

TEMPORARY CONSTRUCTION LEASE AGREEMENT

This Temporary Construction Lease Agreement ("Lease" or "Agreement"), made effective as of _____, 20____, between **SCHOOL DISTRICT NO. 27J**, a school district and political subdivision of the State of Colorado, whose address is 18551 E. 160th Avenue, Brighton, Colorado 80601 ("GRANTOR"), and **METRO WASTEWATER RECLAMATION DISTRICT**, a special district and political subdivision of the State of Colorado (the "GRANTEE"), whose legal address is 6450 York Street, Denver, Colorado 80229 (Grantor and Grantee are referred to collectively as the "Parties").

FOR AND IN CONSIDERATION of the sum of sixty eight thousand seven hundred and eighty six dollars (\$68,786.00), the mutual promises and undertakings herein set forth and good and other valuable consideration, the receipt and sufficiency of which is acknowledged and confessed, the Parties agree as follows:

1. **LEASE.** GRANTOR hereby temporarily leases to the GRANTEE, its successors and assigns, along with GRANTEE's authorized contractors, employees and agents, a temporary right to utilize that certain real property located in the County of Adams, State of Colorado, more particularly described on **Exhibit A**, attached hereto and incorporated by reference (the "Work Area" comprised of the Temporary Construction Lease area and the Permanent Easement area), for the following purposes: i) clearing and grubbing; ii) excavating and moving earth; iii) dewatering treatment; iv) temporary storing and staging of materials, supplies, excavated earth, equipment and vehicles; v) moving, operating and relocating GRANTEE's equipment, materials and vehicles; vi) erecting, maintaining and relocating safety, perimeter and erosion control fencing; vii) undertaking restoration activities described herein; and viii) such other purposes as the GRANTEE deems reasonably necessary in connection with its construction and installation of GRANTEE's wastewater pipeline facilities and related appurtenances (the "Permitted Activities"). Compensation for use of the Work Area will be based on the area described as the Temporary Lease Area in Exhibit A.

2. **TERM AND WORK SCHEDULE.** The overall term of this Lease shall not exceed twelve (12) months over two construction seasons, the first one commencing on May 3, 2021 and automatically terminating six (6) months later, and the second one, if required, commencing on June 1, 2022 and automatically terminating six (6) months later. Unless extended by the Parties in writing, the Lease shall not extend past November 30, 2022. However, notwithstanding anything in the prior sentence, the use of this Lease by GRANTEE and all Permitted Activities, including without limitation the restoration obligations set forth in Paragraph 4 of this Lease, shall only take place pursuant to the following schedule in subparagraphs A through F of this paragraph 2:

- A. **May 3, 2021:** Starting on May 3, 2021, GRANTEE may clear and grub the land, stockpile materials and equipment in that portion of the Work Area located on the soccer field along 120th Avenue between Prairie View Middle School and the tennis courts (Field No. 5, as shown on the aerial map attached hereto as **Exhibit B** and incorporated by reference), and undertake other activities incidental to this

work. This work may be undertaken provided that: i) such work occurs only in that portion of the Work Area south of Station No. 426+00 to 120th Avenue, as shown on Exhibit B, and not at any other location on GRANTOR's property; ii) GRANTEE's access to this portion of the Work Area is exclusively by a new temporary access point from 120th Avenue directly onto the soccer field (such access to be obtained and constructed by GRANTEE); iii) such access does not utilize or interfere with vehicular access to the Prairie View Middle School parking lot or the three driveways connecting to 120th Avenue (including the drop-off lanes and the circle drive); and iv) that portion of the Work Area to be utilized at this time is appropriately fenced and secured.

- B. June 1, 2021: Starting on June 1, 2021, GRANTEE shall have access to the remaining portions of the Work Area described on Exhibit A (including the practice field, both baseball diamonds and the middle school football field (Field Nos. 1, 2, 3 and 4) and may undertake all Permitted Activities (except as specified in this paragraph 2(B). This work may be undertaken provided that: i) vehicular access to Prairie View Middle School via the easternmost of the three middle school driveways connecting to 120th Avenue remains open for use by GRANTOR's staff through June 4, 2021; ii) at least one of the three Prairie View Middle School driveways connecting to 120th Avenue remains open to vehicular traffic at all times during the term of this Lease; iii) such vehicular access via the three Prairie View Middle School driveways is re-opened by July 19, 2021 with all re-paving and re-striping complete; and iv) that portion of the Work Area to be utilized at this time is appropriately fenced and secured.
- C. MILESTONE CUT-OFF DATE: If by July 23, 2021 GRANTEE has not completed pipe installation and back-filling in that portion of the Work Area to Station No. 426+00 (south end of middle school football field (Field No. 4), GRANTEE must immediately cease constructing and installing additional segments of pipeline, immediately begin restoration in the Work Area pursuant to the restoration provisions of this Agreement, complete all restoration in the Work Area no later than August 13, 2021, and may only recommence the Permitted Activities on or after June 1, 2022 pursuant to paragraph 2(E) of this Agreement. If Permitted Activities are halted and are to be resumed in 2022, GRANTEE must still comply with the obligations in paragraph 2(D) of this Agreement according to the schedule provided for in paragraph 2(E).
- D. RESTORATION DEADLINE: Notwithstanding anything to the contrary in subparagraphs A through C of this paragraph 2, all Permitted Activities and other work by GRANTEE must temporarily cease on or before August 13, 2021, subject to possible resumption in 2022 pursuant to subparagraph E of this paragraph 2. In addition to the requirements contained in sub-paragraphs A through C of this paragraph 2, by August 13, 2021, GRANTEE must have completed the following: i) back-filled all trenches, pits and holes in the Work Area made by GRANTEE and re-compacted the same to prevent subsidence; ii) restored, repaired and/or replaced all fields, sidewalks, driveways, parking lots

and other areas affected by GRANTEE's work in the Work Area pursuant to the restoration provisions of this Agreement; iii) removed all construction vehicles, fencing, excess soil and debris, and all project equipment and materials (except to the extent such equipment and materials are permanently installed in the permanent easement); iv) completed all other restoration work required by this Agreement; and v) eliminated all dangerous conditions in the Work Area that were created by GRANTEE or the Permitted Activities undertaken by GRANTEE.

- E. June 1, 2022: If the Milestone Cut-off described in paragraph 2(C) is implicated, and to the extent necessary to complete GRANTEE's construction and installation of wastewater pipeline facilities and related appurtenances, GRANTEE may resume all Permitted Activities on or after June 1, 2022. This work may be undertaken provided that: i) vehicular access via the three driveways connecting the Prairie View Middle School parking lots to 120th Avenue remain open for use by GRANTOR's staff through June 3, 2022; ii) at least one of the three Prairie View Middle School driveways connecting to 120th Avenue remains open to vehicular traffic at all times during the term of this Lease; iii) such vehicular access via the three Prairie View Middle School driveways is re-opened by July 18, 2022 with all re-paving and re-striping complete; iv) GRANTEE has completed work in that portion of the Work Area at the location of the middle school football field (Station 421+00 to 426+00) by August 15, 2022; and v) that portion of the Work Area to be utilized at this time is appropriately fenced and secured. GRANTEE shall complete all restoration obligations by August 15, 2022.
- F. Liquidated Damages. GRANTEE understands and agrees that completion of the restoration obligations set forth in subparagraphs 2(B)(iii), (D)(i)-(v) and (E)(iii) and (iv) of paragraph 2 of this Lease (the "Critical Restoration Obligations") within the time specified herein is an essential feature of this Lease and that GRANTOR will sustain substantial damages, the amount of which is not possible to accurately determine at the time of contracting and which may be difficult to prove, if the Critical Restoration Obligations are not so completed. GRANTEE, therefore, agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to insure the completion of Critical Restoration Obligations within the prescribed time. GRANTEE agrees that its failure to complete the Critical Restoration Obligations within the time specified shall be considered a material breach of this Lease and shall entitle the GRANTOR to collect from GRANTEE liquidated damages for the delay in the sum of Two Thousand Five Hundred Dollars (\$2,500) per calendar day. As for the restoration obligations described in subparagraphs 2(D)(ii) and (E)(iv) relating to the fields, if that work is not completed within the time specified herein, there shall be liquidated damages for any delay of One Thousand Dollars (\$1,000) per calendar day.

3. OPERATIONS. GRANTEE's activities taken pursuant to this Agreement, and all

Permitted Activities, regardless of when performed under sub-paragraphs A through F of paragraph 2 of this Agreement, shall comply with the following:

- A. GRANTEE shall give GRANTOR seven (7) calendar days advance notice before commencing Permitted Activities for each scope of work undertaken under each subparagraphs A through E of paragraph 2 of this Agreement, including the Milestone Cut-off and Restoration progress reports.
- B. GRANTEE shall perform all Permitted Activities in a timely and workmanlike manner, in accordance with applicable construction standards, and in an effort to reasonably minimize disruption and disturbance to school activities and to GRANTOR's property.
- C. The GRANTEE shall have the right to remove any existing trees, bushes, shrubbery, undergrowth, as well as any personal property, fixture and other obstructions located on the Work Area during the term of this Lease if necessary to undertake the Permitted Activities.
- D. GRANTEE shall take reasonable steps in furtherance of the safety of GRANTOR's students and staff while undertaking Permitted Activities by: i) installing and maintaining appropriate construction fencing, signage and traffic control measures in, on and around the Work Area; ii) keeping GRANTEE's workers, equipment and materials within the Work Area and away from areas where GRANTOR's students and staff are allowed to be; iii) conducting permissible background checks on all of GRANTEE's contractor-workers who will be in the Work Area; iv) adhering to the work schedule in sub-paragraphs A through E of paragraph 2 of this Agreement; v) back-filling trenches, pits and holes as soon as practical after installation of pipeline and other facilities; vi) complying with all applicable safety regulations and laws; and vii) promptly removing or mitigating any dangerous and hazardous conditions that are created by GRANTEE in the Work Area.
- E. GRANTEE shall take reasonable steps in furtherance of protecting GRANTOR's real and personal property located in the Work Area by: i) for any of GRANTOR's utilities that are disconnected as part of the Permitted Activities, reconnecting those utilities in a timely and appropriate manner; ii) properly back-filling and compacting all areas that are excavated by GRANTEE in the Work Area; iii) containing all Permitted Activities to the Work Area; iv) installing reasonable leak detection devices at various locations along the pipeline alignment; and v) undertaking the restoration activities contemplated by paragraph 4 of this Agreement.
- F. GRANTEE shall take reasonable steps in furtherance of adhering to the schedule set forth in paragraph 2 of this Agreement by: i) back-filling trenches, pits and holes as soon as practical after installation of sections of pipeline; ii) commencing restoration activities as soon as practical after back-filling; iii) employing two

pipe installation crews to work simultaneously at different locations within the Work Area; and iv) communicating with GRANTOR as to the progress of work, the schedule and any delays.

- G. GRANTEE will keep GRANTOR advised of developments and timing with respect to the Permitted Activities in the Work Area with a weekly progress meeting with GRANTOR's designated representative. GRANTOR, at its own cost may inspect GRANTEE's work as it progresses. However, nothing in this Agreement shall make GRANTOR responsible for, or allow GRANTOR to direct or control GRANTEE's construction means and methods or any of GRANTEE's work in the Work Area.

4. RESTORATION. GRANTEE's restoration obligations set forth in Paragraph 2 shall include the following:

- A. On the two baseball diamonds (Field Nos. 2 and 3) and the middle school football field (Field No. 4), GRANTEE shall re-sod the entire Work Area on those fields with new turf to match existing turf conditions. In addition, on Field #3 only, GRANTEE shall take reasonable steps to have the replaced turf match the existing turf in terms of type, density and color, and provide for a seamless transition between replaced turf and existing turf. New turf will be irrigated with GRANTOR's water and irrigation system. GRANTEE shall undertake the first two mowings of all new turf.
- B. On Field Nos. 1 and 5, and in all other (non-field) areas with irrigated grass (including in front of Prairie View Middle School along 120th Avenue, GRANTEE shall re-seed the entire Work Area on those areas with appropriate grass seeding. Reseeded areas will be irrigated with GRANTOR's water and irrigation system.
- C. For those portions of the Work Area located on the middle school parking lot and the three driveways connecting that parking lot to 120th Avenue GRANTEE shall repave and restripe the surface of these areas to be similar to what existed prior to GRANTEE's activities, and to a condition as good as or better than existed before GRANTEE's activities.
- D. On all curb, gutter and sidewalks, replace with similar to what existed prior to GRANTEE's activities, and to a condition as good as existed before GRANTEE's activities. An additional sidewalk will be provided at GRANTEE's cost that extends the existing northsouth sidewalk on the east side of the Prairie View Middle School parking lot (approximately station 435+50), through the Work Area, and connecting to the existing east-west sidewalk along 120th Avenue. The new sidewalk shall be limited to approximately 75 linear feet of sidewalk not to exceed six feet in width.

- E. On the track around middle school football field (Field No. 4), other unpaved drives and paths, and in non-irrigated vacant land within the Work Area, GRANTEE shall restore with similar surfacing to what existed prior to GRANTEE's activities, and to a condition as good as existed before GRANTEE's activities. This will include re-seeding with native grass in the vacant, non-irrigated area in the northwest corner of GRANTOR's property.
- F. Any of GRANTOR's improvements, irrigation systems, fences or other personal property that needs to be disassembled, removed or relocated in order to accommodate the Permitted Activities shall be disassembled, removed or relocated by GRANTEE, and at the completion of such activities, shall be reassembled, repaired, restored or replaced with similar to what existed prior to GRANTEE's activities, and to a condition as good as existed before GRANTEE's activities.
- G. All areas that have been excavated shall be back-filled and compacted to prevent any material subsidence. The excavated areas under the varsity baseball field (Field No. 3) and paved parking and driveway areas shall be compacted to 95% of Standard Proctor value. All other excavated areas shall be compacted to 90% of Standard Proctor Value. Upon completion of GRANTEE's activities, storm water drainage characteristics shall be similar to what existed prior to GRANTEE's activities, and to a condition as good as existed before GRANTEE's activities.
- H. Upon completion of all Permitted Activities, GRANTEE shall remove all construction vehicles, temporary fencing, excess soil and debris, and all project equipment and materials (except to the extent such equipment and materials are permanently installed in accordance with the permanent easement), and GRANTEE shall remove, eliminate or correct dangerous conditions in the Work Area that were created or caused by GRANTEE.
- I. Upon completion of all Permitted Activities and all restoration work, GRANTEE shall give GRANTOR a written Completion Notice. Upon receipt of the Completion Notice, GRANTOR may inspect such work and GRANTEE and GRANTOR shall work to agree on any reasonable corrective follow-up work as requested by GRANTOR. All restoration work shall be warrantied by GRANTEE for a period of two years from the date GRANTEE's Completion Notice.

5. GENERAL TERMS.

- A. GRANTEE shall procure and maintain, or shall require its contractors to procure and maintain, adequate hazard and liability insurance policies for claims which may arise during the use of the Work Area. GRANTOR shall be added as an additional insured on such policies. Such coverage shall be procured from insurers authorized to do business in the State of Colorado. Upon request by GRANTOR, GRANTEE shall provide GRANTOR with certificates evidencing such insurance.

- B. GRANTOR warrants that it has full right and lawful authority to make the grant herein contained and, to the extent permitted by law and without waiving the provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended, promises and agrees to defend the GRANTEE in the exercise of its rights hereunder against any defect in its title to the Work Area, and against any defect in its right to make said grant. The individuals executing this Agreement on behalf of the Parties represent and warrant that they are duly authorized to do so.
- C. As between GRANTOR and GRANTEE, the GRANTEE shall be responsible and liable for any and all costs, claims and other expenses incurred for or related to the Permitted Activities undertaken on, in or under the Work Area, including the installation, construction, replacement, removal, ownership, operation, repair and use of GRANTEE's facilities, except to the extent such costs, claims or other expenses are caused by the acts of GRANTOR, or its servants, contractors or agents. However, GRANTOR and GRANTEE are both relying on and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or any other limitation or defense otherwise available to Grantor or Grantee under Colorado law.
- D. The benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties hereto.
- E. By entering into this Agreement, neither the GRANTOR, nor the GRANTEE intends to create a multiple-year fiscal obligation, direct or indirect debt or other financial commitment whatsoever. The performance of GRANTOR's or GRANTEE's obligations pursuant to this Agreement requiring the expenditure of public funds, are subject to annual budgeting and appropriations.
- F. This Agreement shall be governed by the laws of the State of Colorado, and exclusive jurisdiction for any legal action concerning the provisions hereof shall be in the District Court for the County of Adams, State of Colorado.
- G. Should any one or more provisions of this Agreement be judicially determined to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intent being that the various sections and provisions hereof are severable.
- H. The above and foregoing constitutes the whole agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto with respect to the subject matter of this instrument. The terms of this Easement Agreement may be modified only by a writing duly executed and acknowledged by the Parties hereto.

I. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic or scanned signatures shall be treated as originals.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

GRANTOR: SCHOOL DISTRICT NO. 27J,
a political subdivision of the State of Colorado

By: _____

Title: _____

GRANTOR's Address:
School District No. 27J
Attn: Mr. Terrence Lucero
18551 E. 160th Ave.
Brighton, CO 80601
(303) ____ - ____

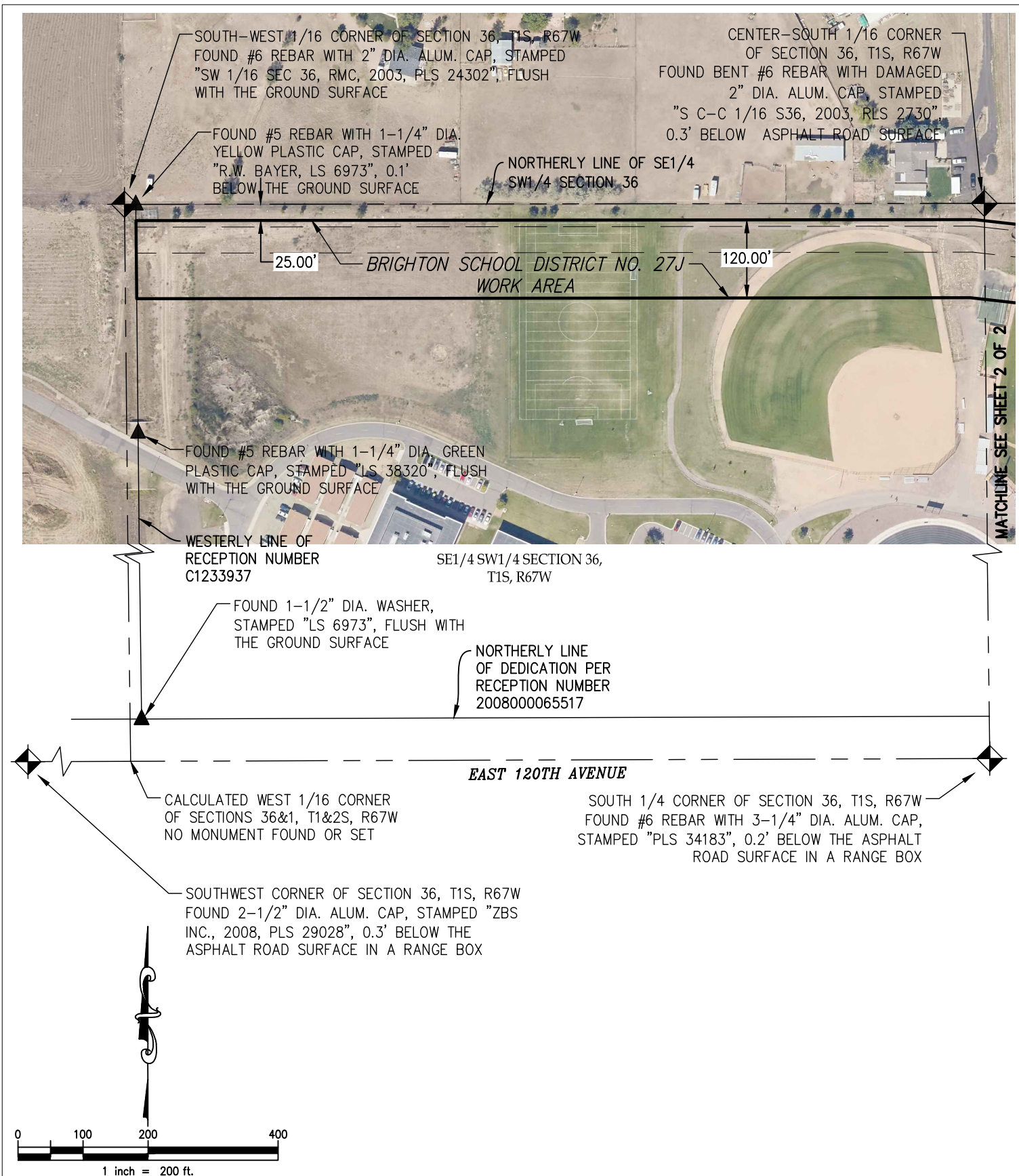
GRANTEE: METRO WASTEWATER RECLAMATION DISTRICT,
a political subdivision of the State of Colorado

By: _____
District Manager

APPROVED AS TO FORM

By: _____
District General Counsel

GRANTEE's Address:
Metro Wastewater Reclamation District
Attn: Mr. Craig Simmonds
6450 York Street
Denver, CO 80229
(303) 286-3000



NOTE

This exhibit does not represent a monumented survey.

Dwg. ELZ

Ckd. JSF

App. JSF



METRO WASTEWATER
RECLAMATION DISTRICT

EXHIBIT A - WORK AREA

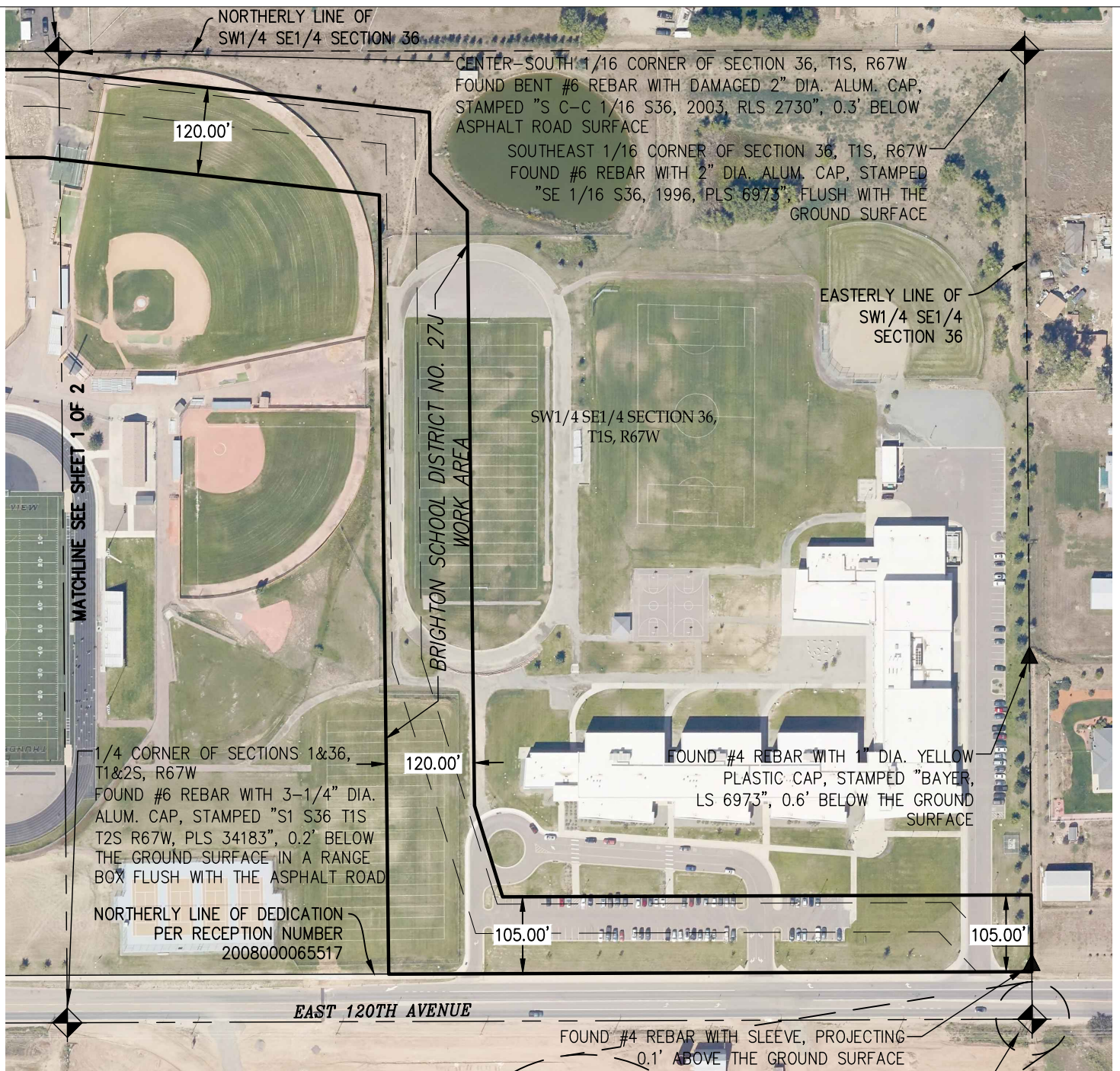
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Second Creek Interceptor

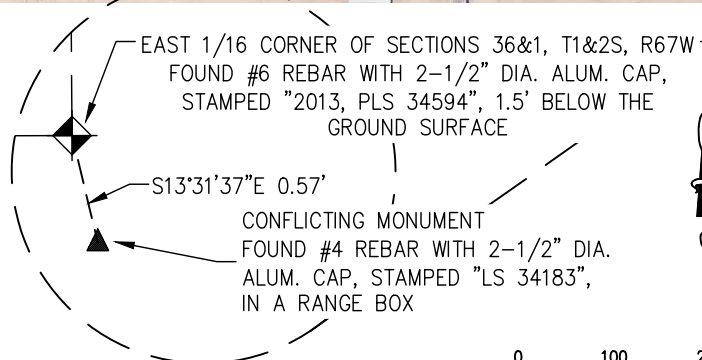
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SDIT-0170-R6

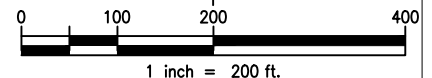
SH 1 OF 2



BRIGHTON SCHOOL DISTRICT NO. 27J
TEMPORARY CONSTRUCTION LEASE
AREA=6.481 ACRES, ±



NOTE
This exhibit does not represent a monumented survey.



Dwg. ELZ
Ckd. JSF
App. JSF



METRO WASTEWATER
RECLAMATION DISTRICT

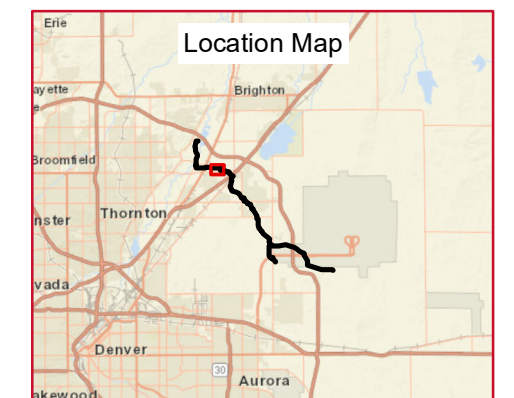
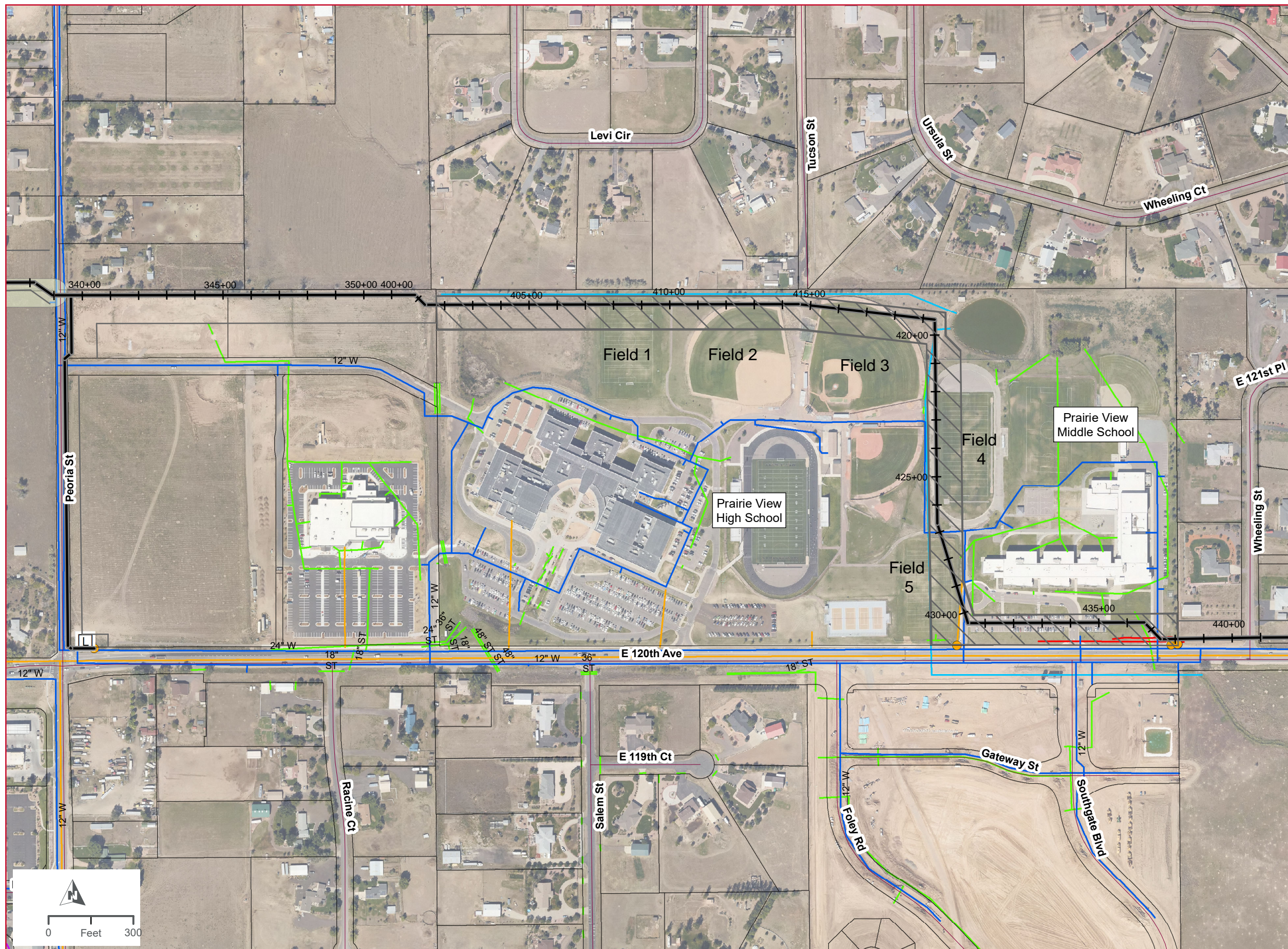
EXHIBIT A - WORK AREA

Parcel SDIT-0170
Second Creek Interceptor

DATE:
02/10/20
DWG. NO.
SDIT-0170-R6
SH 2 OF 2

EXHIBIT B **PRAIRIE VIEW HIGH SCHOOL AND MIDDLE SCHOOL**

- SD Interceptor Preferred Alignment
- Parcel
- Lift Station
- Sanitary Manhole (Surveyed)
- Water Main
- Irrigation Pipe
- Sanitary Main
- Non-potable Water Main
- Natural Gas Line
- Storm Main
- Temporary Easement
- Work Area



DATA SOURCES: MWRD, City and County of Denver, Adams County, National Wetlands Inventory, Commerce City, HDR

