

**TEMPORARY CONSTRUCTION
LICENSE AGREEMENT
(Park Avenue Facility)**

This Temporary Construction License Agreement (“**License**”) is executed as of the Effective Date (defined below), by and between **CITY AND COUNTY OF DENVER**, a Colorado home rule city and municipal corporation, having an address of 1437 Bannock Denver Co 80202 (“**Owner**” or “**City**”), and **DENVER TRANSIT CONSTRUCTORS, LLC**, a Delaware limited liability company, having an address of 1670 Broadway, Suite 2700, Denver, CO 80202, (“**Contractor**”).

BACKGROUND

- A. Owner is the owner of the real property located in Denver, Colorado (“**Property**”).
- B. Contractor has been engaged by the Regional Transportation District (“**RTD**”) to construct certain improvements on real property in the vicinity of the Property as part of the RTD Eagle P-3 Gold Line Project (“**Project**”).
- C. Contractor has requested that Owner grant to Contractor a temporary license over that portion of the Property legally described and depicted on Schedule 1, attached hereto and incorporated herein (“**License Area**”) for the only those purposes described on Schedule 3 attached hereto and incorporated herein (“**License Purpose**”).
- D. Owner desires to grant such license, subject to appropriate approvals and the terms and conditions contained herein

AGREEMENT

For valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Contractor (collectively, the “**Parties**”) agree as follows:

1. **Grant of License.** Owner grants to Contractor a temporary nonexclusive license (“**License**”) over the License Area for the License Purpose. During the term of the License, Owner shall not take any action on or make any use of the License Area (or permit any third party to take any action on or make any use of the License Area) that unreasonably interferes with Contractor’s use and enjoyment of the License, except in the case of emergency or in the exercise of the City’s police and regulatory powers. Contractor shall maintain reasonable access to and through the Property at all times so that Owner’s use of the Property is not unduly impacted by this License.
2. **License Fee.** In consideration of the restoration and other work to be done by Contractor under this License, no License fee is required.
3. **Term.** The License shall commence on a date that is 30 days from the date the Contractor gives notice to the City’s Manager of Public Works and Manager of Parks and Recreation (“**Notice**”) and shall automatically terminate 13 months from the date of such Notice, unless extended by prior written approval of the City’s Manager of Public Works and Manager of Parks and Recreation, which extensions shall not exceed six (6) months.
4. **Indemnity.** Contractor shall indemnify, protect, hold harmless, and defend Owner, and Owner’s elected officials, officers, employees, agents, contractors and permittees (“**Owner Parties**”), from and against, any claim, damage, liability, cost (including court costs and attorneys’ fees), loss, or

injury to the extent arising from or related to Contractor's exercise of the rights under the License and any breach of the terms and conditions of this License by the Contractor and Contractor's employees, agents, contractors and permittees, except to the extent any of the same are the result of the negligence or willful misconduct of any Owner Party.

5. **Insurance.** During the term of the License, Contractor shall at all times maintain (a) commercial general liability insurance with limits of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 policy aggregate; (b) worker's compensation insurance for all of their respective employees in accordance with the law of the State of Colorado; and (c) business auto liability with minimum limits of \$1,000,000 combined single limit. The City and County of Denver, its elected and appointed officials, employees and volunteers shall be named as Additional Insureds on the commercial general liability policy.. Contractor shall deliver proof of the insurance coverage required pursuant to this section to Owner in the form of a certificate of insurance prior Contractor's entry onto the Property or License Area.

6. **Restoration.** Upon termination of this License, Contractor shall restore the License Area and the Property as depicted on **Schedule 2**, attached hereto and incorporated herein. This restoration shall include, but is not limited to, repaving of the License Area; replacement or repair of fence, asphalt, curb and gutter if damaged; removal and disposal of existing barriers and aggregate currently stockpiled on License Area; and construction of a 20 foot wide paved access road under the new Bridge structure to allow access to the area west of the structure, all as described in the License Purpose and as depicted on Schedule 2.

7. **Compliance with Laws.** In the exercise of the License, Contractor shall comply with all applicable laws.

8. **Counterparts.** This License may be signed in one or more counterparts, whether by original, copy, electronic (including PDF), or telecopy signature, each of which together will form one binding License of the Parties.

9. **Effective Date.** The effective date of this License shall be the date set forth on the City's signature page below ("Effective Date")

10. **General.**

- a. Contractor represents that each person executing this License has the full legal right to do so in the capacity indicated.
- b. No waiver of any term of this License shall be deemed to be a continuing waiver of that term or a waiver of any other term of this License.
- c. If any term of this License is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this License shall not be affected.
- d. This License shall be recorded in the Denver County real property records.
- e. This License shall be binding upon the successors and assigns of each of Contractor and Owner.
- f. Remedies for default of this License shall be:

- i. If City Is In Default. Contractor may elect to (1) treat the License as canceled, in which case all payments and things of value received under the Agreement shall be returned and the parties shall thereafter be released from all obligations under the License or (2) treat the Agreement as being in full force and effect and seek specific performance as Contractor's exclusive remedy. Contractor expressly waives the right to seek damages, including delay damages and attorney fees.
 - ii. If Contractor Is In Default. The City may elect to (i) terminate the License and Contractor shall perform all restoration activities set forth herein or (ii) treat the Agreement as being in full force and effect and seek all remedies available in law or equity.
- g. In connection with the performance duties under the License, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts relating to the License.
- h. In no event shall any performance under the License constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default that may then exist. The rendering of any such performance when any breach of default exists in no way impairs or prejudices any right of remedy available with respect to the breach of default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the License may be deemed or taken to be a waiver or any other default or breach.
- i. The License is subject to and is to be construed in accordance with the laws of the local jurisdiction and the State of Colorado, including all ordinances, rules and regulations enacted or promulgated pursuant to these state and local provisions. The aforementioned provisions are incorporated into the License by this reference. Venue for any action arising out of the License is in the Colorado District Court of the jurisdiction where the property is located.
- j. All notices provided for herein must be in writing and be personally delivered, sent via facsimile, electronic mail, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, if to the Contractor at the address first listed above and if to the City at the addresses or facsimile numbers given below. Notices delivered personally or sent electronically or by facsimile 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,

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these substitutions will not become effective until actual receipt of written notification.

If to City: Manager of Public Works
 201 W. Colfax, Department 608
 Denver, Colorado 80202

And Manager of Parks and Recreation
 201 W. Colfax, Department 601
 Denver, Colorado 80202

And Denver City Attorney's Office
 Attn: Karen Aviles
 201 W. Colfax, Dept 1207
 Denver, CO 80202

If to Contractor:

Denver Transit Constructors, LLC
1670 Broadway, Suite 2700
Denver, CO 80202
Attn: Robert Bohnet
e-mail: robert.bohnet@dpjv.com

- k. Each party is responsible for any and all suits, demands, costs, or action proximately resulting from its own individual acts or omissions.
- l. The License is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment to the agreement will have any force or effect whatsoever, unless embodied in writing in the License. Except as expressly provided for in the License, no subsequent notation, renewal, addition, deletion, or other amendment to the License shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties. No City Council approval of any modification or amendment to this License is required unless mandated by City Charter.

- m. It is the intent of the parties that no third party beneficiary interest is created in the License except for an assignment pursuant to the License.
- n. All obligations of the City under and pursuant to the License are subject to prior appropriations of monies expressly made by the City Council for the purposes of the License and paid into the Treasury of the City.
- o. Whenever under the License “reasonableness” is the standard for the granting or denial of the consent or approval of either party, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.
- p. No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of the License or because of any breach thereof or because of its or their execution, approval or attempted execution of the License.
- q. Contractor represents that to the best of Contractor’s information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in the License except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.
- r. The City is not obligated or liable under the License to any party other than Contractor. Contractor understands and agrees that it may not assign any of its rights, benefits, obligations, or duties under the License without the City’s Manager of Public Works prior written approval.
- s. The License is subject to, and will not become effective or binding on the City until full execution by all signatories of the City.
- t. Contractor consents to the use of electronic signatures by the City. The License, 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 License 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 License 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.

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 _____



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"CONTRACTOR"

DENVER TRANSIT CONSTRUCTORS, LLC,
a Delaware limited liability company

By:

Name:

Title:

[Handwritten Signature]
Michael Lipinski
Project Manager



Schedule 1

License Area Legal Description

A parcel of land located in a portion of the NW1/4 of Section 27, T3S, R68W of the 6th P.M., City and County of Denver, State of Colorado, more particularly described as follows:
COMMENCING at the Northwest Corner of said Section 27, from which the W1/4 of said Section 27, bears S00°03'31"W, (Basis of Bearing), thence S00°03'31"W, 2072.96 feet along the West Line of the NW1/4 of said Section 27 to a Northerly Line of Parcel 2 as described in that Special Warranty Deed conveyed to the City and County of Denver recorded May 3, 2005 as Reception Number 2005072461 of the records of the City and County of Denver, thence N89°52'55"E, 74.98 feet along the said Northerly Line of said Reception Number 2005072461 to an angle point thereof and the TRUE POINT OF BEGINNING;

Thence N00°03'31"E, 18.24 feet along a line that is parallel with the West Line of the NW1/4 of said Section 27 to a Southwesterly Line of Parcel 3C as described in that Quit Claim Deed conveyed to the Regional Transportation District recorded June 7, 2010 as Reception Number 2010061215 of the records of the City and County of Denver;

Thence the following three (3) courses and distances along the Southwesterly Line of said Parcel 3C:

1.) Thence N90°00'00"E, 61.01 feet;

2.) Thence S13°49'55"E, 156.14 feet;

3.) Thence S16°57'41"E, 92.89 feet to the Northerly Line of the South Platte River Channel as described in Ordinance No. 25, Series 1894 of the records of the City and County of Denver;

Thence S48°58'21"W, 11.01 feet along the Northerly Line of the said South Platte River Channel to a point of curve to the right;

Thence 107.56 feet along the arc of said curve and along the Northerly Line of the said South Platte River Channel to a non-tangent curve to the right and an angle point of said Parcel 2, said arc having a radius of 520.53 feet, a central angle of 11°50'21", and being subtended by a chord that bears S54°53'33"W, 107.37 feet;

Thence 45.21 feet along the arc of said curve and along the Southerly Line of said Parcel 2 to a point non-tangent, said arc having a radius of 744.49 feet, a central angle of 03°28'47", and being subtended by a chord that bears N40°51'47"W, 45.21 feet;

Thence N00°03'31"E, 257.00 feet along a line that is parallel with the West Line of the NW1/4 of said Section 27 to a Northerly Line of said Parcel 2 and the TRUE POINT OF BEGINNING.
Area = 27,170 square feet, more or less.

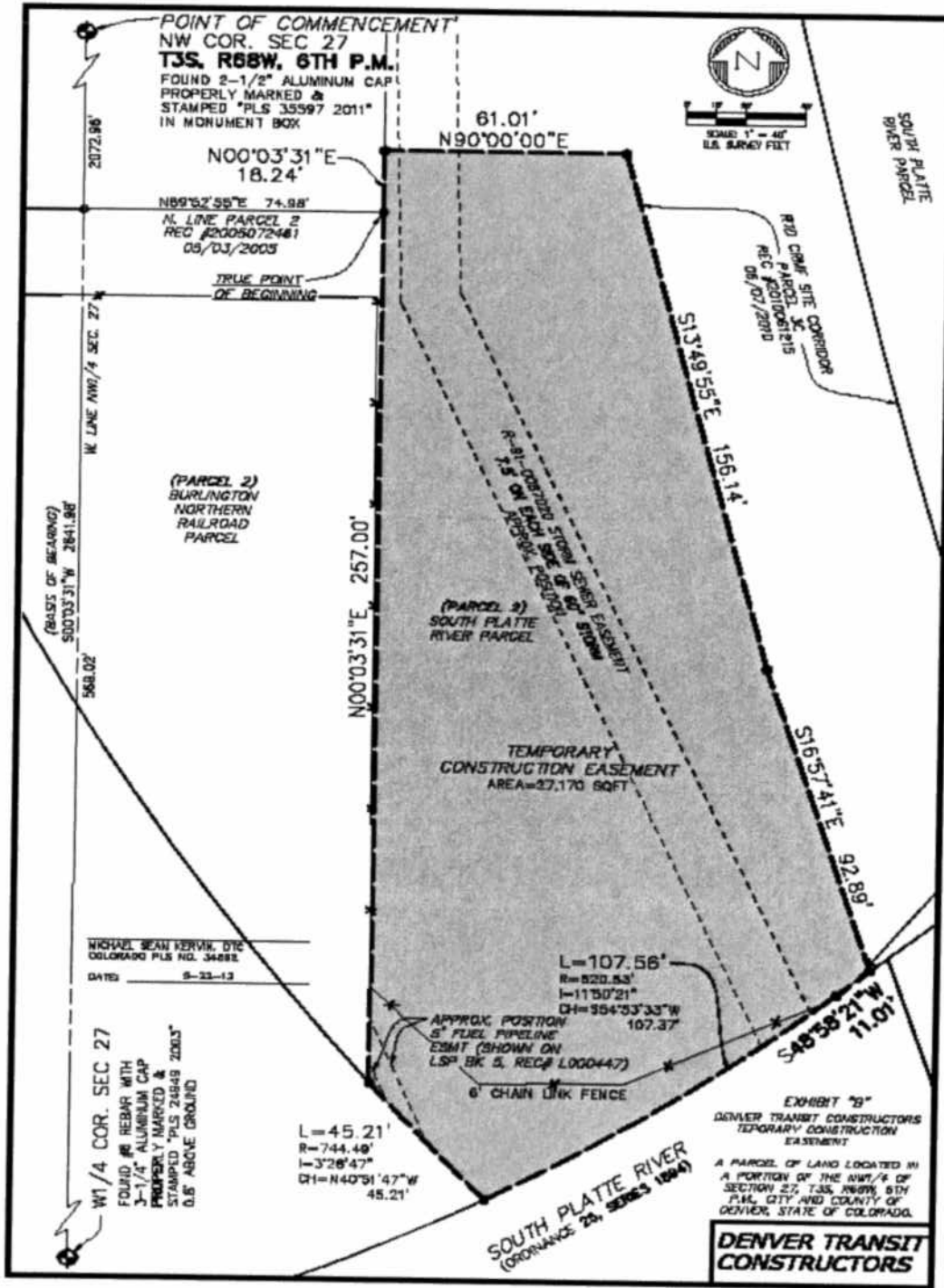
Denver Transit Constructors
Michael Sean Kervin
Colorado Licenses Professional
Land Surveyor No. 34592
Date: 05-22-12

Notes:

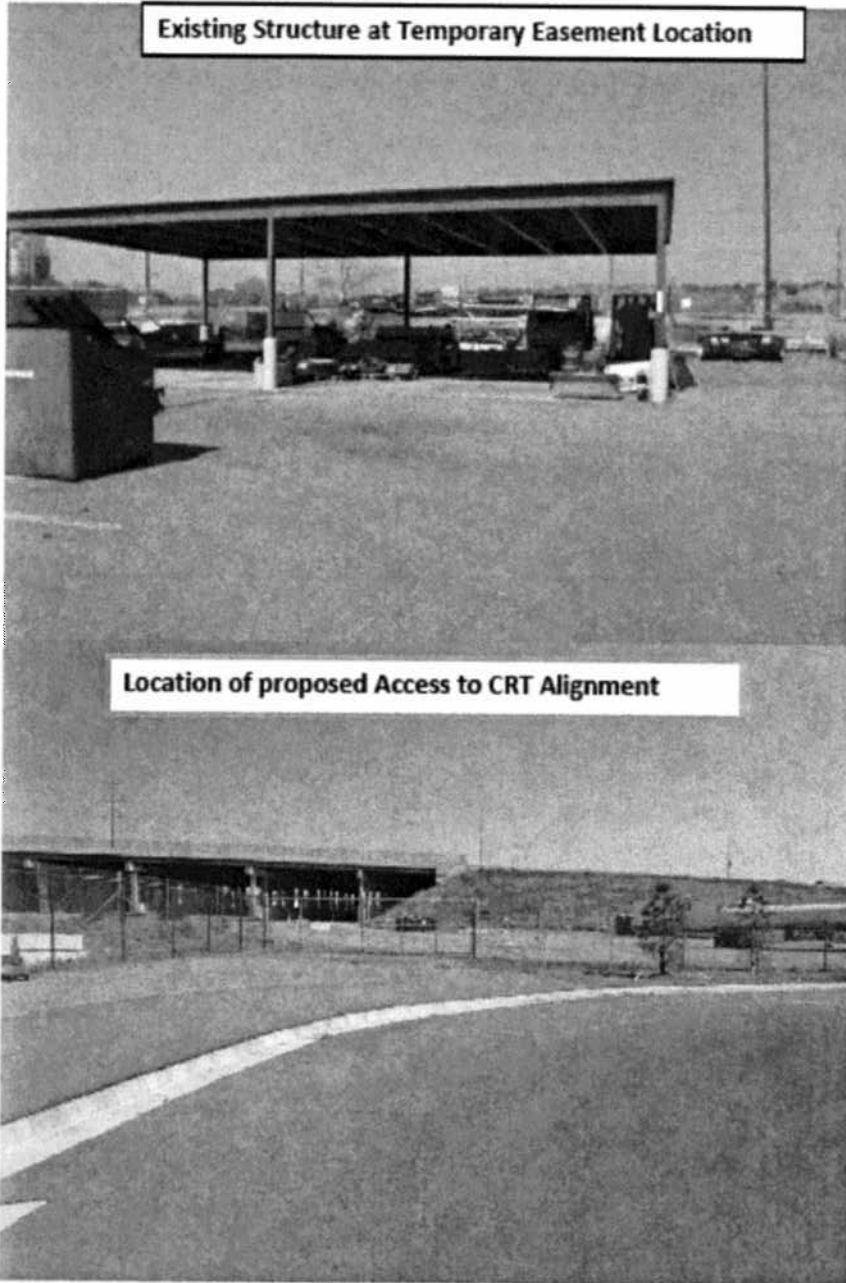
1.) NOTICE: According to Colorado law you must commence any legal action based upon any defect in this legal description within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown.

2.) Legal description was prepared by Michael S. Kervin, PLS, 10035 E. 40th Avenue, Suite 400, Denver, CO 80238

Diagram of the License Area

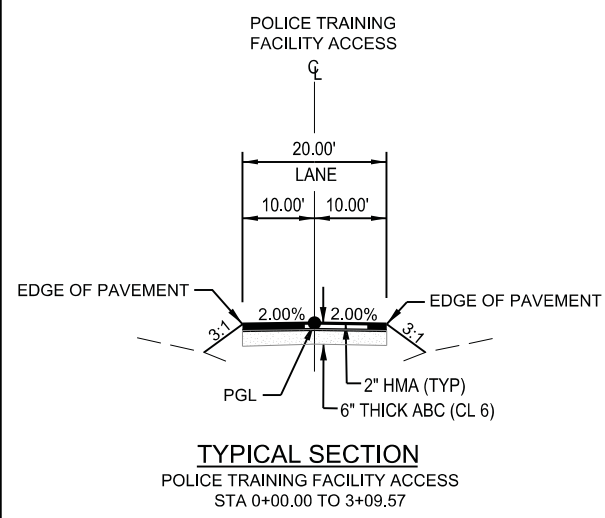
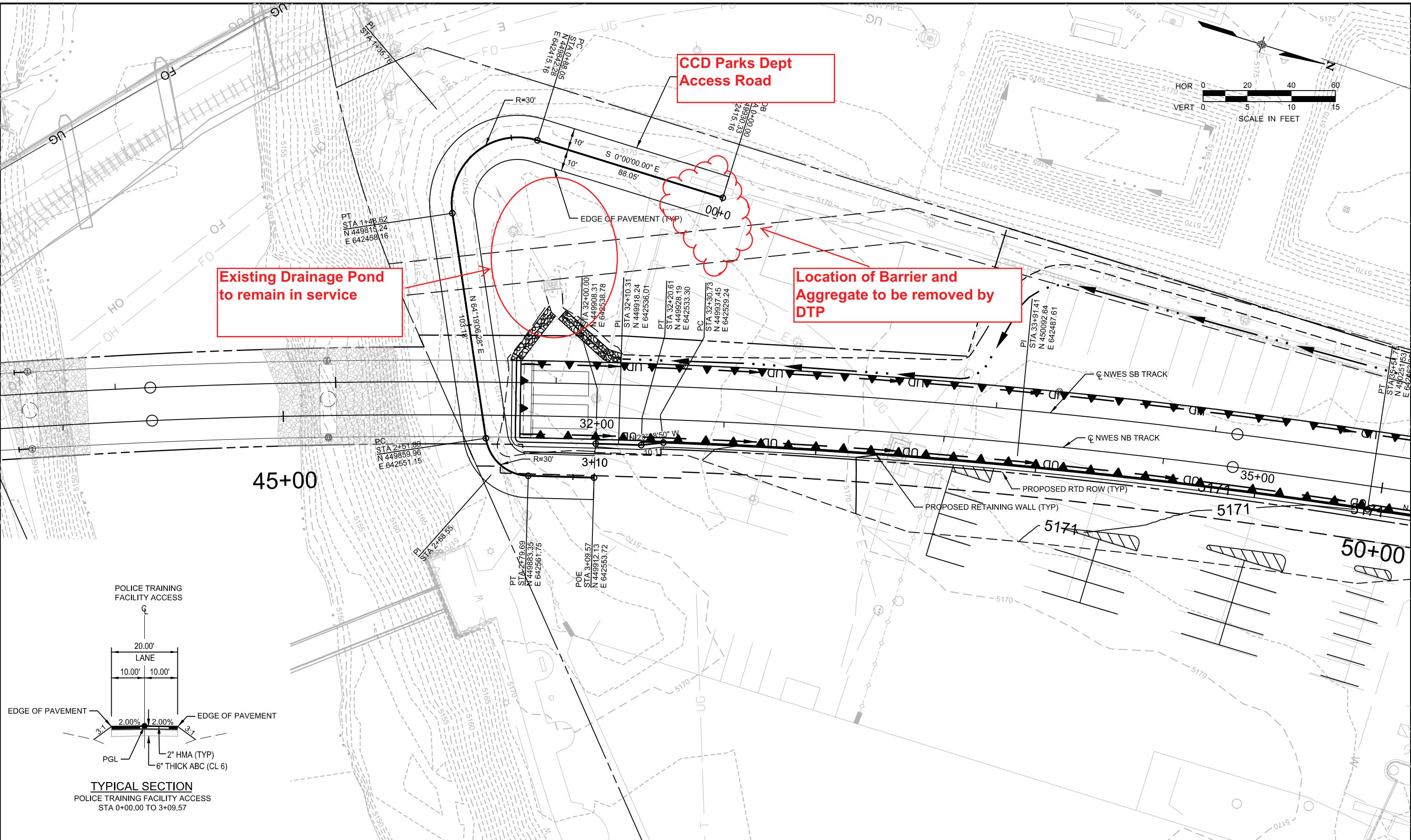


Photos of License Areas



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10/12/2012
USER: jpecora



NO.	REVISIONS	BY	DATE
0	DCN-FHDR-00161, SHEET ADDED	MTF	10/12/12

DESIGNED BY: MTF	DATE: 09/25/12	CHECKED BY:	DATE:
DRAWN BY: DMM	DATE: 09/25/12	APPROVED BY: CJB	DATE:

DENVER TRANSIT PARTNERS

NORTHWEST RAIL ELECTRIFIED SEGMENT
 SOUTH PLATTE RIVER ACCESS
 CIVIL PLAN
 POLICE TRAINING FACILITY ACCESS

SHEET REFERENCE NUMBER:
 CP-005

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Schedule 3

License Purpose

All as shown on Schedule 2:

1. Access for crane work and Precast bridge beam delivery for bridge beam erection.
2. Repair all areas damaged, including but not limited to asphalt, curb and gutter and fencing.
3. Remove all barriers and aggregate stockpiles currently located on the License Area.
4. Maintain capacity of existing detention pond.
5. Construct permanent paved, 20 foot wide access road under the new bridge structure (approximately 310 feet long).