

## LAND AND EASEMENT CONVEYANCE AND DRAINAGE AGREEMENT

**THIS LAND AND EASEMENT CONVEYANCE AND DRAINAGE AGREEMENT** (this "**Agreement**") is made and entered into the date on the City's signature page (the "**Effective Date**"), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city (the "**City**"), **BROADWAY STATION PARTNERS LLC**, a Delaware limited liability company ("**BSP**"); **BSP EAST, LLC**, a Delaware limited liability company ("**BSP East**") and **BROADWAY STATION METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado operating within the City (the "**District**"). City, BSP, BSP East and the District are referred to collectively herein as the "**Parties**" or singularly, as a "**Party**."

### Recitals

This Agreement is made with respect to the following facts:

A. BSP East is the owner of certain real property located approximately three miles south of downtown Denver and immediately adjacent to the I-25 & Broadway light rail station (the "**Site**"). The Site is bounded by Interstate 25 on the north, West Mississippi Avenue on the south, South Broadway on the east, and Vanderbilt Park on the west. The northern end of the Site contains a parcel commonly referred to as the "**Swis Tire Parcel**."

B. As master developer, BSP seeks to develop the Site as a high quality, mixed- use transit-oriented development that will be strategically located and planned as a vibrant hub of Denver's city life (the "**Development**").

C. The City's Development Review Committee ("**DRC**") has approved an Infrastructure Master Plan ("**IMP**") for the Site, which IMP is on file with the City Clerk at City Clerk File No. 2016-0236. The IMP is the guiding document of needed infrastructure to serve development on the Site.

D. The City and BSP have entered into an Agreement Concerning Environmental Standards, Open Space, Vested Rights, and Horizontal Infrastructure Design and Construction (the "**Development Agreement**"), which Development Agreement was approved by the Denver City Council on June 20, 2016 and is recorded in the real property records of the City and County of Denver at Reception No. 2016086857.

E. The IMP contemplates that the portion of West Kentucky Avenue that is located within the Swis Tire Parcel as shown on the IMP will be realigned ("**Realigned Kentucky Avenue**") in conjunction with the City's proposed future improvements to South Broadway known as the "**Gap Project**." The City desires an easement for the area of the Realigned Kentucky Avenue.

F. The City owns and has designated as a park, an area known as Vanderbilt Park East (“**VP East**”). The City also owns a parcel of land which is not a designated park adjacent to the Site referred to herein as the “**Hockey Stick Parcel**”, which Hockey Stick Parcel is approximately 0.5 acres and is depicted and legally described on **Exhibit A**.

G. Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement refer to the IMP drainage concept that includes VP East and the Hockey Stick Parcel and contemplate the location of a regional detention and water quality pond and associated storm drainage facilities in VP East subject to a subsequent written agreement between BSP and the City, and approval by City Council.

H. The Parties desire to enter into this Agreement to provide for (1) conveyance by BSP East to the District of the property that will contain Realigned Kentucky Avenue; (2) conveyance by the District to the City of an easement for the area that will contain Realigned Kentucky Avenue; and (3) conveyance from the City to BSP or its designated assignee of the Hockey Stick Parcel, all in accordance with the provisions of this Agreement.

I. The Parties further acknowledge that BSP, the City and the District currently are working with the Denver Urban Renewal Authority (“**DURA**”) to finalize a tax increment financing package (the “**TIF Package**”) related to the Development and that certain components of the TIF Package need to be approved by the Denver City Council. The Parties contemplate that the value to the City of this transaction will be treated as a developer advance to be reimbursable to District as part of the TIF Package.

J. With regard to the regional detention and water quality pond and associated storm drainage facilities within VP East, this Agreement also is intended to serve as the written agreement contemplated by Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement.

### **Agreement**

NOW THEREFORE, in consideration of the foregoing, the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. Conveyance of Land Underlying Easement Area**

A. BSP East agrees to convey to the District that portion of the Swis Tire Parcel required by the City for Realigned Kentucky Avenue as legally described on **Exhibit B** attached hereto and made a part hereof (the “**Easement Land**”). The consideration for the conveyance is set forth in Section 6.

B. BSP East shall convey the Easement Land within ninety (90) days after the City Council’s final approval of the TIF Package (the “**Easement Land Conveyance Date**”).

C. Within thirty (30) days after the City Council’s final approval of the TIF Package, BSP East will provide the District and the City concurrently all of the environmental

reports in its possession regarding the Easement Land. In addition, upon request from the District, BSP East will provide access to the Easement Land so that the District may conduct Phase I and Phase II environmental site assessments to evaluate the environmental condition of the Easement Land. The District will provide to the City copies of any data and/or reports related to the environmental condition of the Easement Land within fifteen (15) days of receipt.

D. In addition to the environmental review described above, the District shall have the right to inspect the physical condition of the Easement Land at the District's sole expense.

E. Within thirty (30) days after the City Council's final approval of the TIF Package, BSP East shall deliver to the District and the City concurrently true copies of all lease(s) and survey(s) in BSP's possession pertaining to the Easement Land. In addition, BSP shall disclose to the District all easements, liens or other title matters not shown by the public records of which BSP East have actual knowledge. The District shall have the right to inspect the Easement Land to determine if any third party has any right in the Easement Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

F. Within thirty (30) days after the City's approval of the TIF Package, BSP East shall provide the District and the City with title commitments for the Easement Land and copies of exception documents shown thereon.

G. The District acknowledges that Hazardous Materials exist within and underlying the Easement Land as of the Easement Land Conveyance Date ("**Existing Contamination**") and agrees to continue the semi-annual monitoring and operation of the Environmental Systems on and after the Easement Land Conveyance Date to the extent required under the Voluntary Cleanup Plan related to the Easement Land listed in **Exhibit D**, which incorporate that certain Materials Management Plan dated October 5, 2015 ("**MMP**"), ("**VCUP**") until a no further action determination ("**NAD**") is issued by Colorado Department of Public Health and Environment ("**CDPHE**"). The VCUP related to the Easement Land shall not be amended without approval from CDPHE and shall require no less stringent cleanup of the property within and underlying the Easement Land than is required under the current VCUP for the Easement Land.

H. The District shall provide a copy of any request for amendment or modification to the VCUP to BSP, BSP East and the City Manager of Environmental Health at or prior to the time of submittal to CDPHE. If the VCUP is not completed and a NAD is not received, the District shall be responsible for remediation of the property underlying the Easement Land to standards required under the current VCUP. The District's obligations under this section are subject to adequate funding and appropriation.

I. BY PROCEEDING TO AND CLOSING THE CONTEMPLATED TRANSACTION, THE DISTRICT EXPRESSLY AGREES THAT IT IS PURCHASING THE EASEMENT LAND IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS, AND THAT THE DISTRICT MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE EASEMENT LAND WHATSOEVER, AND THE DISTRICT FURTHER AGREES THAT

NEITHER BSP NOT BSP EAST SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE EASEMENT LAND AND SHALL NOT BE BOUND IN ANY MANNER BY GUARANTEES, PROMISES, PROJECTIONS, OPERATING STATEMENTS, SET-UPS, OR OTHER INFORMATION PERTAINING TO THE EASEMENT LAND, MADE, FURNISHED, OR CLAIMED TO HAVE BEEN MADE OR FURNISHED, BY BSP, BSP EAST OR ANY OTHER PERSON OR ENTITY, INCLUDING ANY EMPLOYEE, AGENT, AFFILIATE, ATTORNEY, OR ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT BSP OR BSP EAST, WHETHER VERBALLY OR IN WRITING. THE DISTRICT SHALL BE RESPONSIBLE FOR INVESTIGATING, AT ITS OPTION, THE EASEMENT LAND, AS PROVIDED FOR UNDER THE TERMS OF THIS AGREEMENT, AND SHALL NOT RELY ON ANY REPRESENTATION, WARRANTY, AND STATEMENT OR DUE DILIGENCE DOCUMENT PROVIDED BY BSP OR BSP EAST.

J. The District, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the Benefitted Parties (defined below) as defined below, from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys' fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages (defined below) and Environmental Matters (defined below), whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from, out of or as a result of the environmental conditions or the presence of any Hazardous Materials (defined below) at, on, in, under, upon, about, beneath or emanating from the Easement Area.

1. "Benefitted Party" and collectively, the "**Benefitted Parties**" shall mean BSP, BSP East, Broadway Mississippi Development, LLC, Santa Fe Real Estate Holdings LLC, The Gates Corporation, Air Distribution Technologies, Inc. (formerly known as Tomkins Corporation), The Blackstone Group, L.P., Canadian Pension Plan Investment Board, Onex Corporation, and the current and former officers, trustees, directors, shareholders, employees, advisors, managers, members and affiliates of any of them, and their respective successors and assigns.

2. "**Damages**" shall mean and include the following: (a) losses, costs, expenses, damages or liabilities resulting from any personal injury claims relating to any Environmental Matter; and/or (b) direct and proximate losses, liabilities, costs, expenses and claims, arising from requirements or obligations under Environmental Laws, including without limitation; (i) the cost of remediation of an environmental condition, including reasonable engineering, consultant, expert, and legal costs; (ii) costs associated with any order or request from a governmental agency relating to the environmental condition of the Easement Land, including reasonable engineering, consultant, expert, and legal costs; (iii) costs incurred in defending any third party action for reimbursement or contribution relating to the environmental condition of the Easement Land, including reasonable engineering, consultant, expert, legal and court costs; and (iv) any other costs

incurred as a result of an order issued or requirement imposed by a governmental agency or officer relating to an Environmental Matter.

3. “**Environmental Laws**” shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251 et seq.), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401 et seq.), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802 et seq.), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, including but not limited to Colorado Revised Statutes, Title 25, Articles 15 and 18, as now or hereafter amended, and (x) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the pollution, protection of the environment or the use, storage, discharge or disposal of Hazardous Materials.

4. “**Environmental Matters**” shall mean and include any condition, claim, cost, order, demand, requirement or liability either (i) related to the Easement Land and regulated or arising under any Environmental Law, or (ii) caused by or relating to any Hazardous Materials or environmental contamination at, on, in, under, upon, about, beneath or emanating from Property, including without limitation underground storage tanks.

5. “**Hazardous Materials**” shall mean and include any toxic or hazardous wastes, substance, product matter, material, waste, solid, liquid, gas, or pollutant, the generation, storage, disposal, handling, recycling, release, treatment, discharge, or emission of which is regulated, prohibited, or limited under any Environmental Law, and shall also include, without limitation: (i) gasoline, diesel, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum products or hydrocarbons including any additives or other by-products associated therewith, (ii) asbestos and asbestos-containing materials in any form, and (iii) lead-based paint, radon or polychlorinated biphenyls.

K. The Easement Land shall be conveyed subject to the existing lease between BSP East and Nebraskaland Tire, Inc. (the “**Lease**”). BSP East shall have the right to continue operating and receiving the revenues from the Lease until the District notifies BSP East that it has received the Conveyance Notice under the Easement. At such time, BSP East shall terminate the Lease and shall vacate and cause the tenant under the Lease to vacate the Easement Land and the building on the Easement Land. Should there be any delay in the tenant vacating the Easement Land or the building on the Easement Land, the Easement Land Conveyance Date shall be extended for the number of days of such vacation delay. BSP East shall use diligent

efforts in seeking to cause the tenant to vacate the Easement Land, including pursuing eviction proceedings, if necessary.

## 2. **Easement for Realigned Kentucky Avenue**

A. The District agrees to convey to the City a permanent easement (the “**Easement**”) for Realigned Kentucky Avenue across that portion of the Swis Tire Parcel required by the City for Realigned Kentucky Avenue as legally described on **Exhibit B** attached hereto and made a part hereof (the “**Easement Area**”). The Easement will be in the form attached as **Exhibit C** hereto and made a part hereof. The consideration for the conveyance is set forth in Section 4. In addition, at any time after the District conveys the Easement, BSP East shall, within thirty (30) days after request from the City Department of Public Works, grant to the City, at no cost to the City, a temporary construction easement (“TCE”) for construction staging and other purposes along the southern and western edges of the Easement Area. The TCE shall be no greater than ten (10) feet wide, and legal descriptions of the TCE will be defined at a later date. The TCE shall have a duration of one year.

B. The District will convey the Easement within one hundred and eighty (180) days after the City provides written notice to the District and BSP (the “**Conveyance Notice**”) that it desires to acquire the Easement (the “**Easement Conveyance Date**”). The Conveyance Notice, to be valid, must be accompanied by a certificate of non historic status issued by the Denver Landmark Preservation Commission for the building located within the Easement Area (the “**Certificate**”). As a condition precedent to the District’s obligation to convey the Easement, BSP shall have conveyed the Easement Land to the District. In addition, if the City Council has not approved the TIF Package by December 31, 2017, the District shall have no further obligation to convey the Easement. In such event, the District shall, on or before January 31, 2018, reconvey the Easement Land to BSP, this Agreement shall terminate, and the Parties shall have no further obligation hereunder.

C. The purpose of the Easement will be as set forth in the form of Easement attached as **Exhibit C** (the “**Project**”).

D. Upon receipt of the Conveyance Notice, BSP East shall provide notice to the tenant under the Lease terminating the Lease, if such Lease has not been previously terminated.

E. Within thirty (30) days after the Conveyance Notice, BSP East and/or the District will provide the City with all of the environmental reports in their possession regarding the Easement Area. In addition, upon request from the City, the District will provide access to the Easement Area so that the City may conduct Phase I and Phase II environmental site assessments to evaluate the environmental condition of the Easement Area.

F. In addition to the environmental review described above, the City or its designee shall have the right to inspect the physical condition of the Easement Area at the City's sole expense.

G. Within thirty (30) days after the Conveyance Notice, BSP East and/or the District shall deliver to the City true copies of all lease(s) and survey(s) in BSP East’s or the

District's possession pertaining to the Easement Area. In addition, BSP and/or the District shall disclose to the City all easements, liens or other title matters not shown by the public records of which BSP East or the District have actual knowledge. The City shall have the right to inspect the Easement Area to determine if any third party has any right in the Easement Area not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

H. Within thirty (30) days after the Conveyance Notice, the District shall provide the City with a title commitment for the Easement Area and copies of exception documents shown thereon.

I. At least thirty (30) days prior to the Easement Conveyance Date (the "**City Objection Date**"), the City's Executive Director of Public Works shall provide written notice of unmerchantability of title, any matter disclosed by the survey or title commitment for the Easement Area that is not acceptable to the City, or any environmental condition or any other matter disclosed by the inspection under Section 2 (F) through (G) above that is not acceptable to the City in its reasonable discretion. If the District does not receive the City's notice by the City Objection Date, the City shall be deemed to have accepted the condition of the Easement Area. If the District receives notice of any unsatisfactory condition(s) by the City Objection Date, the District shall may, but shall not be obligated to, correct said unsatisfactory condition(s) within the period ending fifteen (15) days prior to the Easement Conveyance Date (the "**Easement Cure Period**"). The District may extend the Easement Cure Period and the Easement Conveyance Date for up to thirty (30) days in order to correct any such conditions. The District shall be obligated to remove any monetary liens encumbering the property. If the District does not correct said unsatisfactory condition(s) by the end of the Easement Cure Period, the City may, in its sole discretion, elect to proceed to accept the Easement or extend the Easement Conveyance Date to allow for the District to correct the defects. If the District does not cure the condition, the City may elect not to proceed to accept the Easement, in which event the Parties shall negotiate in good faith to agree upon some alternative performance by the District that provides consideration to the City similar to the conveyance of the Easement Area.

J. On the Easement Conveyance Date, all improvements on the Easement Area shall have been removed and the Easement Area shall be free of structures or obstructions. All demolition work on the Easement Area shall be performed by the District or BSP East. The City shall cooperate with the District and BSP East in their efforts to obtain demolition and other permits for any such demolition and in obtaining approvals from utility providers to disconnect any utilities from the improvements.

K. With regard to the Certificate, BSP, BSP East and the District will cooperate with the City in its efforts to obtain the Certificate but shall have no responsibility for preparing any reports or other background documents associated with the City's efforts to obtain the Certificate. The District or BSP East shall provide the City access to the Easement Area to take photographs and otherwise prepare the application for the Certificate. The District, BSP East and BSP shall assist the City in preparing the application for the Certificate by providing all documents in their possession related to the certificate application process and or required application materials for the building located on the Easement Area, and signing all applications

necessary to request the Certificate and attending meetings or hearings if the applicant's presence is necessary or required at such meeting or hearing.

L. The City acknowledges (i) that the compounds of concern (“COCs”) identified in soil for remediation under the VCUP for the Easement Area include, but are not limited to, total petroleum hydrocarbons and trichloroethene and its daughter products and residual LNAPL; and (ii) the VCUP does not contemplate that soil excavation will be required for the property within or underlying the Easement Area to address COCs in soils, bedrock or groundwater. However, the City also acknowledges that the VCUP incorporates the MMP to be implemented during subsurface demolition and redevelopment activities both within and outside such remediation areas in the VCUP parcels, including the property within and underlying the Easement Area. Accordingly, the City hereby grants access to the Easement Area to the District and its officers, employees, agents, contractors, and subcontractors during the City's construction of improvements on the Easement Area to implement the MMP in accordance with the procedures set forth in **Exhibit E** as attached hereto and incorporated herein by reference (“**Remediation Procedures**”). In addition, following the City's final completion of the improvements on the Easement Area, the District shall continue to comply with the VCUP, MMP, NADs, and all other requirements of CDPHE relating to any Existing Contamination within the Easement Area and the property within and underlying the Easement Area. The City shall not be liable for and the District hereby releases claims against the City and its officers and employees arising out of (i) any environmental conditions existing on the District's property adjacent to the Easement Area and in the property within and underlying the Easement Area unless introduced or caused after the Easement Conveyance Date by the City or its officers, employees, agents, contractors, or subcontractors; (ii) any Existing Contamination within and under the Easement Area; and (iii) ongoing obligations of BSP, BSP East or the District with respect to Existing Contamination hereunder, except to the extent such claims arise out of (ii) or (iii) result from the negligence or willful misconduct of the City, or its officers, employees, agents, contractors, or subcontractors or their violation of the requirements of the Remediation Procedures, or any other obligations of the City under this Agreement or the Easement Area. However, except as set forth herein in relation to the City and its officers and employees, nothing in the foregoing shall be construed to release or limit any claims or causes of action the District may have against the City's agents, contractors, or subcontractors, licensees, permittees, invitees, or other parties acting under authority of the City, trespassers, or other third parties arising out of their use, occupancy, or activities in, on, or near the Easement Area. To the extent further remedial activities by the District within the property underlying the Easement Area are required for compliance with this Agreement or Environmental Laws after final completion of the Project, the City agrees to cooperate with the District in obtaining such access in accordance with City regulations. The District's obligations under this section are subject to adequate funding and appropriation.

M. The District or BSP currently owns and operates a bioremediation system and appurtenances (“**Bioremediation System**”), monitoring wells and point of compliance wells (collectively the Bioremediation System, monitoring wells and point of compliance wells are “**Environmental Systems**”) pursuant to the VCUP. The District will continue to own and operate the Environmental Systems following the Easement Area Conveyance Date. The City agrees to the District reserving, in the Easement Area, the right to own, operate, maintain, repair, and replace the Environmental Systems. The District through the Easement grants the City the



right to conduct Project work in relation to the remaining portions of the Environmental Systems, subject to measures to protect the Environmental Systems (the “**Well Protection Specifications**”). The District and the City shall cooperate to prepare mutually agreeable Well Protection Specifications prior to commencement of soil disturbing activities pursuant to the Easement and any changes thereto. Such Well Protection Specifications shall be substantially similar to the specifications attached as **Exhibit F**, subject to site-specific revisions mutually agreeable to the District and the City. The City shall be responsible for causing its contractors to implement the measures shown on the Well Protection Specifications to protect the Environmental Systems and cause its contractors to promptly repair damage to the Environmental Systems caused by the City or its employees, officers, agents, contractors, or subcontractors, and cause its contractors to cleanup any release of Hazardous Materials caused by such damage in accordance with Environmental Laws (“**Damage Cleanup**”). In the event of any such damage to the Environmental Systems, the City shall immediately notify the District, who shall provide specifications for such repair and Damage Cleanup and shall have the right to monitor such repair and Damage Cleanup. If the City’s contractors do not to commence such repair and Damage Cleanup, or does not commence such repair and Damage Cleanup within a reasonable time given the nature of the repair or Damage Cleanup, the District may perform such repair and Damage Cleanup and the City shall cause its contractor to reimburse the District for the reasonable costs thereof. The District’s obligations under this section are subject to adequate funding and appropriation.

N. The City, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the District, its directors, officers, employees, consultants and attorneys from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys’ fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages and Environmental Matters, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from the City’s use of the Easement Area as a roadway, or as a result of the environmental conditions or the presence of any Hazardous Materials at, on, in, under, upon, about, beneath or emanating from the Easement Area, except to the extent resulting from the District’s failure to fulfill its obligations set forth in **Exhibit E** hereto.

### 3. **Hockey Stick Parcel**

A. In exchange for conveyance to the City of the Easement as described in Section 2(A) above, the City shall convey to BSP or its designated assignee the Hockey Stick Parcel. Such conveyance shall be subject to the following conditions:

(i) At any time after the Effective Date, BSP may provide written notice to the City of its election to acquire the Hockey Stick Parcel. Within ninety (90) days after receipt of a written notice from BSP, and provided that all prerequisites to such conveyance as set forth in subsections (ii) through (vi) below are satisfied or are waived, the City shall convey the Hockey Stick Parcel to BSP or its designated assignee by quitclaim deed subject to

only those exceptions acceptable to BSP and subject to the BSP election set forth in subsection (v) below. The date for conveyance is referred to herein as the "**Hockey Stick Parcel Closing Date.**"

(ii) Upon request from BSP, the City will provide access to the Hockey Stick Parcel so that BSP may conduct any Phase I update or further Phase II environmental site assessment to evaluate the environmental condition of the Hockey Stick Parcel and shall cooperate with BSP if BSP elects to seek a NAD from CDPHE for such parcel prior to conveyance. BSP will coordinate any such environmental site assessments with the City's Department of Environmental Health. The City will take no action subsequent to the Effective Date that results in the introduction of new environmental contamination on the Hockey Stick Parcel.

(iii) In addition to the environmental review described in subsection (i) above, BSP shall have the right to inspect the physical condition of the Hockey Stick Parcel at BSP's sole expense.

(iv) Within ten (10) days after BSP's notice in Section 3(A)(i) above, the City shall deliver to BSP true copies of all lease(s) and survey(s) in the City's possession pertaining to the Hockey Stick Parcel and shall disclose to BSP all easements, liens or other title matters not shown by the public records of which the City has actual knowledge. BSP shall have the right to inspect the Hockey Stick Parcel to determine if any third party has any right in the Hockey Stick Parcel not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

(v) BSP may order a title commitment for the Hockey Stick Parcel for BSP's review.

(vi) Written notice from BSP of unmerchantability of title, any matter disclosed by the survey or title commitment for the Hockey Stick Parcel that is not acceptable to BSP, any environmental condition of the Hockey Stick Parcel, or any other matter disclosed by BSP's review of the title commitment that is not acceptable to BSP in its reasonable discretion shall be given to the City at least forty-five (45) days prior to the Hockey Stick Parcel Closing Date. If the City does not receive BSP's notice by such date, BSP shall be deemed to have accepted the condition of the Hockey Stick Parcel. If the City receives notice of any unsatisfactory condition(s), the City may, in its sole discretion, correct such unsatisfactory condition(s) within the period ending fifteen (15) days prior to the Hockey Stick Parcel Closing Date (the "**Hockey Stick Parcel Cure Period**"). The City may extend the Hockey Stick Parcel Cure Period and the Hockey Stick Parcel Closing Date for up to thirty (30) days in order to correct any such conditions. The City shall be obligated to remove any monetary liens encumbering the Hockey Stick Parcel. If the City does not correct such unsatisfactory condition(s) by the end of the Hockey Stick Parcel Cure Period, BSP may, in its sole discretion, elect to proceed to closing or extend the Hockey Stick Parcel Closing Date to allow for the City to correct the defects. If the condition is not cured by the City, BSP may elect not to proceed to closing, in which event the City and BSP shall negotiate in good faith to agree upon some alternative performance by the City that provides consideration to BSP similar to the conveyance of the Hockey Stick Parcel.

O. The City does not make, has not made, and specifically disclaims any representation or warranty, express or implied, regarding: (i) any Hazardous Materials or Environmental Matters at, on, under, or about the Hockey Stick Parcel; or (ii) compliance or non-compliance of the Hockey Stick Parcel with Environmental Laws.

P. BY PROCEEDING TO AND CLOSING THE CONTEMPLATED TRANSACTION, BSP EXPRESSLY AGREES THAT IT IS PURCHASING THE HOCKEY STICK PARCEL IN AN “AS IS, WHERE IS” CONDITION, WITH ALL FAULTS, AND THAT THE CITY MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE HOCKEY STICK PARCEL WHATSOEVER, AND BSP FURTHER AGREES THAT THE CITY SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE HOCKEY STICK PARCEL AND SHALL NOT BE BOUND IN ANY MANNER BY GUARANTEES, PROMISES, PROJECTIONS, OPERATING STATEMENTS, SET-UPS, OR OTHER INFORMATION PERTAINING TO THE HOCKEY STICK PARCEL, MADE, FURNISHED, OR CLAIMED TO HAVE BEEN MADE OR FURNISHED, BY THE CITY OR ANY OTHER PERSON OR ENTITY, INCLUDING ANY EMPLOYEE, AGENT, AFFILIATE, ATTORNEY, OR ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT THE CITY, WHETHER VERBALLY OR IN WRITING. BSP SHALL BE RESPONSIBLE FOR INVESTIGATING THE HOCKEY STICK PARCEL, AS PROVIDED FOR UNDER THE TERMS OF THIS AGREEMENT, AND SHALL NOT RELY ON ANY REPRESENTATION, WARRANTY, AND STATEMENT OR DUE DILIGENCE DOCUMENT PROVIDED BY THE CITY.

Q. BSP acknowledges that the value of the Hockey Stick parcel accounts for potential Damages and Environmental Matters, and, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the City from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys’ fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages and Environmental Matters, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from, out of or as a result of the environmental conditions or the presence of any Hazardous Materials (defined above at, on, in, under, upon, about, beneath or emanating from the Hockey Stick Parcel).

#### **4. Agreements Regarding VP East Regional Detention and Water Quality Pond and Associated Storm Drainage**

A. The Parties acknowledge that this Agreement is intended to serve as the written agreement contemplated by Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement regarding regional detention and water quality pond and associated storm drainage facilities within VP East.

B. In addition to the requirements set forth in the IMP regarding detention and storm drainage facilities within VP East, the District agrees to meet the following requirements:

(i) The water surface area of Pond A shown on page 34 of the IMP shall not occupy more than 0.83 acres of the current VP East park property.

(ii) The graded slopes of Pond A shall not exceed a 3:1 H:V, Horizontal to Vertical ratio (excluding any inlet or outlet control structures that may require reinforced concrete retaining walls).

(iii) Any walls other than those associated with the inlet and outlet control structures of Pond A shall be prohibited within the portion of Pond A lying within VP East park property.

(iv) The design of Pond A shall require approval of the Department of Parks, the Department of Environmental Health and the Wastewater Division of the Department of Public Works and shall be designed to function with the remainder of the park and be aesthetically pleasing.

(v) Design and construction of Pond A will take into account the findings contained in the Phase II Environmental Site Assessment, Vanderbilt Park East, 800-898 South Santa Fe Drive, dated June 20, 2016, prepared by Stantec for the City and County of Denver.

(vi) The City will cooperate with BSP to work with CDOT to provide any necessary right-of-way permits or licenses associated with the pond outlet crossing beneath South Santa Fe Drive and into the South Platte River channel.

(vii) Maintenance of VPE and Pond A shall be in accordance with the Intergovernmental Agreement between the City and the District entered into in connection with the Development.

5. **Open Space.** The Parties acknowledge that Section 4 of the Development Agreement and the IMP address the open space requirements for the Site. Such open space will be shown as lots or tracts in the subdivision plats prepared for the Site, shall be owned and maintained by the District and shall be publicly accessible and usable.

## 6. **Valuation of Transactions**

A. The Parties acknowledge that BSP and the City have conducted appraisals of the Hockey Stick Parcel and the Easement Area. The Parties acknowledge that the net value to the City of this transaction is \$6,130,000.00 (the “**Transaction Value**”).

B. The Parties acknowledge that the Transaction Value will be considered a developer advance from BSP East to the District or its designee and will be reimbursable to BSP East by the District or its designee as a TIF eligible expense in accordance with the District’s agreement with DURA. The developer advance will be recognized at the time of conveyance of

the Easement Land from BSP East to the District, and will begin accruing interest on the date that BSP East provides notice to the City and the District that the Lease has been terminated and BSP East is no longer receiving income from the Lease, subject to approval of DURA in accordance with the provisions of the redevelopment agreement between the District and DURA.

**7. Cooperation Regarding Easement Relinquishment.** The City will cooperate with BSP East on a relinquishment ordinance to terminate the City's interests in Permanent Easement 121C, recorded in the real property records of the City and County of Denver on March 3, 2015 at Reception No. 2015026592, and, if such terminations occur, at the City's cost, remove the underlying roadway within those easements once the Kentucky realignment is in place. In addition, the City will assist BSP East in obtaining consent from the Regional Transportation District ("RTD") to relinquish RTD's access easement on West Kentucky Avenue recorded at Reception No. 9400000229.

**8. Environmental Remediation Contribution.** BSP will advance to the District and will cause the District to deposit the amount of Two Hundred Thousand and no/100 (\$200,000.00) to be used toward the cost of remediation of the lake in Vanderbilt Park and stabilization of the banks, upon the earlier to occur of the following: (1) completion of the Kentucky Bridge and sale of the southernmost parcel between the consolidated main line and the South Platte River, or (2) the sale by BSP to a third party of all or a portion of Block 11 (other than transfers of any portion of Block 11 to the District or the City). Such amount shall be placed in a dedicated City account may be used by the City for remediation of the Vanderbilt Park lake and stabilization of the banks. The amount paid to the District hereunder will be considered a developer advance from BSP to the District and will be reimbursable to BSP by the District as a TIF eligible expense in accordance with the District's agreement with DURA.

## **9. General Provisions**

A. Time is of the Essence. It is understood and agreed between the parties that time is of the essence hereof; and all the agreements herein contained shall be binding upon and for the benefit of each Party's successors and assigns.

B. Default by City. A "breach" or "default" by the City under this Agreement shall be defined as the City's failure to fulfill or perform any material obligation of the City contained in this Agreement.

C. Default by BSP or BSP East. A "breach" or "default" by BSP or BSP under this Agreement shall be defined as BSP's or BSP East's failure to fulfill or perform any material obligation of BSP or BSP East, as the case may be, contained in this Agreement.

D. Default by the District. A "breach" or "default" by the District under this Agreement shall be defined as the District's failure to fulfill or perform any material obligation of the District contained in this Agreement.

E. Notices of Default; Cure Period. In the event of a default by a Party under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in Section 10, and the defaulting Party shall have thirty (30)

days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure.

F. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting Party shall have all remedies available at law or in equity, including an action for injunction and/or specific performance, but the Parties hereby waive the right to recover, to seek and to make any claim for damages for default under this Agreement, or for attorneys' fees or costs.

G. Authority to Execute. The Parties each represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind each Party.

H. Cooperation of the Parties. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement, the Parties shall reasonably cooperate in defending such action or proceeding, each to bear its own expenses in connection therewith. Unless the Parties otherwise agree, each Party shall select and pay its own legal counsel to represent it in connection with such action or proceeding.

I. Assignment. Except with regard to BSP's rights under Section 3A to designate an assignee to receive conveyance of the Hockey Stick Parcel, the rights and obligations under this Agreement may not be assigned to any entity without the prior written consent of the other Parties. If this Agreement is assigned, all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the respective parties. BSP and BSP East shall have the right to assign or transfer, without the prior written consent of the other Parties, all or any portion of its interests, rights and obligations under this Agreement to third parties acquiring an interest or estate in the Site, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Site, provided that to the extent BSP or BSP East assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of BSP's or BSP East's obligations under this Agreement by its assignee shall thereby relieve BSP or BSP East, as the case may be, of any further obligations under this Agreement with respect to the matter so assumed.

J. Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid, void or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, so long as each party receives substantially all the benefits contemplated in this Agreement and so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining.

K. When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach or default exists shall in no way impair or prejudice any right of remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of this Agreement shall be deemed or taken to be a waiver of any other default or breach.

L. Subject to Local Laws: Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and, except as otherwise specified, the Ordinances and regulations of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

M. Extensions: Amendments. Except as otherwise provided for herein, no prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. Except as otherwise provided for herein, no subsequent notation, renewal, addition, deletion, or other amendment to or termination of this Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties. City Council approval shall be required for amendments only if and to the extent required by the Charter.

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

O. No Third-Party Beneficiary. It is the intent of the Parties that no third party beneficiary interest, including, without limitation, the Benefitted Parties, is created in this Agreement except for an assignment pursuant to this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

P. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

Q. 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. All obligations of the District under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the Board of Directors of the District for the purposes of this Agreement.

R. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of any Party

hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

S. No Personal Liability. No elected official, director, officer, agent, manager, member or employee of the City, BSP, BSP East or the District shall be charged personally or held contractually liable by or to the other Parties under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

T. Conflict of Interest by City Officers. The City represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

U. Colorado Governmental Immunity Act. The Parties understand and agree that the City and the District are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

V. No Authority To Bind City To Contracts. BSP and BSP East lack any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.M.R.C.

W. No Discrimination In Employment. In connection with the performance of work under this Agreement, BSP, BSP East and the District agree 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 identity or gender expression, marital status, or physical or mental disability; and BSP, BSP East and the District further agree to insert the foregoing provision in all subcontracts pertaining to any public work.

X. Findings. The City hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the City.

Y. Further Assurances. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges under this Agreement.

Z. Police Powers. Except as expressly provided herein, nothing in this Agreement shall impair the City's exercise of its police powers.

10. **Notices.** Any notices, demands or other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, delivered by overnight courier service, or sent by certified mail, postage prepaid, return receipt requested, addressed to



the Parties at the addresses set forth below, or at such other address as any Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given at the time it is personally delivered, the next business day following being placed with any reputable overnight courier service for next business day delivery, or, if mailed, on the third business day after such mailing.

If to the City:

Mayor  
1437 Bannock Street, Room 350  
Denver, Colorado 80202

With copies to

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

Executive Director of Public Works  
201 W. Colfax, Dept. 608  
Denver, CO 80202

Chief Financial Officer  
201 W. Colfax, Dept. 1010  
Denver, CO 80202

Executive Director of Parks and Recreation  
201 W. Colfax, Dept. 601  
Denver, CO 80202

Executive Director of Community Planning  
and Development  
201 W. Colfax, Dept. 205  
Denver, CO 80202

Executive Director of Environmental Health  
200 W. 14<sup>th</sup> Ave  
Denver, CO 80204

If to BSP or BSP East:

BSP Denver, LLC  
2420 17th St., 3rd Floor  
Denver, CO 80202  
Attn: Dan Jacobs, Manager

With copies to:

Broadway Station Development Company  
2420 17th St., 3rd Floor Denver, CO 80202

Attn: Lisa Ingle, Development Project  
Manager

and:

Kaplan Kirsch & Rockwell  
Attn: Sarah M. Rockwell and  
Stephen H. Kaplan  
1675 Broadway, Suite 2300  
Denver, CO 80202

Broadway Station Metropolitan District  
No.1  
2420 17th St., 3rd Floor  
Denver, CO 80202  
Attn: Lisa Duker-Ingle, Dan Jacobs

and

Collins Cockrel & Cole  
390 Union Blvd. Suite 400  
Denver, CO 80228-1556  
Attn: Paul Cockrel

EXECUTED as of the Effective Date.

## **Exhibits**

- Exhibit A: Hockey Stick Parcel
- Exhibit B: Easement Land and Easement Area
- Exhibit C: Form of Permanent Easement
- Exhibit D: VCUP
- Exhibit E: Remediation Procedures
- Exhibit F: Well Protection Specifications

**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 \_\_\_\_\_



Vendor

Signatures

Already

Contract Control Number: FINAN-201736713-00

Contractor Name: Broadway Station Partners LLC

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

Attached  
to  
document

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_







**BROADWAY STATION PARTNERS, LLC,**  
a Delaware limited liability company

By:   m r z  

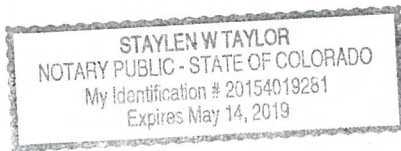
Title:   manager  

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF   Jefferson              )

The foregoing instrument was acknowledged before me this   6<sup>th</sup>   day of   September  , 2017, by   Daniel Jacobs  , as   Manager   of **Broadway Station Partners, LLC**, a Delaware limited liability company.

WITNESS my hand and official seal.

My Commission Expires:   14 May 19    
  [Signature]    
Notary Public





# EXHIBIT A

Page 1 of 3

## Parcel Known as the "Hockey Stick"

### LEGAL DESCRIPTION

A parcel of land situated in the Southwest one-quarter of Section 15, Township 4 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, being a portion of that parcel of land conveyed to the City and County of Denver in Deed Number 1238 of record in Book 2758 at Page 0162, and being all of that parcel of land conveyed to the City and County of Denver in Deed Number 4336 of record in Book 6006 at Page 0036, and being a portion of that parcel of land conveyed to the City and County of Denver in Deed Number 4336 of record in Book 6006 at Page 0035, and being a portion of that parcel of land conveyed to the City and County of Denver in Deed Number 1344 of record in Book 3501 at Page 0520, records of the Recorder's Office, City and County of Denver, and being more particularly described as follows:

**BASIS OF BEARINGS:** The North line of the Southwest one-quarter of Section 15, Township 4 South, Range 68 West of the Sixth Principal Meridian being monumented at the West one-quarter corner of said Section 15 by a recovered 3-1/2 inch aluminum cap stamped "Chichester, RLS 7735" and at the center one-quarter corner of said Section 15 by a recovered stone with a chiseled notch in a range box, with the line considered to bear South 89°59'03" West with all bearings hereon relative thereto.

**COMMENCING** at said West one-quarter corner of Section 15;

**THENCE** across said Southwest one-quarter of Section 15, South 57°11'12" East, a distance of 1,149.53 feet to the point of intersection of the West Right-of-Way line of S. Elati street (60 foot wide right-of-way) and the North Right-of-Way line of West Ohio Avenue (60 foot wide right-of-way) said point being the **POINT OF BEGINNING**;

**THENCE** along said North Right-of-Way line of West Ohio Avenue South 89°15'24" West, a distance of 135.02 feet to the Southeast corner of Lot 24, Block 2 as platted in Vanderbilt Park, in Book 9 at Page 24, Apahoe County records, and to the Easterly line of Ordinance No. 3, Series 1962, Valley Highway Dedication map, Unit No. 5;

**THENCE** the following four (4) courses along said Easterly line of Ordinance No. 3, Series 1962, Valley Highway Dedication Map, Unit No. 5;

1. North 00°44'33" West along the East line of Lots 21 through 24 inclusive of said Block 2 of Vanderbilt Park, a distance of 96.32 feet to the South line of Sylvester (excepted) as platted in said Vanderbilt Park;
2. South 89°49'48" West along said South line of Sylvester (excepted) a distance of 10.60 feet to the Southwest corner of said Sylvester (excepted);
3. North 00°14'09" West along the West line of said Sylvester (excepted) a distance of 0.33 feet to the Southeast corner of Lot 20, Block 2 of said Vanderbilt park;
4. North 21°30'21" West a distance of 294.47 feet to the South line of Lot 9 in said Block 2 of Vanderbilt Park (from whence the Southwest corner of said Lot 9 lies Westerly 20.00 feet) and to a Westerly corner of that parcel of land conveyed as Parcel 4A to Cherokee Denver, LLC by deed recorded at Reception Number 2001213022;

**THENCE** the following three (3) courses along the Westerly and Southerly lines of said Cherokee Denver, LLC parcel 4A:

# EXHIBIT A

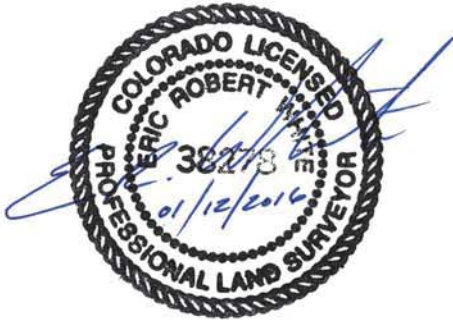
Page 2 of 3

1. South  $31^{\circ}43'33''$  East along the Easterly line of said City and County of Denver parcel of record in Book 6006 at Page 0035 a distance of 204.53 feet to the Southeast corner of Lot 16 and the Northeast corner of lot 17 of said Block 2, Vanderbilt Park;
2. South  $32^{\circ}00'28''$  East along the Easterly line of said City and County of Denver parcel of record in Book 6006 at Page 0036 a distance of 118.10 feet to said South line of Sylvester (excepted);
3. North  $89^{\circ}49'48''$  East along said South line of Sylvester (excepted) a distance of 83.42 feet to the Northeast corner of Lot 28 of said Block 2, Vanderbilt Park and to said Westerly Right-of-Way line of S. Elati Street;

**THENCE** departing said Westerly and Southerly line of the Cherokee Denver, LLC parcel and departing said South line of Sylvester (excepted) and along said Westerly Right-of-Way line of S. Elati Street, South  $00^{\circ}44'37''$  East, a distance of 94.97 feet to the **POINT OF BEGINNING**.

Said parcel contains an area of 21,378 square feet or 0.491 acres, more or less.

I, Eric R. White, a duly registered Land Surveyor under the laws of the State of Colorado, do hereby certify that this legal description was prepared by me or under my direct supervision and that it is correct to the best of my knowledge and belief. It is not to be construed, nor does it represent a monumented land survey.



Eric R. White  
Colorado Professional Land Surveyor, License Number 38278  
January 12, 2016

NV5, Inc.  
1975 Research Pkwy., Suite 165  
Colorado Springs, CO 80902  
Tel: (719) 268-8500

TIME:  
SERVER:  
XREFS:

DATE:  
PAGE SETUP:

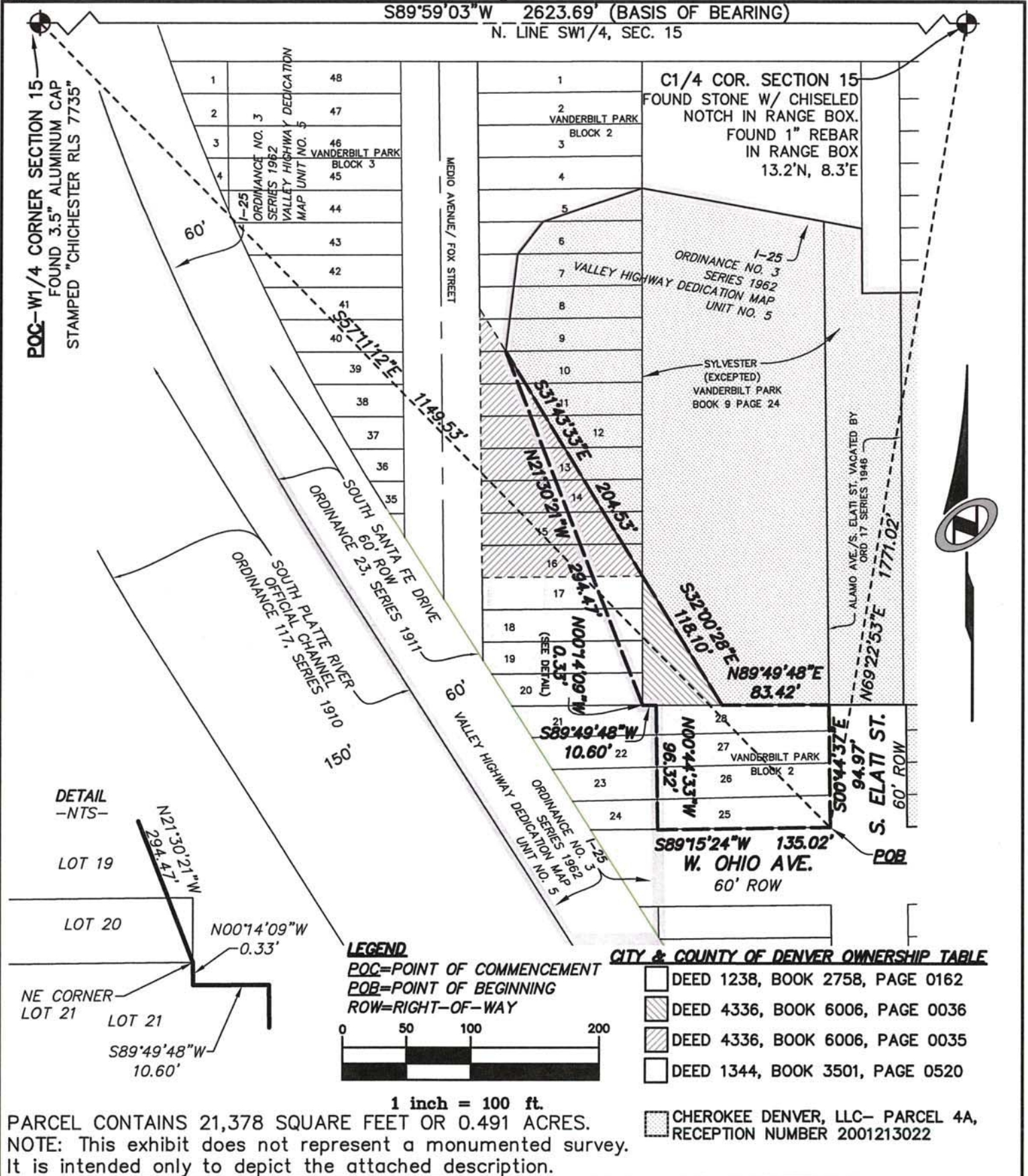
PATH:  
DRAWING NAME:

# EXHIBIT A

Page 3 of 3

S89°59'03"W 2623.69' (BASIS OF BEARING)

N. LINE SW1/4, SEC. 15



**N|V|5**  
BEYOND ENGINEERING

1975 RESEARCH PKWY, STE 165 COLORADO SPRINGS, CO  
719.288.8500 TEL 719.288.9100 FAX WWW.NV5.COM

**HOCKEY STICK PARCEL**  
SW1/4 Section 15, T4S, R68W of the 6th P.M.

Prepared for: Broadway Station Partners Date: Jan. 12, 2016

SHEET NUMBER  
**1**  
OF 1 SHEETS

JOB NUMBER  
223515-00008

**EXHIBIT "B"**  
**(PERMANENT EASEMENT)**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO; MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE EAST LINE OF SAID SOUTHWEST ONE-QUARTER OF SECTION 15; MONUMENTED ON THE NORTH END BY A FOUND ORIGINAL NOTCHED STONE WITH DIVOT ON TOP IN A RANGE BOX AND ON THE SOUTH END BY A FOUND 3-1/4" BRASS CAP IN RANGE BOX WITH MOSTLY ILLEGIBLE STAMPING AND "LS 19611" AND IS ASSUMED TO BEAR NORTH 00°44'36" WEST, 2647.74 FEET.

**COMMENCE** AT THE CENTER-SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 15, WHENCE THE SOUTH ONE-QUARTER BEARS SOUTH 00°44'36" EAST A DISTANCE OF 1323.66 FEET; THENCE NORTH 43°45'12" WEST, A DISTANCE OF 96.76 FEET TO A POINT ON THE EXTERIOR BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "PARCEL NO. 615C" IN RULE AND ORDER RECORDED ON OCTOBER 1, 2004 IN THE OFFICE OF THE CITY AND COUNTY OF DENVER CLERK AND RECORDER UNDER RECEPTION NUMBER 2004205973 AND THE **POINT OF BEGINNING**;

THENCE SOUTH 40°45'32" WEST, ALONG SAID EXTERIOR, A DISTANCE OF 39.97 FEET;  
THENCE NORTH 44°35'40" WEST, A DISTANCE OF 55.87 FEET;  
THENCE SOUTH 89°15'25" WEST, A DISTANCE OF 219.96 FEET TO A TANGENT 118.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTHERLY;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 68°56'09", AN ARC DISTANCE OF 141.97 FEET TO A POINT ON THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "GATES RUBBER PARCEL 1" IN SAID RULE AND ORDER AND A 224.50 FOOT RADIUS NON-TANGENT CURVE WHOSE CENTER BEARS NORTH 86°03'13" EAST;

THENCE ALONG SAID EAST LINE THE FOLLOWING 2 COURSES:

1. THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°47'17", AN ARC DISTANCE OF 22.68 FEET;
2. THENCE NORTH 01°52'11" EAST, A DISTANCE OF 67.27 FEET TO A POINT ON THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED RECORDED ON JULY 1, 1980 IN SAID RECORDS IN BOOK 2182 AT PAGE 294;

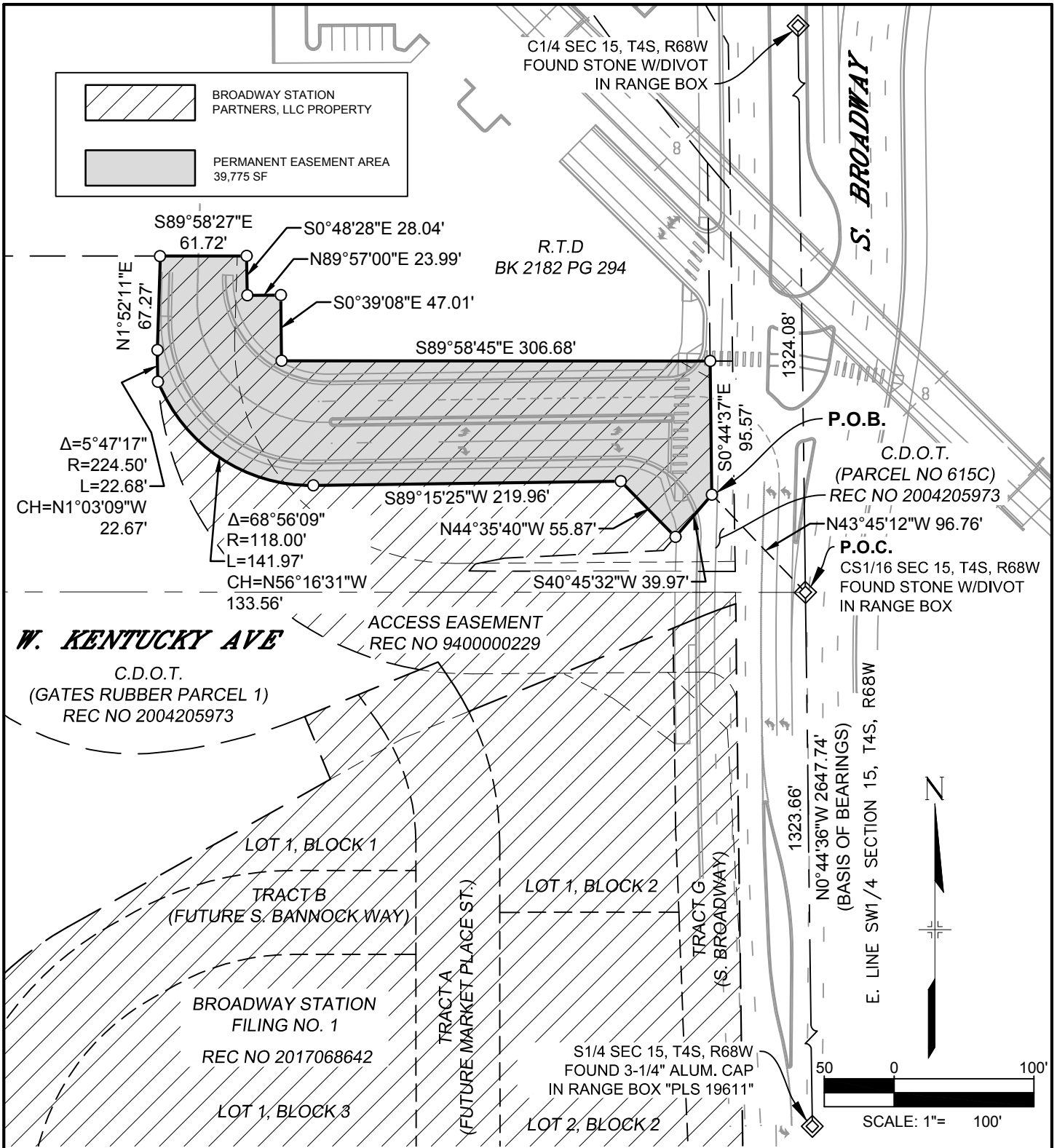
THENCE ALONG SAID SOUTH LINE THE FOLLOWING 5 COURSES:

1. THENCE SOUTH 89°58'27" EAST, A DISTANCE OF 61.72 FEET;
2. THENCE SOUTH 00°48'28" EAST, A DISTANCE OF 28.04 FEET;
3. THENCE NORTH 89°57'00" EAST, A DISTANCE OF 23.99 FEET;
4. THENCE SOUTH 00°39'08" EAST, A DISTANCE OF 47.01 FEET;
5. THENCE SOUTH 89°58'45" EAST, A DISTANCE OF 306.68 FEET TO A POINT ON THE PREVIOUSLY MENTIONED EXTERIOR OF "PARCEL NO 615C" IN SAID RULE IN ORDER;

THENCE SOUTH 00°44'37" EAST, ALONG SAID EXTERIOR, A DISTANCE OF 95.57 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 39,775 SQUARE FEET OR (0.91312 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.

JUSTIN A. CONNER, PLS 38421  
FOR AND ON BEHALF OF MATRIX DESIGN GROUP, INC.  
1601 BLAKE STREET, SUITE 200  
DENVER, CO 80202  
PH. (303)572-0200



AREA: 39,775 S.F. (0.91312 AC.)



1601 Blake Street, Suite 200  
 Denver, CO 80202 Phone  
 303-572-0200 Fax  
 303-572-0202

WEST KENTUCKY AVENUE  
 (PERMANENT EASEMENT)

**EXHIBIT B**

DRAWN BY:	JAC	DATE:	JUL 18, 2017
CHECKED BY:	MB	FILE NO.:	JN: 15.817.001

**Exhibit C**

**FORM OF PERMANENT EASEMENT**

(Swis Tire)

**THIS PERMANENT EASEMENT** (“Easement”) is granted this \_\_\_ day of \_\_\_\_\_, 201\_\_, from **Broadway Station Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Grantor”), to the **City and County of Denver**, a Colorado municipal corporation and home rule city (“Grantee”).

In consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants and conveys unto Grantee an exclusive, perpetual easement in, on, over, or through the easement area which is legally described and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference, and which is limited to the elevations shown on **Exhibit B**, attached hereto and incorporated herein (the “Easement Area”), which real property is located in the City and County of Denver, State of Colorado, for the purpose of the use and maintenance (including protection of monitoring wells and performance compliance wells owned and/or operated by Grantor or Broadway Station Partners, LLC (collectively “Environmental Systems”), operation, repair, replacement, or reconstruction of a road, curb, gutter, sidewalk, landscaping, utilities, and all appurtenances to such road (the “Improvements”) within the Easement Area and the dedication and use of the Easement Area as public right-of-way. Sheets depicting the Environmental Systems are attached hereto and incorporated herein as **Exhibit C**. The rights granted hereunder shall be subject to the supplemental requirements, attached hereto and incorporated herein as **Exhibit D**, and all applicable laws.

Except to the extent necessary to construct the Improvements, and as necessary to achieve the purposes of this Easement, and without limiting the extent that the Denver Revised Municipal Code requires adjacent property owners to maintain, repair, and replace improvements, Grantee shall cause the repair and/or restoration of any and all damage caused by Grantee, its agents, contractors, or subcontractors to the Easement Area during construction or replacement of the Improvements by Grantee, or on behalf of Grantee, including any damage to the Environmental Systems.

All obligations of the Grantee are subject to prior appropriation of monies expressly made by City Council and paid into the Treasury of the City. Grantee shall have all rights, privileges, and benefits necessary or convenient for the full use and enjoyment of the Easement Areas, subject to the terms of this Easement. Grantee shall not access any other property of Grantor without the prior written consent of Grantor.

Grantor reserves for itself and Broadway Station Partners, LLC, the right to own, operate, maintain, repair, and replace the Environmental Systems within the Easement Area, subject to the work contemplated by the Improvements. In addition, Grantor shall have the right to use and

enjoy the Easement Area, subject to the right. If allowed by, and if in full compliance with, the laws, rules, and regulations of the City and County of Denver, Colorado, and other entities having jurisdiction over the Easement Area, the Easement Area may be used for set-back, density, and open space purposes and for access to Grantor's remaining property. Grantor agrees not to otherwise build, create, construct, or permit to be built, created, or constructed, any obstruction, building, fence, or other structures over, under, on, or across the Easement Area without prior written consent of Grantee's Executive Director of Public Works. Nothing herein shall impair Grantee's police powers.

Grantor further understands and agrees that with respect to the Easement Area, all laws, ordinances, and regulations pertaining to streets, sidewalks, and public places shall apply so that the public use, and Grantor's and Grantee's obligations for repair, replacement, and maintenance of the Improvements and the Easement Area, are consistent with the use and enjoyment of any dedicated public right-of-way in the City and County of Denver, Colorado.

Grantee, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the District, its directors, officers, employees, consultants and attorneys from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys' fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages and Environmental Matters, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from the City's use of the Easement Area as a roadway, or as a result of the environmental conditions or the presence of any Hazardous Materials (defined below) at, on, in, under, upon, about, beneath or emanating from the Easement Area except to the extent resulting from the District's failure to fulfill its obligations set forth in **Exhibit F** of that certain Land and Easement and Drainage Conveyance Agreement between the District and Grantee dated as of [**insert date**] .

Grantee, further, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the Benefitted Parties (defined below) as defined below, from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys' fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages (defined below) and Environmental Matters (defined below), whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from, out of or as a result of the environmental conditions or the presence of any Hazardous Materials (defined below) at, on, in, under, upon, about, beneath or emanating from the Easement Area., whether prior to or after the date of this Easement.

1. "Benefitted Party" and collectively, the "Benefitted Parties" shall mean BSP,

Broadway Mississippi Development, LLC, Santa Fe Real Estate Holdings LLC, The Gates Corporation, Air Distribution Technologies, Inc. (formerly known as Tomkins Corporation), The Blackstone Group, L.P., Canadian Pension Plan Investment Board, Onex Corporation, and the current and former officers, trustees, directors, shareholders, employees, advisors, managers, members and affiliates of any of them, and their respective successors and assigns.

2. “Damages” shall mean and include the following: (a) losses, costs, expenses, damages or liabilities resulting from any personal injury claims relating to any Environmental Matter; and/or (b) direct and proximate losses, liabilities, costs, expenses and claims, arising from requirements or obligations under Environmental Laws, including without limitation; (i) the cost of remediation of an environmental condition, including reasonable engineering, consultant, expert, and legal costs; (ii) costs associated with any order or request from a governmental agency relating to the environmental condition of the Easement Area, including reasonable engineering, consultant, expert, and legal costs; (iii) costs incurred in defending any third party action for reimbursement or contribution relating to the environmental condition of the Easement Area, including reasonable engineering, consultant, expert, legal and court costs; and (iv) any other costs incurred as a result of an order issued or requirement imposed by a governmental agency or officer relating to an Environmental Matter.

3. “Environmental Laws” shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251 et seq.), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401 et seq.), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802 et seq.), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, including but not limited to Colorado Revised Statutes, Title 25, Articles 15 and 18, as now or hereafter amended, and (x) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the pollution, protection of the environment or the use, storage, discharge or disposal of Hazardous Materials.

4. “Environmental Matters” shall mean and include any condition, claim, cost, order, demand, requirement or liability either (i) related to the Easement Area and regulated or arising under any Environmental Law, or (ii) caused by or relating to any Hazardous Materials or environmental contamination at, on, in, under, upon, about, beneath or emanating from the Easement Area, including without limitation underground storage tanks.

5. “Hazardous Materials” shall mean and include any toxic or hazardous wastes, substance, product matter, material, waste, solid, liquid, gas, or pollutant, the generation, storage, disposal, handling, recycling, release, treatment, discharge, or emission of which is regulated, prohibited, or limited under any Environmental Law, and shall also include, without limitation:



(i) gasoline, diesel, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum products or hydrocarbons including any additives or other by-products associated therewith, (ii) asbestos and asbestos-containing materials in any form, and (iii) lead-based paint, radon or polychlorinated biphenyls. As used herein, "Damages" shall mean and include the following: (a) losses, costs, expenses, damages or liabilities resulting from any personal injury claims relating to any Environmental Matter; and/or (b) direct and proximate losses, liabilities, costs, expenses and claims, arising from requirements or obligations under Environmental Laws, including without limitation; (i) the cost of remediation of an environmental condition, including reasonable engineering, consultant, expert, and legal costs; (ii) costs associated with any order or request from a governmental agency relating to the environmental condition of the Easement Area, including reasonable engineering, consultant, expert, and legal costs; (iii) costs incurred in defending any third party action for reimbursement or contribution relating to the environmental condition of the Easement Area, including reasonable engineering, consultant, expert, legal and court costs; and (iv) any other costs incurred as a result of an order issued or requirement imposed by a governmental agency or officer relating to an Environmental Matter.

The rights granted herein, and the terms, conditions, and provisions of this Easement, are a covenant running with the land and shall extend to, and be binding upon, the successors and assigns of Grantor and Grantee.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties have executed this Easement as of the date first hereinabove written.

**GRANTOR:**

**BROADWAY STATION METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado

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

Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 201\_\_,  
by \_\_\_\_\_, \_\_\_\_\_ of **BROADWAY STATION METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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



**Exhibit A to Permanent Easement**

**Legal Description and Depiction of the Easement Area**

(See attached)

**(PERMANENT EASEMENT)**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO; MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE EAST LINE OF SAID SOUTHWEST ONE-QUARTER OF SECTION 15; MONUMENTED ON THE NORTH END BY A FOUND ORIGINAL NOTCHED STONE WITH DIVOT ON TOP IN A RANGE BOX AND ON THE SOUTH END BY A FOUND 3-1/4" BRASS CAP IN RANGE BOX WITH MOSTLY ILLEGIBLE STAMPING AND "LS 19611" AND IS ASSUMED TO BEAR NORTH 00°44'36" WEST, 2647.74 FEET.

COMMENCE AT THE CENTER-SOUTH ONE-SIXTEENTH CORNER OF SAID SECTION 15, WHENCE THE SOUTH ONE-QUARTER BEARS SOUTH 00°44'36" EAST A DISTANCE OF 1323.66 FEET; THENCE NORTH 43°45'12" WEST, A DISTANCE OF 96.76 FEET TO A POINT ON THE EXTERIOR BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "PARCEL NO. 615C" IN RULE AND ORDER RECORDED ON OCTOBER 1, 2004 IN THE OFFICE OF THE CITY AND COUNTY OF DENVER CLERK AND RECORDER UNDER RECEPTION NUMBER 2004205973 AND THE POINT OF BEGINNING;

THENCE SOUTH 40°45'32" WEST, ALONG SAID EXTERIOR, A DISTANCE OF 39.97 FEET;  
THENCE NORTH 44°35'40" WEST, A DISTANCE OF 55.87 FEET;  
THENCE SOUTH 89°15'25" WEST, A DISTANCE OF 219.96 FEET TO A TANGENT 118.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTHERLY;  
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 68°56'09", AN ARC DISTANCE OF 141.97 FEET TO A POINT ON THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "GATES RUBBER PARCEL 1" IN SAID RULE AND ORDER AND A 224.50 FOOT RADIUS NON-TANGENT CURVE WHOSE CENTER BEARS NORTH 86°03'13" EAST;

THENCE ALONG SAID EAST LINE THE FOLLOWING 2 COURSES:

1. THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°47'17", AN ARC DISTANCE OF 22.68 FEET;
2. THENCE NORTH 01°52'11" EAST, A DISTANCE OF 67.27 FEET TO A POINT ON THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED RECORDED ON JULY 1, 1980 IN SAID RECORDS IN BOOK 2182 AT PAGE 294;

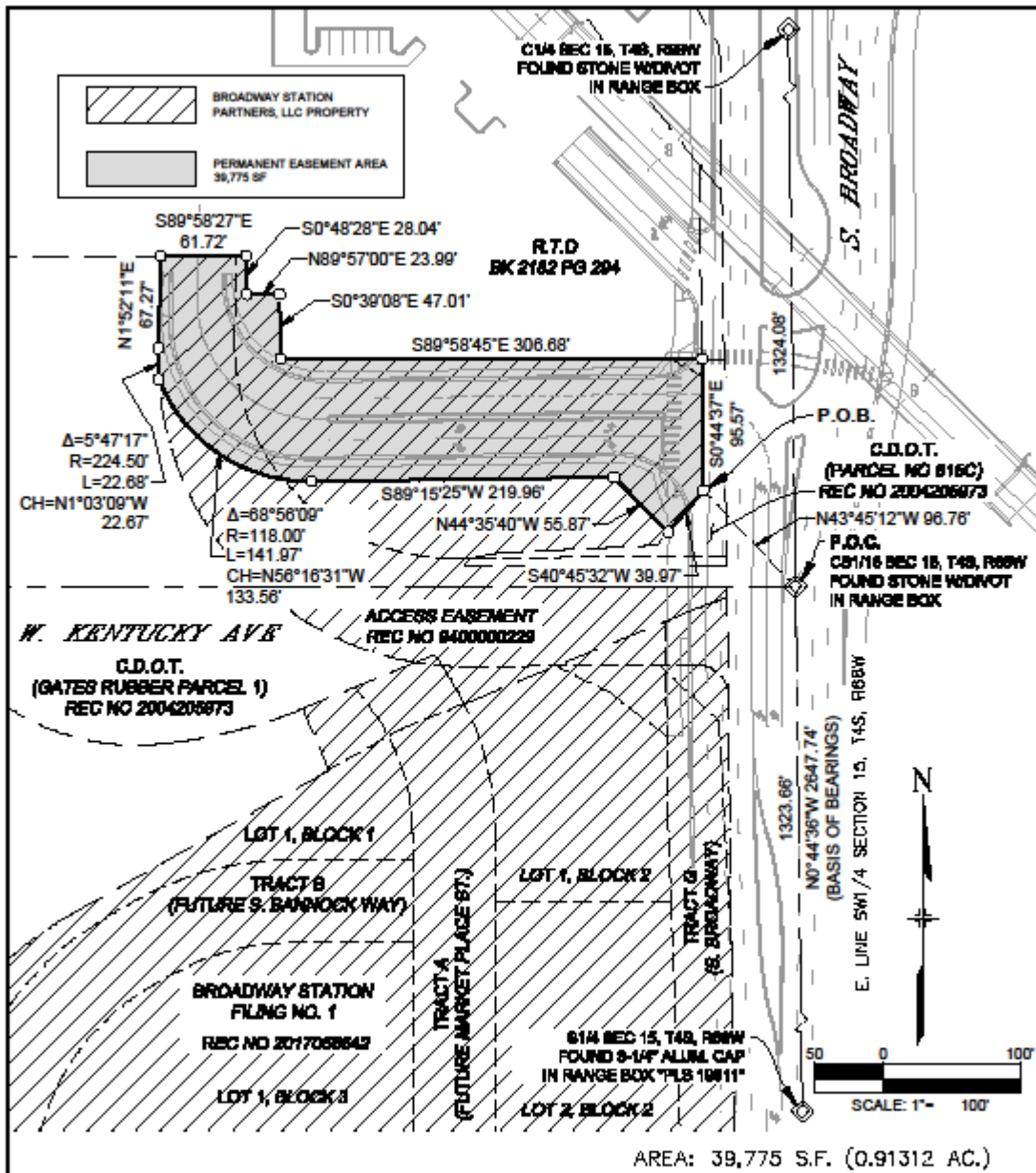
THENCE ALONG SAID SOUTH LINE THE FOLLOWING 5 COURSES:

1. THENCE SOUTH 89°58'27" EAST, A DISTANCE OF 61.72 FEET;
2. THENCE SOUTH 00°48'28" EAST, A DISTANCE OF 28.04 FEET;
3. THENCE NORTH 89°57'00" EAST, A DISTANCE OF 23.99 FEET;
4. THENCE SOUTH 00°39'08" EAST, A DISTANCE OF 47.01 FEET;
5. THENCE SOUTH 89°58'45" EAST, A DISTANCE OF 306.68 FEET TO A POINT ON THE PREVIOUSLY MENTIONED EXTERIOR OF "PARCEL NO 615C" IN SAID RULE IN ORDER;

THENCE SOUTH 00°44'37" EAST, ALONG SAID EXTERIOR, A DISTANCE OF 95.57 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 39,775 SQUARE FEET OR (0.91312 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.

JUSTIN A. CONNER, PLS 38421  
FOR AND ON BEHALF OF MATRIX DESIGN GROUP, INC.  
1601 BLAKE STREET, SUITE 200  
DENVER, CO 80202  
PH. (303)572-0200



**Matrix**  
DESIGN GROUP  
AN EMPLOYEE-OWNED COMPANY

1601 Blake Street, Suite 200  
Denver, CO 80202 Phone  
303-572-0200 Fax  
303-572-0202

WEST KENTUCKY AVENUE  
(PERMANENT EASEMENT)

EXHIBIT A

DRAWN BY: JAC	DATE: JUL 18, 2017	2 OF 2
CHECKED BY: MB	JN: 15.817.001	

R:15.817.001.000 (Broadway Station - Gates)/Survey/Legal Descriptions/PE-122A\_Kentucky/PE-122A.dwg

**Exhibit B to Permanent Easement**

**Easement Depth Elevations**

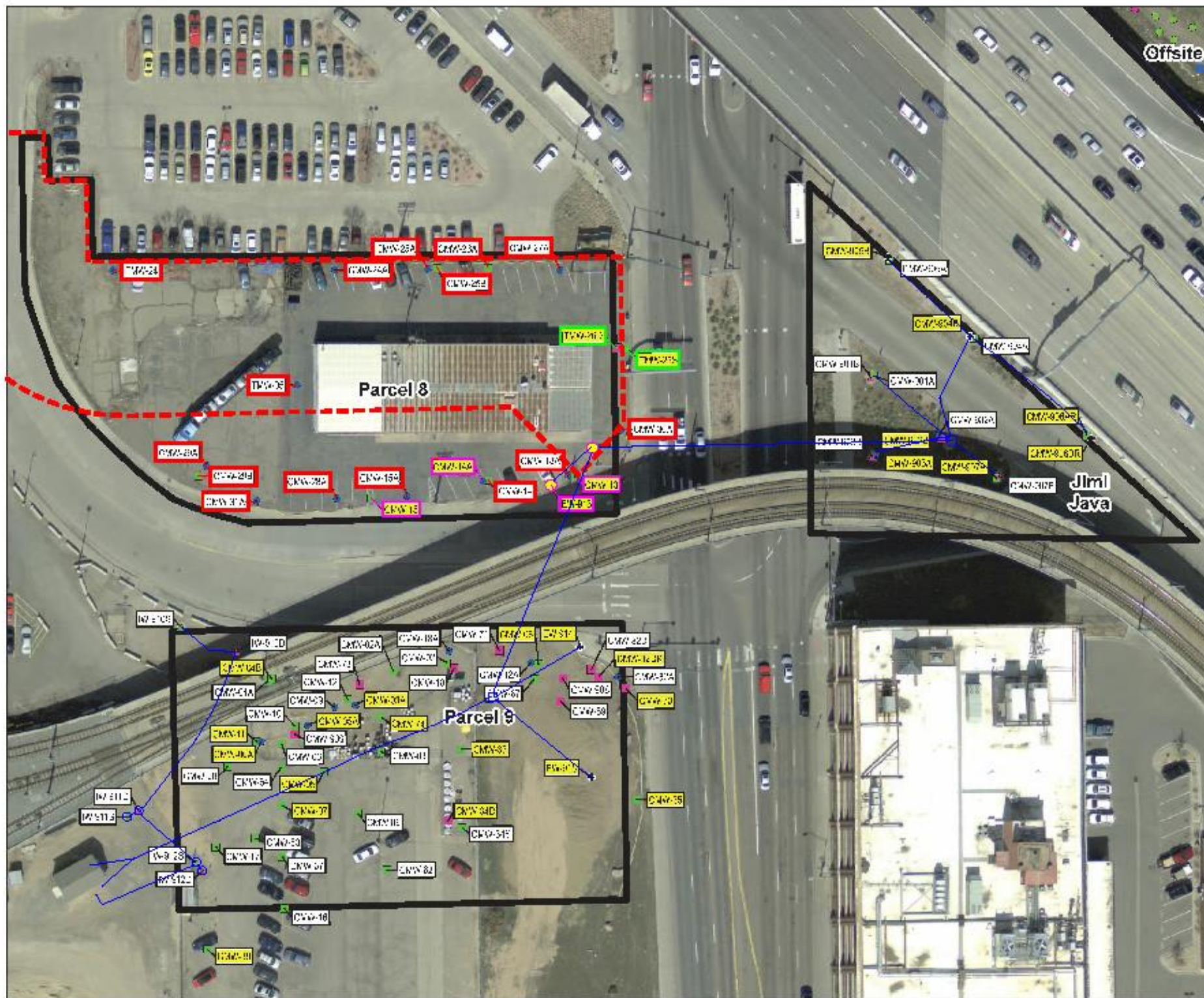
(See attached)





**Exhibit C to Permanent Easement**  
**Location of Environmental Systems**

(See attached)



**Figure 1**  
**Parcels 8/9 and Jimi Java**  
**Monitoring Well Location Map**

**Legend**

- + Extraction Well
- Monitoring Wells**
  - ◆ Alluvium
  - ◆ Shallow Alluvial
  - ◆ Deep Alluvial
  - ◆ Bedrock
  - ◆ Shallow Bedrock
  - ◆ Deep Bedrock
- Injection Wells**
  - ◆ Shallow Bedrock
  - ◆ Deep Bedrock
- ▭ VCUP Boundaries
- TMW-24 Wells to Abandon
- TMW-203 Wells to Relocate
- TMW-913 Wells to Maintain / Protect
- System Infrastructure
- Groundwater Remediation System Piping & Electrical
- - - - "Easement Land"



0 25 50 100  
 Feet



## Exhibit D to Permanent Easement

### Supplemental Requirements

#### 1. Environmental Requirements.

(a) Grantee shall cause the repair and restoration of any and all damage caused by Grantee, its officers, agents, employees, contractors, or subcontractors (together, "Grantee Parties") to the Environmental Systems during construction, maintenance, operation, repair, replacement, or reconstruction of the Improvements by Grantee Parties and the cleanup of any release of Hazardous Materials (defined below) caused by such damage to the Environmental Systems in accordance with Environmental Laws ("Damage Cleanup"). In the event of damage to the Environmental Systems during construction, maintenance, operation, repair, replacement, or reconstruction of the Improvements caused by the Grantee Parties, Grantee shall immediately notify Grantor, who shall provide specifications for repair and Damage Cleanup and shall have the right to monitor such repair and Damage Cleanup. If the Grantee does not cause the repair and Damage Cleanup to occur within a reasonable time, given the nature of the damage, the Grantor may perform such repair and Damage Cleanup and the Grantee shall cause the Grantee Parties (other than Grantee and its officers and employees) to reimburse the Grantor for the reasonable costs thereof. "Environmental Laws" for purposes of this Agreement shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901, *et seq.*), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601, *et seq.*), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251, *et seq.*), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601, *et seq.*), (v) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401, *et seq.*), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f, *et seq.*), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802, *et seq.*), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, including, but not limited to, Colorado Revised Statutes, Title 25, Articles 15 and 18, as now or hereafter amended, and (x) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the pollution, protection of the environment, or the use, storage, discharge, or disposal of Hazardous Materials. "Hazardous Materials" means any toxic substances or hazardous wastes, substance, product matter, material, waste, solid, liquid, gas, or pollutant, the generation, storage, disposal, handling, recycling, release, treatment, discharge, or emission of which is regulated, prohibited, or limited under any Environmental Law, and shall also include, without limitation: (i) gasoline, diesel, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum products or hydrocarbons, including any additives or other by-products associated therewith, (ii) asbestos and asbestos-containing materials in any form, and (iii) lead-based paint, radon, or polychlorinated biphenyls. The term "toxic substances" means and includes any materials present on the Property that are subject to

regulation under the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2601, *et seq.*, applicable state law, or any other applicable federal or state law now in force or later enacted relating to toxic substances. The term “toxic substances” includes, but is not limited to, asbestos, polychlorinated biphenyls (PCB’s), and lead-based paints.

(b) Grantee shall keep or cause the Easement Area to be kept free from Hazardous Materials, except (i) Preexisting Contamination (defined below), (ii) those Hazardous Materials approved to remain on the Easement Area in any Voluntary Cleanup Plans, no action determinations, no further action letters or comparable approvals or determinations from the Colorado Department of Public Health and Environment or another governmental authority with jurisdiction over the Remediation Activities (defined below) and authority to issue such approvals or determinations for the Easement Areas, (iii) at concentrations in compliance with Environmental Laws, (iv) used and stored in the ordinary course of business and compliance with all Environmental Laws. “Remediation Activities” shall mean all actions as shall be necessary for the clean-up of any Hazardous Materials on, in, under, migrating from, or affecting any and all portions of the Easement Area in accordance with all applicable Environmental Laws for the intended use of the Easement Area, including, without limitation, all reporting, planning, preparation of regulatory submittals, investigative, monitoring, removal, containment, and remedial actions.

(c) Grantee shall expressly prohibit the use, generation, handling, storage, production, processing, and disposal of Hazardous Materials in the Easement Area (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws), and, without limiting the generality of the foregoing, during the term of this Easement, shall not install or use any underground storage tanks, shall not install in the Improvements or permit to be installed in the Improvements, asbestos or any substance containing, asbestos, except in compliance with Environmental Laws.

(d) In the case of the release, spill, discharge, leak, or disposal of Hazardous Materials as a result of Grantee’s or the Grantee Parties’ activities at the Easement Areas, Grantee shall cause all necessary actions required by applicable federal, state, and local standards to be taken. Grantee shall cause the Grantee Parties (other than Grantee or its officers and employees) to reimburse Grantor for any penalties and all reasonable costs and expense, including, without limitation, attorneys’ fees, incurred by Grantor as a result of any such release or disposal by Grantee or the Grantee Parties. Grantee shall also cause the immediate notification of Grantor, in writing, of the release, spill, leak, discharge, or disturbance of Hazardous Materials, the control and response actions taken, and any responses, notifications, or actions taken by any federal, state, or local agency with regard to any such release, spill, or leak in violation of Environmental Law. Grantee shall make available to the Grantor, for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials prepared pursuant to any requirement under this paragraph. If there is a requirement to file any notice or report of a release or threatened release of such Hazardous Materials at, on, under, or migrating from the Easement Area, Grantee shall cause copies of all results of such report or notice to be supplied to the Grantor.

At the Grantor's reasonable request, Grantee shall conduct testing and monitoring as is necessary to determine whether any Hazardous Materials have entered the soil, groundwater, or surface water on or under the Easement Area due to Grantee's or the Grantee Parties' use or occupation of the Easement Areas. Grantee shall provide copies of all results of such testing and monitoring to the Grantee's Executive Directors of Environmental Health and Public Works and Grantor.

(e) Existing Contamination. Grantee and its officers and employees shall not be liable for and Grantor hereby releases claims against Grantee and its officers and employees arising out of (i) any environmental conditions existing in Grantor's property adjacent to the Easement Area and in the property within and underlying the Easement Area unless introduced or caused after the date of this Easement by Grantee or the Grantee Parties, (ii) any Existing Contamination within and under the Easement Area, and (iii) ongoing obligations of Grantor with respect to Existing Contamination hereunder, except to the extent such claims arising out of (ii) or (iii) result from the negligence or willful misconduct of the Grantee, or the Grantee Parties, or their violation of any obligations of the Grantee or the Grantee Parties under this Easement. "Existing Contamination" shall mean Hazardous Materials existing within or underlying the Easement Areas as of the date of this Easement.

2. Reservation of Claims. Except as otherwise set forth herein in relation to the Grantee and its officers and employees, nothing in this Exhibit D or in this Easement shall be construed to release or limit any claims or causes of action Grantor may have against the Grantee Parties, Grantee's licensees, permittees, invitees, or other parties acting under authority of the Grantee, trespassers, or other third parties arising out of their use, occupancy, or activities in, on, or near the Easement Area.

3. Insurance. Grantee shall require the Grantee Parties (other than the Grantee and its officers and employees) accessing the Easement Area to secure insurance in types and amounts typically required by Grantee for similar parties performing similar activities in other locations within the City and County of Denver, Colorado.

4. Stormwater Management. Without limiting any other obligation hereunder, the Grantee shall maintain all necessary permits for construction stormwater discharges ("Stormwater Permits") related to the Grantee's activities under this Easement. The Grantor shall take reasonable steps to not interfere with or damage, and shall take reasonable steps to prevent its officers, agents, employees, contractors, and subcontractors from interfering with or damaging, any structures or measures that Grantee implements on the Easement Area under the applicable Stormwater Management Plan ("SWMP") and Stormwater Permits. If the Grantor or its officers, agents, employees, or contractors damage or interfere with any such structures or measures, the Grantor shall promptly cause its contractors to correct such damage or interference in a manner sufficient to avoid any violation of the Grantee's Stormwater Permits or pay or cause such parties to pay to Grantee an amount sufficient to compensate for the loss sustained by the Grantee as a result of such damage or interference. However, if the Grantee modifies the SWMP or Stormwater Permits, the Grantor shall have no obligation to cause such parties to correct or reimburse the Grantee for any such damage to any modified structure or measure, unless the Grantor received notice at least twenty-four (24) hours in advance of such

modification. Notification shall include any amendment to the SWMP or Stormwater Permits.

5. Drug Related Activities. Except to the extent authorized by laws, ordinances, and regulations pertaining to all streets, sidewalks, and public places, Grantee shall not use or permit the use of occupancy of the Easement Area for a Controlled Substances Use (defined below) or in any manner that violates or could violate any Controlled Substances Laws (defined below), including, without limitation, any business, communications, financial transactions, or other activities related to Controlled Substances (defined below) or a Controlled Substances Use (collectively, “Drug-Related Activities”). Without limiting any other reserved rights hereunder, Grantor may make physical inspections of the Easement Area to confirm compliance with the requirements of this paragraph. For purposes of this paragraph, (i) “Controlled Substances Laws” means the Federal Controlled Substances Act (21 U.S.C. § 801, *et seq.*) or any other similar or related federal, state or local law, ordinance, code, rule, regulation, or order, (ii) “Controlled Substances” means marijuana, cannabis or other controlled substances, as defined in the Federal Controlled Substances Act, or that otherwise are illegal or regulated under any Controlled Substances Laws, and (iii) “Controlled Substances Use” means any cultivation, growth, creation, production, manufacture, sale, distribution, storage, handling, possession, or other use of a Controlled Substance in violation of Controlled Substances

6. Notices. All notices provided for in this Easement must be in writing and be personally delivered or mailed by registered or certified United States mail, postage prepaid, return-receipt requested at the addresses given below. Notices delivered personally are effective when delivered. 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 Grantee:

Manager  
City and County of Denver  
Department of Public Works  
201 West Colfax Avenue, Department 608  
Denver, Colorado 80202

and

Manager  
City and County of Denver  
Department of Environmental Health  
200 West 14<sup>th</sup> Ave., Suite 300  
Denver, Colorado 80204

and

Denver City Attorney’s Office  
201 W. Colfax Ave. Dept. 1207  
Denver, Colorado 80202

If to Grantor:

Broadway Station Metropolitan District No. 1  
2420 17th St., 3rd Floor  
Denver, CO 80202  
Attn: Lisa Ingle

and

Collins Cockrel & Cole  
390 Union Blvd. Suite 400  
Denver, CO 80228-1556  
Attn: Paul Cockrel

## **Exhibit D**

### **Applicable Voluntary Cleanup Plan**

VCUP 8&9

CDM on behalf of Broadway Mississippi Development, LLC. Application for Voluntary Clean-Up Program, Parcel 8 and 9, Former Gates Rubber Company Site. April 11, 2011.

Colorado Department of Public Health and Environment. Letter to Mosteller Consulting, LLC from CDPHE dated May 2, 2011 (re: Voluntary Cleanup Plan Approval for Former Gates Rubber Site, Parcel 8 and 9 Application). May 2, 2011.

Colorado Department of Public Health and Environment. Letter to Mosteller Consulting, LLC from CDPHE dated August 28, 2014 (re: Approval of Voluntary Cleanup Program Time Extension for Former Gates Rubber Company Site, VCUP Parcels 8 and 9, Denver, Colorado). August 28, 2014.



## EXHIBIT E

### Environmental Remediation Procedures during Project Work

1. Not later than thirty (30) days prior to commencing soil disturbing activities within the Easement Area associated with the Project, the City shall provide written notice to the District specifying the date that such work will commence and the anticipated schedule and duration for such work. During such work, the City, through its contractor(s), shall provide a Health and Safety Officer (“HSO”), in accordance with Section 250 of the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, who shall be on site to identify potentially environmentally impacted groundwater, soil/bedrock or other materials or debris. In addition, the District shall provide a materials management coordinator who is a certified asbestos building inspector in addition to being either a certified hazardous materials manager or a registered environmental manager (“MMC”) to observe soil disturbing activities within twenty- four (24) hours following a request from the City or its contractor. The City and the District intend that the MMC be on site at all times when soil excavation or disturbance activities with the potential to disturb environmentally impacted materials or debris are being performed within the Easement Area. Prior to issuing a request for proposals (“RFP”) for the Project, the City shall provide the District an opportunity to review and provide comments on the draft RFP. Prior to issuing notice to proceed to the contractor for the Project, the City shall coordinate with both the District and the Contractor to determine the anticipated MMC oversight needs. If the MMC or any other City contractor or the HSO identifies any visible, odorous, or otherwise recognizable Existing Contamination, the City and its contractors shall not further disturb such material and shall proceed with construction at another location until receipt of written notification from the District that it has completed the MMP Work (defined below). The City shall request observation by the MMC, or provide notification of any such discovery, by contacting Nicole Christ at nchrist@frontierem.com and (720) 313-6085. All reporting of discoveries and the remediation of Hazardous Materials within the Easement Area to CDPHE shall be the responsibility of the District.

2. Within four (4) days following notification that potential Existing Contamination has been encountered, or in the event the MMC identifies potential Existing Contamination while observing the City’s soil disturbing activities, the MMC shall evaluate the potentially environmentally impacted materials or debris and identify and begin implementing any further assessment and/or sampling necessary and the management, removal or disposal of any Existing Contamination in accordance with the MMP (“MMP Work”). The MMP Work shall include backfilling in accordance with paragraph 4 below and in a quantity equal to the lesser of (a) the quantity of soil required to replace any soil removed for off-site disposal as part of the MMP Work; or (b) the quantity of soil required to return the excavated area to final Project grade. The District shall not have any responsibility for environmentally impacted groundwater, soil/bedrock or other materials or debris that is not Existing Contamination.

3. So long as the District is proceeding diligently, in the mutual reasonable opinion of the Managers of Public Works and Environmental Health, with the MMP Work, the District shall not be responsible for the cost of any demobilization, remobilization, delay or similar costs

incurred by the City as a result of any delay associated the MMP Work. Further, in no event shall the District be responsible for any costs associated with (i) Hazardous Materials introduced to the Easement Area by the City or its officers, agents, employees, contractors, or subcontractors after the Easement Area Conveyance Date; (ii) any exacerbation or improper disposal of Existing Contamination caused by the failure of the City or its contractors to observe the procedures set forth in this Exhibit; or (iii) for remediation of any environmental contamination under this Agreement except Existing Contamination.

4. For purposes of determining what soils may be left in place or used as backfill pursuant to the MMP, the applicable standards for the Easement Area shall be the industrial soil standards set forth in the Regional Screening Level (RSL) Summary Table dated May 2014, available at [http://www.epa.gov/reg3hwmd/risk/human/rbconcentration\\_table/Generic\\_Tables/index.htm](http://www.epa.gov/reg3hwmd/risk/human/rbconcentration_table/Generic_Tables/index.htm) for areas that have engineered barriers (e.g., concrete, asphalt) to exclude exposure pathways to the general public. Imported backfill material shall also meet MMP standards and have an R-Value of 42 or higher. Compaction of the backfill material shall be in accordance with AASHTO T-180.

5. The District shall be the designated generator of any Existing Contamination removed from the Easement Area for off-site disposal as part of the MMP Work.

## EXHIBIT F

### REVISIONS OF SECTIONS 210 AND 604 ADJUST STRUCTURE ENVIRONMENTAL MANHOLE SPECIAL

Sections 210 and 604 of the Standard Specifications is hereby revised for this project as follows:

Subsection 210.12 shall include the following:

Reconfiguring of groundwater monitoring wells and well vaults will be paid for by the actual number of well and vaults reconfigurations (Adjust Structure).

Section 210.13 shall include the following

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Adjust Structure	EA

Payment will be full compensation for all materials, equipment, and labor necessary to complete the work.

Payment for the HAZWOPER will be made under pay item 250 Monitoring Technician (HAZWOPER).

Payment for removal and handling of hazardous material will be paid for under pay item 250 Hazardous Waste Disposal.

Subsection 604.01 shall include the following:

As part of this work, the Contractor shall identify, protect, and reconfigure all groundwater monitoring wells (environmental manholes) and well vaults located within the area of work, as shown on the drawings and as specified herein. The Contractor shall also be responsible for all costs to abandon, repair, rehabilitate, and/or replace any wells, well vaults, or associated environmental remediation piping that are damaged as a result of work performed by the Contractor. Wells shall remain plumb, shall continue to allow passage of a bailer to the bottom without becoming caught, shall not be contaminated with any surface materials, shall not be pulled vertically, and shall not be changed in any other manner except as specifically allowed herein.

The Project Manager and/or the Property Owner and/or their representatives may oversee the work, and both the Project Manager and the Property Owner shall be notified by the Contractor within 24 hours of any damage to a well, well vault, or section of remediation piping. In the event a well, well vault, or section of remediation piping is damaged, the Property Owner reserves the right to determine if the damage requires repair or replacement.

Due to the concentrations of chemicals in groundwater and headspace in the monitoring wells, OSHA Hazardous Waste Operator (HAZWOPER) requirements will apply any time the Contractor is opening (unsealing) any of the monitoring wells, or if they damage any of the extraction vault contents or piping as specified in Subsection 250 of the Standard Special Provisions.

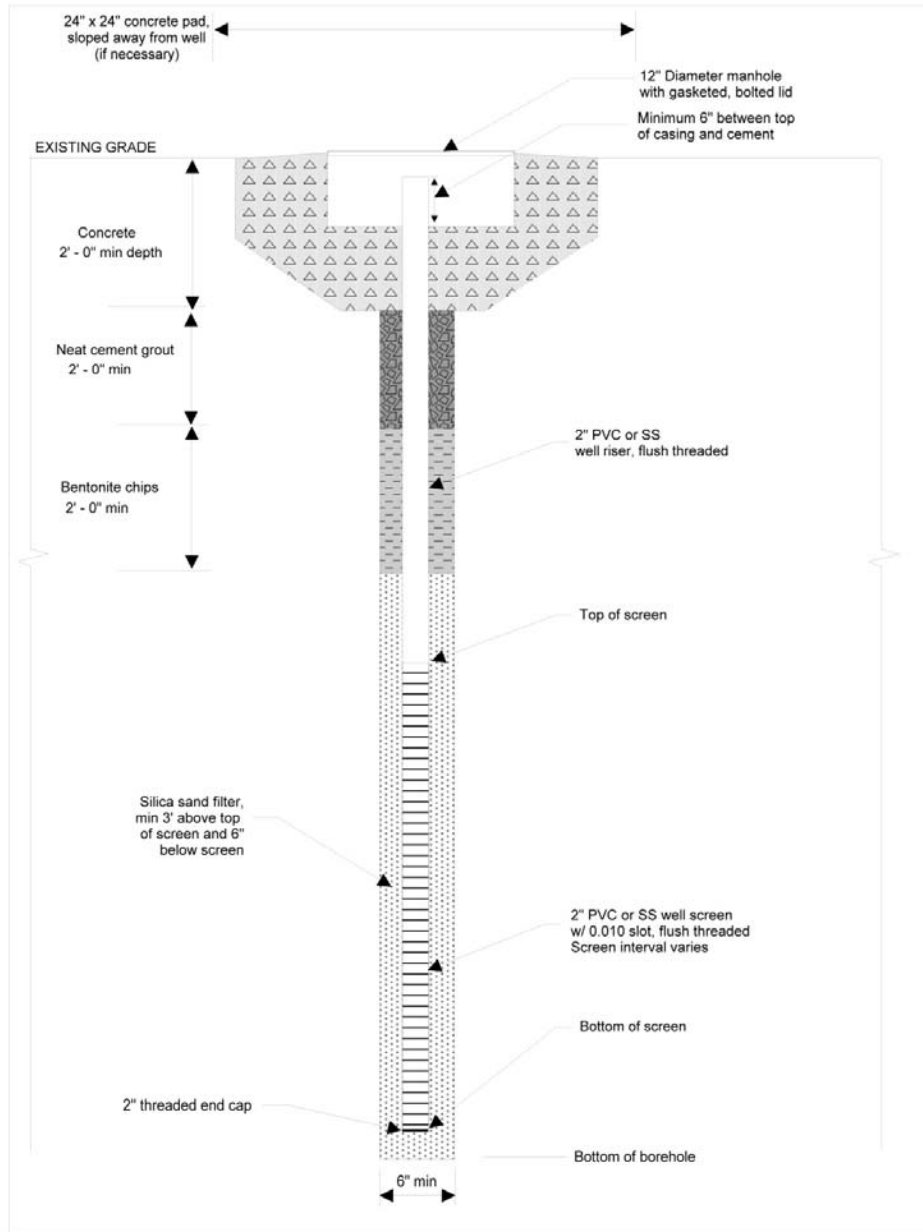
**REVISIONS OF SECTIONS 210 AND 604  
ADJUST STRUCTURE  
ENVIRONMENTAL MANHOLE SPECIAL**

Subsection 604.04(b) shall include the following

Site Plan is provided to the Contractor as a reference, but may not indicate the exact locations of all wells and vaults within the area of work. Therefore, prior to starting work, the Contractor shall be responsible for identifying all wells and vaults within the area of work. However, all wells and vaults requiring identification have surface completions and are readily visible. If the Contractor so requests, the Property Owner or their representatives will assist with identification of all known wells and vaults within the work zone.

Figures 1 and 2 indicate typical future (post construction of South Broadway by City and County of Denver) well construction details, although individual wells may vary slightly.

-3-  
**REVISIONS OF SECTIONS 210 AND 604**  
**ADJUST STRUCTURE**  
**ENVIRONMENTAL MANHOLE SPECIAL**



**Figure 1**  
**Typical Monitoring Well Detail - No Surface Casing**  
**Former Gates Rubber Factory**  
**Denver, Colorado**

-4-  
**REVISIONS OF SECTIONS 210 AND 604**  
**ADJUST STRUCTURE**  
**ENVIRONMENTAL MANHOLE SPECIAL**

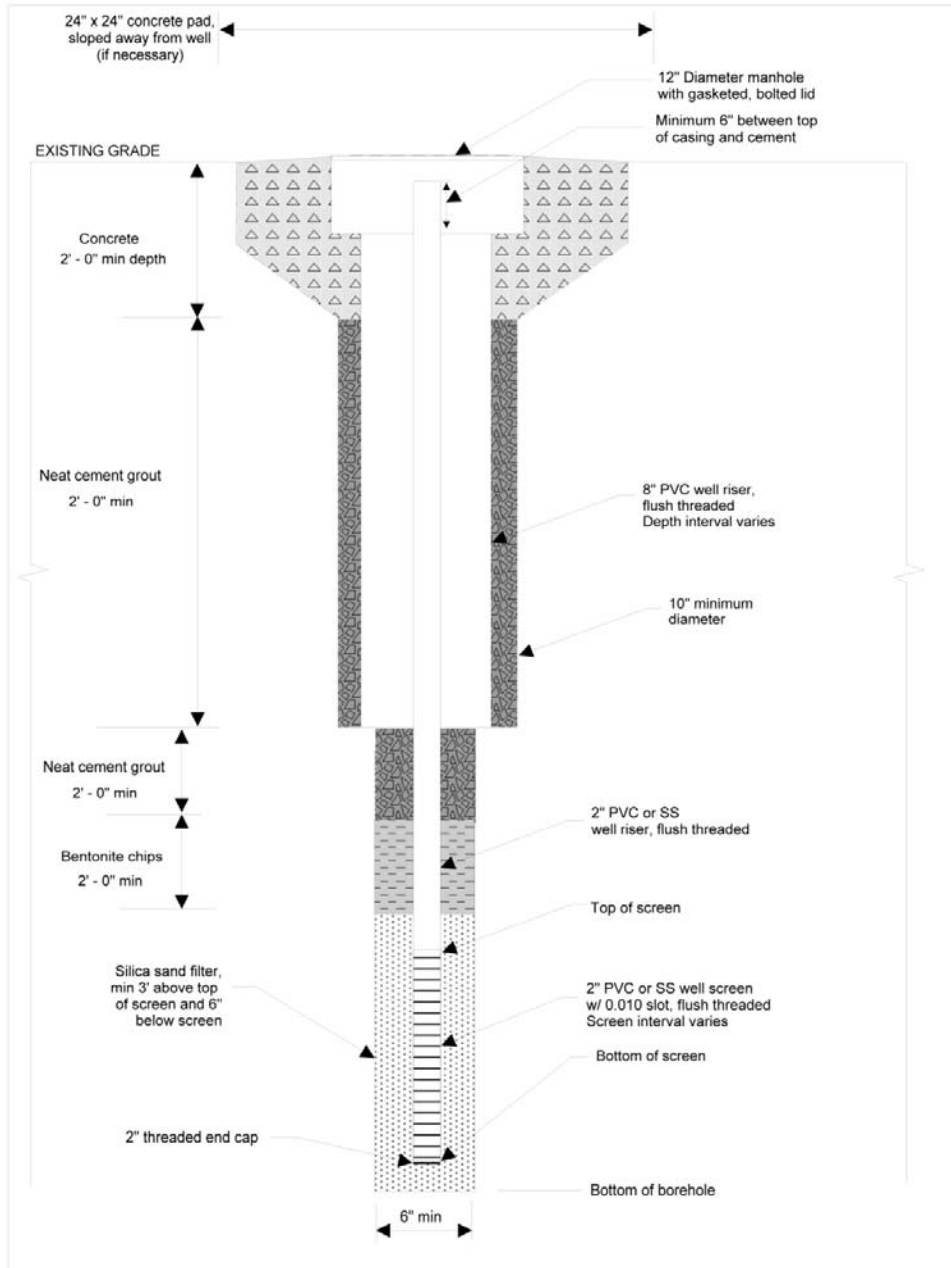


Figure 1  
**Typical Monitoring Well Detail - With Surface Casing**  
**Former Gates Rubber Factory**  
**Denver, Colorado**

**REVISIONS OF SECTIONS 210 AND 604  
ADJUST STRUCTURE  
ENVIRONMENTAL MANHOLE SPECIAL**

Monitoring Well Protection and Reconfiguration

Following the identification of all wells, the Contractor will be responsible for determining the level of protection required during construction, given the design and the methods specified by the Project Manager or selected by the Contractor to accomplish the work. At a minimum, the Contractor shall protect the wells as described below:

1. Contractor shall remove the well surface completion, but leave the well casing sealed with the existing plug. Surface completion removal shall be by hand. No hydraulic equipment shall be used to remove the surface completions.
2. Contractor shall over-excavate in the immediate vicinity of the well, to a depth selected by the Contractor that is sufficiently below all other over-excavation and grading work. Over-excavation shall be performed by hand. No hydraulic equipment shall be used;
3. Contractor shall cut off the top of the well casing, to the depth selected by the Contractor;
4. Contractor shall reseal the outer casing of the well such that no material will enter the well during construction;
5. Contractor shall backfill and compact as required by the Project Manager as part of the design and/or as determined by the Contractor to be sufficiently protective of the well during construction;
6. As work proceeds, Contractor shall over-excavate, expose the well, unseal the well, and extend the well upward by installing more casing(s). This extension work may be done iteratively, as desired by the Contractor to match work sequencing, in which case the Contractor shall seal the well and protect as needed during all phases of work. However, all new well casings added shall match the existing well casing in material, orientation, and installation. Contractor shall verify all installed casing is plumb. All steel welds shall be inspected by a representative of the Property Owner. Contractor shall perform backfill, as per Step 5, as needed.
7. Once the well casing has been extended to final grade, the Contractor shall install new H25-rated well boxes with surface completions, as specified by the Property Owner's Engineer, or as specified by the Project Manager. Monitoring wells shall be placed in flush-mounted well boxes of sufficient size to accommodate the well casing. Well casings shall be cut and sealed with removable well plugs. The flush-mounted well boxes shall be rated in accordance with the traffic activity type anticipated for the area.

Less protective alternatives shall not be implemented unless the Property Owner and Project Manager both provide written approval to the Contractor, but shall not absolve the Contractor of their prevailing responsibilities for protecting or replacing the wells, as described above. More protective alternatives may be implemented at the option of the Contractor.

**REVISIONS OF SECTIONS 210 AND 604  
ADJUST STRUCTURE  
ENVIRONMENTAL MANHOLE SPECIAL**

Well Vault Protection and Reconfiguration

The Contractor shall locate, identify, protect, and be responsible for any damage to the environmental remediation piping and associated well vaults. The locations of piping will be provided by the Property Owner as part of pre-excavation utility location via Colorado 811. The Contractor shall also notify the Property Owner one week prior to any well vault modifications. The vaults have been designed and installed with removable precast concrete rings. The Contractor shall remove these rings as needed and set the vault lids flush with final grade, as per the design. All vault modifications shall be overseen by the Property Owner or their representative. Remediation piping and well vault contents shall not be modified or adjusted by the Contractor.