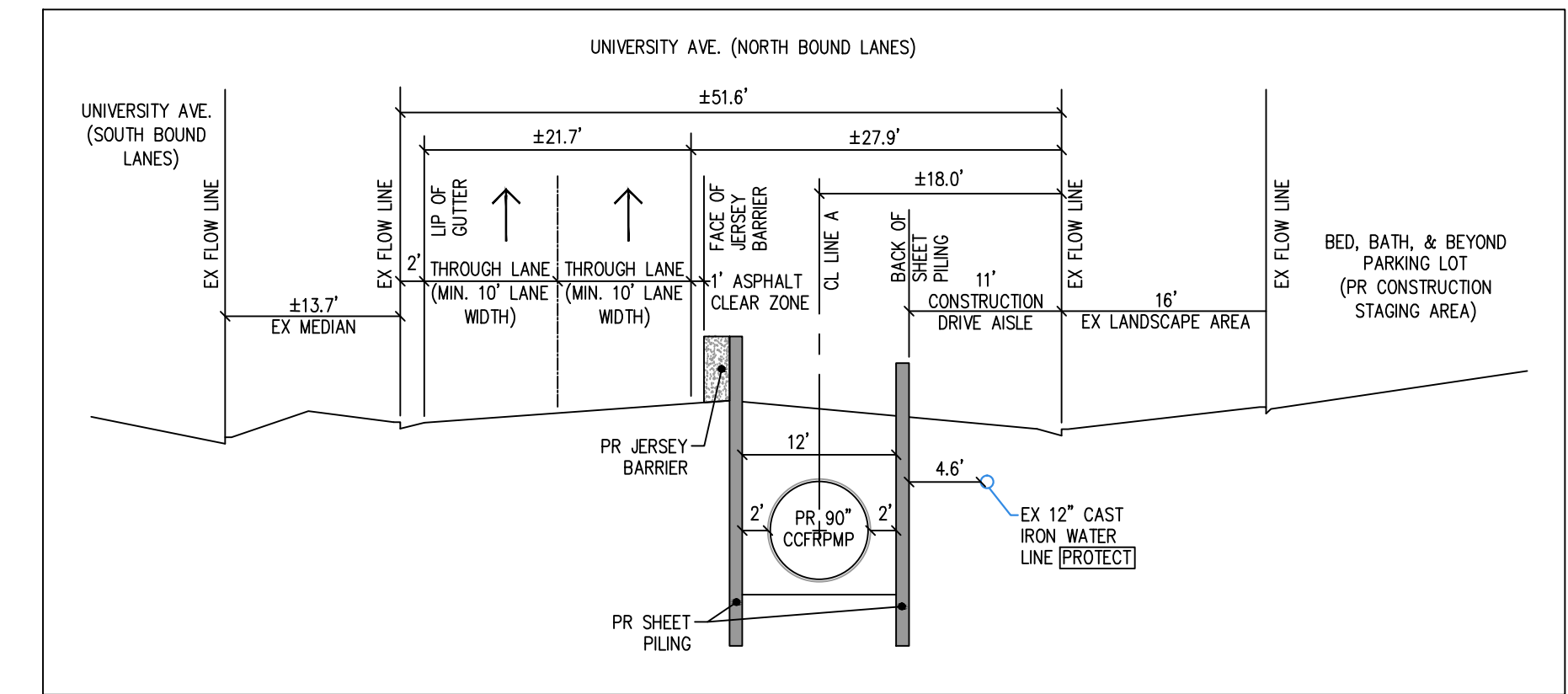
LINE 'I' PROFILE VIEW  
STA. 1+00 TO 1+17.40



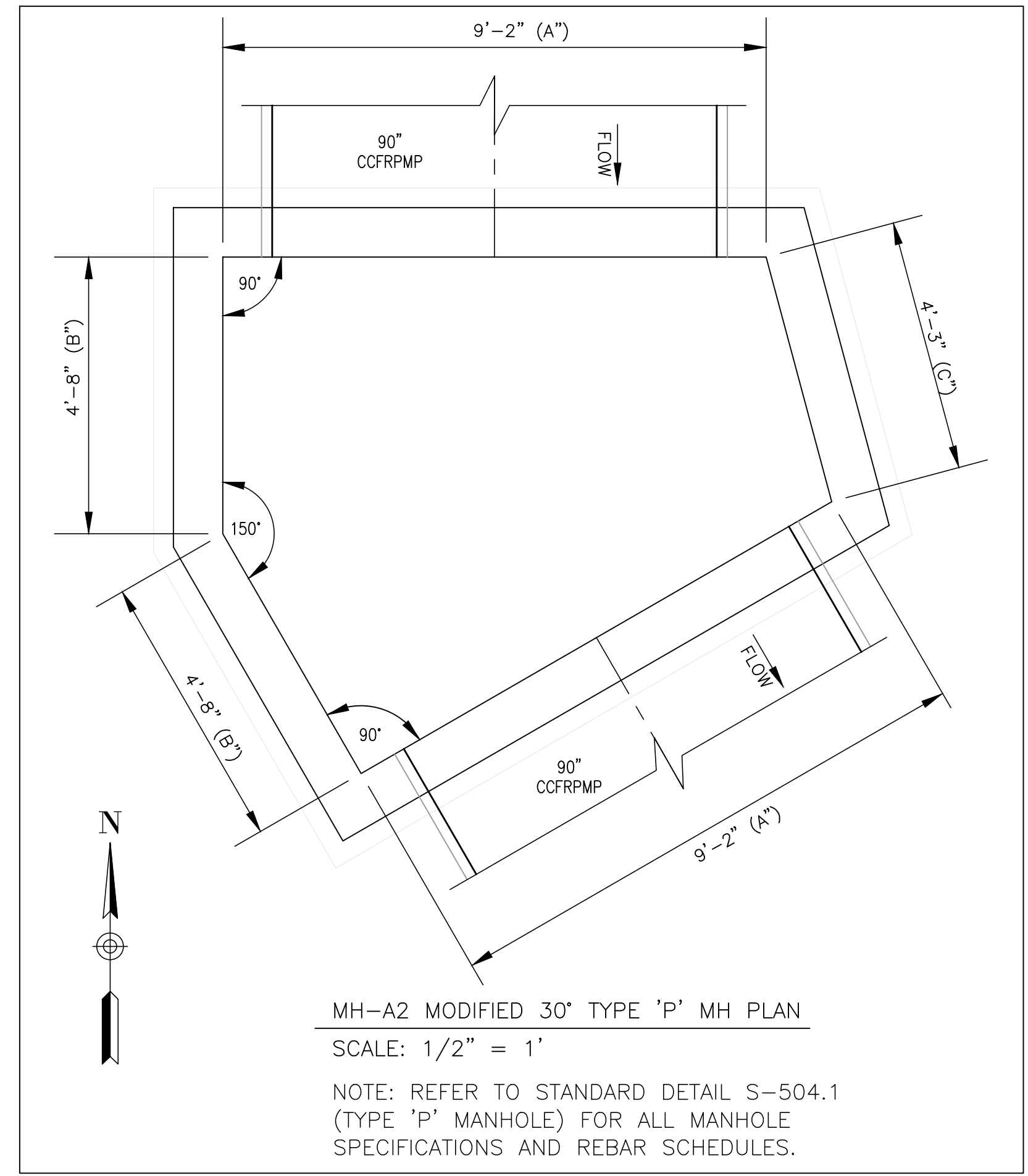
LINE 'J' PROFILE VIEW  
STA. 1+00 TO 1+16.50



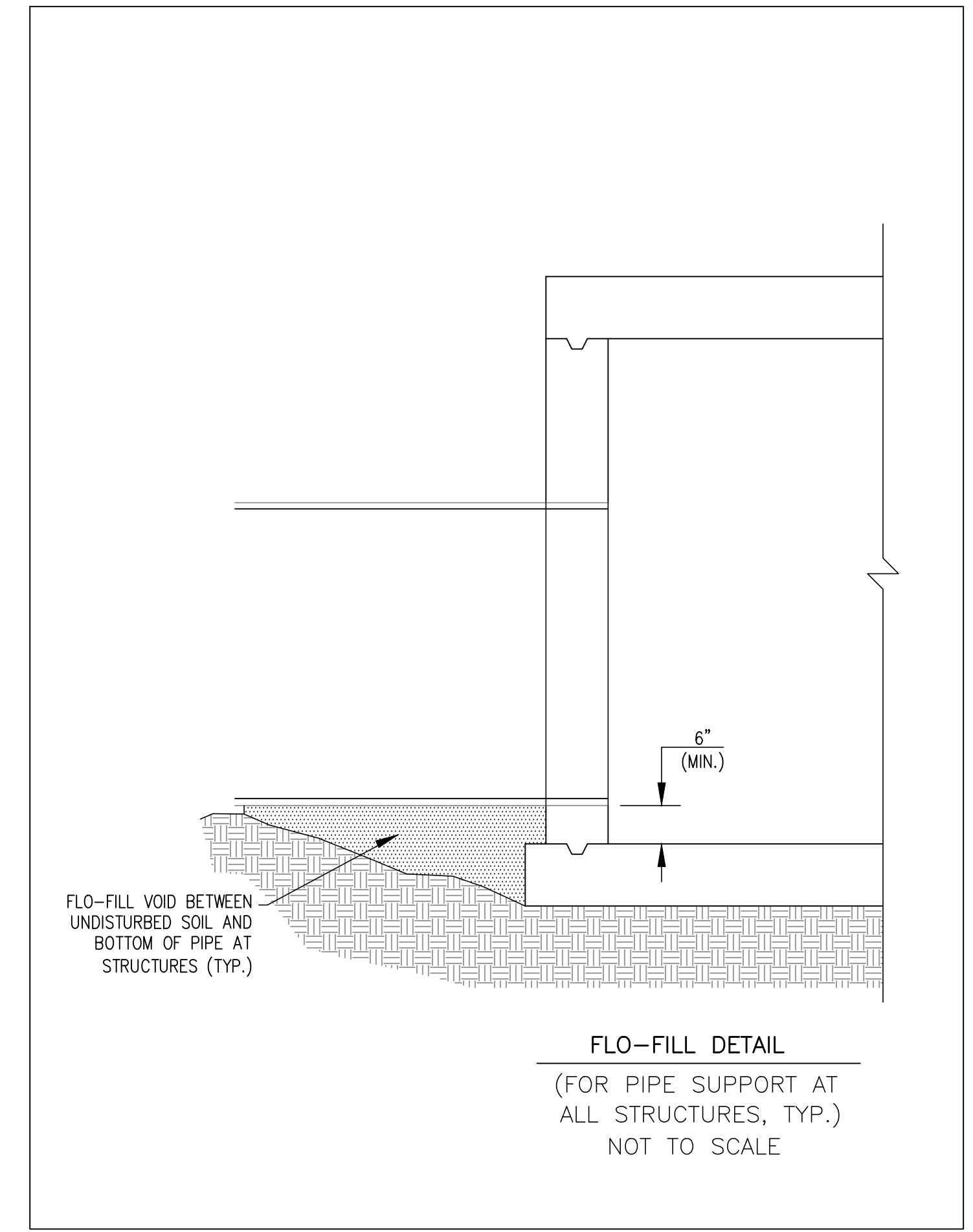
UNIVERSITY AVENUE CROSS  
SECTION B-B  
NOT TO SCALE



UNIVERSITY AVENUE CROSS  
SECTION A-A  
NOT TO SCALE

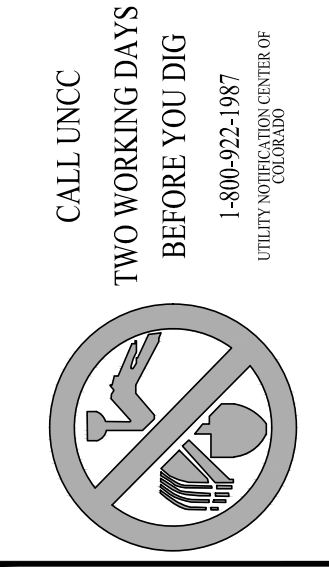


MH-A2 MODIFIED 30° TYPE 'P' MH PLAN  
SCALE: 1/2" = 1'  
NOTE: REFER TO STANDARD DETAIL S-504.1 (TYPE 'P' MANHOLE) FOR ALL MANHOLE SPECIFICATIONS AND REBAR SCHEDULES.



FLO-FILL DETAIL  
(FOR PIPE SUPPORT AT ALL STRUCTURES, TYP.)  
NOT TO SCALE

NO.	DATE	BY	DESCRIPTION OF REVISIONS



CALL UNCC  
TWO WORKING DAYS  
BEFORE YOU DIG  
UTILITY WARNING CENTER  
1-800-922-1987

CITY AND COUNTY OF DENVER  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION  
CAPITAL PROJECTS MANAGEMENT  
2000 W. 3RD AVE. DENVER, CO 80223  
TEL.: (303) 446-3617 FAX: (303) 446-3647

STREET RECONSTRUCTION OF UNIVERSITY AVE. & JOSEPHINE ST. FROM 1ST AVE TO 6TH AVE AND NORTH UNIVERSITY OUTFALL (CCN)  
PCO CONTROL NO: PWC2009-1171  
PILAR REVIEW NO: 2010-0446-01

STORMLINE PLAN & PROFILE & DETAILS

DRAWN BY:	JWR
DESIGNED BY:	JWR
APPROVED BY:	SJC
DRAWING NAME:	SD3-SD5-STORM PLAN AND PROFILE.dwg
DATE:	9-25-13
SHEET NO.:	SD5 OF SD14



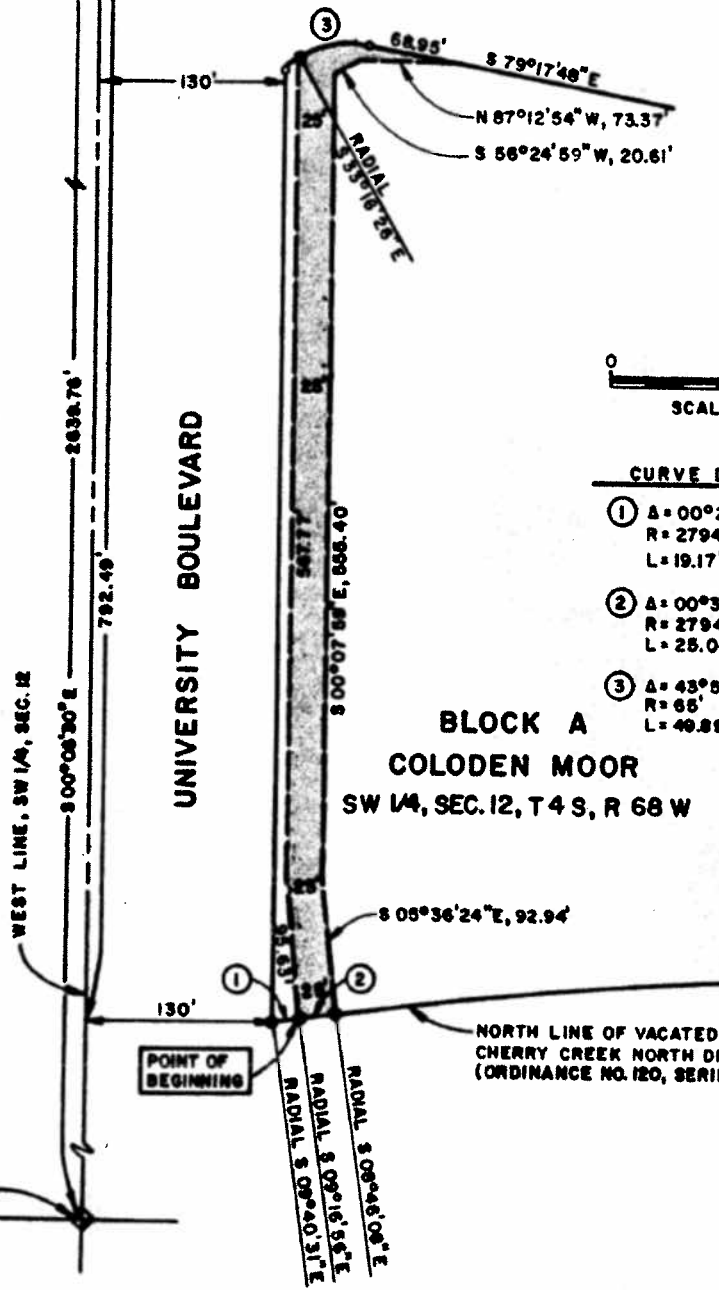
# **Exhibit B**

POINT OF COMMENCEMENT  
WEST 1/4 CORNER OF  
SECTION 12, T4S, R68W,  
8 1/4" P.M. - 3 1/4" DIA.  
BRASS CAP IN RANGE BOX

CENTER OF  
SECTION 12  
3 1/4" DIA BRASS  
CAP IN RANGE BOX

N 90°00'00"E  
2621.12'  
NORTH LINE, SW 1/4, SEC. 12  
1ST AVENUE

5-101



0 100 200  
SCALE: 1" = 100'

CURVE DATA

①	A = 00°23'35"
	R = 2794.58'
	L = 19.17'
②	A = 00°30'48"
	R = 2794.58'
	L = 25.04'
③	A = 43°58'38"
	R = 65'
	L = 49.89'

BLOCK A  
COLODEN MOOR  
SW 1/4, SEC. 12, T 4 S, R 68 W

POINT OF BEGINNING

NORTH LINE OF VACATED  
CHERRY CREEK NORTH DRIVE  
(ORDINANCE NO. 120, SERIES OF 1987)

SW CORNER OF  
SECTION 12  
CHISELED  
IN CONCRETE

*James T. Jones*  
CERTIFICATION: REGISTERED LAND SURVEYOR



			EXHIBIT "B"			
REVISED	W.A.C.	5-87	PREPARED BY CENTENNIAL ENGINEERING, INC. 3333 QUEBEC STREET SUITE 9090 STAPLETON PLAZA DENVER, COLORADO 80207 PHONE: 320-8844 OR 333-2300			
APPROVED			PROJECT CHERRY CREEK SHOPPING CENTER FIRST AVENUE STORM SEWER OUTFALL			
CHECKED	A.E.R.	5-87	LOCATION (BY: 801) R. 68 W. T. 4 S. SECTION 12, SW 1/4 (684-12.3)			
DRAWN	W.A.C.	5-87				
SURVEYED						
ACTION	BY	DATE	JOB NO.	PROJECT NO.	R.D. FILE NO.	SHEET
				SP-08-87	1182.02-DE	2 of 2

CITY AND COUNTY OF DENVER, DEPARTMENT OF PUBLIC WORKS, WASTEWATER MANAGEMENT DIVISION

LEGAL DESCRIPTION

4-10

A tract of land located in the Southwest 1/4 of Section 12, Township 4 South, Range 68 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, described as follows:

Commencing at the West 1/4 Corner of said Section 12; thence South 00°06'30" East, along the west line of said Southwest 1/4, a distance of 792.49 feet; thence North 89°53'30" East, at right angles to said west line, 130.00 feet to the intersection of the east line of University Boulevard and the north line of vacated Cherry Creek North Drive, said north line being a 2794.58 foot radius, non-tangent curve which is concave southerly, a radial line from said intersection bears South 09°40'31" East; thence easterly, along said north line, through a central angle of 00°23'35" an arc distance of 19.17 feet to a point from which a radial line bears South 09°16'56" East, said point being the Point of Beginning; thence North 05°36'24" West, 95.63 feet; thence North 00°07'59" West, 567.77 feet to a point in a segment of the south line of 1st Avenue, said segment being a 65 foot radius, non-tangent curve which is concave southerly, a radial line from said point bears South 33°16'26" East; thence easterly, along said south line through a central angle of 43°58'38" an arc distance of 49.89 feet to a point of tangency; thence South 79°17'48" East, along said tangent south line, 68.95 feet; thence North 87°12'54" West, 73.37 feet; thence South 56°24'59" West, 20.61 feet; thence South 00°07'59" East, 555.40 feet; thence South 05°36'24" East, 92.94 feet to a point in said north line from which a radial line bears South 08°46'08" East; thence westerly, along said north line, through a central angle of 00°30'48" an arc distance of 25.04 feet to the Point of Beginning.

Said tract of land contains 17,341 square feet (0.398 acres), more or less.

**Basis of Bearings:**

The north line and the west line of said Southwest 1/4 being North 90°00'00" East and South 00°06'30" East, respectively. The monuments used to establish the Southwest 1/4 are described as follows:

- Southwest corner - "x" chiseled in concrete.
- West 1/4 corner - 3 1/2" dia. brass cap in range box.
- Center - 3 1/2" dia. brass cap in range box.
- South 1/4 corner - 1 1/2" dia. axle in range box.

*James T. Jones*

CERTIFICATION: REGISTERED LAND SURVEYOR



EXHIBIT "B"			
REVISED		PREPARED BY	CENTENNIAL ENGINEERING, INC. STAPLETON PLAZA, SUITE 9090 3333 QUEBEC STREET DENVER, CO 80207 (303) 320-5544
APPROVED		PROJECT	CHERRY CREEK SHOPPING CENTER FIRST AVENUE STORM SEWER OUTFALL
CHECKED		LOCATION (R&M)	R68W, T4S, SEC. 12, SW 1/4 (684-12.3)
DRAWN			
SURVEYED			
ACTION	BY	DATE	JOB NO. PROJECT NO. RW FILE NO. SHEET
			SP-09-87 1152.02-DE 1 of 2

CITY AND COUNTY OF DENVER, DEPARTMENT OF PUBLIC WORKS, WASTEWATER MANAGEMENT DIVISION

# **Exhibit C**

## TEMPORARY EASEMENT

### KNOW ALL MEN BY THESE PRESENTS:

**THAT TEMPLE HOYNE BUELL FOUNDATION**, a Colorado nonprofit corporation with a principal office street address of 1666 South University Boulevard, Suite B, Denver, Colorado 80210 (“Grantor”) for and in consideration of One Dollar (\$1.00), receipt of which is acknowledged, and the prospective benefits to be derived by reason of maintaining drainage facilities for water and sewerage under the supervision of and for the City and County of Denver, and other good and valuable consideration in hand paid, does hereby grant, convey and release to the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, its successors and assigns, sometimes (“City” or “Grantee”) an exclusive and perpetual temporary easement and right-of-way for drainage facilities for water and sewerage across lands owned by Grantor, and situated in the City and County of Denver, State of Colorado.

Grantor hereby grants to the Grantee the perpetual right to enter, re-enter and use the hereinafter described easement to locate, construct, inspect, operate, maintain, repair, remove, replace, relocate, reconstruct drainage facilities for water and sewage, including underground and surface facilities and appurtenances thereto, into, within, over, upon, across, through and under the parcel of land for which the easement and right-of way is hereby granted, and said parcel of land is more particularly described as follows to-wit:

### Legal Description -- Exhibit A

The Grantor hereby warrants the Grantor has full right and lawful authority to make the grant herein contained and that Grantor has fee simple title to the land over which said easement is granted.

If ingress to and egress from the parcel of land for which an easement is hereby granted from and to a public road or highway is not available, the Grantor grants to Grantee the right of ingress to and egress from said parcel over and across the land owned by grantor by means of roads and lanes thereon. If such exist, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to Grantor; provided that such right of ingress and egress shall not extend to any portion of said land which is isolated from the strip by any public road or highway now crossing or hereinafter crossing said land; and provided further, that if any portion shall extend to the strip, the right on ingress and egress on that portion shall be confined to such roads and highways.

Grantor further grants to Grantee the right from time to time to trim and to cut down and clear away any and all trees and brush now or hereafter on the strip which now or hereafter, in the opinion of grantee, may be a hazard to said facilities, or appurtenances thereto, or may interfere with the exercise of grantee’s rights hereunder; provided, however, that all tress which Grantee is hereby authorized to cut and remove, if valuable for timber or wood, shall continue to be the property of the Grantor, but all tops, lops, brush and refuse wood shall be burned or removed by grantee. Upon completion by Grantee of any work in the easement area, grantee

shall return the surface area thereof to a condition similar to that which existed prior to the performance of such work.

Grantor releases the City and County of Denver from any and all claims for damages arising in any way or incident to the construction and/or maintenance by Grantor, or his agents, of the said facilities across the described land.

Reserving, however, to the undersigned and their successors in interest and assigns the right to use and enjoy the above described premises, providing such use and enjoyment shall not interfere with the installation, construction, maintenance, repair, inspection and operation of said facilities installed or permitted to be installed by the City and County of Denver, and providing further that the Grantor shall not erect or place any building, tree or other construction on the above-described easement and right-of-way and the City shall not be liable for their removal if they are so placed. Use of said premises for driveway, parking and landscaping purposes is expressly permitted. Grantee agrees to perform all work in the easement area as expeditiously as is reasonably practical and with a minimum of interference to Grantor's adjoining property. Grantor reserves the right, at its sole cost and expense, to relocate the sewer and necessary easement area, subject, however, to the prior approval of Grantee as to the location of the relocated easement and the plans and specifications for any such work.

This Temporary Easement shall be effective until such time that it is relinquished by written notice from the Manager of Public Works for the City in accordance with that certain Agreement Concerning University/Josephine Street and Sewer Project dated \_\_\_\_\_.

**THE TEMPLE HOYNE BUELL  
FOUNDATION**, a Colorado  
nonprofit corporation

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as \_\_\_\_\_ of The Temple Hoyne Buell Foundation, a Colorado nonprofit corporation.

My commission expires: \_\_\_\_\_, 20\_\_.

WITNESS my hand and official seal. \_\_\_\_\_