

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this 20<sup>th</sup> day of June, 2013, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this Instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and CITY OF COLORADO SPRINGS, a political subdivision of the State of Colorado, ("Grantee"), whose address for purposes of this Instrument is 30 South Nevada Avenue, Suite 405, Colorado Springs, Colorado 80903, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in the City of Colorado Springs, Colorado as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated June 20 2013 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

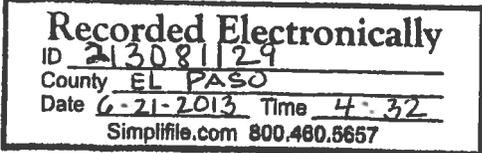
The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

[signature pages follow]

213081129



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IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

[signature pages follow]

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: Carrie Thompson  
Name: Carrie Thompson  
Title: Manager - Land Revenue Management

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the 20<sup>th</sup> day of June, 20 13  
by CARRIE Thompson (name) as  
Manager - Land Revenue Management (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Rhonda L. Burton  
Notary Public

(Seal)

My appointment expires: 9/21/2016



**GRANTEE:**

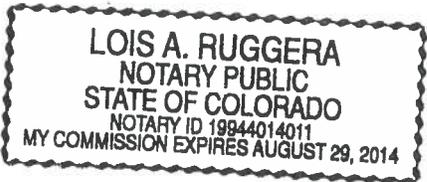
**City of Colorado Springs, State of Colorado**

By: Karen Palus  
Name: Karen Palus  
Title: Director Parks, Recreation & Cultural Services

STATE OF COLORADO §  
  §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 3rd day of April, 2013, by Karen Palus (name) as Director, Parks, Recreation & Cultural Services (title) of City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation

Lois A. Ruggera  
Notary Public



(Seal)

My appointment expires: Aug. 29, 2014

**APPROVED AS TO FORM**

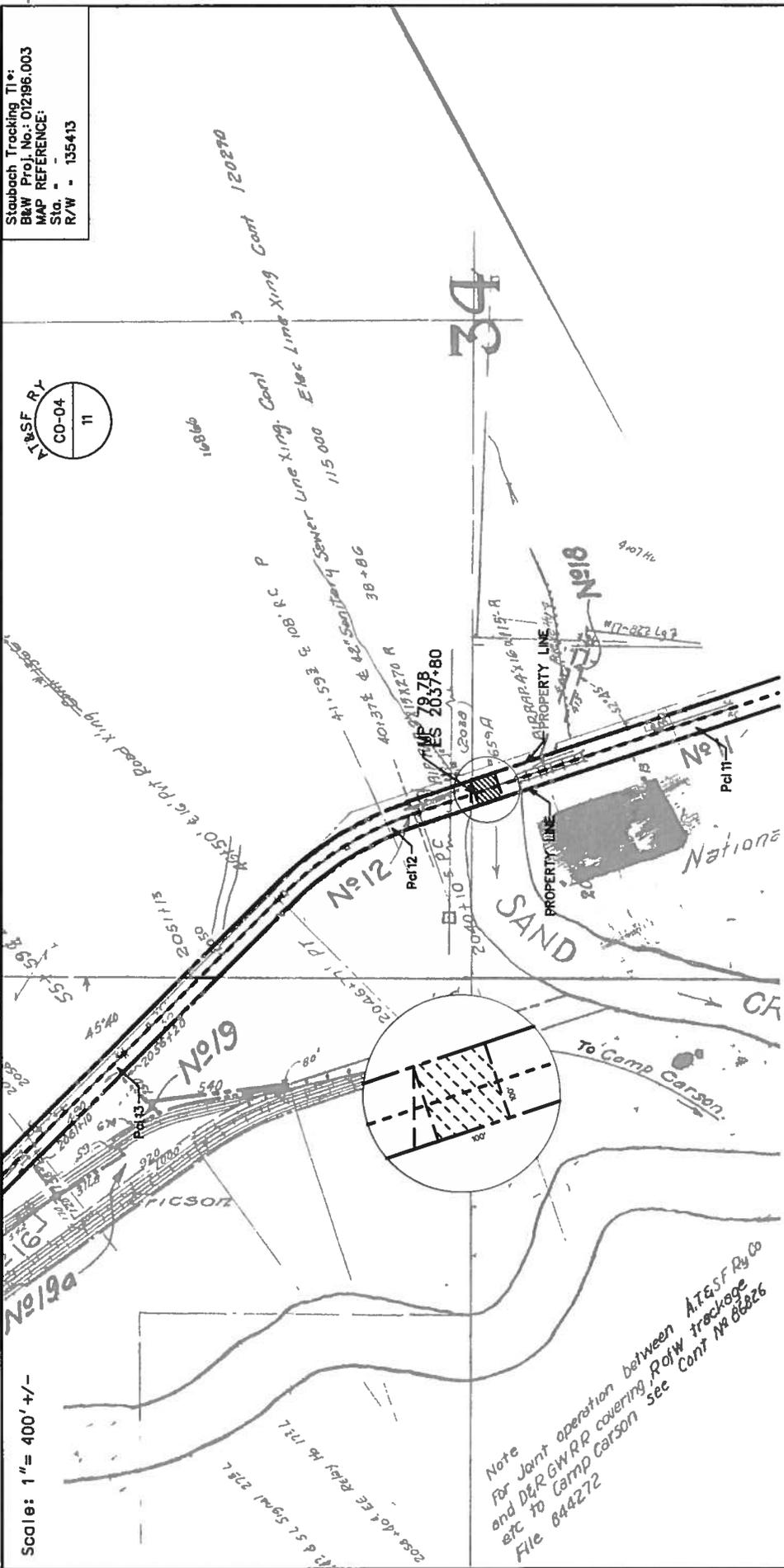
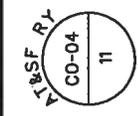
[Signature]  
**MUNICIPAL ATTORNEY  
CITY OF COLORADO SPRINGS**

**EXHIBIT "A"**

**Premise**

# EXHIBIT "A"

Staubach Tracking T1\*  
 B&W Proj. No.: 012196.003  
 MAP REFERENCE:  
 Sta. -  
 R/W - 135413



Scale: 1" = 400' +/-

Note  
 For Joint operation between AT&SF Ry Co  
 and D&R GWR R covering Rofw trackage  
 etc to Camp Carson See Cont No 88826  
 File 844272

To: Pueblo Jct.

To: 20th street

Colorado Division  
 Pikes Peak Subdivision - L.S. 477  
 Vol. Sec. 43060  
 AT&SF RY CO-04, Map 11  
 Sec. 34, T14S, R66W 6PM  
 November 14, 2012  
 M.P. 79.78 STK

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

Legend:  
 Easement Area

To: City of Colorado Springs  
 At: Colorado Springs  
 El Paso County  
 Colorado

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, errors or omissions relating to this map.

# EXHIBIT A



2850 Serendipity Circle West  
Colorado Springs, CO 80917

Phone: 719-528-6133  
Fax: 719-528-6848

Surveying • Planning • Engineering • Landscape Architecture

www.lde-inc.com

SAND CREEK TRAIL  
Project No. 00128  
Revised August 21, 2009  
Sheet 1 of 2

## LEGAL DESCRIPTION: PUBLIC TRAIL EASEMENT

A PUBLIC TRAIL EASEMENT over and across a portion of the Northwest One-Quarter of the Southwest One-Quarter of Section 34, Township 14 South, Range 66 West of the 6th P.M., also being a portion of the A.T. & S.F. RAILROAD right-of-way (125' r.o.w. width), situate in the City of Colorado Springs, El Paso County, Colorado, being fifty (50) feet each side of the following described centerline:

Commencing at the Southwest corner of Sand Creek Drainage Way as platted within DRENNAN INDUSTRIAL PARK FILING NO. 3 (Plat Book H-3, Page 33, El Paso County, Colorado records) (all bearings in this description are relative to the Northeasterly right-of-way line of said A.T. & S.F. RAILROAD, which bears S18°59'36"E "assumed"); thence N18°59'36"W along said RAILROAD's Northeasterly right-of-way line, 50.00 feet to the Point of Beginning of the EASEMENT centerline herein described; thence S71°00'24"W, 125.00 feet to a point on the Southwesterly right-of-way line of said RAILROAD, said point also being the terminus point of this description, with the side lines of said EASEMENT lengthening and shortening to intersect said RAILROAD's Northeasterly right-of-way line at its Northeasterly end and said RAILROAD's Southwesterly right-of-way line at its Southwesterly end.

## SURVEYOR'S STATEMENT:

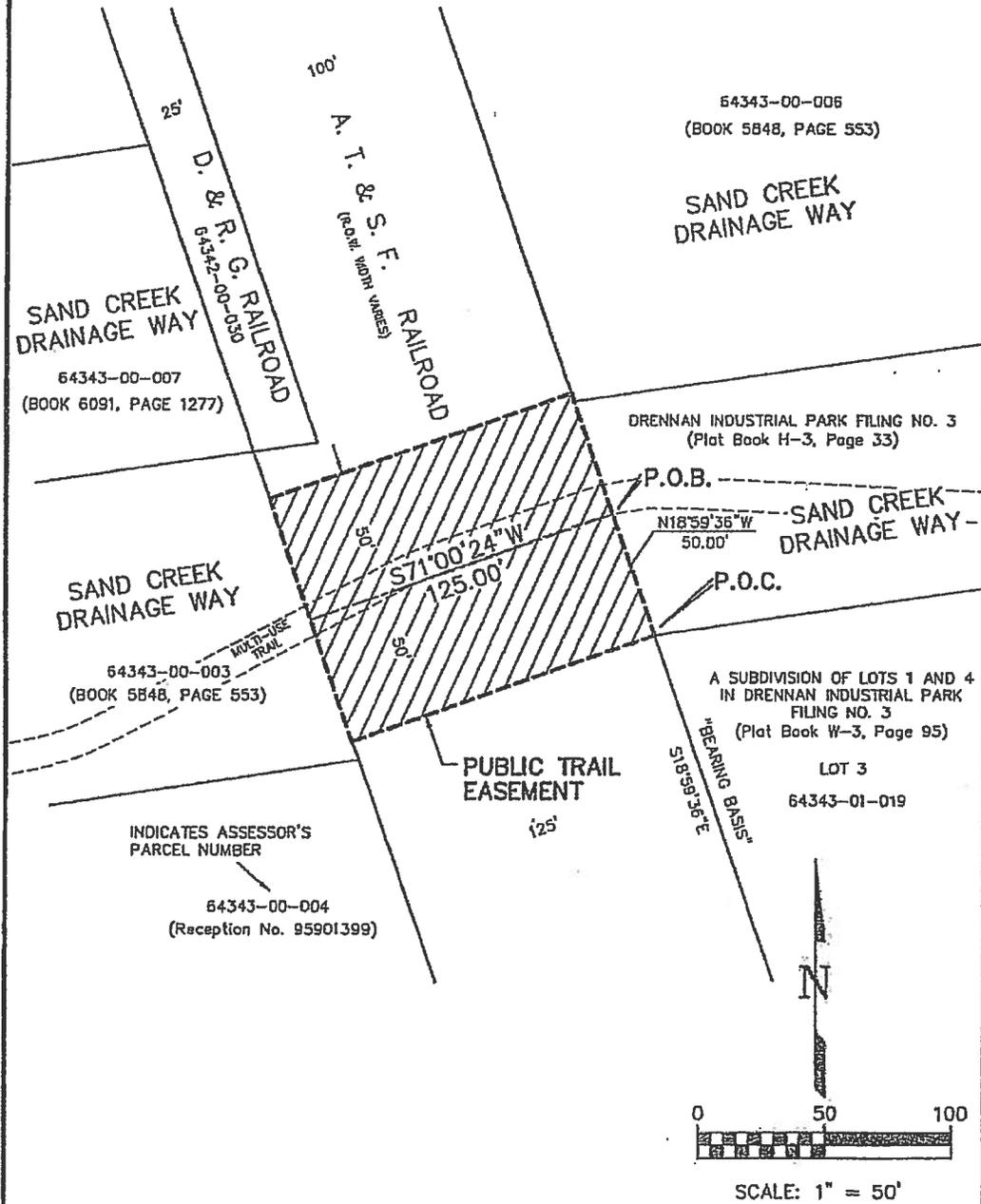
I, David V. Hostetler, a registered Professional Land Surveyor in the State of Colorado, do hereby state that the attached LEGAL DESCRIPTION and EXHIBIT were prepared under my direct responsibility, supervision, and checking, and on the basis of my knowledge, information and belief, are correct.

David V. Hostetler, Professional Land Surveyor  
Colorado P.L.S. No. 20681  
For and on behalf of LDC, Inc.

File: 00128 Trail ATSF Legal  
DVH/dh

# LEGAL DESCRIPTION EXHIBIT

A PORTION OF THE  
 NW1/4 SW1/4 OF SECTION 34, T 14 S, R 66 W OF THE 6TH P.M.,  
 IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO



SHEET 2 OF 2

<p>Land Development Consultants, Inc.                  PLANNING • LANDSCAPE ARCHITECTURE                  ENGINEERING • SURVEYING                  www.ldc-inc.com • TEL: (719) 528-6123 • FAX: (719) 528-6848                  2850 BERENSONITY CIRCLE WEST • COLORADO SPRINGS, CO 80917</p>	<p>NOTE: This EXHIBIT does not represent a monumented land survey, and is only intended to depict the attached LEGAL DESCRIPTION.</p>	REVISIONS			
		NO.	DESCRIPTION	DATE	BY
DWN BY: KLV      DATE: 08/10/09 CKD BY: DVH      REF. NO.: 00128EX18		PROJECT NUMBER 00128			

PERMANENT EASEMENT AGREEMENT  
FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS

THIS EASEMENT AGREEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS ("Easement Agreement") is made and entered into as of the 20<sup>th</sup> day of June, 2013 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and CITY OF COLORADO SPRINGS, a political subdivision in the State of Colorado ("Grantee").

A. Grantor owns or controls certain real property situated in the City of Colorado Springs, El Paso County, State of Colorado, at Grantor's Mile Post 79.8 on Line Segment 477, [Project # 924656A], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement for Pedestrian/Bike Underpass dated as of May 24, 2013 concerning Improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the sum of \$21,094.00 (Twenty One Thousand Ninety Four \_\_\_\_\_ and No./100), the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1 Granting of Easement.**

1.1 Easement Purpose. The "Easement Purpose" shall be for the purpose set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively "Laws"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2** Term of Easement The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual

**Section 3** No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4** Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5** Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor, and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said

work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6 Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7 Environmental.**

**7.1 Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances," as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

**7.2 Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

**7.3 Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

**7.4 Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

**7.5 Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, provide written notice to Grantee of the lack of compliance, and Grantee shall immediately cease use of the Premises. If Grantee has cured the lack of compliance within 45 days of such written notice, Grantee may resume use of the Premises. Otherwise, Grantor may terminate this Easement Agreement. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

**Section 8**      **Default and Termination.**

8.1      **Grantor's Performance Rights.** If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2      **Abandonment.** Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3      **Effect of Termination or Expiration.** Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 9.

8.4      **Non-exclusive Remedies.** The remedies set forth in this Section 8 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

**Section 9**      **Surrender of Premises.**

9.1      **Removal of Improvements and Restoration.** Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a)      remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b)      repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c)      remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d)      leave the Premises in the condition which existed as of the Effective Date.

9.2      **Limited License for Entry.** If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10 Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to Section 6. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 10 or any other section of this Easement Agreement

**Section 11 Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "Memorandum of Easement") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 90 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Colorado without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However,

nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

**ADMINISTRATIVE FEE**

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: *Carrie Thompson*  
Name: *Carrie Thompson*  
Title: Manager - Land Revenue Management

**GRANTEE:**

**City of Colorado Springs, State of Colorado**

By: *Karen Palus*  
Name: *Karen Palus*  
Title: *Director Parks, Rec + Cultural Services*

**APPROVED AS TO FORM**

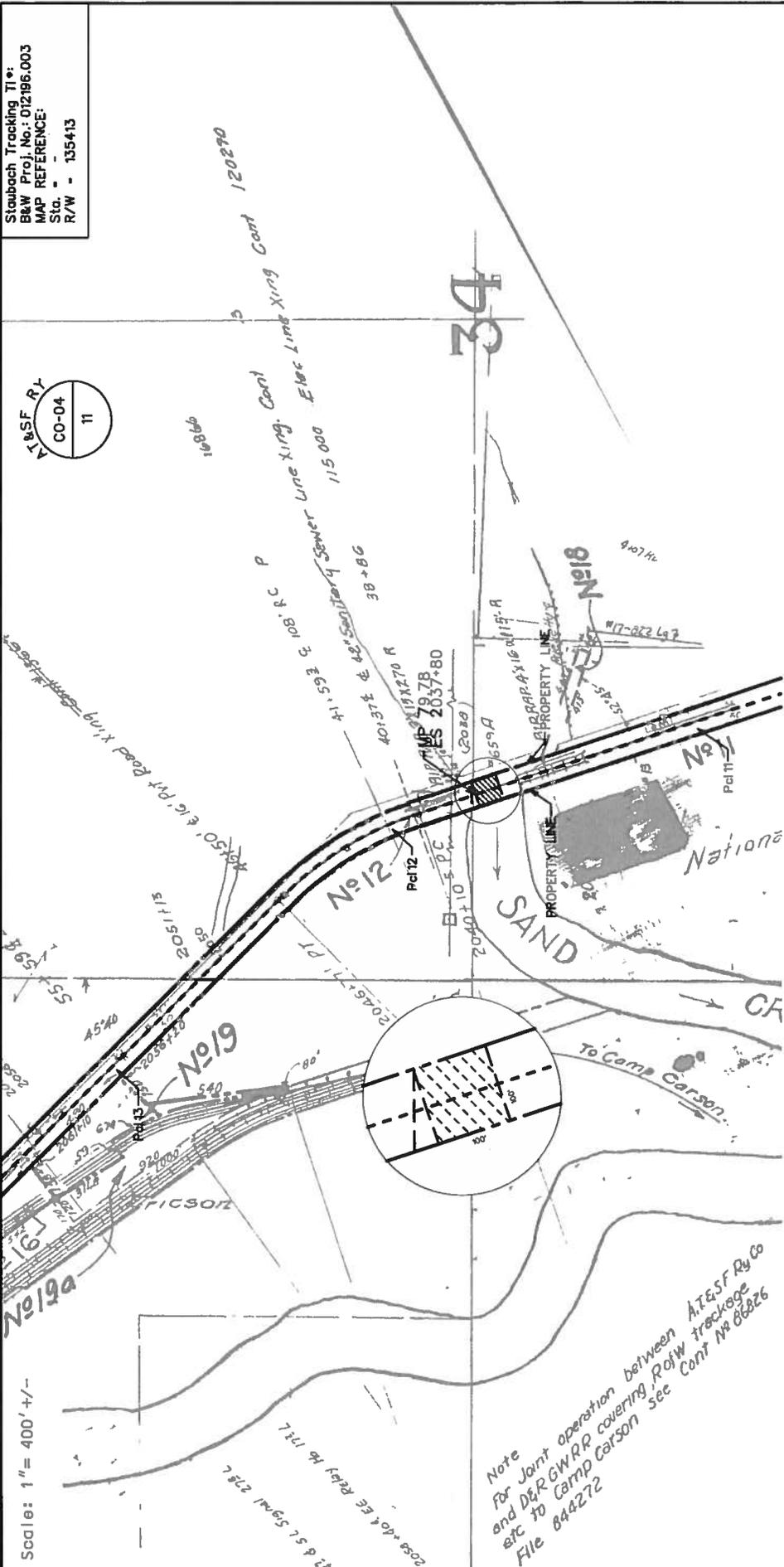
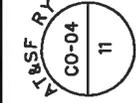
*[Signature]*  
**MUNICIPAL ATTORNEY  
CITY OF COLORADO SPRINGS**

**EXHIBIT "A"**

**Premises**

# EXHIBIT "A"

Staebach Tracking II\*  
 BAW Proj. No.: 012196.003  
 MAP REFERENCE:  
 STA. -  
 R/W - 135413



Scale: 1" = 400' +/-

Note  
 For Joint operation between AT&SF Ry Co  
 and DER GWR RR covering ROW trackage  
 etc to Camp Carson see Cont No 66826  
 File 844272

To: Pueblo Jct.

To: 20th street

Colorado Division  
 Pikes Peak Subdivision - L.S. 477  
 Vol. Sec. 43060  
 AT&SF RY CO-04, Map 11  
 Sec. 34, T14S, R66W 6PM  
 November 14, 2012  
 M.P. 79.78 STK

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

Legend:  
 Easement Area

To: City of Colorado Springs  
 At: Colorado Springs  
 El Paso County  
 Colorado

DRAWING NO. 3-56367

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

**MEMORANDUM OF EASEMENT**

THIS MEMORANDUM OF EASEMENT is hereby executed this 20<sup>th</sup> day of June, 2013, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and CITY OF COLORADO SPRINGS, a political subdivision of the State of Colorado, ("Grantee"), whose address for purposes of this instrument is 30 South Nevada Avenue, Suite 405, Colorado Springs, Colorado 80903, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

WHEREAS, Grantor owns or controls certain real property situated in the City of Colorado Springs, Colorado as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated June 20 2013 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

[signature pages follow]

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: *Carrie Thompson*  
Name: Carrie Thompson  
Title: Manager - Land Revenue Management

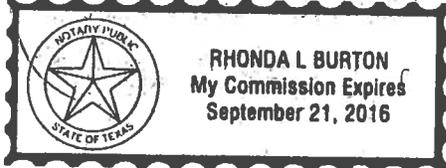
STATE OF TEXAS      §  
   §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the 20<sup>th</sup> day of June, 20 13,  
by CARRIE THOMPSON (name) as  
Manager - Land Revenue Management (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

*Rhonda L Burton*  
Notary Public

(Seal)

My appointment expires: 9/21/2016



**GRANTEE:**

City of Colorado Springs, State of Colorado

By: Karen Palus  
Name: Karen Palus  
Title: Director Parks, Recreation & Cultural Services

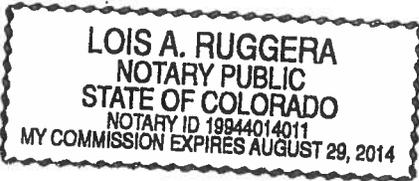
STATE OF COLORADO §  
  §  
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 3rd day of April, 2013, by Karen Palus (name) as Director, Parks, Recreation & Cultural Services (title) of City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation

Lois A. Ruggera  
Notary Public

(Seal)

My appointment expires: Aug. 29, 2014



**APPROVED AS TO FORM**

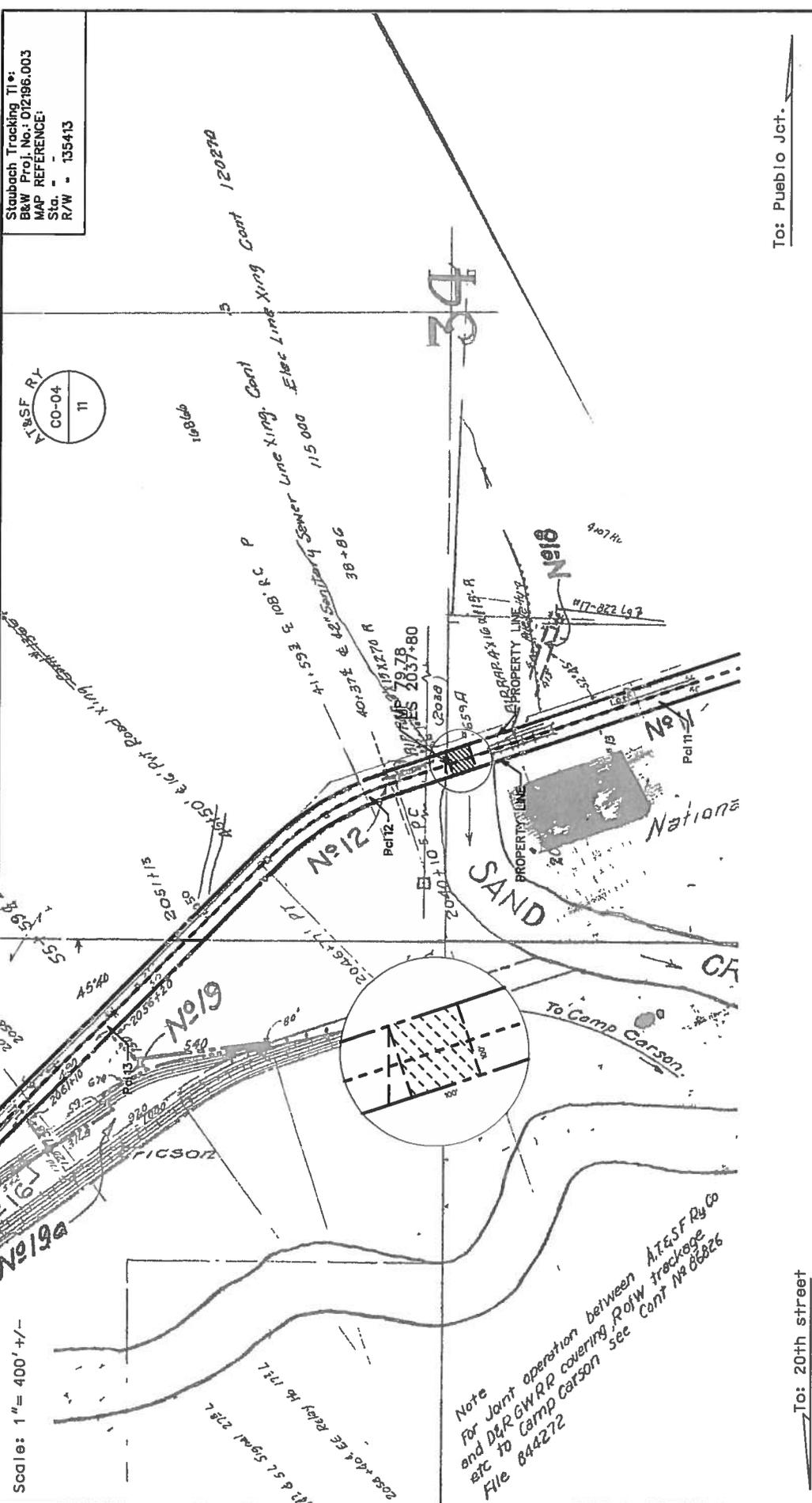
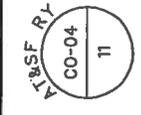
[Signature]  
**MUNICIPAL ATTORNEY  
CITY OF COLORADO SPRINGS**

**EXHIBIT "A"**

**Premise**

**EXHIBIT "A"**

Staebach Tracking Tie:  
 B&W Proj. No.: 012196.003  
 MAP REFERENCE:  
 Sta. -  
 R/W - 135413



Scale: 1" = 400' +/-

Note  
 For Joint operation between AT&SF Ry Co  
 and D&R G.W.R.R covering ROW trackage  
 etc to Camp Carson see Cont No 86826  
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To: Pueblo Jct.

To: 20th street

Colorado Division  
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 AT&SF RY CO-04, Map 11  
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 November 14, 2012  
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MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

Legend:  
 Easement Area

To: City of Colorado Springs  
 At: Colorado Springs  
 El Paso County  
 Colorado

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF makes no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

# EXHIBIT A



2850 Serendipity Circle West  
Colorado Springs, CO 80917

Phone: 719-528-6133  
Fax: 719-528-6848

Surveying • Planning • Engineering • Landscape Architecture

www.ldc-inc.com

SAND CREEK TRAIL  
Project No. 00128  
Revised August 21, 2009  
Sheet 1 of 2

## LEGAL DESCRIPTION: PUBLIC TRAIL EASEMENT

A PUBLIC TRAIL EASEMENT over and across a portion of the Northwest One-Quarter of the Southwest One-Quarter of Section 34, Township 14 South, Range 66 West of the 6th P.M., also being a portion of the A.T. & S.F. RAILROAD right-of-way (125' r.o.w. width), situate in the City of Colorado Springs, El Paso County, Colorado, being fifty (50) feet each side of the following described centerline:

Commencing at the Southwest corner of Sand Creek Drainage Way as platted within DRENNAN INDUSTRIAL PARK FILING NO. 3 (Plat Book H-3, Page 33, El Paso County, Colorado records) (all bearings in this description are relative to the Northeasterly right-of-way line of said A.T. & S.F. RAILROAD, which bears  $S18^{\circ}59'36''E$  "assumed"); thence  $N18^{\circ}59'36''W$  along said RAILROAD's Northeasterly right-of-way line, 50.00 feet to the Point of Beginning of the EASEMENT centerline herein described; thence  $S71^{\circ}00'24''W$ , 125.00 feet to a point on the Southwesterly right-of-way line of said RAILROAD, said point also being the terminus point of this description, with the side lines of said EASEMENT lengthening and shortening to intersect said RAILROAD's Northeasterly right-of-way line at its Northeasterly end and said RAILROAD's Southwesterly right-of-way line at its Southwesterly end.

## SURVEYOR'S STATEMENT:

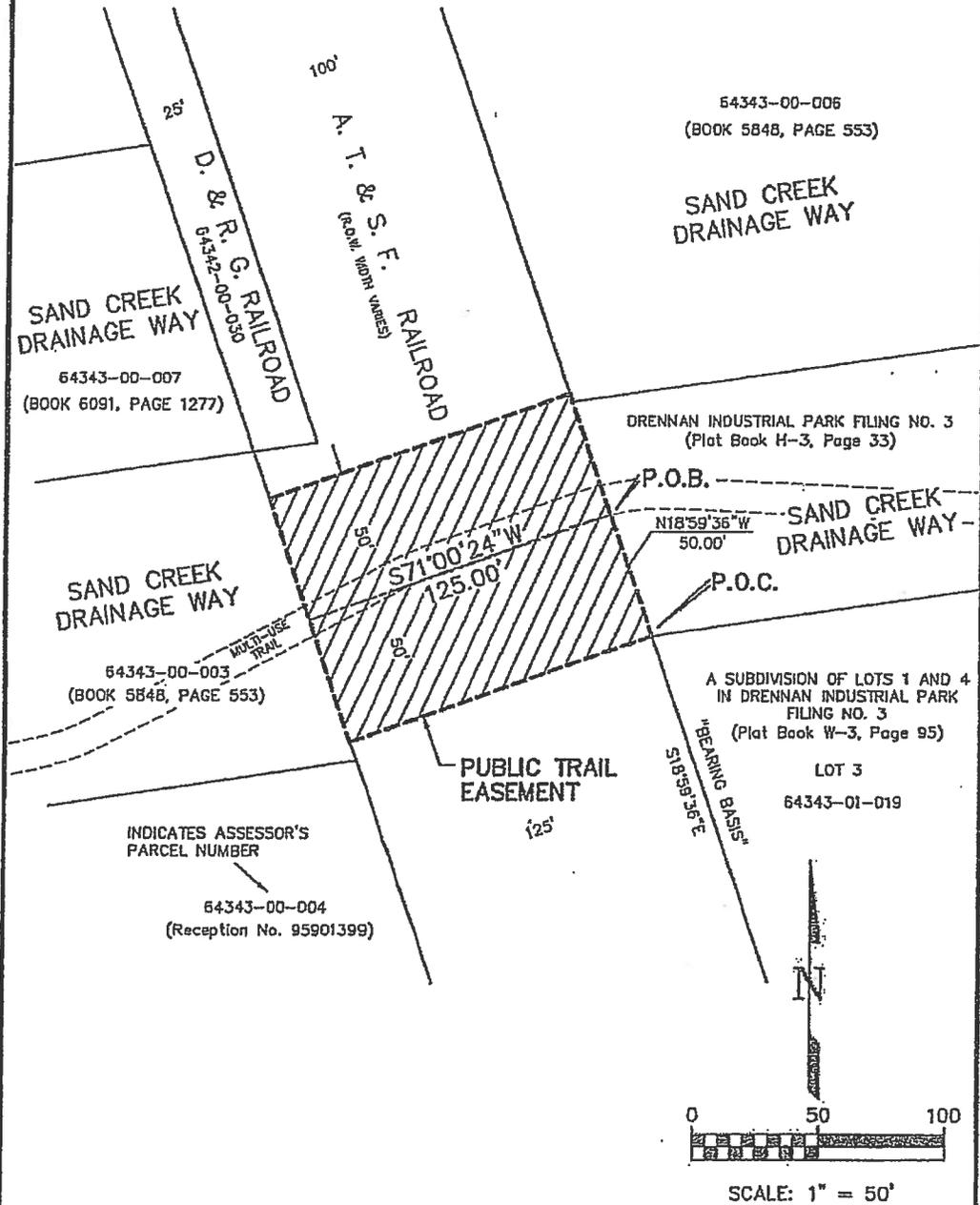
I, David V. Hostetter, a registered Professional Land Surveyor in the State of Colorado, do hereby state that the attached LEGAL DESCRIPTION and EXHIBIT were prepared under my direct responsibility, supervision, and checking, and on the basis of my knowledge, information and belief, are correct.

David V. Hostetter, Professional Land Surveyor  
Colorado P.L.S. No. 20681  
For and on behalf of LDC, Inc.

File: 00128 Trail ATSF Legal  
DVH/dh

# LEGAL DESCRIPTION EXHIBIT

A PORTION OF THE  
 NW1/4 SW1/4 OF SECTION 34, T 14 S, R 66 W OF THE 6TH P.M.,  
 IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO



SHEET 2 OF 2

 <p>PLANNING • LANDSCAPE ARCHITECTURE                  ENGINEERING • SURVEYING                  www.ldcinc.com • TEL: (719) 528-6133 • FAX: (719) 528-6848                  2450 SERENITY CIRCLE WEST • COLORADO SPRINGS, CO 80917</p>	<p>NOTE: This EXHIBIT does not represent a monumented land survey, and is only intended to depict the attached LEGAL DESCRIPTION.</p>	REVISIONS			
		NO.	DESCRIPTION	DATE	BY
DWN BY: KIW      DATE: 08/10/09 CKD BY: DVH      REF. NO.: 00128EX1B	PROJECT NUMBER 00128				

**CONSTRUCTION AND MAINTENANCE AGREEMENT FOR  
PEDESTRIAN/BIKE UNDERPASS**

This Agreement made and entered into in duplicate as of the 24th day of May 2013 by and between the **BNSF RAILWAY COMPANY**, a Delaware Corporation, hereinafter called "Railroad" or "BNSF", and **THE CITY OF COLORADO SPRINGS, COLORADO**, hereinafter called "City".

**WHEREAS**, the Railroad owns and operates a line of railroad in and through the City of Colorado Springs;

**WHEREAS**, the City proposes to construct and maintain an underpass structure to carry a multi-use, non-motorized pedestrian/bike trail for recreational use by the public without charge under the Railroad's existing bridge structure BR 79.8 over Spring Creek and track at Line Segment 477, Mile Post 79.8, located on the Colorado Division, Pikes Peak Subdivision (hereinafter "the Premises"), as shown on Exhibit "A", attached hereto and made a part hereof;

**WHEREAS**, in connection with said project, it will be necessary for the City to perform certain work on, under and in proximity to the Railroad right-of-way and tracks;

**WHEREAS**, the City is willing to undertake the construction of said Pedestrian/Bike Underpass and related work with its Contractor at the expense of the City, and Railroad is willing to consent to the construction of the Improvements upon the terms and conditions herein stated and not otherwise; and

**WHEREAS**, the parties desire to set forth in this instrument an agreement relating to the ownership, operation, use, maintenance, repair and replacement of the Pedestrian/Bike Underpass, upon the terms and conditions herein stated and payment of any Railroad charges made necessary in connection therewith;

**NOW, THEREFORE**, in consideration of the premises and the mutual dependent promises hereinafter contained, the parties agree as follows:

**ARTICLE I- DEFINITIONS**

The term "Pedestrian/Bike Underpass" as used in this Agreement, refers to the concrete walk with wood columns and metal roofing that will constitute the floor, walls and canopy of the pedestrian/bike path that will pass under the existing BNSF bridge BR 79.8 over Spring Creek, and the pedestrian/bike path itself along with all associated improvements and appurtenances as shown on the plans attached hereto and incorporated herein as Exhibit B (the "Plans") in the general detail and location on the Property as described in Exhibit A.

## **ARTICLE II-EXHIBITS**

The Exhibits listed below are attached hereto and made a part of this Contract:

Exhibit A	Map showing location of Pedestrian/Bike Underpass
Exhibit B	Construction Plans for the Pedestrian/Bike Underpass
Exhibit C	Contractor's Requirements
Exhibit C-1	Contractor's Agreement
Exhibit D	Easement Agreement for Pedestrian/Bike Underpass Recreational Trail

## **ARTICLE III-RAILROAD OBLIGATIONS**

In consideration of covenants and conditions to be fulfilled by the City as hereinafter set forth, Railroad agrees:

1. By separate agreement in the form of Exhibit D and for the consideration stated therein, BNSF shall grant to the City, its agents and contractors a non-exclusive perpetual Easement upon the Premises as shown on Exhibit A for the Recreational Trail Pedestrian/Bike Underpass. Said Easement is granted pursuant to the Colorado Recreational Liability Act, C.R.S. § 33-41-101, et. seq., and with the intent that Railroad be entitled to the protection and benefits thereof.

2. Railroad will provide flagging services in accordance with notification requirements and rates described within this agreement and associated attachments. No other work is anticipated to be completed by the Railroad for the Pedestrian/Bike Underpass.

3. Railroad will present insofar as possible a final detailed and itemized statement for work performed by Railroad at expense of the City within one hundred twenty (120) days after completion thereof. The Railroad may present periodic itemized progress bills to the City for work as completed. Final payment will be made in the amount of the difference between the sum of the monthly payments made and the itemized audited statement for the total amount of the work performed by the Railroad upon completion of the work. In the event of overpayment, Railroad shall refund to the City such excess.

## **ARTICLE IV-CITY'S OBLIGATIONS**

In consideration of the covenants and conditions to be fulfilled by Railroad as herein set forth, the City agrees:

1. To furnish all plans, specifications, engineering supervision, labor, materials, supplies, and equipment necessary to construct the Pedestrian/Bike Underpass. Plans and specifications for work to be done on, over, under or adjacent to Railroad's right of way and tracks shall be submitted to Railroad's Manager of Public Projects Andy Amparan in Kansas City, Kansas for review and comments or approval prior to construction. Approval by Railroad shall not be construed or deemed to be ratification or an adoption by Railroad of said plans and specifications. The Railroad shall not be liable or responsible in any manner for the structural design, details or construction of the Pedestrian/Bike Underpass. The final plans and specifications as approved by the parties are attached hereto as Exhibit B and incorporated herein by reference. All construction and work done by the City shall be in accordance with the approved plans and specifications.

2. Pay the consideration stated in Exhibit D for the easements and a \$2000 administrative fee before the commencement of the work on the Pedestrian/Bike Underpass.

3. Advertise the project, solicit bids and enter into a construction contract for the Pedestrian/Bike Underpass in accordance with the terms of this Agreement.

4. Construct or cause to be constructed in a manner acceptable to the Railroad said Pedestrian/Bike Underpass in accordance with Exhibit B and Exhibits C and C-1 attached hereto and incorporated herein by reference.

5. Arrange for relocation of any utility facilities that may be affected by this Pedestrian/Bike Underpass. Construction shall not interfere with any fiber optic lines or other use of the Premises by the BNSF or its permittees. Before the City's contractor begins any excavation, the contractor shall telephone BNSF at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the affected BNSF premises and confer with BNSF with regard to any other overhead or underground utilities or services which may be on or near the site of the work. If any utilities are impacted by the work, the City's contractor, at its expense, shall telephone the telecommunications and utility companies involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable or other utility prior to beginning any work on the Premises. Any such location or relocation shall be at the sole cost and expense of the City.

6. To furnish or cause to be furnished all labor, materials, tools and equipment and to construct the Pedestrian/Bike Underpass, except such work as is to be performed by Railroad, in accordance with Exhibit B or such plans and specifications as approved by the PUC.

7. Prior to commencement of any work on Railroad's property, the City shall require its contractor to sign and return to Railroad Exhibit "C-1" and comply with all terms in Exhibit "C" and all work on said project to be performed in a manner that will not endanger the safety of the Railroad or interfere with the operation thereof. If, in the opinion of the Railroad, the operation of the City's

contractor is endangering the safety of the Railroad's operation, Railroad may immediately order the termination of further work on Railroad's premises, until the dangerous condition has been corrected, without liability on the Railroad's part.

8. To reimburse the Railroad within forty five (45) days after receipt of properly computed and compiled statements for costs incurred for work done by the Railroad in accordance with the provisions of this Agreement. Notwithstanding the foregoing, the City shall not have any liability for or obligation to pay for any work done by Railroad unless statement therefore is presented to and received by the City before the expiration of one year after the day of completion of all work done by the Railroad in accordance with the provisions of this Agreement.

9. In the event that City shall fail to pay any monies due to Railroad within forty five (45) days after receipt of the invoice, then City shall pay interest at the rate of one percent (1%) per month of the outstanding balance of monies owed subject to the requirements and restrictions of the Prompt Payment ordinance.

10. Upon completion of construction of the Pedestrian/Bike Underpass, the City will own and maintain and repair at its sole cost and expense the Pedestrian/Bike Underpass, including but not limited to graffiti removal, snow removal, fence repair and sign repair/replacement. BNSF will have no maintenance responsibilities with respect to the Pedestrian/Bike Underpass or Spring Creek whatsoever. Prior to any maintenance work or repair of the bike path that requires the City or its contractors to be on, over or within the Railroad right of way or the Premises other than on the pedestrian/bike path or at any time when the City desires to enter upon the Premises outside the pedestrian/bike path with any vehicle or equipment for any purpose whatsoever, five (5) days advance notice must be given to Railroad's Roadmaster, currently Damon Fry, telephone number (303) 480-6251. Said notice shall inform Railroad's Roadmaster of the date(s) of the proposed maintenance, repair or desired vehicular or equipment access, the nature of the maintenance, repair or access to be performed and the manner in which the maintenance, repair and access shall be performed. Upon receipt of such notice, Railroad's Roadmaster will determine and inform the City whether a flagman need be present and whether the City need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are required or performed by the Railroad, such services will be provided at the City's expense. No maintenance performed by the City shall cause any interference with the constant, continuous and uninterrupted use of the trains, property and facilities of Railroad or those using Railroad's facilities with its permission. The City agrees that any contractor retained to perform maintenance or repair on, over or within the Railroad's right of way or the Property will have in place for the duration of such maintenance the insurance required in Exhibit C-1 and comply with all terms of Exhibit C-1 and C. If the City undertakes such maintenance or repair with its own forces or equipment, the City will at all times comply with the requirements of Exhibit C. This notice requirement shall not apply to routine maintenance of the trail including snow removal where the vehicles, equipment and workers will remain on the bike path.

## **ARTICLE V- CONSTRUCTION ACTIVITIES**

1. The City will require that all work herein provided for, to be done by the City's contractor (the "Contractor") on, above or adjacent to the Premises and/or Railroad's right-of-way and tracks, be performed in a manner reasonably satisfactory to the Railroad and shall be performed at such time and in such manner as not to interfere with the movement of trains or traffic upon the tracks of Railroad. The City shall require the Contractor or its subcontractors as part of any contract for work to be performed on or about the Railroad's right-of-way to be totally responsible for all damage to the Railroad as a result of work on the Pedestrian/Bike Underpass, which shall include but not be limited to interference with the normal movement of trains. Should the Contractor's operations result in damage to Railroad property or train delays, the City shall require its Contractor to reimburse the Railroad for such damage or delays within thirty (30) days of receipt of a bill from Railroad for such damages.

2. The City shall cause its Contractor to prosecute and complete work according to the Contractor's own manner and methods and with and by the Contractor's own means and employees, free from any supervision, inspection, or control whatsoever by Railroad, except as may be necessary to enable Railroad to determine whether work performed complies with the requirements of this Agreement and conforms to the Plans. It is the intent of the parties hereto that the City's Contractor shall be and remain an independent contractor and that nothing herein contained shall be construed as inconsistent with that status.

3. The City shall cause its Contractor to comply with all applicable requirements and regulations of every Federal, State, Local or other governmental authority with respect to the performance of work for the safety of the employees engaged therein and of the public and shall take all necessary precautions for the safety of contractor, subcontractors and the employees and tools of both while engaged in said work. In addition, the City shall cause its Contractor to comply with the Railroad's Contractor Requirements set forth in Exhibit C.

4. Railroad's engineer or designee may advise the City's Contractor or Contractor's site supervisor that an agent, servant, or employee of the Contractor or of a subcontractor is working in an unsafe manner or may potentially work in an unsafe manner, in which event, Contractor's work site supervisor shall cause said agent, servant or employee to leave the work site and Railroad's property. The City shall cause its Contractor to assume all responsibility for the safe work methods and practices of its agents, servants, and employees.

5. If the City's Contractor prosecutes the Pedestrian/Bike Underpass contrary to the Plans or if such Contractor shall prosecute said work in a manner deemed hazardous by the Railroad or if the insurance required in Exhibit C-1 shall be cancelled during the progress of the work, Railroad shall have the right to stop said work until the acts or omissions of such Contractor have been fully rectified to the satisfaction of the Railroad or until additional insurance has been obtained and proof thereof delivered to and accepted by Railroad. Such work stoppage shall not give rise to or impose upon

Railroad any liability.

6. The City agrees that it will not permit any contractor to enter upon or perform any work contemplated by this Agreement upon or within 25 feet of the centerline of the Railroad's track unless and until contractor shall have executed and delivered to Railroad the Agreement between BNSF and the Contractor in the form attached hereto as Exhibit C-1 and obtained Railroad's approval of all railroad required insurance.

7. All of the limitations and obligations imposed upon the City's Contractor by the City and all rights reserved to Railroad by this Agreement shall apply with equal force and effect to any subcontractor(s) performing any work for the City's Contractor upon Railroad property. The City shall provide that its Contractor shall be primarily liable and responsible to Railroad for all acts or omissions of any of the contractor's subcontractors employed upon Railroad property. Nothing herein shall be construed to preclude Railroad from proceeding against the City's Contractor and subcontractors individually or collectively. Only those subcontractors whose operations are covered by the insurance provisions of Exhibit C-1 hereof will be authorized to work upon Railroad property.

8. The City shall cause its Contractor to provide a lockable master battery disconnect switch on all operated or leased mobile equipment stored or parked at or adjacent to the Premises during construction. The Contractor must verify that the master battery disconnect switch is left in the off or disconnect position and padlocked, when equipment is left unattended. No equipment shall be left unattended within 25 feet of track centerline unless approval is obtained from the Responsible Railroad Project Representative. Under no circumstances is equipment to be left unattended within 8'-6" of track centerline or any other position where it could be struck by a train or on-track equipment. To protect against unauthorized access and/or use, unattended equipment needs to be shut off and left in gear, with brakes set. Remove keys and lock cabs, where so equipped. Buckets and blades need to be lowered to the ground. Where equipment has an enclosed cab, the installation of a lockable hasp on cab access doors is strongly encouraged.

## **ARTICLE VI-LIABILITY**

1. As between the parties hereto, each party hereto shall be responsible for its own negligence and that of its agents, servants, and employees in the performance of this Agreement, consistent with the provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S. (the "Act").

2. City shall and will and does hereby agree, insofar as permitted by law and without waiving any defenses it has under the Colorado Governmental Immunity Act to any third party claim, to assume responsibility for any and all claims, liabilities, losses, damages, costs, expenses, judgments, or attorney's fees for or on account of personal injuries to or death of persons or damage to or loss or destruction of property, directly or indirectly caused by, due to arising out of, or in connection with, the construction,

maintenance, operation, use, removal or existence of the Pedestrian/Bike Underpass, excepting injuries or damages which are not caused by use of the Pedestrian/Bike Underpass, such as derailments caused by defects in the Railroad tracks or equipment.

## **ARTICLE VII-NOTICE PROVISIONS**

1. For the purposes of this Agreement, the individuals named below are hereby designated representatives of the respective parties. Any party may, at any time, designate in writing new or substitute representatives.

### For the City

Christian Lieber,  
Principal Planner City of Colorado Springs Parks,  
Recreation and Cultural Services  
1401 Recreation Way, MC 1200  
Colorado Springs, Colorado 80905  
719-385-6530

with copies to:

Ingrid Richter  
Real Estate Services Manager  
City of Colorado Springs  
30 South Nevada Avenue, Suite 405  
Colorado Springs, Colorado 80903

### For BNSF:

Andy Amparan  
BNSF Railway Company  
4515 Kansas Ave  
Kansas City, Kansas 66106  
913-551-4964

## **ARTICLE VIII- TERMINATION**

The City and Railroad mutually agree:

1. The City and Railroad acknowledge that the Railroad's willingness to grant the Easement for the Pedestrian/Bike Underpass and enter into this Agreement is based solely on the protection afforded Railroad by the Colorado Recreational Liability Act, C.R.S. § 33-41-101 or any replacement or alternative state statute or City ordinance which will afford the Railroad similar protections against liability for the recreational use of the Pedestrian/Bike Underpass. In the event that the Colorado Recreational Liability Act is repealed, without any substantially similar replacement, or amended so it no longer affords substantially the same protection against liability as previously afforded, the Railroad and the City shall endeavor, in good faith, to provide legal protection for the Railroad of a similar nature as previously afforded by enactment of a new state statute,

adoption of a City ordinance, or by provision of insurance by the City or its agent reasonably satisfactory to the Railroad. If such new legal protection cannot be secured in a time frame reasonably satisfactory to the Railroad, the Pedestrian/Bike Underpass shall be closed to public access by the City, upon thirty (30) days' written notice by the Railroad to the City and at the City's expense, until such time as legal protection reasonably satisfactory to the Railroad is arranged. If such legal protection is not provided within two (2) years of the City receiving the written notice from the Railroad, upon written request of the Railroad, the Pedestrian/Bike Underpass shall be permanently sealed shut and the paved trail located on Railroad property shall be removed by the City and the land under the trail restored to its original condition until such time as the City can provide legal protection satisfactory to the Railroad.

2. In the event the City shall for any reason abandon the construction of the Pedestrian/Bike Underpass before completion, the Railroad shall have the right to terminate this Agreement and the Easement, and the City agrees to remove the Pedestrian/Bike Underpass and restore the Premises to the condition existing prior to commencement of work at the City's expense. All such work shall be performed in accordance with the terms of this Agreement and Exhibits C and C-1 attached hereto. Prior to exercising such right, BNSF shall notify the City in writing of its intent to exercise its rights herein giving the City thirty days to cure the cause of the termination.

3. Railroad may terminate this Agreement for any reasons stated herein, which must amount to a material breach of the terms of this Agreement or persistent failure to comply with the terms hereof. Except as noted elsewhere herein, Railroad shall provide thirty days written notice of its intent to terminate this Agreement to provide the City with an opportunity to cure. If the default or breach is the failure to maintain the insurance required in Exhibit C-1 or any unsafe condition or construction practice by the City or its contractor, then Railroad shall have the right to stop the work until proof of such insurance is provided and the unsafe condition or construction practice removed. In the event the breach or default is not cured within thirty days, Railroad at its sole option may terminate this Agreement. City may terminate this Agreement upon thirty days written notice to Railroad for any material breach or persistent failure to comply with the terms hereof.

4. If this Agreement is terminated by either party for the reasons set forth herein, the Pedestrian/Bike Underpass shall be permanently sealed shut and the paved trail located on Railroad property shall be removed by the City and the land under the trail restored to its original condition at the sole cost and expense of City and pursuant to the terms hereof including Exhibit C and C-1.

#### **ARTICLE IX- MISCELLANEOUS**

1. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not

contain the particular part, term or provision held to be invalid.

2. In no event shall any waiver by the Railroad of the breach by the City of any covenant, stipulation, term or condition of this Agreement impair the right of the Railroad to avail itself of any subsequent breach thereof. In no event shall any waiver by the City of the breach by the Railroad of any covenant, stipulation, term or condition of this Agreement impair the right of the City to avail itself of any subsequent breach thereof.

3. This Agreement is intended as the complete integration of all understandings between the parties, their successors and assigns. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other contract executed by the parties and signed by the signatories of this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

4. Each party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of each party and to bind each party to its terms.

5. Appropriation and Funding: Notwithstanding any other term, condition or covenant of this Agreement, it is expressly understood and agreed that any payment obligation of the City under this Agreement, for all or any part of any payment obligations set out herein, whether direct or contingent, shall extend only to payment of monies duly and lawfully appropriated for the purpose of this Agreement by their respective governing bodies. The City has budgeted and appropriated funds to cover the estimated cost of the Project for the year in which this Agreement has been executed by the City. Railroad acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves in this or future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. Status of Parties: It is understood and agreed by and between the parties that the status of the parties shall be that of independent contractors and it is not intended, nor shall it be construed, that any agent or employee of one party is an agent or employee of the other for any purpose whatsoever.

7. Examination of Records: Upon reasonable advance request and during regular business hours, the Railroad agrees that any duly authorized representative of the City including the City Auditor, shall, until the expiration of three (3) years after the payment by the City to the Railroad under this Agreement, have access to and the right to examine any books, documents, papers and records of the Railroad, which are directly pertinent to transactions related to this Agreement.

8. Subject to Local Laws; Venue: Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, and the ordinances, regulations, Executive Orders, and/or fiscal rules, enacted and/or promulgated pursuant thereto, excepting those laws and ordinances which have been preempted by federal law. Venue for any action arising hereunder shall be in the District Court, City of Colorado Springs, Colorado or the United States District Court for the District of Colorado.

9. Assignment and Subcontracting: The City and Railroad shall not assign this Agreement, or any part hereof, without the prior written consent of the other parties hereto and it is agreed that any transfer or assignment, or attempted transfer or assignment of this Agreement, or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without said written consent, shall be absolutely void.

10. Conflict of Interest: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Railroad further agrees not to hire or contract for services of any official, officer or employee of the City.

11. Counterparts of this Agreement: This Agreement will be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

12. Nothing contained in this Agreement shall be deemed or construed by the City and Railroad or by any third party to create the relationship of principal and agent or of any partnership or of joint venture between the City and Railroad.

13. Nothing contained in this Agreement is intended or shall be construed to confer upon or give any person other than the parties thereto and their successors and assigns, any rights, benefits or remedies under or by reason of the Agreement.

14. In connection with the performance of work under this Agreement, the parties 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, marital status, or physical or mental disability; and the parties further agree to insert the foregoing provision in all approved subcontracts hereunder.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

By: A. X. Gamparan

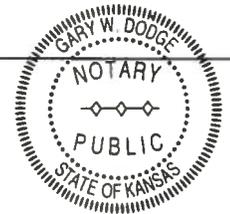
Title: Mgr Public Projects

STATE OF KANSAS )  
                  Kansas City ) ss.  
CITY OF WYANDOTTE )  
                                  COUNTY

The foregoing instrument was acknowledged before me this 29 day of May, 2013 by GARY W DODGE as NOTARY PUBLIC of BNSF Railway Company, a Delaware Corporation.

WITNESS my hand and official seal.

Gary W Dodge  
Notary Public



My Commission Expires: 10-21-2016

MY COMMISSION EXPIRES:

10-21-2016

CITY OF COLORADO SPRINGS

By: Karen Palus

Printed Name: Karen Palus

Title: Director Parks, Recreation & Cultural Services

WITNESS:

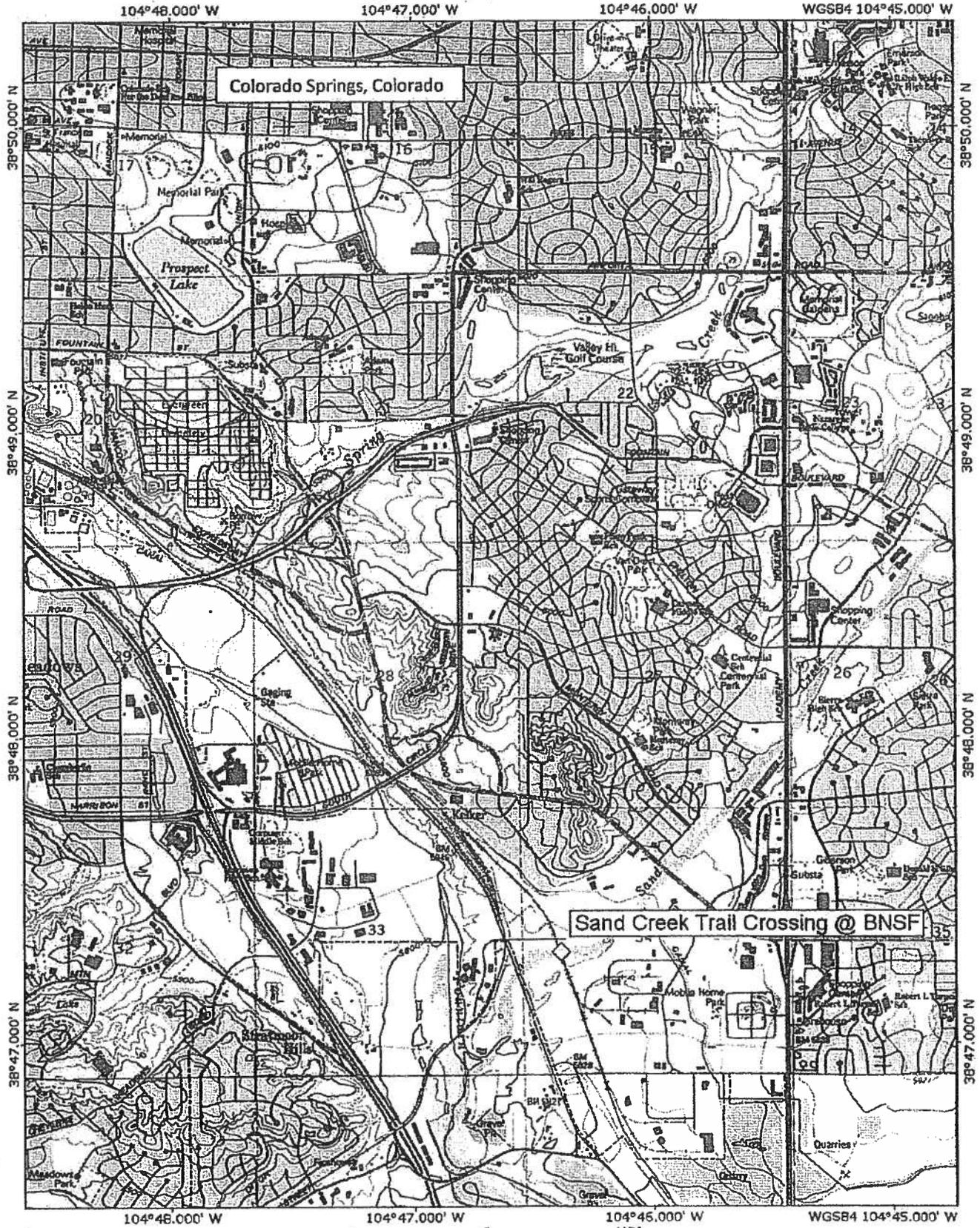
Sorabuggana 4/3/2013

APPROVED AS TO FORM

[Signature]  
MUNICIPAL ATTORNEY  
CITY OF COLORADO SPRINGS



**EXHIBIT A**  
**LOCATION OF THE PREMISES AND PROJECT**



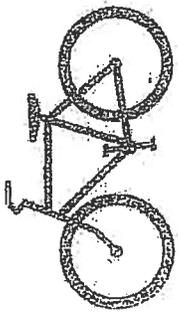
**EXHIBIT B**

**PLANS AND SPECIFICATIONS**

CONSTRUCTION SUB-ACCOUNT NO. 15540

# DEPARTMENT OF TRANSPORTATION STATE OF COLORADO

CITY OF COLORADO SPRINGS PARKS and RECREATION TRAIL IMPROVEMENT PROGRAM  
 PLAN of the SAND CREEK MULTI-USE TRAIL  
 COMBINED FEDERAL AID PROJECT NO. STE M-240-094  
 EL PASO COUNTY

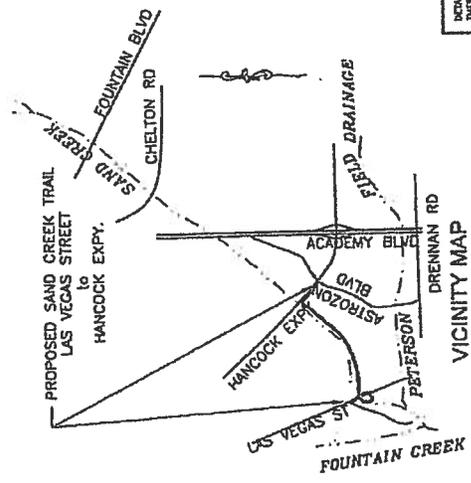


Oversight / NWS	
PRWA FULL OVERSIGHT	DRG DYES
NATIONAL HIGHWAY SYSTEM	DRG DYES

TITLE	DATE
DESIGN PLAN, REC. & REG. PLS.	
WORKING DESIGN DEVELOPMENT & PLS.	
WORKING DESIGN PLS.	
CITY PROJECTS	
CONSTRUCTION PROJECT WORKER	
CITY ENGINEER	
CITY OF COLORADO - TRANSPORTATION	

## SHEET NO. INDEX OF SHEETS

- 1 TITLE SHEET
- 2 STANDARD PLANS LIST
- 3 SUMMARY OF APPROXIMATE QUANTITIES
- 4 GENERAL NOTES
- 5 TABULATION OF QUANTITIES
- 6 GENERAL NOTES
- 7 PLAN 23+00.00 TO STA. 23+00.00
- 8 PLAN 23+00.00 TO STA. 23+00.00
- 9 PLAN 23+00.00 TO STA. 23+00.00
- 10 PLAN 23+00.00 TO STA. 23+00.00
- 11 PLAN 23+00.00 TO STA. 23+00.00
- 12 PLAN 23+00.00 TO STA. 23+00.00
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- 21 PLAN 23+00.00 TO STA. 23+00.00
- 22 PLAN 23+00.00 TO STA. 23+00.00
- 23 PLAN 23+00.00 TO STA. 23+00.00



CALL BEFORE YOU DIG...  
 48 HOURS BEFORE YOU DIG...  
 1-800-922-1987

TRAIL DESIGN DATA	
MAXIMUM GRADE	8.33%
MINIMUM HORIZONTAL CURVE	25'
MINIMUM WIDTH	10.0'
TYPICAL WIDTH	12'
CROSS-SLOPE	2%



**Colorado Department of Transportation**  
 500 North Cole Avenue  
 P.O. Box 1000  
 Denver, Colorado 80201  
 Phone: (719) 544-5748 FAX: (719) 546-3411  
 Region 2 - Engineering

**Kovacs Engineering Corporation**  
 11004 South Elm Street  
 Colorado Springs, Colorado  
 719-593-6642  
 719-593-6642  
 KOWA.FELBERT@KOVACS.COM

1-800-922-1987

ROWAY CONSULTING CORPORATION

Title Sheet

Project No./Code  
 STE M-240-094  
 Code: 15540  
 Sheet Number 1 of 22

DETAILED BRIDGE PLANS AND SPECIFICATIONS DRAWINGS SHALL BE PREPARED BY THE ENGINEER AND SUBMITTED TO THE SUPERVISOR. THESE DRAWINGS SHALL BE REVIEWED AND APPROVED BY THE SUPERVISOR. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THESE DRAWINGS. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THESE DRAWINGS. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THESE DRAWINGS.

CONSTRUCTION SUB-ACCOUNT NO. 15540

PLAN NUMBER	M STANDARD TITLE	PAGE NUMBER	PLAN NUMBER	M STANDARD TITLE	PAGE NUMBER	PLAN NUMBER	S STANDARD TITLE	PAGE NUMBER
<input type="checkbox"/> M-100-1	STANDARD STAIRS (3 SHEETS)	1-3	<input type="checkbox"/> M-607-1	WIRE FENCES AND GATES	84-86	<input type="checkbox"/> S-612-1	DELINATOR INSTALLATIONS	131-135
<input type="checkbox"/> M-203-1	APPROACH ROADS	4	<input checked="" type="checkbox"/> M-607-2	CHAIN LINK FENCE	87-89	<input checked="" type="checkbox"/> S-614-1	GROUND SIGN PLACEMENT (2 SHEETS)	136-137
<input type="checkbox"/> M-203-2	DITCH TYPES	5	<input type="checkbox"/> M-607-3	BARRIER FENCE	90	<input type="checkbox"/> S-614-2	CLASS I SIGNS	138
<input type="checkbox"/> M-203-11	SURFELEVATION CROWNED HIGHWAYS AND DIVIDED HIGHWAYS (3 SHEETS)	6-8	<input type="checkbox"/> M-607-4	DEER FENCE AND GATES	91-92	<input checked="" type="checkbox"/> S-614-3	CLASS II SIGNS	139
<input type="checkbox"/> M-203-12	SURFELEVATION CROWNED HIGHWAYS AND DIVIDED HIGHWAYS (3 SHEETS)	9-10	<input type="checkbox"/> M-607-10	PICKET SNOW FENCE	103	<input type="checkbox"/> S-614-4	CLASS III SIGNS	140-142
<input type="checkbox"/> M-206-1	EXCAVATION AND BACKFILL FOR STRUCTURES	11-12	<input type="checkbox"/> M-607-15	ROAD CLOSURE GATE (9 SHEETS)	94-102	<input type="checkbox"/> S-614-5	BREAK-AWAY SIGN SUPPORT DETAILS FOR GROUND SIGNS	(2 SHEETS) 143-144
<input type="checkbox"/> M-206-2	EXCAVATION AND BACKFILL FOR BRIDGES	(2 SHEETS) 13-14	<input type="checkbox"/> M-608-1	CURBS, GUTTERS, AND SIDEWALKS	(3 SHEETS) 102-106	<input type="checkbox"/> S-614-6	CONCRETE FOOTINGS AND SIGN ISLANDS	(2 SHEETS) 145-146
<input type="checkbox"/> M-208-1	TEMPORARY EROSION CONTROL	(7 SHEETS) 15-21	<input type="checkbox"/> M-611-1	ROAD RAMP	(2 SHEETS) 110-111	<input type="checkbox"/> S-614-8	TUBULAR STEEL SIGN SUPPORT DETAILS FOR CLASS II SIGNS	(9 SHEETS) 147-151
<input type="checkbox"/> M-210-1	WALDOX DETAILS	(2 SHEETS) 22-23	<input type="checkbox"/> M-613-1	ROADWAY LIGHTING	(3 SHEETS) 112-115	<input type="checkbox"/> S-614-10	MARKER ASSEMBLY INSTALLATIONS	152
<input type="checkbox"/> M-214-1	PLANTING DETAILS	24	<input type="checkbox"/> M-614-1	SAND BARREL ARRAYS	(2 SHEETS) 119-120	<input type="checkbox"/> S-614-12	STRUCTURE NUMBER INSTALLATION	153
<input type="checkbox"/> M-412-1	CONCRETE PAVEMENT JOINTS	(5 SHEETS) 25-29	<input type="checkbox"/> M-614-2	EMBANKMENT PROTECTOR TYPE 3	121	<input type="checkbox"/> S-614-14	FLASHING BEACON AND SIGN INSTALLATION	(3 SHEETS) 154-156
<input type="checkbox"/> M-510-1	STRUCTURAL PLATE PIPE H-20 LOADING	30	<input type="checkbox"/> M-615-1	EMBANKMENT PROTECTOR TYPE 5	122	<input type="checkbox"/> S-614-20	TYPICAL POLE MOUNT SIGN INSTALLATION	157
<input type="checkbox"/> M-601-1	SINGLE CONCRETE BOX CULVERT	(2 SHEETS) 31-32	<input type="checkbox"/> M-615-2	INVERTED SIPHON	123	<input type="checkbox"/> S-614-21	CONCRETE BARRIER SIGN POST INSTALLATIONS	158
<input type="checkbox"/> M-601-2	DOUBLE CONCRETE BOX CULVERT	(2 SHEETS) 33-34	<input type="checkbox"/> M-616-1	FIELD LABORATORY, CLASS 1	124	<input type="checkbox"/> S-614-22	TYPICAL MULTI-SIGN INSTALLATIONS	159
<input type="checkbox"/> M-601-3	TRIPLE CONCRETE BOX CULVERT	(2 SHEETS) 35-36	<input type="checkbox"/> M-620-1	FIELD LABORATORY, CLASS 2	125	<input type="checkbox"/> S-614-40A	TYPICAL TRAFFIC SIGNAL INSTALLATION DETAILS (5 SLOTS) 167-171	
<input type="checkbox"/> M-601-10	HEADWALL FOR PIPES	37	<input type="checkbox"/> M-620-2	FIELD OFFICE, CLASS 1	126	<input type="checkbox"/> S-614-50	ALTERNATE TRAFFIC SIGNAL INSTALLATION DETAILS (5 SLOTS) 167-171	
<input type="checkbox"/> M-601-11	TYPE 'S' SADDLE HEADWALL FOR PIPE	38	<input type="checkbox"/> M-620-11	FIELD OFFICE, CLASS 2	127	<input type="checkbox"/> S-614-50	OVERHEAD SIGNS MONOTUBE	(14 SHEETS) 172-185
<input type="checkbox"/> M-601-12	HEADWALLS AND PIPE OUTLET PAVING	38	<input type="checkbox"/> M-620-12	SURVEY MONUMENTS	(2 SHEETS) 128-129	<input checked="" type="checkbox"/> S-627-1	PAVEMENT MARKINGS	(5 SHEETS) 186-190
<input type="checkbox"/> M-601-20	WHORLS FOR PIPE OR BOX CULVERTS	40	<input type="checkbox"/> M-628-1			<input checked="" type="checkbox"/> S-630-1	TRAFFIC CONTROLS FOR HIGHWAY CONSTRUCTION	(12 SHEETS) 181-203
<input type="checkbox"/> M-603-1	METAL AND PLASTIC CULVERT PIPE	(2 SHEETS) 41-42				<input type="checkbox"/> S-630-2	BEACON SIGNS, PORTABLE BARRIERS (READY & VERTICAL PANELS)	204
<input type="checkbox"/> M-603-2	REINFORCED CONCRETE PIPE	43				<input type="checkbox"/> S-630-3	FLASHING BEACON (PORTABLE) DETAILS	204
<input type="checkbox"/> M-603-3	PREDCAST CONCRETE BOX CULVERT	44						
<input type="checkbox"/> M-603-10	CONCRETE AND METAL END SECTIONS	(2 SHEETS) 45-46						
<input type="checkbox"/> M-604-10	INLET, TYPE C	47						
<input type="checkbox"/> M-604-11	INLET, TYPE D	48						
<input type="checkbox"/> M-604-12	CURB INLET, TYPE R	(2 SHEETS) 49-50						
<input type="checkbox"/> M-604-13	CONCRETE INLET, TYPE 13	51						
<input type="checkbox"/> M-604-20	MANHOLES	(3 SHEETS) 52-54						
<input type="checkbox"/> M-604-25	WANE GRATE INLET	(3 SHEETS) 55-58						
<input type="checkbox"/> M-605-1	SURFSURFACE DRAINS	60						
<input type="checkbox"/> M-606-1	GUARDRAIL TYPE 3 W-BEAM	(16 SHEETS) 61-76						
<input type="checkbox"/> M-606-13	GUARDRAIL TYPE 7 F-SHAPE BARRIER	(4 SHEETS) 77-80						
<input type="checkbox"/> M-606-14	PREDCAST TYPE 7 CONCRETE BARRIER	(3 SHEETS) 81-83						

COLORADO  
DEPARTMENT OF TRANSPORTATION  
STANDARD PLANS LIST  
M & S STANDARDS  
JULY 4, 2006

THE STANDARD PLAN SHEETS INDICATED  
HEREON BY A MARKED BOX ARE TO BE  
USED TO CONSTRUCT THIS PROJECT.



Colorado Department of Transportation 800 North Elk Avenue P.O. Box 336 Pueblo, Colorado 81001 Phone: (719) 548-3146 Fax: (719) 548-5414	Kiewit Engineering Corporation 1804 South Elm Street Colorado Springs, Colorado 80904-4800 (719) 800-7342 KIEWIT PROJECT MCL 00415	Sheet Revisions 000000		As Constructed No Revisions Revised Not		Standard Plans List Project No./Code STE M-240-09A Code 15540 Sheet Number 2 of 22	
		Region 2 - Engineering		Sheet Status Sheet Deleted		Sheet Deleted	

CONSTRUCTION SUB-ACCOUNT NO. 15540

SUMMARY OF APPROXIMATE QUANTITIES

CONTRACT ITEM NO.	CONTRACT ITEM	UNIT	PLAN	AS CONST.	PROJECT TOTALS
201	CLEARING & GRUBBING	LS	1173		1
203.1	EXCAVATION (HAUL)	CU	950		950
207	TOPSOIL	CU	4,350		4,350
208.1	STORM DRAIN / CULVERT RILEY PROTECTION	EA			1
208.2	SKET FENCING	LF			2
208.3	CONCRETE WASHOUT STRUCTURE	EA			2
208.4	VEHICLE TRAPPING CONTROL	EA			2
212.1	SEEDING	AC	3.0		3.0
212.2	EROSION CONTROL FABRIC	SY	2650		2650
212.3	MULCHING	AC	3.0		3.0
212.4	EROSION CONTROL SUPERVISOR	LS			1
304.1	AGGREGATE BASE COURSE (CLASS 6)	CU	310		310
304.2	3/4" CRUSHED ROCK	CU	15		15
408	HPR, 4" THICK	TON	40		40
508.1	10-INCH 150 SQA/PPRP	CU	1250		1250
508.2	3'-4" 8' BOLLARDS	LF	170		170
508.3	12" 550 RPPRP (CULVERT OUTLET PROTECTION)	CU	2		2
514.1	BREWERY RAILINGS	LF	331		331
514.2	SHOOTH RAIL FENCE	LF	814		814
604.1	CITY STD. 10-FOOT OUM CURB RIBET	EA			1
604.2	CITY STD. 4" VAHOLE	EA			1
604.3	ADJUST MANHOLE COVERS & VALVE COVERS	EA			5
608.1	REMOVE EXISTING GUARD RAILING	LF	78		78
608.2	STANDARD NON-FLARED DIO TERMINAL, TYPE 30	EA			1
608.3	TYPE 7 BARRIER	LF	30		30
607.1	CHINA LARK FENCE	LF	115		115
607.2	REMOVE & SALVAGE 4' CHAINLINK FENCE	LF	230		230
607.3	REMOVE & SALVAGE 4' CHAINLINK FENCE	LF	230		230
607.4	REMOVE EXISTING BARRER HRS. FENCE	LF	43		43
608.4	CONCRETE TRAIL SECTION A	SY	3,265		3,265
608.5	CONCRETE TRAIL SECTION B	SY	312		312
608.6	CONCRETE TRAIL SECTION C	SY	368		368
608.7	CONCRETE TRAIL SECTION D	SY	608		608
608.8	CONCRETE CURB RAMPS, CITY STD.	EA			4
608.9	CONCRETE DRIVEWAY, CITY STD.	EA			1
608.7	TYPE 1 CURB & GUTTER, CITY STD.	LF	106		106
608.8	STD. CURB FLARES	EA			3
608.9	ROLLED ASPHALT CURB	LF	20		20
817.1	18" HOPE CULVERT	LF	174		174
817.2	18" PVC 50R35	LF	5		5
817.3	15" HPE FES	EA			1
820	SAWTOOTH EAVES	EA			1
821	CONSTRUCTION STAIRS	EA			1
822	EPOXY PAVEMENT MARKING, CROSSSTRAKS	EA			2
823	MUNICIPALIZATION	EA			1
830.1	CONSTRUCTION ZONE TRAFFIC CONTROL 30" 50"	EA			8
830.2	TRAIL SIGNAGE, PANEL SIZE A	EA			14
830.3	REDUCE/REPLACE SIGNS	EA			2
830.4	CONCRETE CURB AND SIDEWALKS	EA			4
712.1	CONCRETE WALL CROSSING TUB	EA			1
712.2	CONCRETE WALL CROSSING TUB	EA			1
712.3	BASE RETAINING WALL	EA			3300
712.4	TRAIL/RR DEBRIS STRUCTURE	EA			1
712.5	FENCE ACCOUNTS/PERSON CONTRACT REVISIONS	EA			1

**Colorado Department of Transportation**  
 502 North Elk Avenue  
 P.O. Box 538  
 Golden, Colorado 80601  
 Phone: (719) 548-5748 FAX: (719) 548-5114

**Region 2 - Engineering**

**Kloves Engineering Corporation**  
 1000 South Elm Street  
 Colorado Springs, Colorado  
 80904-4320  
 (719) 533-7542  
 KENVA PROJ.GST NO.15540.5

00000

Sheet Revisions

As Constructed	He Revised:
Drawn:	Revised:
Not	Not

**Summary of Approximate Quantities**

Project No./Code: **STE M-240-094**

Code: **15540**

Sheet Number: **3 of 21**

Sheet Subject: **Subal Shade**

City of Colorado Springs



**CONSTRUCTION SUB-ACCOUNT NO. 15540**

**GENERAL NOTES**

ALL MATERIALS AND WORKMANSHIP SHALL BE IN CONFORMANCE WITH THE LATEST COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, 2006.

THE CONTRACTOR SHALL HAVE IN HIS POSSESSION AT ALL TIMES ONE (1) SIGNED COPY OF THE PLANS AND SPECIFICATIONS WHICH HAVE BEEN APPROVED BY THE DEPARTMENT OF TRANSPORTATION (CDOT) AND THE CITY OF COLORADO SPRINGS (CITY).

THE CONTRACTOR SHALL NOTIFY THE OWNER (CITY) AND ENGINEER OF ANY PROBLEMS IN CONFORMING TO THE APPROVED PLANS FOR ANY ELEMENT OF THE PROPOSED IMPROVEMENTS PRIOR TO ITS CONSTRUCTION.

THE CONTRACTOR SHALL PROTECT ALL EXISTING FACILITIES IN THE GENERAL AREA OF CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE CAUSED BY CONSTRUCTION OPERATIONS AT NO COST TO THE PROJECT.

UTILITY LINES AS SHOWN ON THESE DRAWINGS ARE PLOTTED FROM THE BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL CALL 1-800-922-1987 FOR UTILITY LOCATIONS AT LEAST TWO WORKING DAYS PRIOR TO ANY DIGGING. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION AND SHALL PROTECT THEM FROM DAMAGE DURING CONSTRUCTION.

A CITY OF COLORADO SPRINGS DEPARTMENT OF UTILITIES INSPECTOR IS REQUIRED TO BE ON SITE DURING EXCAVATION AND CONSTRUCTION AROUND GAS FACILITIES. IT IS THE RESPONSIBILITY TO COORDINATE WITH THE GAS DEPARTMENT FORTY-FOUR (48) HOURS PRIOR TO CONSTRUCTION NEAR GAS FACILITIES.

DEPTH OF MOISTURE-DENSITY CONTROL FOR THIS PROJECT SHALL BE AS FOLLOWS: FULL DEPTH OF ALL EMBANKMENTS, BASES OF CUTS AND FILLS 0.5 FOOT.

EXCAVATION REQUIRED FOR COMPACTION OF BASES OF CUTS AND FILLS WILL BE CONSIDERED AS SUBSIDIARY TO THAT OPERATION AND WILL NOT BE PAID FOR SEPARATELY.

THE TESTING OF COMPACTION FOR THIS PROJECT WILL BE PER ASHTO T 99.

SUBGRADE UNDER TRAIL SHALL BE RECOMPACTED TO 95% STANDARD PROCTOR IN ACCORDANCE WITH SECTION 304 OF THE ABOVE REFERENCED CDOT SPECIFICATIONS.

SOIL PREPARATION AND SEEDING WILL BE REQUIRED FOR AN ESTIMATED 3.0 ACRES WITHIN THE LIMITS OF THE TRAIL. SEE SWMP FOR SEEDING TYPES AND APPLICATION RATES. SURVEYING FOR THIS PROJECT SHALL BE CONDUCTED IN ACCORDANCE WITH CDOT STANDARDS.

BENCH-MARK: FMS MONUMENT No. F220 IS A BERTHSEN C108 3.25-INCH DIAMETER BRASS FMS CAP, SET ON THE NORTHEAST CORNER OF A STORM SEWER INLET, LOCATED ON THE NORTH SIDE OF WABUSH STREET, ABOUT 10 FEET EAST OF 24.5 FEET S. THE MARK IS 31.5 FEET TO THE SOUTH AND A TRIBUTARY IS 24.5 FEET TO THE SOUTHWEST.

WATER SHALL BE USED AS A DUST PALLIATIVE WHERE REQUIRED. LOCATIONS SHALL BE AS DIRECTED BY THE ENGINEER. WATER WILL NOT BE PAID FOR SEPARATELY, BUT WILL BE SUBSIDIARY TO THE EXCAVATION ITEM.

ALL REMOVED ASPHALT WILL BECOME THE PROPERTY OF THE CONTRACTOR AND WILL BE DISPOSED OF OUTSIDE PROJECT LIMITS.

THE SOIL TO BE PLACED AS TOPSOIL MATERIAL SHALL BE FREE OF REFUSE, STUMPS, ROOTS, ROCKS, BRUSH, NEEDS, HARD CLODS, TOXIC SUBSTANCES OR OTHER MATERIAL WHICH WOULD BE DETRIMENTAL TO ITS USE ON THE PROJECT. IT SHALL HAVE A MINIMUM PL OF 5 BUT SHALL NOT BE SUCH HEAVY CLAY AS TO PRECLUDE PLACEMENT WITH A SHOULDER MACHINE.

SAVAILABLE MATERIAL: MATERIAL THAT CAN BE SAVED OR SALVAGED, UNLESS OTHERWISE SPECIFIED IN THE CONTRACT, ALL SAVABLE MATERIAL SHALL BECOME THE PROPERTY OF THE CONTRACTOR.

TOPOGRAPHIC DATA INDICATED ON THESE DRAWINGS WAS COMPILED FROM AERIAL AND FIELD SURVEYS. CONTRACTOR MUST VERIFY EXISTING UTILITIES, PIPES, AND UTILITIES. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE EXISTENCE, DEPTH, AND LOCATION OF ALL UTILITIES. WHERE SUCH DIMENSIONS OR LOCATIONS DETERMINE THE LIMITS OF THE WORK, SUCH DIMENSIONS OR LOCATIONS SHALL BE VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.

THE LOCATIONS OF EXISTING STRUCTURES, PIPELINES, UTILITIES, ETC., SHOWN ON THE DRAWINGS HAVE BEEN APPROXIMATED. THERE MAY BE OTHER STRUCTURES, PIPELINES, UTILITIES, ETC., NOT SHOWN ON THE DRAWINGS. CONTRACTOR SHALL BE RESPONSIBLE FOR THE CONSTRUCTION OF ANY SUCH STRUCTURES, PIPELINES, UTILITIES, ETC., AND FOR THE PROTECTION OF EXISTING STRUCTURES, PIPELINES, UTILITIES, ETC., IN THE PROJECT SITE.

THE CONTRACTOR SHALL CAREFULLY PRESERVE ALL MONUMENTS, BENCHMARKS, PROPERTY MARKERS, REFERENCE POINTS, AND STAKES. IN CASE OF HIS DESTRUCTION OF THESE, THE CONTRACTOR WILL BE RESPONSIBLE FOR RESETTING SAME, AT NO COST TO THE OWNER, AND SHALL BE RESPONSIBLE FOR ANY LOSS OF TIME THAT MAY BE CAUSED.

THE CONTRACTOR SHALL NOTIFY THE ENGINEER WHERE UTILITIES CONFLICT WITH THE WORK IN CONFORMANCE WITH THE SPECIFICATIONS. WHERE FIELD VERIFICATION IS NOTED ON THE PLANS, THIS SHALL REQUIRE THE CONTRACTOR TO DETERMINE THE LOCATION OF THE FACILITY IN QUESTION PRIOR TO CONSTRUCTION. A DETERMINATION SHALL BE MADE BY THE CONTRACTOR IF THE CURRENT DESIGN WILL CONFLICT WITH THE EXISTING FACILITY AND NOTIFY THE ENGINEER IN WRITING.

ALL EXISTING AREAS DISTURBED OUTSIDE THE LIMITS OF CONSTRUCTION ACTIVITIES SHALL BE REVEGETATED IN CONFORMANCE WITH THE SPECIFICATIONS AT NO ADDITIONAL COST TO THE PROJECT. ALL EXISTING ROADWAYS AND SIDEWAYS DAMAGED DURING CONSTRUCTION SHALL BE REPAIRED OR RECONSTRUCTED IN CONFORMANCE WITH THE SPECIFICATIONS.

SCHWAB SHALL FOLLOW THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" (MUTCD), LATEST EDITION. CONTRACTOR SHALL SUBMIT TO THE CITY A TRAFFIC CONTROL PLAN PRIOR TO COMMENCING WITH THE WORK.

CONTRACTOR SHALL ESTABLISH TRAIL CORRIDOR WITH STAKES. THE OWNER WILL THEN MARK ALL TREES TO BE SAVED IN A WALKTHROUGH OF THE TRAIL CORRIDOR WITH THE CONTRACTOR.

ALL DISCHARGES TO DRAINAGE COURSES AND STORM SEWER SYSTEMS MUST COMPLY WITH THE APPLICABLE PROVISIONS OF THE COLORADO WATER QUALITY CONTROL ACT AND THE COLORADO DISCHARGE PERMIT REGULATIONS, AND ARE SUBJECT TO REGULATION BY THE CDOT AND CDPE. ALL DISCHARGES SHALL BE MADE AND TREATED IN ACCORDANCE WITH THE CDOT AND CDPE. EROSION CONTROL SHALL BE INSTALLED AND MAINTAINED A PERMANENT PLAN FOR PERIODIC REMOVAL AND DISPOSAL OF SEDIMENT FROM EROSION CONTROL FACILITIES AND FOR MAINTENANCE OF EROSION CONTROL FACILITIES.

**KNOWN UTILITIES WITHIN PROJECT LIMITS**

CONTRACTOR MUST VERIFY ALL UTILITIES PRIOR TO EXCAVATION

1. CITY OF COLORADO SPRINGS DEPT. OF UTILITIES: WATER, WASTEWATER, ELECTRIC & GAS DIVISIONS
2. DIRECT TELEPHONE SERVICE
3. FOUNTAIN MUTUAL IRRIGATION COMPANY
4. COMCAST CATV LINES
5. MCI COMMUNICATION SERVICES

**PRE-EXCAVATION CHECKLIST**

- GAS AND OTHER UTILITY LINES OF RECORD SHOWN ON PLANS.
- UTILITIES CENTRALLY LOCATING CALLED AT LEAST 2 BUSINESS DAYS AHEAD. (1-800-922-1987)
- UTILITIES LOCATED AND MARKED.
- EMPLOYEES BRIEFED ON MARKING AND COLOR CODES.
- EMPLOYEES TRAINED ON EXCAVATION AND SAFETY PROCEDURES FOR NATURAL GAS LINES.
- WHEN EXCAVATION APPROACHES GAS LINES, EMPLOYEES POSSESS LINES BY CAREFUL PROBING AND HAND DIGGING.

\*AGAA-D.W.A. STANDARD UTILITY MARKING COLOR CODE.

- NATURAL GAS YELLOW
- ELECTRIC RED
- WATER BLUE
- WASTEWATER GREEN



**CALL BEFORE YOU DIG...**

1-800-922-1987

**LEGEND**

- 0 DOLLAR
- 1 CONTRACTUAL
- 2 SOIL
- 3 ELECTRIC POLE
- 4 ELECTRIC WALK
- 5 GAS LINE
- 6 GAS MAIN
- 7 WATER MAIN
- 8 WATER MAIN
- 9 TELEPHONE MAIN
- 10 TELEPHONE MAIN
- 11 TELEPHONE MAIN
- 12 TELEPHONE MAIN
- 13 TELEPHONE MAIN
- 14 WATER MAIN

**Colorado Department of Transportation**  
 502 North Cole Avenue  
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**Region 2 - Engineering**

**Kiewit Engineering Corporation**  
 1000 1/2 First Street  
 Pueblo, Colorado 81004  
 Phone: (719) 544-7544  
 KOWA PROJECTS 02045

Sheet Revisions		As Constructed	
00000	Iss. Revisions:		
	Revised:		
	Vol:		

<b>Project No./Code</b>	
SITE H-240-094	Code 15540
Sheet Number 4 of 22	

CONSTRUCTION SUB-ACCOUNT NO. 15540

SUMMARY OF DRAINAGE STRUCTURE QUANTITIES

PROJECT	STATION	PIPE	FITTINGS	END SECTION	12" 650 BIRLAP (CY)	LENGTH (LF)
		(RDS 801, 812 & 812.2)		(RDS 812.3 & 812.4)	(GRAVEL) (CY)	
SITE M-240-094	STA 27+50	18" 10PC	TYPE OTHER (804.1)	1 - 18" 10PC	1.0	17
	STA 28+84.7	18" 10PC	1/4 WAMPOL (804.2)	1/4 WAMPOL (804.2)	1.0	27
	STA 29+84	18" 10PC 20X3			0	5
				TOTAL	2.0	49

\* THESE QUANTITIES FOR INFORMATION ONLY

(PAY ITEM)

TABULATION OF EARTHWORK (ITEM 203)

PROJECT	ITEM	QUANTITY (CY)
SITE M-240-094	UNCLASSIFIED EXCAVATION	2570 *
	EMBANKMENT (FILL)	1215 *
	NET HAUL	1355 *
	15% SHRINKAGE	182 *
	TOTAL HAUL	1173

TABULATION OF TRAIL SIGNAGE PANEL SIZE A (ITEM 630.2)

SIGN SCHEDULE	DESIGNATION	AMOUNT
1-5	BICYCLES AHEAD W11-1	6
6-7	SAND CREEK TRAIL RL-050	2
8	M7-5R	1
10	M7-5L	1
12	BICYCLISTS DISCOUNT	2
16	BICYCLISTS YIELD TO PEDS. RB-6	1
17	BICYCLISTS USE PED. SIGNALS RB-5	1
	TOTAL=14	

TABULATION OF GUARDRAILS

PROJECT	BD TEM	DESCRIPTION	QUANTITY (LF)
SITE M-240-094	606.1	REMOVE EXISTING GUARDRAIL	78
	606.2	STD. HIGH-FLARED END TYPED TYPE 3D	1
	606.3	TYPE 7 BARRIER	30

TABULATION OF FENCING

PROJECT	BD TEM	DESCRIPTION	QUANTITY (LF)
SITE M-240-094	607.1	CHAINLINK FENCE	115
	607.2	REMOVE & SALVAGE 6" CHAINLINK FENCE	250
	607.3	REPLACE CHAINLINK FENCE	230
	607.4	REMOVE EXISTING BARBED WIRE FENCE	45

TABULATION OF BIKEWAY RAIL (ITEM 514.1)

PROJECT	STA. TO STA.	LENGTH, L.F.
SITE M-240-094	28+90 TO 35+20/78	331
	PROJECT TOTAL	331

TABULATION OF SMOOTH RAIL FENCE (ITEM 514.2)

PROJECT	STA. TO STA.	LENGTH, L.F.
SITE M-240-094	45+84 TO 50+78/59	814
	PROJECT TOTAL	814

TABULATION OF TRAIL QUANTITIES (ITEMS 608.1-4)

PROJECT	STA. TO STA.	TRAIL WIDTH	SECT.	5" THICK CONCRETE (BD ITEMS 608.1-4)		LENGTH	COMMENTS
				SA, 15'	SA, 15'		
SITE M-240-094	STA 17+63 TO STA 21+89	10'	A	178	106	15	
	STA 22+89 TO STA 27+50.1	10'	B	313	441	106	
	STA 27+48 TO STA 28+90	10.5'	C	152	133	133	REMOVE & RE-INSTALL
	STA 28+89 TO STA 27+20/78	10.5'	D	283	248	331	
	STA 35+20/78 TO STA 37+18.8	15'	A	464	248	248	
	STA 05+191 TO STA 72+68	6'	A	604	604	748	
	STA 72+68 TO STA 75+14	10'	A	273	273	273	
	PROJECT TOTAL			6771	5008		

UNUSABLE AND UNRECOVERABLE CONCRETE SHALL BE PAID FOR ON A PER SQ. YD. BASIS. UNRECOVERABLE CONCRETE SHALL BE PAID FOR ON A PER SQ. YD. BASIS. UNRECOVERABLE CONCRETE SHALL BE PAID FOR ON A PER SQ. YD. BASIS. UNRECOVERABLE CONCRETE SHALL BE PAID FOR ON A PER SQ. YD. BASIS.



Colorado Department of Transportation  
 807 North Elk Avenue  
 P.O. Box 530  
 Pueblo, Colorado 81002  
 Phone: (719) 546-5746 FAX: (719) 546-5414  
 Region 2 - Engineering

Kiewit Engineering Corporation  
 1604 South Elm Street  
 Colorado Springs, Colorado  
 (719) 533-7342  
 KIEWIT PROJECT NO. 15540

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Sheet Revisions

No. Revised	Revised	By	Date

As Constructed

Drawn	Checked	Reviewed	Date

Tabulation of Quantities

Project No./Code	Sheet No.
SITE M-240-094	Code 15540
	Sheet Number 5 of 22

Project No./Code  
 SITE M-240-094  
 Code 15540  
 Sheet Number 5 of 22

SCHEDULE OF CONSTRUCTION TRAFFIC CONTROL DEVICES (ITEM 630.1)

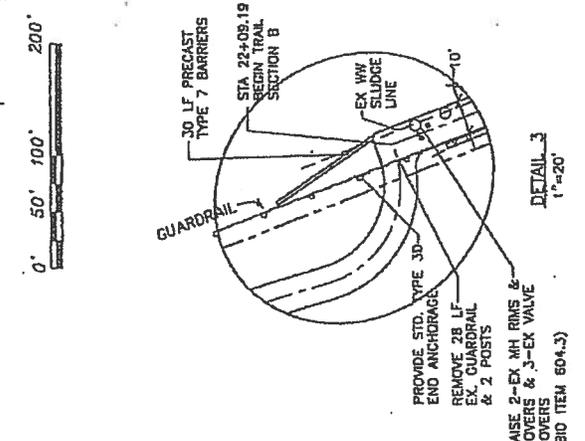
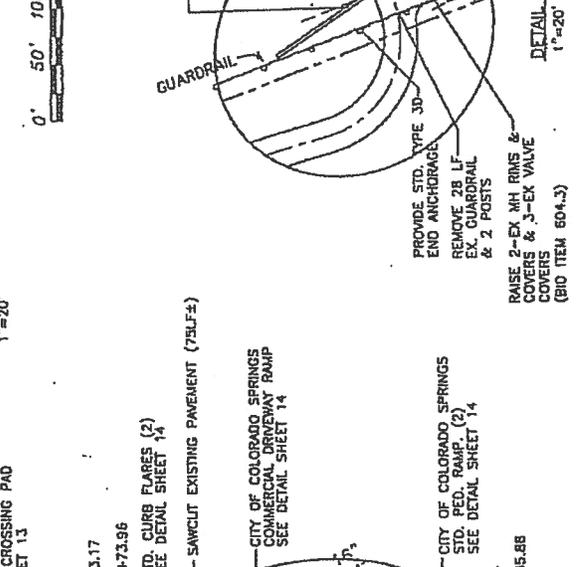
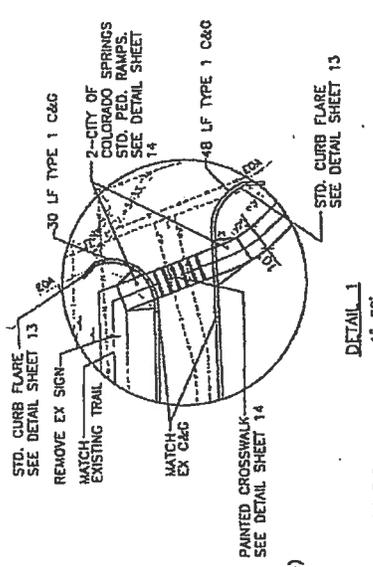
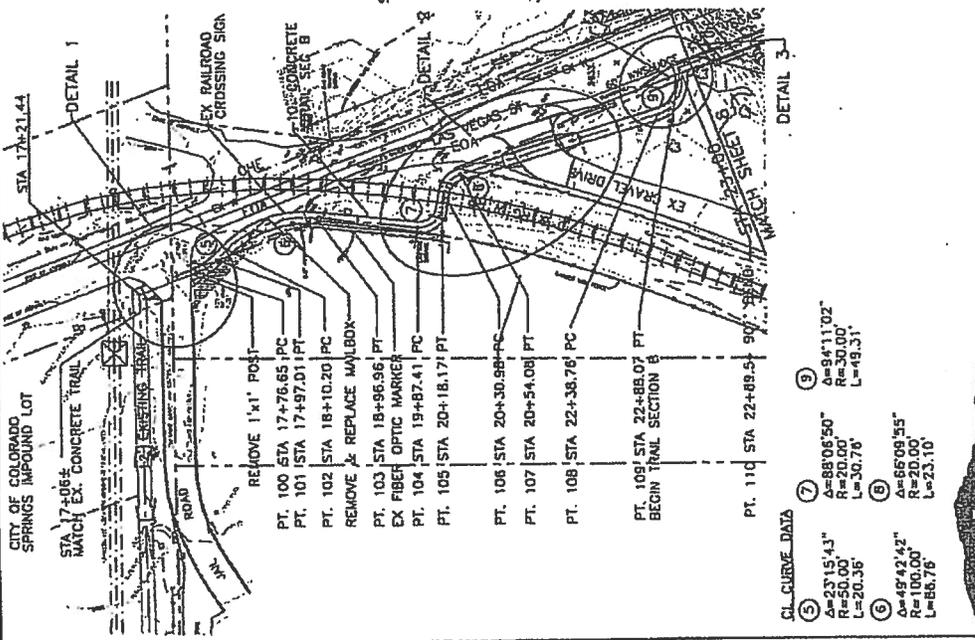
PROJECT	SIGN CODE	LEGEND	PANEL SIZE - DIMENSIONS (QUANTITY EACH)
SITE M-240-094	301B-5	"TRUCKS TURNING"	30" x 30"
	301C1-5	"ROAD WORK AHEAD"	5
	TOTAL		8

NOTES:  
 1. MAN-HOUR COST FOR TRAFFIC CONTROL SUPERVISOR AND MANAGER WILL NOT BE PAID FOR SEPARATELY, BUT SHALL BE INCLUDED IN THE WORK FOR BD ITEM 630.1.



CONSTRUCTION SUB-ACCOUNT NO. 15540

PT. NO.	NORTHING, EXISTING
100	1349285.53, 3207081.14
101	1349268.42, 3207091.90
102	1349258.91, 3207117.07
103	1349217.49, 3207128.37
104	1349089.33, 3207118.09
105	1349067.46, 3207101.03
106	1349065.73, 3207148.97
107	1349051.45, 3207165.49
108	1348873.98, 3207216.60
109	1348854.13, 3207255.82
110	1348854.64, 3207257.19

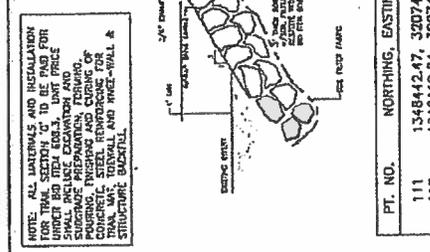


CL CURVE DATA

⑤	$\Delta=23'15.43"$ $R=50.00$ $L=20.36$
⑥	$\Delta=49'42.42"$ $R=100.00$ $L=40.72$
⑦	$\Delta=88'06.50"$ $R=20.00$ $L=30.76$
⑧	$\Delta=65'09.55"$ $R=20.00$ $L=23.10$
⑨	$\Delta=94'11.02"$ $R=30.00$ $L=49.31$

<p>City of Colorado Springs 1604 South 5th Street Colorado Springs, Colorado 80904-6207 Phone: (719) 594-7342 FACSIMILE: (719) 594-7342</p>	<p>Colorado Department of Transportation 605 North 5th Avenue P.O. Box 434 Ft. Collins, Colorado 80501 Phone: (970) 226-5141 Fax: (970) 226-5142</p>	<p>Kiewit Engineering Corporation 1604 South 5th Street Colorado Springs, Colorado 80904-6207 Phone: (719) 594-7342 FACSIMILE: (719) 594-7342</p>	<p>Trail Plan STA. 17+06 TO STA. 23+00</p>	<p>Project No./Code SITE M-240-094 Code 15540</p>
	<p>Region 2 - Engineering</p>	<p>Sheet Revisions 000000</p>	<p>As Constructed No. Resident: Revised: Mk:</p>	<p>Decision: Dabbler RHW RHW Steel Subject</p>

CONSTRUCTION SUB-ACCOUNT NO. 15540



NOTE: ALL MATERIALS AND REGULATIONS FOR THIS PROJECT SHALL BE IN ACCORDANCE WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) SPECIFICATIONS FOR CONSTRUCTION. ALL MATERIALS SHALL BE TESTED AND APPROVED BY CDOT BEFORE USE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

DL CURVE DATA

①	A=63°42'03"	R=50.00'	L=55.59'
②	A=14°39'17"	R=200.00'	L=51.15'

PT. NO. NORTHING, EASTING

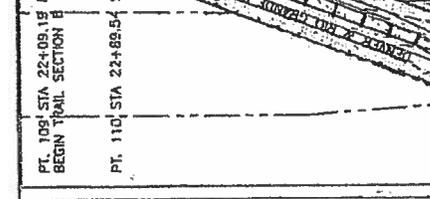
111	1348442.47	3207418.64
112	1348419.24	3207407.89
113	1348523.19	3207338.03
114	1348447.95	3207355.03
115	1348818.55	3207411.45
116	1348573.05	3207355.32
117	1348789.50	3207773.02

IRAIL SECTION C  
STA 28+90 TO 32+20.76



IRAIL SECTION B  
STA 27+50.14 TO 27+59.46

IRAIL SECTION C  
STA 28+90 TO 32+20.76



TRAIL PLAN  
STA. 23+00.00 TO STA. 33+00.00

Project No./Code  
SIE M-240-084  
Code 15540  
Sheet Number B of 2

As Constructed

By: [Name]  
Checked: [Name]  
Scale: [Scale]

Sheet Revisions

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Colorado Department of Transportation  
801 North Cole Avenue  
P.O. Box 338  
Pueblo, Colorado 81001  
Phone: (719) 346-5148 Fax: (719) 346-5114

Region 2 - Engineering

Klawns Engineering Corporation  
1604 South 51st Street  
Colorado Springs, Colorado  
719) 593-4000  
719) 593-4002  
719) 593-4003

Colorado Department of Transportation  
801 North Cole Avenue  
P.O. Box 338  
Pueblo, Colorado 81001  
Phone: (719) 346-5148 Fax: (719) 346-5114

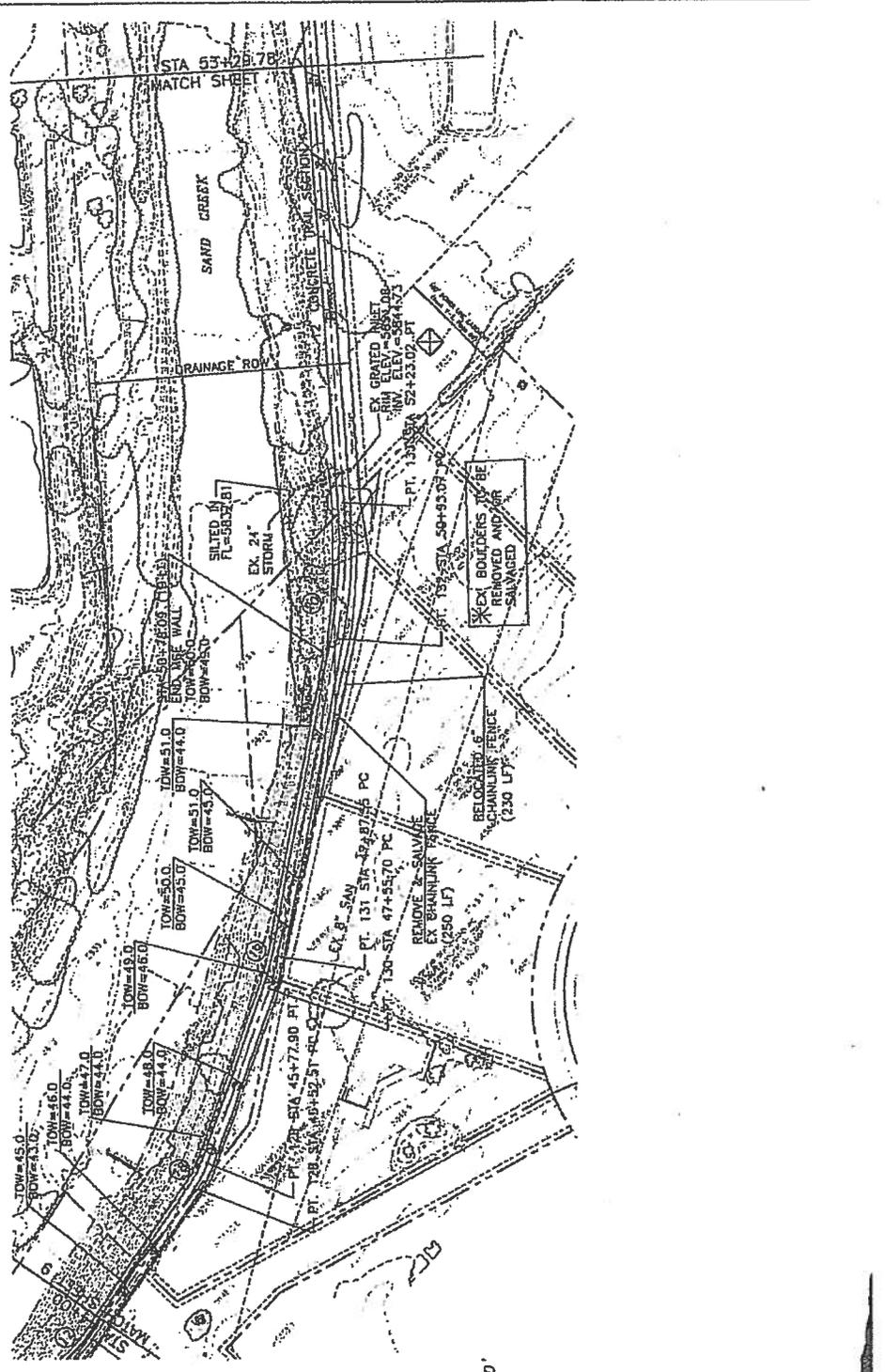
Region 2 - Engineering







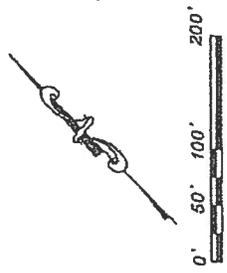
CONSTRUCTION SUB-ACCOUNT NO. 15540



**CL. CURVE DATA**

19	As=14°32'54"	Δs=977.28'
	R=100.00'	R=200.00'
	L=25.39'	L=51.85'
20	As=14°53'29"	Δs=500.00'
	R=500.00'	R=500.00'
	L=129.95'	L=129.95'

PT. NO.	NORTHING	EASTING
128	348945.40	3208689.96
129	349061.07	3209045.52
130	349085.33	3208884.87
131	349076.87	3209073.14
132	349249.21	3209325.41
133	349333.56	3209422.04

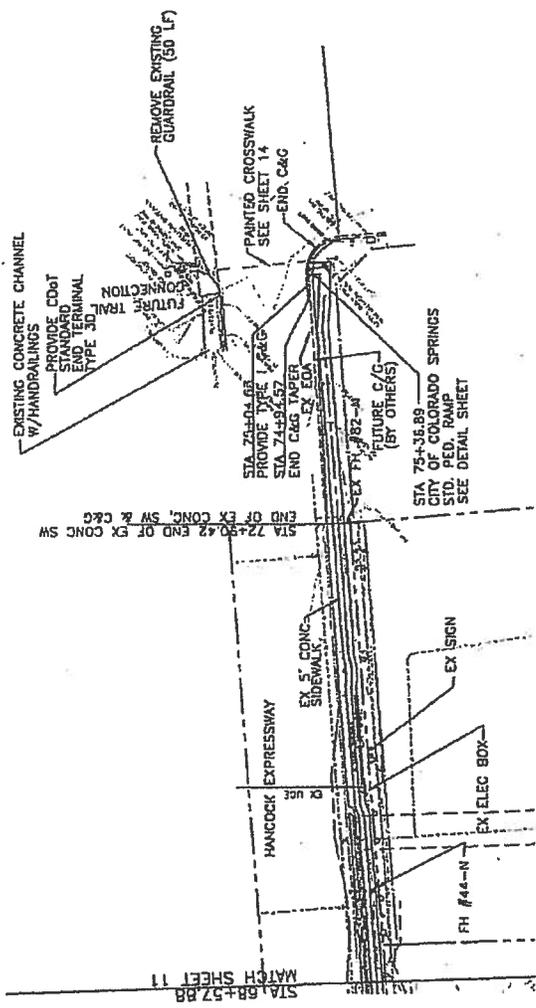


<p><b>As Constructed</b></p> <p>No. Revisions: _____</p> <p>Revised: _____</p> <p>Notes: _____</p>		<p><b>TRAIL PLAN</b></p> <p>STA. 43+00 TO STA. 53+29.78</p>		<p>Project No./Code</p> <p>STE N-240-094</p> <p>Code 15540</p> <p>Sheet Number 10 of 21</p>	
<p>00000</p>		<p><b>As Constructed</b></p> <p>No. Revisions: _____</p> <p>Revised: _____</p> <p>Notes: _____</p>		<p>Designer: _____</p> <p>Drafter: _____</p> <p>Sheet Number: _____</p>	
<p><b>Kiewit Engineering Corporation</b></p> <p>1804 South 27th Street</p> <p>Colorado Springs, Colorado</p> <p>80904-4200</p> <p>(719) 530-7348</p> <p>KIOWA PROJECT NO. 09045</p>		<p><b>City of Colorado Springs</b></p> <p>Colorado Department of Transportation</p> <p>302 North 6th Avenue</p> <p>P.O. Box 338</p> <p>Palmer, Colorado 81001</p> <p>Phone: (719) 548-5718</p> <p>Region 2 - Engineering</p>		<p>007</p> <p>PROPOSED</p>	

POWER/0305-0100/05/05/11/09

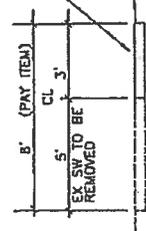


CONSTRUCTION SUB-ACCOUNT NO. 15540



IN PROGRESS PENDING  
HANCOCK CROSSING

NEW 5" MIN. THK. CONCRETE W/  
FIBERMESH REINFORCING. CONCRETE USED  
FOR TRAIL SECTION D SHALL CONFORM TO  
CITY OF COLORADO SPRINGS STANDARD  
SPECIFICATIONS; f'c = 4000psi



SCARIFY NATIVE SUBGRADE TO A DEPTH OF 8"  
AND RECOMPACT TO 95% STANDARD PROCTOR

TYPICAL TRAIL SECTION D  
(BID ITEM 608.4)

STA 67+38± TO STA 72+68

REMOVAL, DISPOSEN & SUBGRADE  
PREPARATION BENEATH EXISTING SIDEWALK  
SHALL BE PAID FOR UNDER BID ITEM  
608.4

**CITY OF COLORADO SPRINGS**

**Colorado Department of Transportation**  
802 North Zie Avenue  
Pueblo, Colorado 81001  
Phone: (719) 546-3748 FAX: (719) 546-3414

**Region 2 - Engineering**

**Klova Engineering Corporation**  
1804 Birch Elm Road  
Colorado Springs, Colorado  
80904-4200  
(719) 530-7562  
KONA PROJECT NO. 05046

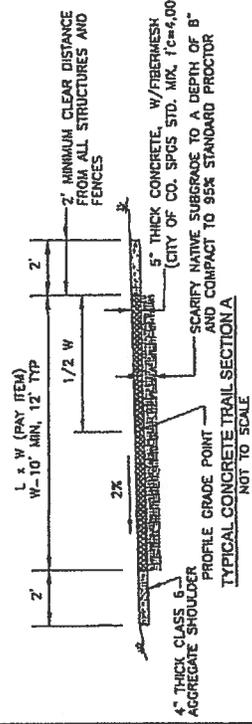
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Sheet Revisions

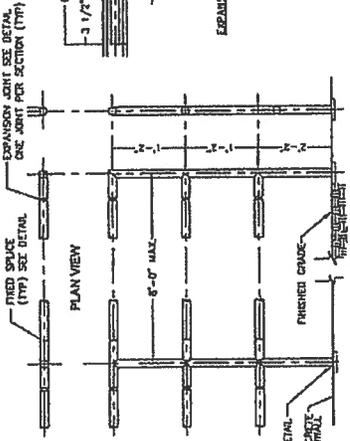
As Constructed

Project No./Code  
STA. 68+57.88 TO STA. 75+14.16  
SIE M-240-094  
Code 15540  
Sheet Number 12 of 23

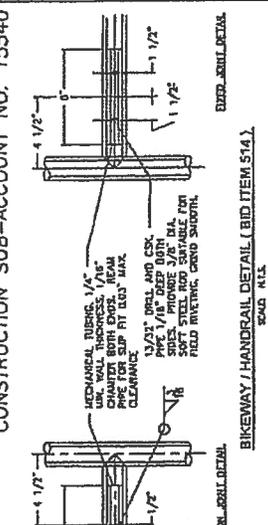
CONSTRUCTION SUB-ACCOUNT NO. 15540



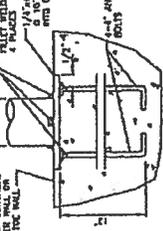
NOTE: ALL MATERIALS AND INSTALLATION FOR TRAIL SECTION A TO BE PAID UNDER BID ITEM NO. 1 UNIT PRICE SHALL INCLUDE ALL PREPARATION, FORMING, POURING AND CURING OF CONCRETE, STEEL REINFORCING FOR TRAIL MAT. & BACKFILL.



INTERMEDIATE  
TYPICAL RAILROAD DETAIL



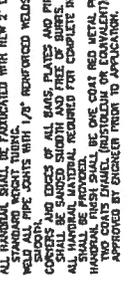
EXPANSION JOINT DETAIL  
BIKEWAY / HANDRAIL DETAIL (BID ITEM 514)



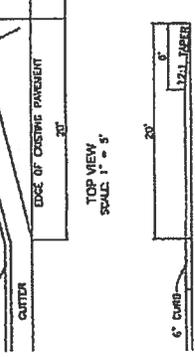
HANDRAIL CONNECTION DETAIL  
SCALE: N.T.S.

HANDRAIL NOTES  
ALL HANDRAIL SHALL BE FABRICATED WITH NEW 2" DIAMETER STANDARD WEIGHT TUBING. WELDS SHALL BE MADE SMOOTH. PIPE JOINTS WITH 1/8" REINFORCED WELDS AND DRESS CORNERS AND EDGES OF ALL BRAGS, PLATES AND PIPE ENDS SHALL BE PROVIDED. ALL HANDRAIL MATERIAL REQUIRED FOR COMPLETE INSTALLATION SHALL BE PROVIDED. HANDRAIL SHALL BE ONE COLOR PER METAL BRAGS AND HANDRAIL SHALL BE ONE COLOR PER METAL BRAGS AND HANDRAIL SHALL BE APPROVED BY ENGINEER PRIOR TO APPLICATION. COLOR SHALL BE APPROVED BY ENGINEER PRIOR TO APPLICATION.

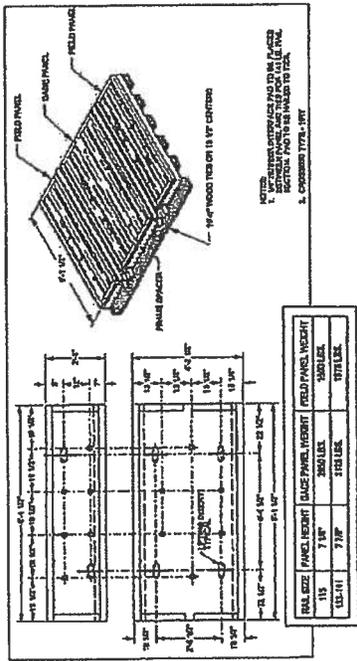
ELEVATION



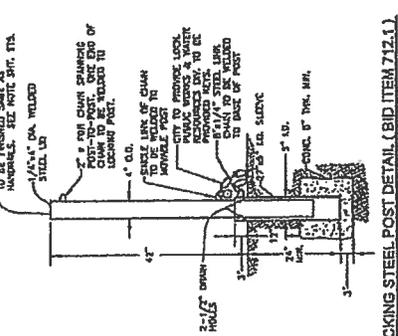
NOTE: CURB AND GUTTER TO BE PAID FOR UNDER BID ITEM NO. 2. HRP TO BE PAID FOR UNDER ITEM NO. 40.



CDOT STANDARD CURB AND GUTTER  
TANGENT WITH FLARE SECTION



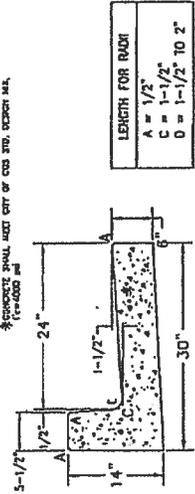
CONCRETE RAILROAD CROSSING PAD DETAIL (BID ITEM 712.2)



LOCKING STEEL POST DETAIL (BID ITEM 712.1)

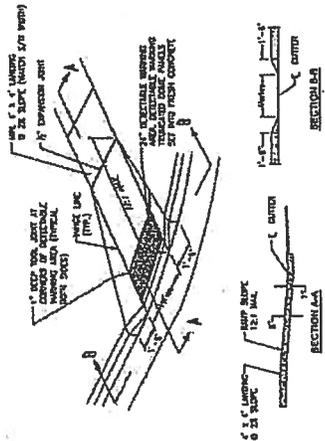
Colorado Department of Transportation		Kiewit Engineering Corporation	
807 North Erie Avenue P.O. Box 538 Golden, Colorado 80101 (719) 546-3148 FAX (719) 546-3414	1000 South 21st Street Denver, Colorado 80202 (719) 640-7448	Project No./Code SITE M-240-094	Code 15540
Region 2 - Engineering	Sheet Revisions	As Constructed	Detail Sheet
	00000	No Revision:	Sheet No. 13 of 22
		Revised:	Sheet Title:
		Field:	
		Verify:	

CONCRETE SHALL MEET CITY OF COO STD. DESIGN M1.  
 (f=4000 psi)

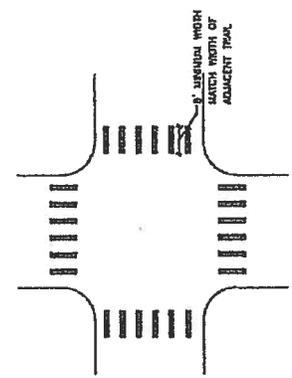


CITY STANDARD  
 TYPE I VERTICAL CURB AND GUTTER  
 NOT TO SCALE

**GENERAL NOTES**  
 A - CONCRETE JOINTS SHALL BE INSTALLED WITH ANTI-SPLITTING COMPOUND. JOINTS SHALL BE 1/2" WIDE AND SHALL EXTEND THE FULL DEPTH OF THE CONCRETE SURFACE.  
 CONCRETE SHALL BE PER CITY OF COLORADO SPECIFICATIONS UNLESS OTHERWISE INDICATED.

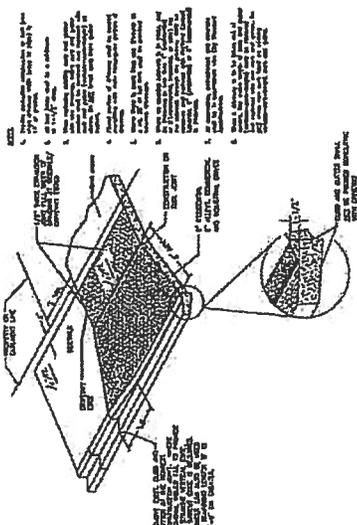
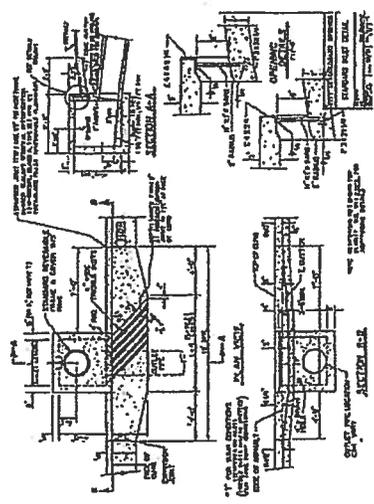


PEDESTRIAN RAMP DETAILS CITY STD. D-3  
 NOT TO SCALE



CROSSWALK MARKING DETAIL  
 NOT TO SCALE

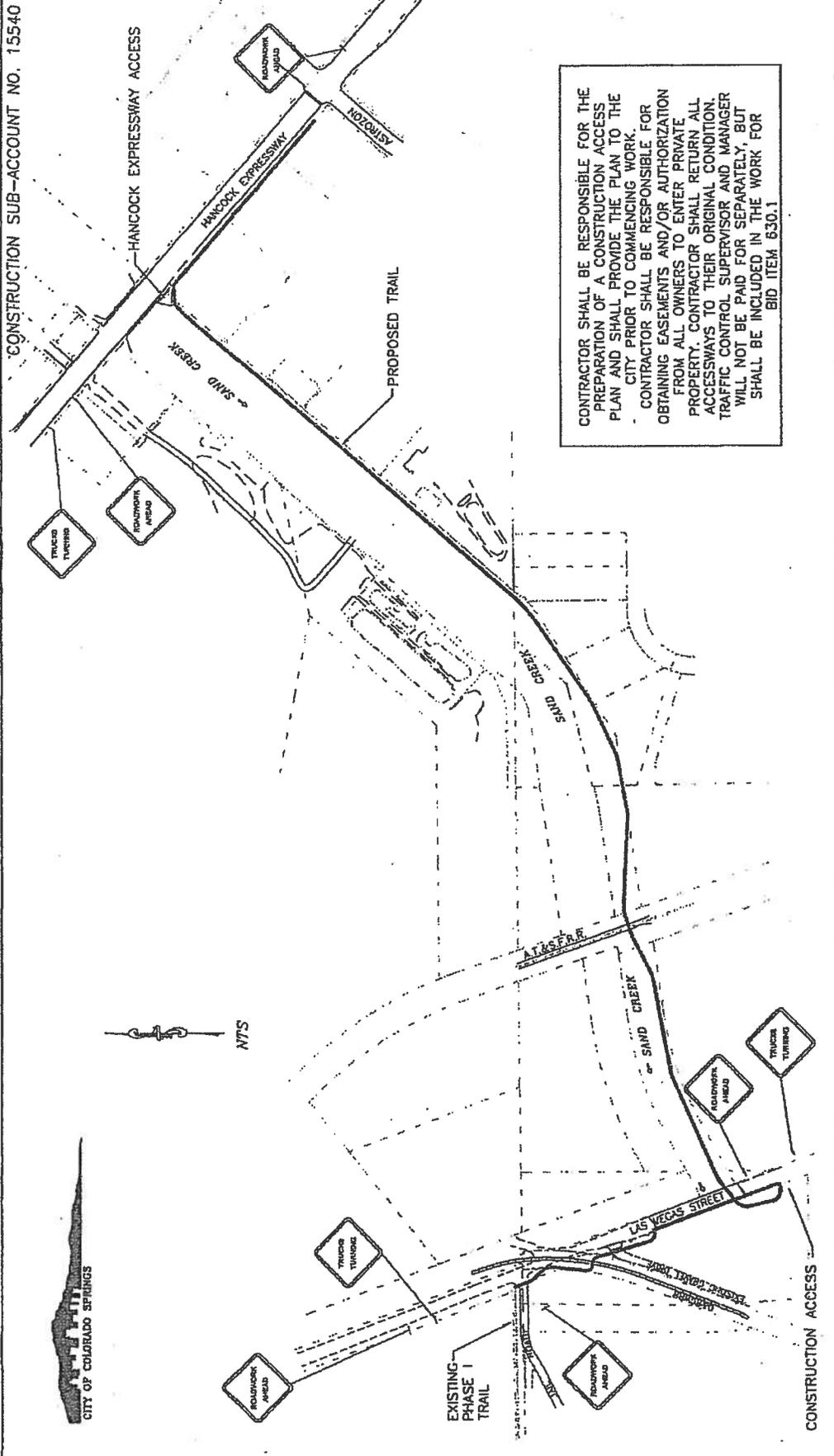
NOTE: OTHER CROSSWALK MARKINGS ON PEDESTRIAN RAMP.  
 CROSSWALK MARKINGS SHALL BE 12" TO 24" WIDE AND SPACED 12" TO 24" APART. MARKINGS SHALL BE PER CITY OF COLORADO SPECIFICATIONS UNLESS OTHERWISE INDICATED. REFER TO CITY STANDARD S-107-1 FOR LAYOUT OF MARKINGS.



CITY STANDARD  
 COMMERCIAL DRIVEWAY  
 NOT TO SCALE

Sheet Revisions		As Constructed		Detail Sheet		Project No./Code	
000000		No. Revisions:		Drawn by:	RHW	Sheet:	14 of 22
		Revised:		Checked by:	RHW	Number:	15540
		By:		Submittal:		Sheet:	14 of 22
Kiowa Engineering Corporation 1804 South 2nd Street Colorado Springs, Colorado (719) 530-7282 KIOWA PROJECT NO. D0045				Colorado Department of Transportation 902 North 6th Avenue P.O. Box 330 Pueblo, Colorado 81001 Phone: (719) 516-5148 fax: (719) 546-3414 Region 2 - Engineering			

CONSTRUCTION SUB-ACCOUNT NO. 15540



CONTRACTOR SHALL BE RESPONSIBLE FOR THE PREPARATION OF A CONSTRUCTION ACCESS PLAN AND SHALL PROVIDE THE PLAN TO THE CITY PRIOR TO COMMENCING WORK. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING EASEMENTS AND/OR AUTHORIZATION FROM ALL OWNERS TO ENTER PRIVATE PROPERTY. CONTRACTOR SHALL RETURN ALL ACCESSWAYS TO THEIR ORIGINAL CONDITION. TRAFFIC CONTROL SUPERVISOR AND MANAGER WILL NOT BE PAID FOR SEPARATELY, BUT SHALL BE INCLUDED IN THE WORK FOR BID ITEM 630.1

<p><b>Colorado Department of Transportation</b>          301 North 51st Avenue          P.O. Box 535          Pueblo, Colorado 81001          Phone: (719) 546-5148 FAX: (719) 546-5114  <b>Region 2 - Engineering</b></p>		<p><b>Klown Engineering Corporation</b>          1804 South 81st Street          Colorado Springs, Colorado          (719) 620-7342          NOAA PROJECT NO. 08045</p>		<p>00000</p>	
<p><b>Sheet Revisions</b></p>		<p><b>As Constructed</b></p>		<p><b>Construction Access &amp; Traffic Control Plan</b></p>	
<p>No. Revisions</p>		<p>Revised:</p>		<p>Project No./Code STE H-240-094</p>	
<p>Year:</p>		<p>Revised:</p>		<p>Code 15540</p>	
<p>Author:</p>		<p>Checked:</p>		<p>Sheet Number 15 of 22</p>	
<p>Drawn:</p>		<p>Reviewed:</p>		<p>Sheet Title:</p>	

CONSTRUCTION SUB-ACCOUNT NO. 15540

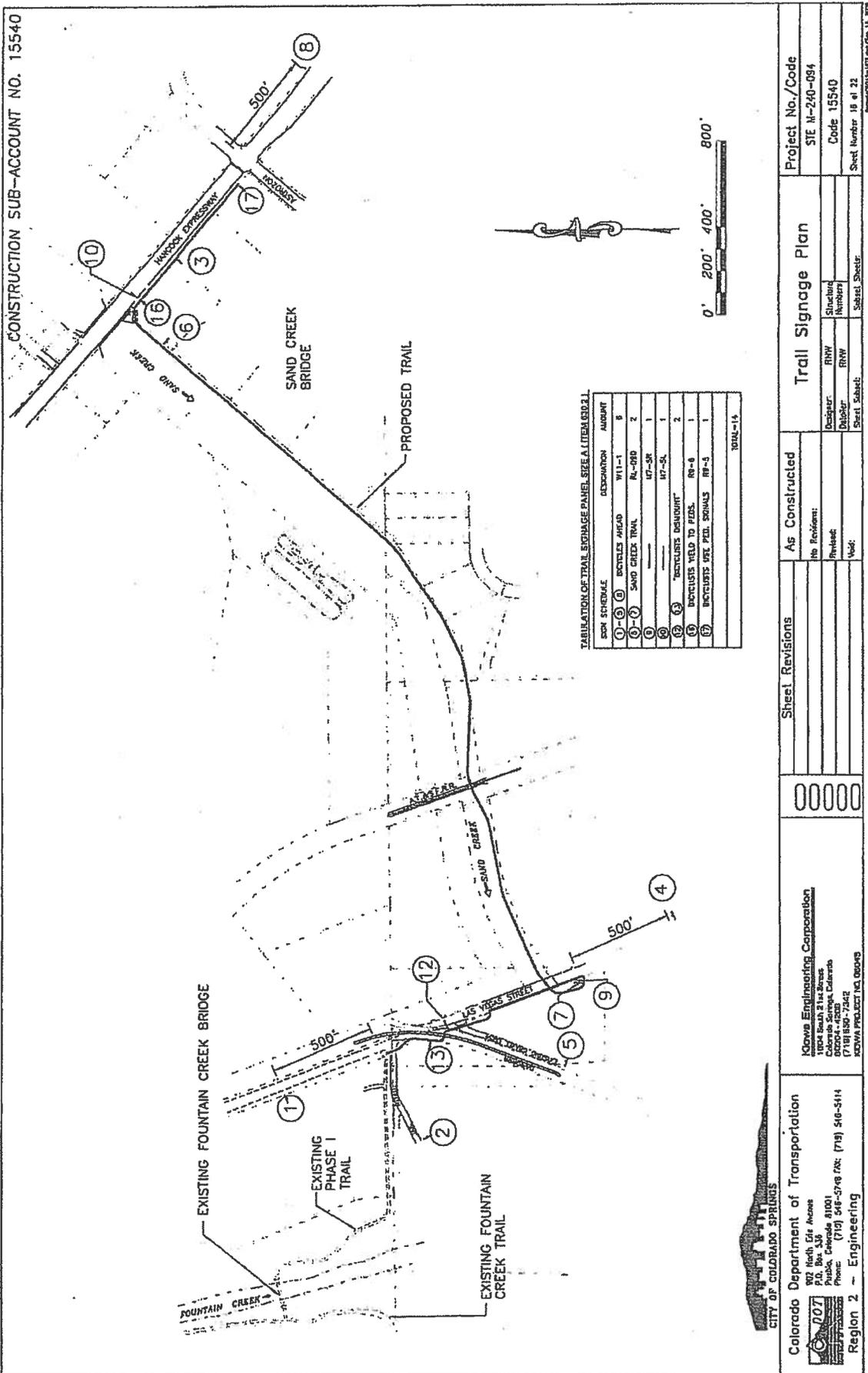


TABLE OF TRAIL SIGNAGE PANELS SEE A ITEM 630.2.1.

ITEM SCHEDULE	DESCRIPTION	AMOUNT
1-5	BICYCLES AHEAD W11-1	5
6-7	SAND CREEK TRAIL RL-090	2
8	"BICYCLES AHEAD" W7-SK	1
9	"BICYCLES AHEAD" W7-SL	1
10	BICYCLES YIELD TO PEDES. RB-6	2
11	BICYCLES YIELD TO PEDES. RB-5	1
12	BICYCLES YIELD TO PEDES. RB-5	1
13-19	TRAIL MARKERS	10000-114

**Colorado Department of Transportation**  
 902 North Erie Avenue  
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 Phone: (719) 548-5748 Fax: (719) 546-5114  
**Region 2 - Engineering**

**City of Colorado Springs**  
 1004 South 21st Street  
 Colorado Springs, Colorado  
 (719) 534-7242  
 KOWA PROJECT NO. 00095

**As Constructed**

No. Revisions: \_\_\_\_\_

Revised: \_\_\_\_\_

Used: \_\_\_\_\_

**Trail Signage Plan**

Project No./Code: SITE II-240-094

Code: 15540

Sheet Number: 18 of 22







NON-STRUCTURAL BMP practices for erosion and sediment control practices may include, but are not limited to:

BMP	Type Of Control	BMP As Designed	In Use On Site	First Construction Activities	During Construction	Interim/Final Stabilization
Surface Roughening/Grading Techniques	Erosion				X	
Seeding Permanent	Erosion	X				X
Seeding Temporary	Erosion				X	
Mulch/Straw	Erosion				X	
Roller/Grader	Erosion				X	
Soil Bladder	Erosion				X	
Soil Reclamation	Erosion				X	
Blanket	Erosion			X		X
Negative Buffer	Erosion			X		X
Stripes	Erosion			X		X
Protection of Trees	Erosion			X		X
Preservation of Future Vegetation	Erosion			X		X
Other						

- Erosion control devices are used to limit the amount of erosion on site.
- Sediment control devices are designed to capture sediment on the project site.
- Construction control are BMPs related to construction access and staging.
- BMP locations are indicated on the site map.
- BMP installation details and general narratives are in the SAP notebook.

D. Off-site Erosion (Run On Sites)  
 1. Erosion control devices shall be installed at the site in accordance with subsection 206.03.

E. Stabilized Construction Entrance/Exit/Driveway Control  
 1. BMPs shall be implemented in accordance with subsection 206.04.

F. Perimeter Control  
 1. Perimeter control shall be established as the first line of defense to prevent sediment from leaving the construction site boundaries, entering the stormwater drainage system, or discharging to state waters.  
 2. Perimeter control may consist of vegetation buffers, berms, silt fences, erosion logs, catching Janifera, or other BMPs as approved.  
 3. Perimeter control shall be in accordance with subsection 206.04.

5. During Construction Responsibilities of the SAP Administrator/Erosion Control Supervisor during construction.

The SAP should be considered a "living document" that is continuously reviewed and modified. During construction, the following items shall be added, updated, or removed as required by the SAP administrator. The SAP administrator shall add a narrative explaining where and why the BMP is being used, description of BMP application, and a detail.

- Site/Job Handing/And Soil Presentation
- Stockpile Management
- Grading And Slope Stabilization
- Surface Roughening
- Vehicle Tracking
- Temporary Stabilization
- Concrete Support
  - Concrete without water or waste from field laboratories and paving equipment shall be contained in accordance with subsection 206.05.
- Site Cleanup
- Street Cleaning

6. Inspections  
 A. Inspections shall be in accordance with subsection 206.03 (c).

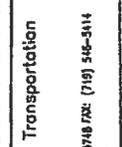
7. BMP Maintenance  
 A. Maintenance shall be in accordance with subsection 206.04 (e).

8. Record Keeping  
 A. Records shall be in accordance with subsection 206.03 (c).

9. Interim And Final Stabilization

A. Soil Preparation  
 Soil preparation, soil conditioning or topsoil, seeding (seed free), and mulch application will be required for an erodible 2.0 acres of disturbed area within the right-of-way limits which are not paved. The following types and rates shall be used: (See sheet 21 for sub).

B. Erosion Control Fabric  
 Erosion control fabric shall be installed on areas that are erodible that 3-oz./sq. yd. erosion control fabric shall be placed. Erosion control fabric shall be a single method, straw or wood fiber, similar to American Excelsior Product(s), or equal.

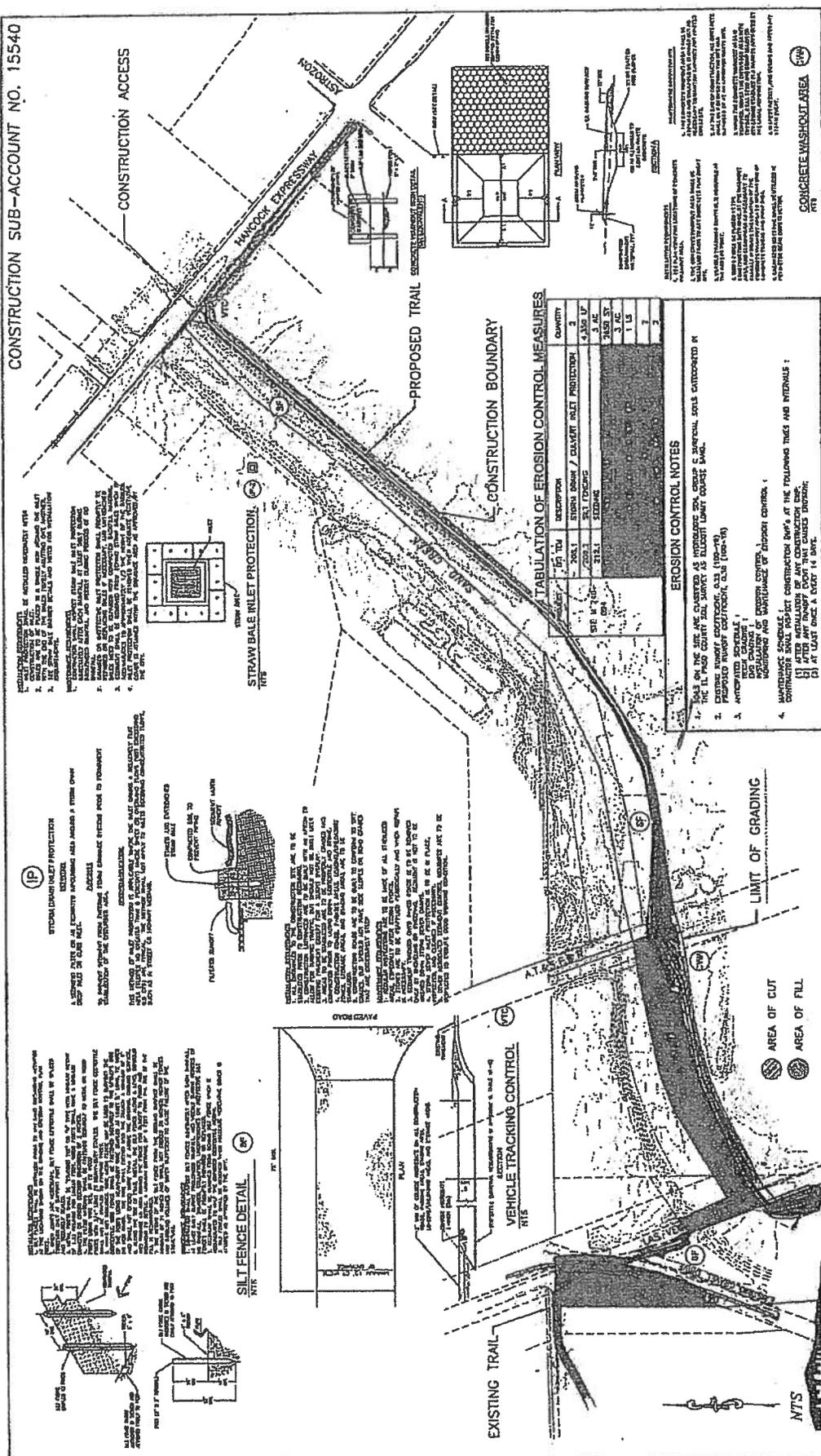


**CITY OF COLORADO SPRINGS**  
 Colorado Department of Transportation  
 502 North Echo Avenue  
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 Region 2 - Engineering

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 1000 South 21st Street  
 Colorado Springs, Colorado  
 80904-4209  
 (719) 530-7242  
 KIEWIT PROJECT NO. 08045

Sheet Revisions		As Constructed		SWMP CONSTRUCTION PLAN SHEET 2 OF 4		Project No./Code	
NO	Revisions	NO	Revisions	Revised:	R/W	Sheet Number	SITE M-240-084
YES	Revisions	YES	Revisions	Revised:	R/W	Sheet Number	Code 15540
				Sheet Subject:			Sheet Number 26 of 22





**CONSTRUCTION ACCESS**

1. ALL TRUCKS AND EQUIPMENT SHALL BE KEPT OFF THE CONSTRUCTION AREA AT ALL TIMES.

2. ALL TRUCKS SHALL BE KEPT OFF THE CONSTRUCTION AREA AT ALL TIMES.

3. ALL TRUCKS SHALL BE KEPT OFF THE CONSTRUCTION AREA AT ALL TIMES.

4. ALL TRUCKS SHALL BE KEPT OFF THE CONSTRUCTION AREA AT ALL TIMES.

5. ALL TRUCKS SHALL BE KEPT OFF THE CONSTRUCTION AREA AT ALL TIMES.

**STRAW BALE INLET PROTECTION**

1. THE STRAW BALE INLET SHALL BE CONSTRUCTED AS SHOWN ON THE DRAWING.

2. THE STRAW BALE INLET SHALL BE MAINTAINED AT ALL TIMES.

3. THE STRAW BALE INLET SHALL BE MAINTAINED AT ALL TIMES.

4. THE STRAW BALE INLET SHALL BE MAINTAINED AT ALL TIMES.

5. THE STRAW BALE INLET SHALL BE MAINTAINED AT ALL TIMES.

**VEHICLE TRACKING CONTROL**

1. THE VEHICLE TRACKING CONTROL SHALL BE CONSTRUCTED AS SHOWN ON THE DRAWING.

2. THE VEHICLE TRACKING CONTROL SHALL BE MAINTAINED AT ALL TIMES.

3. THE VEHICLE TRACKING CONTROL SHALL BE MAINTAINED AT ALL TIMES.

4. THE VEHICLE TRACKING CONTROL SHALL BE MAINTAINED AT ALL TIMES.

5. THE VEHICLE TRACKING CONTROL SHALL BE MAINTAINED AT ALL TIMES.

**TABULATION OF EROSION CONTROL MEASURES**

NO.	DESCRIPTION	QUANTITY
1	STRAW BALE INLET PROTECTION	1
2	VEHICLE TRACKING CONTROL	1
3	SILT FENCE	1
4	CONCRETE WASHOUT AREA	1
5	CONCRETE WASHOUT AREA	1
6	CONCRETE WASHOUT AREA	1
7	CONCRETE WASHOUT AREA	1

**EROSION CONTROL NOTES**

1. ALL EROSION CONTROL MEASURES SHALL BE CONSTRUCTED AS SHOWN ON THE DRAWING.

2. ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED AT ALL TIMES.

3. ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED AT ALL TIMES.

4. ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED AT ALL TIMES.

5. ALL EROSION CONTROL MEASURES SHALL BE MAINTAINED AT ALL TIMES.

**CONCRETE WASHOUT AREA**

1. THE CONCRETE WASHOUT AREA SHALL BE CONSTRUCTED AS SHOWN ON THE DRAWING.

2. THE CONCRETE WASHOUT AREA SHALL BE MAINTAINED AT ALL TIMES.

3. THE CONCRETE WASHOUT AREA SHALL BE MAINTAINED AT ALL TIMES.

4. THE CONCRETE WASHOUT AREA SHALL BE MAINTAINED AT ALL TIMES.

5. THE CONCRETE WASHOUT AREA SHALL BE MAINTAINED AT ALL TIMES.

**Colorado Department of Transportation**  
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 1804 South E. 1st Street  
 Colorado Springs, Colorado  
 80904  
 (719) 520-7342  
 KEMP PROJECT NO. 02045

**Sheet Revisions**

No.	Description
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0000	
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**SWMP CONSTRUCTION PLAN**  
**SHEET 4 OF 4**

Project No./Code: **SIE H-240-094**  
 Code: **15540**  
 Sheet Number: **22 of 22**

CONCRETE WASHOUT AREA

EXHIBIT C CONTRACTOR  
REQUIREMENTS

**EXHIBIT "C"**  
**CONTRACTOR REQUIREMENTS**

**1.01 General:**

- **1.01.01** The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Sand Creek Multi-Use Trail as defined in the Construction and Maintenance Agreement for Pedestrian/Bike Underpass Agreement dated \_\_\_\_\_, 2012.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martínez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Ms. Ingrid Richter  
City of Colorado Springs  
30 S. Nevada Ave., Suite 501  
Colorado Springs, CO 80903
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State

and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify City of Colorado Springs Parks, Recreation and Cultural Services Department at (719) 385-5940 and Railway's Manager Public Projects, telephone number (913) 551-4964 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file \_\_\_\_\_.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

### 1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Mark Carpenter at (303) 480-6393 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest track
  - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other

materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

#### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone \_\_\_\_\_) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 37 freight trains per 24-hour period at a timetable speed 45 MPH and 0 passenger trains at a timetable speed of N/A MPH.

#### **1.06 Contractor General Safety Requirements**

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **[NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.]**
- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

#### **1.07 Excavation:**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative Gene Eliassen, 303-480-6586. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before

continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

#### **1.08 Hazardous Waste, Substances and Material Reporting:**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

#### **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



## NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C)       Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- Contractor/safety sensitive (F)       Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)       Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

\_\_\_\_\_

Transmit attached information to Accident/Incident Reporting Center by:  
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Employee No.)

\_\_\_\_\_  
(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE  
PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

### NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/State: \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather: \_\_\_\_\_  
(if not EMSF location)

Mile Post / Line Segment: \_\_\_\_\_

5. Driver's License # (and state) or other ID: \_\_\_\_\_ SSN (required): \_\_\_\_\_

6. Name (last, first, MI): \_\_\_\_\_

7. Address: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

8. Date of Birth: \_\_\_\_\_ and/or Age: \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)

Phone Number: \_\_\_\_\_ Employer: \_\_\_\_\_

9. Injury: \_\_\_\_\_ 10. Body Part: \_\_\_\_\_  
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Treatment:

- First Aid Only \_\_\_\_\_
- Required Medical Treatment \_\_\_\_\_
- Other Medical Treatment \_\_\_\_\_

13. Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

14. Dr. Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

15. Hospital Name: \_\_\_\_\_

16. Hospital Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

17. Diagnosis: \_\_\_\_\_

EXHIBIT C-1

AGREEMENT BETWEEN BNSF AND CONTRACTOR

EXHIBIT C-1

AGREEMENT BETWEEN BNSF AND CONTRACTOR

LAW DEPARTMENT APPROVED

EXHIBIT "C-1"

Agreement Between  
BNSF RAILWAY COMPANY  
and the  
CONTRACTOR

**BNSF RAILWAY COMPANY**  
Attention: Manager Public Projects

Railway File: \_\_\_\_\_  
Agency Project: \_\_\_\_\_

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 2012, with the City of Colorado Springs, Colorado for the performance of certain work in connection with the following project: an underpass structure to carry a multi-use, non-motorized pedestrian/bike trail for recreational use by the public without charge under the Railway's existing bridge structure BT 79.8 over Spring Creek and track at Line Segment 477, Mile Post 79.8 located on the Colorado Division, Pikes Peak Subdivision. Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Colorado Springs (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

## Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

## Section 3. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Railway* employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the *Railway* as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the *Railway* prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

**Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against *Railway* for all claims and suits against *Railway*. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against *Railway* for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against *Railway* for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of *Railway*. If granted by *Railway*, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all *Railway* liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to *Railway* an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

Contractor shall notify *Railway* in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

Any insurance policy must be written by a reputable insurance company acceptable to *Railway* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this *Agreement* has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this *Agreement*.

Not more frequently than once every five years, *Railway* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming *Railway* as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify *Railway* to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify *Railway* herein.

Failure to provide evidence as required by this section shall entitle, but not require, *Railway* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railway* shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving *Railway* arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor.

Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, *Railway* means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

#### Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative Damon Frye (303) 480-6251 thirty (30) days advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

Contractor \_\_\_\_\_

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

Title: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**BNSF Railway Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Manager Public Projects

Accepted and effective this \_\_\_\_\_ day of 2012.

EXHIBIT D  
EASEMENT AGREEMENT FOR RECREATIONAL TRAIL  
PEDESTRIAN/BIKE UNDERPASS

**PERMANENT EASEMENT AGREEMENT  
FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS**

THIS EASEMENT AGREEMENT FOR RECREATIONAL TRAIL PEDESTRIAN/BIKE UNDERPASS ("Easement Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2012 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and CITY OF COLORADO SPRINGS, a political subdivision in the State of Colorado ("Grantee").

A. Grantor owns or controls certain real property situated in the City of Colorado Springs, El Paso County, State of Colorado, at Grantor's Mile Post 79.8 on Line Segment 477, [Project # \_\_\_\_\_], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement for Pedestrian/Bike Underpass dated as of \_\_\_\_\_, 2012 concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the sum of \_\_\_\_\_ ( \_\_\_\_\_ and \_\_\_\_/100), the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1 Granting of Easement.**

1.1 Easement Purpose. The "Easement Purpose" shall be for the purpose set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively "Laws"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2 Term of Easement** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual

**Section 3 No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4 Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5 Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said

work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6 Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7 Environmental.**

**7.1 Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

**7.2 Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

**7.3 Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

**7.4 Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

**7.5 Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, provide written notice to Grantee of the lack of compliance, and Grantee shall immediately cease use of the Premises. If Grantee has cured the lack of compliance within 45 days of such written notice, Grantee may resume use of the Premises. Otherwise, Grantor may terminate this Easement Agreement. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

**Section 8 Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 9.

8.4 Non-exclusive Remedies. The remedies set forth in this Section 8 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

**Section 9 Surrender of Premises.**

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10 Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to Section 6. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 10 or any other section of this Easement Agreement

**Section 11 Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "Memorandum of Easement") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 90 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Colorado without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However,

nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

**ADMINISTRATIVE FEE**

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

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

**GRANTEE:**

**City of Colorado Springs, State of Colorado**

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

**EXHIBIT "A"**

**Premises**



2850 Serendipity Circle West  
Colorado Springs, CO 80917

Phone: 719-528-6133  
Fax: 719-528-6848

Surveying • Planning • Engineering • Landscape Architecture

www ldc-inc.com

SAND CREEK TRAIL  
Project No. 00128  
Revised August 21, 2009  
Sheet 1 of 2

**LEGAL DESCRIPTION: PUBLIC TRAIL EASEMENT**

A PUBLIC TRAIL EASEMENT over and across a portion of the Northwest One-Quarter of the Southwest One-Quarter of Section 34, Township 14 South, Range 66 West of the 6th P.M., also being a portion of the A.T. & S.F. RAILROAD right-of-way (125' r.o.w. width), situate in the City of Colorado Springs, El Paso County, Colorado, being fifty (50) feet each side of the following described centerline:

Commencing at the Southwest corner of Sand Creek Drainage Way as platted within DRENNAN INDUSTRIAL PARK FILING NO. 3 (Plat Book H-3, Page 33, El Paso County, Colorado records) (all bearings in this description are relative to the Northeasterly right-of-way line of said A.T. & S.F. RAILROAD, which bears S18°59'36"E "assumed"); thence N18°59'36"W along said RAILROAD's Northeasterly right-of-way line, 50.00 feet to the Point of Beginning of the EASEMENT centerline herein described; thence S71°00'24"W, 125.00 feet to a point on the Southwesterly right-of-way line of said RAILROAD, said point also being the terminus point of this description, with the slide lines of said EASEMENT lengthening and shortening to intersect said RAILROAD's Northeasterly right-of-way line at its Northeasterly end and said RAILROAD's Southwesterly right-of-way line at its Southwesterly end.

**SURVEYOR'S STATEMENT:**

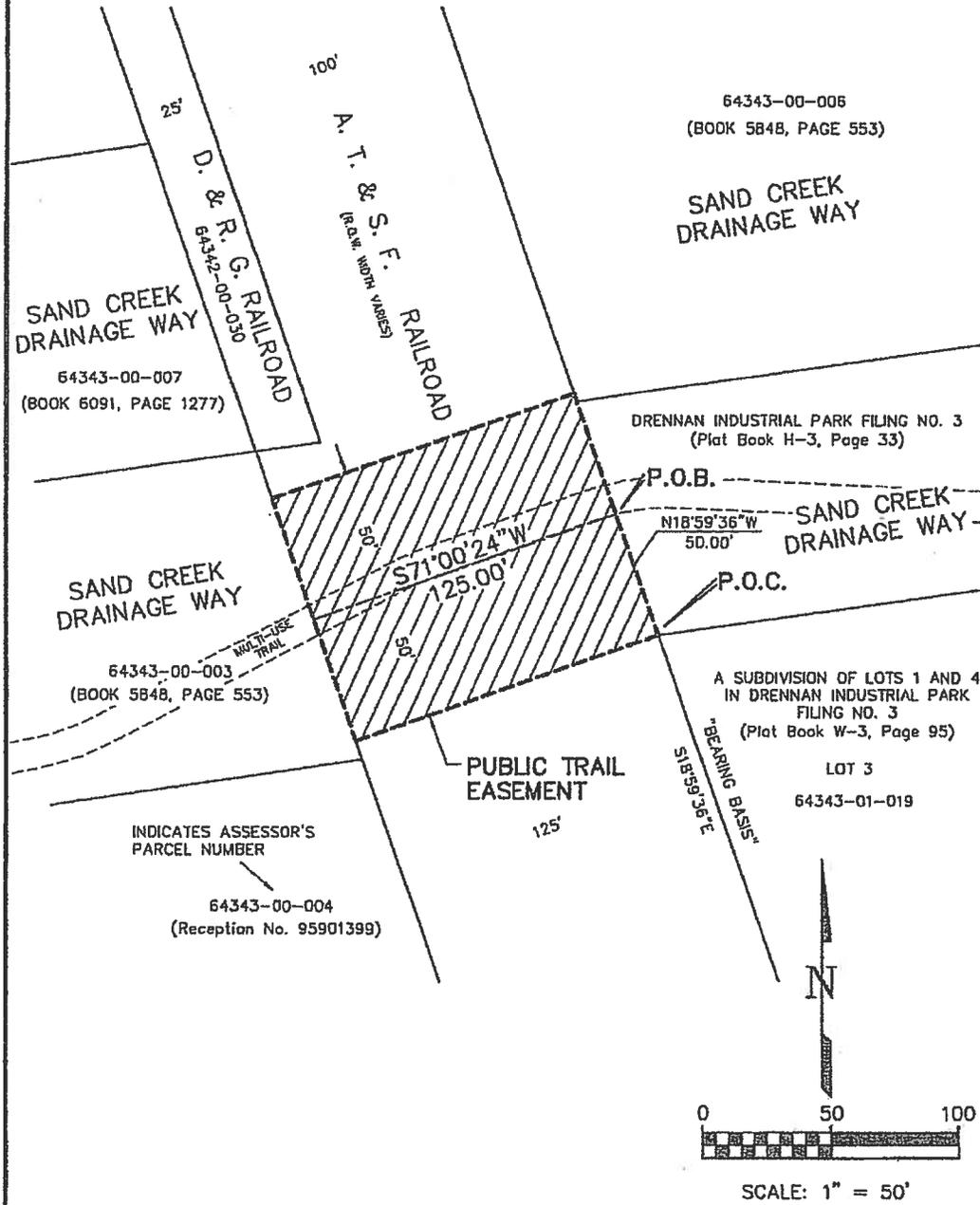
I, David V. Hostetler, a registered Professional Land Surveyor in the State of Colorado, do hereby state that the attached LEGAL DESCRIPTION and EXHIBIT were prepared under my direct responsibility, supervision, and checking, and on the basis of my knowledge, information and belief, are correct.

David V. Hostetler, Professional Land Surveyor  
Colorado P.L.S. No. 20681  
For and on behalf of LDC, Inc.

File: 00128 Trail ATSF Legal  
DVH/dh

# LEGAL DESCRIPTION EXHIBIT

A PORTION OF THE  
 NW1/4 SW1/4 OF SECTION 34, T 14 S, R 66 W OF THE 6TH P.M.,  
 IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO



SHEET 2 OF 2

 <p>Land Development Consultants, Inc.          PLANNING • LANDSCAPE ARCHITECTURE          ENGINEERING • SURVEYING          www.ldcinc.com • TEL: (719) 528-6133 • FAX: (719) 528-6848          2850 SERENDIPITY CIRCLE WEST • COLORADO SPRINGS, CO 80917</p>	<p>NOTE: This EXHIBIT does not represent a monumented land survey, and is only intended to depict the attached LEGAL DESCRIPTION.</p>	<p>REVISIONS</p>			
		NO.	DESCRIPTION	DATE	BY
<p>DWN BY: KLW      DATE: 06/10/09          CKD BY: DVH      REF. NO.: 00128EX18</p>	<p>PROJECT NUMBER          00128</p>				

**EXHIBIT "B"**

**MEMORANDUM OF EASEMENT**

**MEMORANDUM OF EASEMENT**

THIS MEMORANDUM OF EASEMENT is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and CITY OF COLORADO SPRINGS, a political subdivision of the State of Colorado, ("Grantee"), whose address for purposes of this instrument is 30 South Nevada Avenue, Suite 405, Colorado Springs, Colorado 80903, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

WHEREAS, Grantor owns or controls certain real property situated in the City of Colorado Springs, Colorado as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_, 2012 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

[signature pages follow]

**GRANTOR:**

**BNSF RAILWAY COMPANY, a Delaware corporation**

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ (name) as  
\_\_\_\_\_ (title) of BNSF RAILWAY COMPANY, a Delaware  
corporation.

\_\_\_\_\_  
Notary Public  
  
(Seal)  
  
My appointment expires: \_\_\_\_\_

**GRANTEE:**

**City of Colorado Springs, State of Colorado**

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

STATE OF COLORADO    §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ (name) as \_\_\_\_\_ (title)  
of \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_.

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

(Seal)

My appointment expires: \_\_\_\_\_

**EXHIBIT "A"**

**Premise**



2850 Serendipity Circle West  
Colorado Springs, CO 80917

Phone: 719-528-6133  
Fax: 719-528-6848

Surveying • Planning • Engineering • Landscape Architecture

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SAND CREEK TRAIL  
Project No. 00128  
Revised August 21, 2009  
Sheet 1 of 2

**LEGAL DESCRIPTION: PUBLIC TRAIL EASEMENT**

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**SURVEYOR'S STATEMENT:**

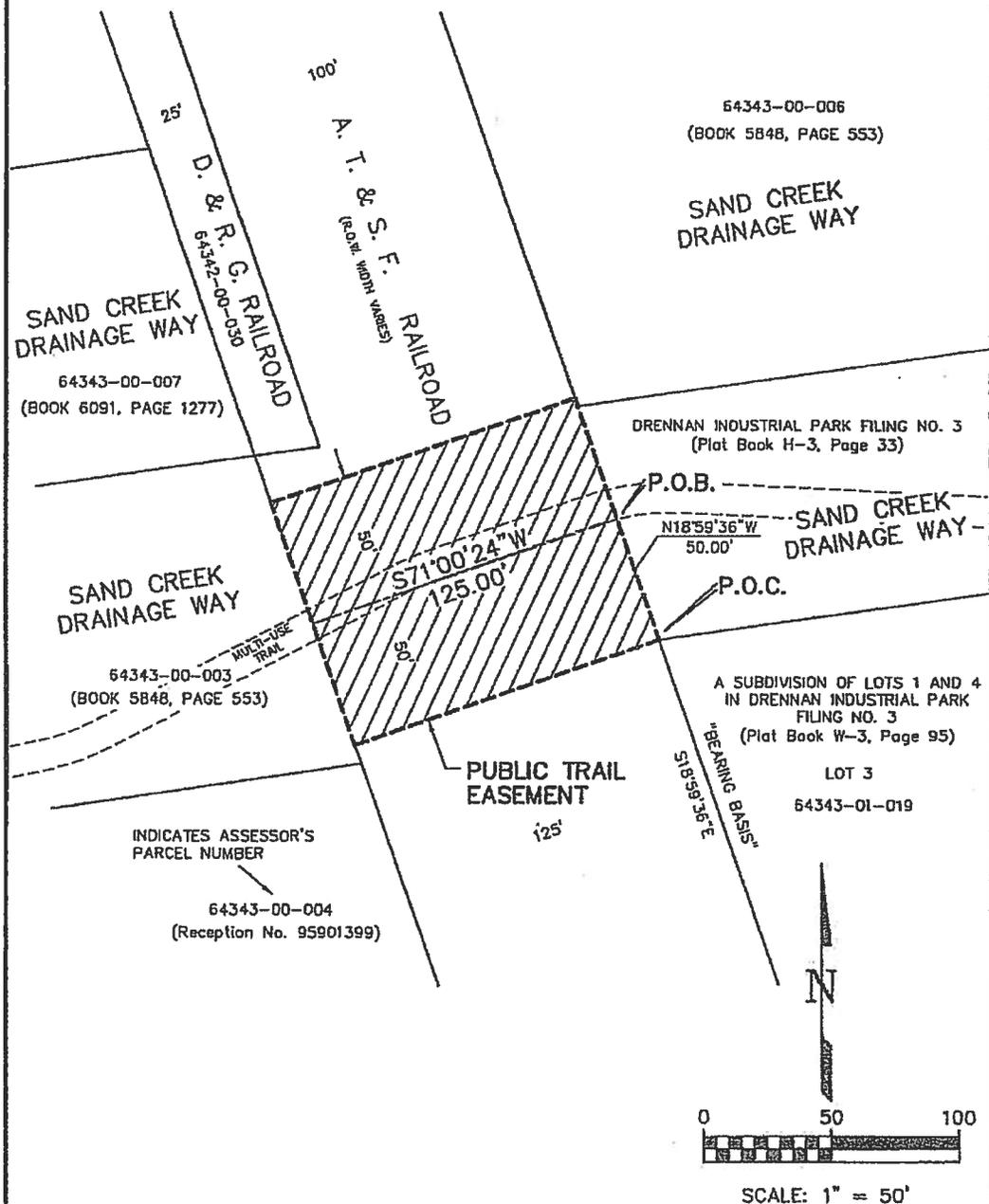
I, David V. Hostetler, a registered Professional Land Surveyor in the State of Colorado, do hereby state that the attached LEGAL DESCRIPTION and EXHIBIT were prepared under my direct responsibility, supervision, and checking, and on the basis of my knowledge, information and belief, are correct.

David V. Hostetler, Professional Land Surveyor  
Colorado P.L.S. No. 20681  
For and on behalf of LDC, Inc.

File: 00128 Trail ATSF Legal  
DVH/dh

# LEGAL DESCRIPTION EXHIBIT

A PORTION OF THE  
 NW1/4 SW1/4 OF SECTION 34, T 14 S, R 66 W OF THE 6TH P.M.,  
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SHEET 2 OF 2

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		NO.	DESCRIPTION	DATE
DWN BY: K LW      DATE: 08/10/09		PROJECT NUMBER		
CKD BY: DVH      REF. NO.: 00128EX18		00128		

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