

12-105-A

**TEMPORARY EASEMENT**  
(Northwest-Gold Line Corridor/Fox St. Ponds)

**THE TEMPORARY EASEMENT** is granted \_\_\_\_\_, 201\_\_ 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 **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado ("RTD" or "Grantee").

A. Grantor is the owner of certain real property located in the City and County of Denver, Colorado, at generally Fox Street and Park Avenue.

B. Grantee, as part of RTD's FasTracks transit expansion plan approved by voters in November 2004, through its concessionaire Denver Transit Partners, is constructing Commuter Rail Transit services, lines, related stations, and maintenance facilities known as the Gold Line Corridor, the electrified segment of the Northwest Rail Corridor and a Commuter Rail Maintenance Facility partially located within the City ("Project"). A portion of the Project involves the construction of a bridge structure, tracks and other appurtenances ("RTD Facilities"), as shown on the construction plans titled Northwest Rail Electrified Segment 1A (NWES-1A) 60% Design Submittal Rev. B, dated November 3, 2011, ("Project Plans"), which Project Plans shall be approved by the City's Manager of Public Works prior to any work being done pursuant to this Temporary Easement thereto over and on a portion of the City property.

C. RTD desires and the City is willing to grant certain temporary rights relating to the City property for the RTD Facilities for the proposes and subject to the terms and conditions set forth herein.

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 the RTD Facilities as described in Project Plans, 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 RTD gives written notice to the City's Manager of Public Works that work will commence and will terminate eighteen (18) months from the commencement date. The term of this Temporary Easement may be extended for 3 additional 90 day periods by written approval of the Manager of Public Works. Upon expiration of the term and any extension thereof, RTD 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. Grantee acknowledges that the Property is subject to License dated August 26, 2002, from the City to Prospect Pipeline LLC for a water quality pond ("Pond B License"). Therefore, Grantor retains all rights necessary to comply with the terms of the Pond B License and Grantee shall not take any action hereunder to impair the functionality of Pond B and any rights under the Pond B License. Subject to the Pond B License, the Temporary Easement allows RTD, 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) operate construction equipment on the Property, and (d) perform any other work incidental to the construction of the Project.

4. RTD shall be responsible for maintenance of the pond and its appurtenances during construction and immediately prior to termination of this Temporary Easement.

5. This Temporary Easement is subject to, and RTD shall comply with, all terms of the Light Rail System Master Agreement dated March 25, 1993 and the Intergovernmental Agreement (Denver-RTD FasTracks Gold/NWES Corridor) dated June 20, 2011 between the City and RTD.

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

7. 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.

8. The Grantee shall not cause or knowingly 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 by the Grantee, Grantee's agents, employees, contractors, or invitees, or if the Property becomes contaminated in any manner due to the actions or inactions of the Grantee, Grantee's agents, employees, contractors, or invitees, 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, Grantee's agents, employees, contractors, or invitees. 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, Grantee's agents, employees, contractors, or invitees causes or knowingly 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.

9. 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.

10. 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.

11. 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; (b) the right to sell and convey the Property or any portion of it subject to the Temporary Easement; and (c) all rights necessary to comply with the Pond B License.

12. 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.

13. 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 RTD:                   Regional Transportation District  
                                  Manager of Real Property  
                                  1560 Broadway, Suite 700  
                                  Denver, Colorado 80202

With a copy to:               General Counsel  
                                  Regional Transportation District  
                                  1600 Blake Street  
                                  Denver, Colorado 80202

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

With copies to:               City Attorney's Office  
                                  201 W. Colfax, Department 1207  
                                  Denver, Colorado 80202

**14.** 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.

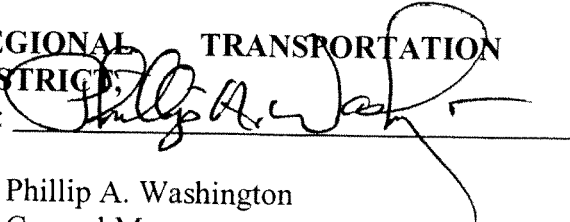
**15.** RTD has the right to assign its rights and obligations set forth in the Temporary Easement, upon the prior written approval of the Manager of Public Works. The Manager hereby approves assignment of this Temporary Easement to the Project concessionaire Denver Transit Partners .

**16.** The Temporary Easement, only during the term of this 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.


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

**REGIONAL TRANSPORTATION  
DISTRICT**

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

  
Phillip A. Washington  
General Manager

Approved as to Legal Form:

  
Lori L. Graham  
Associate General Counsel

**CITY AND COUNTY OF DENVER**

**ATTEST**

By: \_\_\_\_\_  
Debra Johnson,  
Clerk and Recorder, Ex-Officio  
Clerk of the City and County of Denver

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

**APPROVED AS TO FORM:**

Douglas J. Friednash,  
Attorney for the City and County of Denver

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

**“CITY”**

**Exhibit A**  
(Property Legal Description)

**REGIONAL TRANSPORTATION DISTRICT  
TEMPORARY CONSTRUCTION EASEMENT  
TO BE ACQUIRED  
FROM**

PARCEL NO. TCE-3 REV1  
STA. 35+ TO STA. 37+

CITY AND COUNTY OF DENVER  
3062 SOUTH FOX STREET  
DENVER, CO 80202

**FOR**

**CRMF SITE CORRIDOR COMMUTER RAIL PROJECT**



**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT NO. TCE-3 REV1**  
**Date: October 7, 2011**  
**DESCRIPTION**

Parcel No. TCE-3 REV1 of the RTD CRMF Site Corridor Commuter Rail Project being a tract of land being a portion of Lots 12 through 16, Block 3 of Gerspachs First Addition as filed for record on January 29, 1874 lying in the Southwest Quarter of Section 27, Township 3 South, Range 68 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

**COMMENCING** at the range point at West 31st Avenue and Fox Street (a plastic cap, LS 36062), **WHENCE** the range point at West 30th Avenue and Fox Street (a 3-1/4" aluminum cap in a range box, LS 36062) bears S00°00'42"E 439.94 feet (basis of bearing assumed);

**THENCE** S58°03'45"E a distance of 58.57 feet to a point on the easterly line of the Fox Street right of way as described in Ordinance 799-2005 and the **POINT OF BEGINNING**;

**THENCE** along the arc of a curve to the right, having a central angle of 3°03'54", a radius of 2180.14 feet, a chord bearing of S18°04'18"E a distance of 116.61 feet, and an arc distance of 116.62 feet;

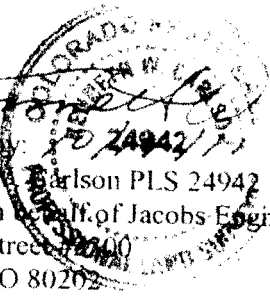
**THENCE** S16°32'21"E tangent with the last described curve a distance of 3.38 feet;

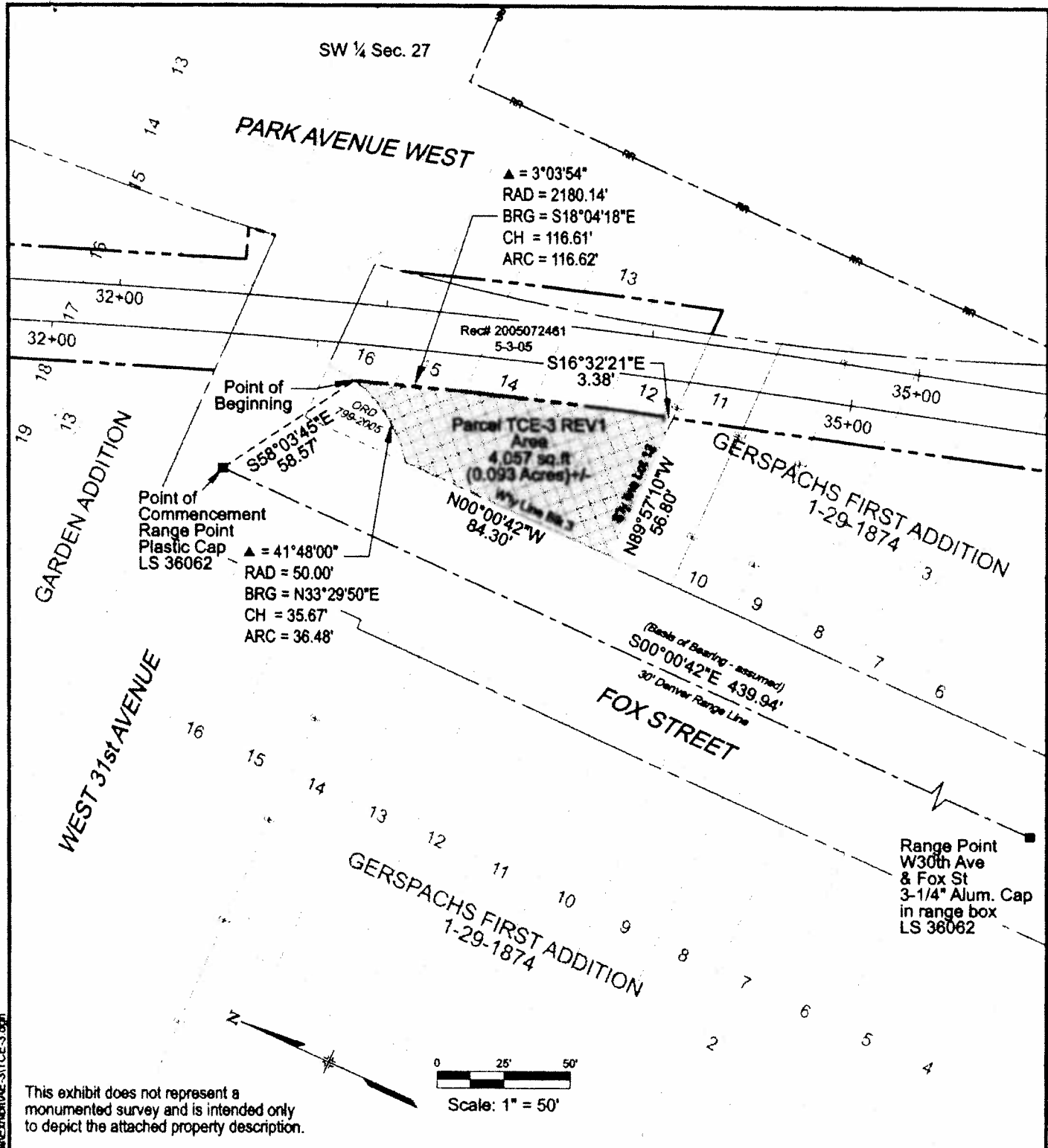
**THENCE** N89°57'10"W coincident with the southerly line of said Lot 12 a distance of 56.80 feet;

**THENCE** N00°00'42"W, coincident with the westerly line of said Block 3, non-tangent with the following described curve a distance of 84.30 feet to the most southerly corner of said Ordinance 799-2005;

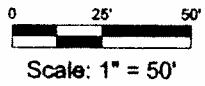
**THENCE**, coincident with said easterly right of way line and coincident with the easterly line of said Ordinance 799-2005, along the arc of a curve to the left, having a central angle of 41°48'00", a radius of 50.00 feet, a chord bearing of N33°29'50"E a distance of 35.67 feet, and an arc distance of 36.48 feet to the **POINT OF BEGINNING**.

Containing 4,057 square feet, (0.093 Acres), more or less.

  
*Kenneth V. Carlson*  
Prepared by: Kenneth V. Carlson PLS 24942  
For and on behalf of Jacobs Engineering Group, Inc.  
707 17<sup>th</sup> Street  
Denver, CO 80202  
303.820.5240



This exhibit does not represent a monumented survey and is intended only to depict the attached property description.



JACOBS PROJECT NO.		WXW7411	
CLIENT PROJECT NO.			
REVISION DESCRIPTION		10-07-11 - Revised Description	
DRAWN	jsk	DATE	9-13-11
		SCALE	1"=50'
<b>JACOBS</b>			
707 17th Street, Suite 2300, Denver CO 80202 (303) 820-5240 Fax (303) 820-5798			
THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY JACOBS ENGINEERING GROUP INC. FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF JACOBS ENGINEERING GROUP INC. SHALL BE AT THE SOLE RISK OF THE USER.			

<b>PARCEL TCE-3 REV1</b> City & County of Denver SW ¼ Section 27, T3S, R68W, 6th P.M.		
TITLE:		
<b>FasTracks</b> <b>CRMF</b>		
REVISION:	DRAWING NO.	SHEET NO.
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