

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2011, to be effective as of October 20, 2010, between the City and County of Denver, a municipal corporation of the State of Colorado, acting by and through its Board of Water Commissioners, ("Board"), and the City and County of Denver, a home rule city and municipal corporation of the State of Colorado ("City") (collectively "Parties").

11-2-11

RECITALS

1. The City has determined a portion of Quincy Avenue should be reconstructed and widened, including alteration of grades, adjacent to the Board's Marston Water Treatment Plant ("Marston") (the "Project").

2. The City is prepared to fund portions of the design, construction survey, construction, inspection and necessary field support activities for the Project as set forth in this Agreement.

3. The Board is willing to allow the relocation of a portion of its 54 inch and 60 inch conduits and 12 inch water line, which are located within or adjacent to the existing Quincy Avenue. The portions of these three lines which need to be relocated will collectively be referred to herein as "Conduits".

4. The Board has prepared a preliminary estimate of the costs to move the Conduits to accommodate the Project (the "Cost Estimate"), which has been reviewed and accepted by the City's Manager of Public Works (the "Manager").

5. Based upon the City's commitment to fund the Project and Conduits, and the Board's willingness to move the Conduits, participate in certain costs for the Project and Conduits and convey certain real property to the City for the Project, the Parties desire to enter into this Cooperation Agreement.

6. In accordance with the Colorado Constitution and the Charter of the City and County of Denver, the City and the Board are authorized to enter into agreements of this nature.

NOW, THEREFORE, upon the mutual covenants and considerations set forth herein, the Board and the City agree as follows.

1. COORDINATION AND LIAISON.

A. The Manager is the City's authorized representative for purposes of performing the City's obligations under this Agreement. The Manager hereby designates the City Engineer as the Manager's authorized representative for purposes of directing and administering the City's activities under this Agreement. The Manager may change his authorized representative at any time by providing written notice to the Board of such change.

B. The Board's Director of Engineering ("Director") is the Board's authorized representative for purposes of directing and administering the Board's activities under this Agreement. The Board may change its authorized representative at any time by providing written notice to the City of such change.

2. **THE PROJECT AND CONDUITS.**

A. The Project will generally consist of the design, construction survey, construction, inspection and necessary field support activities for the Project for an improved and expanded Quincy Avenue between the entrance of Marston and Pierce Street adjacent to the Board's Marston Water Treatment Plant.

B. Relocation of the Conduits will generally consist of the Board's design, survey control, inspection and necessary field support activities for relocating the Conduits within or adjacent to Quincy Avenue, as well as the City's construction, construction survey, inspection and necessary field support activities for the Conduits.

3. **PROJECT CONSTRUCTION.** The Parties have prepared cost estimates for the Project and the Conduits and desire to share in the cost of the Project and the Conduits, as set forth below, based upon these cost estimates.

A. Work. The City shall contract for all work necessary for the Project and the relocation of the Conduits, except as set forth herein..

B. Cost Sharing. The Board shall contribute to the Project as follows:

i.	cost of Conduits' relocation	\$1,368,000
ii.	Cost of an approximately 22 foot wide portion of the pavement and appurtenances on the south side of Quincy Avenue adjacent to Marston	\$255,000
	Subtotal	\$1,623,000
iii.	Less credit received for Street Occupancy Fees paid by the Board to the City between August, 2009 and January, 2010	-\$219,000
	Total to be paid to City	\$1,404,000
iv.	Real property for additional Quincy ROW to be conveyed by the Board to the City per Ex. A (estimated value)	\$260,000
	Total value of Board contribution	\$1,664,000

C. Real Property. The Board shall convey by Quit Claim Deed to the City the real property described in Exhibit A attached hereto and incorporated herein by reference for roadway purposes at Quincy Avenue.

D. Temporary Construction Easement. The Board shall convey a temporary construction easement to the City for the real property described in Exhibit B which is attached hereto and incorporated herein by reference, in substantially the same form as the Temporary Construction Easement attached hereto as Exhibit C.

E. Payments and Conveyances. Shortly after full execution of this Agreement, the Board shall execute the Deed and Easement referenced in C. and D. above and deliver them to the City. Further, the Board shall pay the City One Million Four Hundred Four Thousand Dollars (\$1,404,000) toward the Conduits' relocation set forth in B. above. The Board is not obligated to execute an Agreement or any amendments for any further services, including any services performed beyond that specifically described herein.

F. Timing for Construction of Conduits. The City understands that construction on the Conduits must occur between January 18, 2011 and March 1, 2011, when such lines may be taken out of service. Such dates may only be altered by the consent of the Director.

G. Management of the Project. The City shall not alter plans provided by the Board for construction of the Conduits without the consent of the Director, and except as so changed, will cause the Conduits to be constructed in accordance with such plans. The City, acting through the City Engineer, agrees to cooperate and coordinate fully with the Board, through its Director, in its performance under this Agreement. In order to facilitate coordination, communication and cooperation, the City or its representative or contractor shall provide copies of all communications between the City and/or any Project contractors or consultants with respect to the Conduits (subject to protection and preservation of any applicable legal privileges) and shall, also provide timely notice of all Conduits related meetings and presentations to the Director. During prosecution of the construction contract for the Project and Conduits, the Director agrees to respond to shop drawings and other submittals required by the construction contract within the time frames set forth in the City's construction contract. Upon substantial completion of the Project, the City Engineer and the Director, or their designated representatives and the construction contractor and/or construction manager shall inspect the Project and the Conduits and shall determine whether the Project and Conduits work has been satisfactorily completed in accordance with the plans, specifications and construction contract. The Parties will work cooperatively and timely in good faith to resolve any deficiencies in the Project and Conduits work in conformance with the provisions of the construction contract.

H. Ownership of Project and Conduits Improvements. Upon final completion and final acceptance of the Project and Conduits in accordance with the construction contract, the City shall transfer all of its interests in the Conduits, including all warranties, to the Board. The City shall retain ownership of all other Project improvements. The Board, at all times, shall pay all costs associated with the maintenance, repair, replacement and operation of the completed Conduits.

I. Board Role.

(1) The Board shall prepare and provide to the City a complete, final design and specifications for the Project in accordance with the City's construction budget for the Project. In preparing such plans and specifications, the Board shall coordinate its design effort with the design of the City's Project No. CE 82054, to the extent directed by the City.

(2) During Construction, the Board will provide all survey, inspection and testing services necessary to verify that the Project construction complies with the plans and specifications. Further, the Board shall provide the City with the results of all such services performed by the Board.

J. Costs of Conduits Relocation. In the event the total cost of relocating the Conduits exceeds \$1,824,000, the Parties will attempt to negotiate in good faith as to their respective responsibilities to pay for such excess costs. If the Parties are unable to reach an agreement on this issue, they shall initially pay for such excess costs at the rate of 75% by the

Board and 25% by the City so that work on the project will not cease. The Mayor of the City shall make a final determination as to what percentage of such excess costs shall be paid by each Party. If the Mayor's determination results in one party having overpaid, the underpaying party will reimburse the overpaying party in accordance with the Mayor's decision.

4. **STREET OCCUPANCY PERMIT FEES.** The City will not impose Street Occupancy Permit Fees against the Board or its contractors, as those fees are defined by the City, including fees related to traffic lanes, center lanes, alleys, sidewalks and bagging of meter permits, through December 31, 2010. (The Parties acknowledge that such Street Occupancy Permit Fees have not been imposed by the City on the Board since 2005 except for \$219,000 collected by the City between August, 2009 and January, 2010, which amount is being credited herein as set forth in Section 3.B.iii above.).

A. **Procedure for Obtaining Street Occupancy Permits.** Prior to entering into an agreement with a contractor that requires a street occupancy permit, an authorized representative of the Board shall provide the City with documents describing the project's scope and a good-faith estimate of the time period the Board project will impact City rights-of-way.

- i. The Board and the City will review the project scope and estimated time period of impact on City rights-of-way. The Board and the City will mutually determine the time period the Board project will impact City rights-of-way, which will be defined as the "Reasonable Construction Time Period(s)".
- ii. The Board will include the Reasonable Construction Time Period(s) in the contract documents issued to its contractor for that construction project.
- iii. Once the Board has entered into a contract with a contractor for the Board project, the City, through the normal course of its review, shall issue the Board's contractor street occupancy permits with no associated permit fees. The duration of the occupancy permits shall be the Reasonable Construction Time Period(s) plus a grace period of 10 percent of that time.
- iv. If the impact of the Board project on City rights-of-ways has not ceased or will not cease prior to the expiration of the initial occupancy permit described above, then the Board's contractors shall apply for a second occupancy permit. The City, and the Board if it chooses to participate, will then review the status of the Board's project, justification for the additional impact, and other relevant issues, after which, the City in its discretion may either:
 - a. issue the Board's contractor street occupancy permits at a rate up to twice the prevailing rate for such permits; or
 - b. issue the Board's contractor street occupancy permits, with no associated permit fees for an additional time period.

5. **TERM.** This Agreement shall be effective on the date that it is signed by the authorized representatives of the Parties and shall be in effect until March 31, 2011 or the completion of all obligations required hereunder, whichever is later.

6. **CONTINUED COOPERATION.** The Parties recognize the benefits to the City, to the Board, and to the citizens of Denver arising out of their cooperation with each other's construction and maintenance projects. This Agreement memorializes agreement on a few issues currently pending between the City and the Board, however, the Parties recognize that there remain many other issues to be resolved, and the Parties agree to use good faith efforts to come to a resolution for all other matters.

7. **RECORDS AND AUDITS.** The Parties shall at all times maintain a system of accounting records in accordance with each other's normal procedures, together with supporting documentation for all work, purchases, services and billings under this Agreement, which shall be made available for audit and reproduction by the City or the Board at the other party's request. The Parties agree that, for a period of at least three (3) years from the final scheduled payment under this Agreement, any duly authorized representative of the City or the Board, including the City Auditor or his designee, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the parties involving the transactions and other activities related to this Cooperation Agreement.

8. **GOOD FAITH EFFORTS.** The City and the Board agree to work diligently together and in good faith to resolve any unforeseen issues and disputes regarding the design, construction, completion, and acceptance of the Project and Conduits.

9. **INSPECTION AND ACCEPTANCE.** The Board will be allowed to and shall undertake such inspection as it deems necessary to verify that the Conduits are being constructed in accordance with the accepted Project and Conduits plans. If the Board observes that the Conduits are not being constructed in accordance with the accepted plans, then the Board shall provide timely notice of these observations to the City. At final completion, the City shall furnish the Board with an accurate record of the constructed improvements known as "as built" drawings".

10. **LIABILITY.** Each party shall be liable for the errors and omissions of its agents and employees, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of the Agreement.

11. **NOTICES.** All notices required or given under this Agreement shall be in writing, and shall be deemed effective: (a) when delivered personally to the other party; or (b) three days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by facsimile transmission and receipt is confirmed by return facsimile transmission.

If to the City: Manager of Public Works, Engineering Division, Capital Projects Management, 201 West Colfax, Dept.608, Denver, Colorado 80202.

If to the Board: Manager of the Denver Water Department, 1600 West 12th Avenue, Denver, Colorado 80204.

Or such other persons or addresses as the parties may designate in writing.

12. **NO DISCRIMINATION IN EMPLOYMENT.** 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 further agrees to insert the foregoing or a similar provision in all contracts entered into in furtherance of this Agreement.

13. **CONFLICT OF INTEREST**. The parties agree that no official, officer or employee of the City or the Board shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

14. **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, the Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

15. **GOVERNMENTAL IMMUNITY ACT**. The parties understand and agree that the parties are relying upon, and have not waived, the monetary limitations of \$150,000 per person, \$600,000 per occurrence, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

16. **APPROPRIATION**. The Parties agree that any payment obligation of either Party associated with this Agreement, whether direct or contingent, shall extend only to funds that have been duly appropriated and encumbered by the Denver City Council or the Board of Water Commissioners respectively for the purpose of this Agreement, and with respect to the City's obligation, paid into the Treasury of the City.

17. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the Board and the City as to the subject matter hereof, and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument. However, the parties acknowledge there may be aspects of the Project not within the scope of this agreement (e.g. utility relocations) that will require submittal, review, approval, and licensing by the Board; such activities shall be governed by the Board's Operating Rules and Engineering Standards.

18. **NO THIRD PARTY BENEFICIARIES**. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the City and the Board; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other person or third party.

19. **EXECUTION OF AGREEMENT**. This Agreement is expressly subject to, and shall not be or become effective or binding on the City and the Board until fully executed by all signatories of the Board and the City and County of Denver.

20. **COUNTERPARTS**. This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed.

ATTEST:

[Signature]
Manager

**CITY AND COUNTY OF DENVER,
ACTING BY AND THROUGH ITS
BOARD OF WATER COMMISSIONERS**

By: [Signature]
President

Date: October 13, 2010

APPROVED:

[Signature]
Director of Engineering

APPROVED AS TO FORM:

[Signature]
Legal Division



CITY AND COUNTY OF DENVER

ATTEST:

STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: [Signature]
Manager of Public Works

APPROVED AS TO FORM:

DAVID R. FINE, Attorney
For the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance
Contract Control No. RC02030

By: _____
Auditor

CITY AND COUNTY OF DENVER
REAL PROPERTY
TO BE ACQUIRED
FROM

PARCEL NO: 1

BOARD OF WATER COMMISSIONERS,
A.K.A. DENVER METRO WATER WORKS

FOR

PROJECT NO: CE 82054
CITY AND COUNTY OF
DENVER

WEST QUINCY AVE.

EXHIBIT "A"

PROJECT NUMBER: Quincy ROW

PARCEL NUMBER: 1

DATE: February 11, 2011

DESCRIPTION

A tract or parcel of land Parcel No. 1 containing 8,547 sq. ft. (0.196 acres). more or less, in Section 12, Township 5 South, Range 69 West, of the Sixth Principal Meridian, in the City and County of Denver, Colorado, said tract or parcel being more particularly described as follows:

Commencing at the Northwest corner of Section 12, thence N. 89°34'04" E. along the North line of said Section 12, a distance of 575.02 feet; Thence S. 00°31'16" W., departing said North line, a distance of 30.00 feet, more or less, to a point on the South Right of Way line of West Quincy Ave., said point also being the TRUE POINT OF BEGINNING;

1. Thence N. 89°34'04" E. along said South Right of Way line, a distance of 2849.06 feet;
2. Thence S. 00°25'56" E. departing said South Right of Way line, a distance of 3.00 feet to a line parallel and distant 3.00 feet, measured at right angles, from said South Right of Way line;
4. Thence S. 89°34'04" W., along said parallel line, a distance of 2849.11 feet to the westerly boundary of a parcel of land at 6100 West Quincy Avenue under the ownership of the Board of Water Commissioners of the City and County of Denver;
5. Thence N. 00°31'16" E., along said westerly boundary, a distance of 3.00 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 8,547 sq. ft. (0.196 acres). more or less.

Basis of Bearings: All bearings are based on a line between the Northwest corner of Section 12, T. 5 S., R. 69 W., being a found 3-1/4" Denver Water Department brass cap in a range box marked "LS 16398" and the Northeast corner of said Section 12, being a found 3-1/4" aluminum cap in a range box marked "LS 16398"; said line bears N. 89°34'04" E.

For and on Behalf of the
City and County of Denver
Aaron D. Willis, PLS 37064
116 Inverness Drive East, Suite 105
Englewood, CO 80112-5125



WOOLPERT, INC.

116 INVERNESS DRIVE EAST #105
ENGLEWOOD, COLO. 80112-5125
(303) 925-1400

SHEET 3 OF 6

SCALE 1" = 100'

CHECKED BY: B.D.L.

DATE 02 / 11 / 2011 BY AW & sc

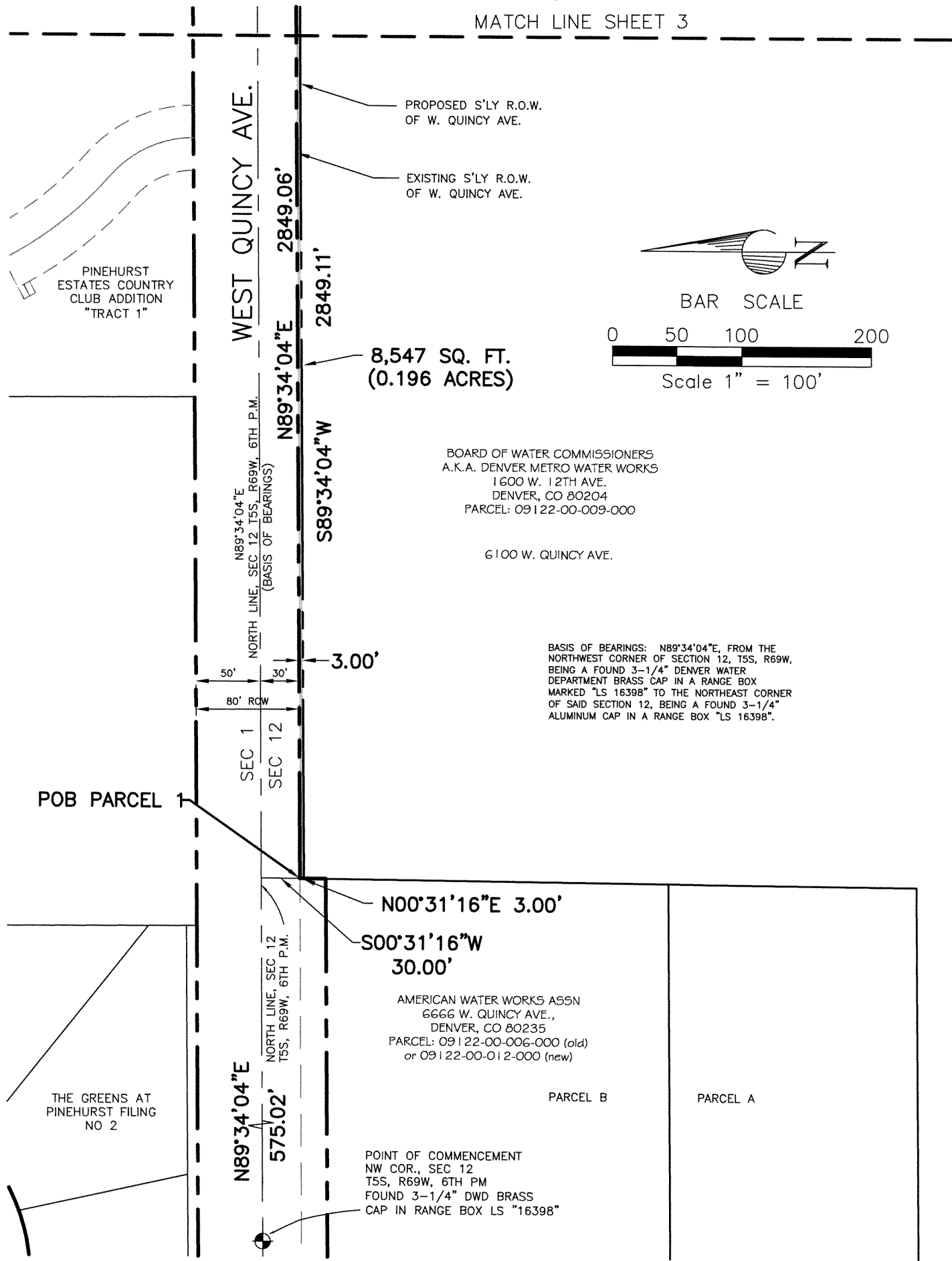
JOB NO. 068444

FILE NAME: Projects\068444 - QUINCY Ave\DRAWINGS - WP\Quincy 3' Parcel 1.dwg

PARCEL 1

NOTES:

PARCEL MAP
SEC 12, T5S, R69W, 6TH PM



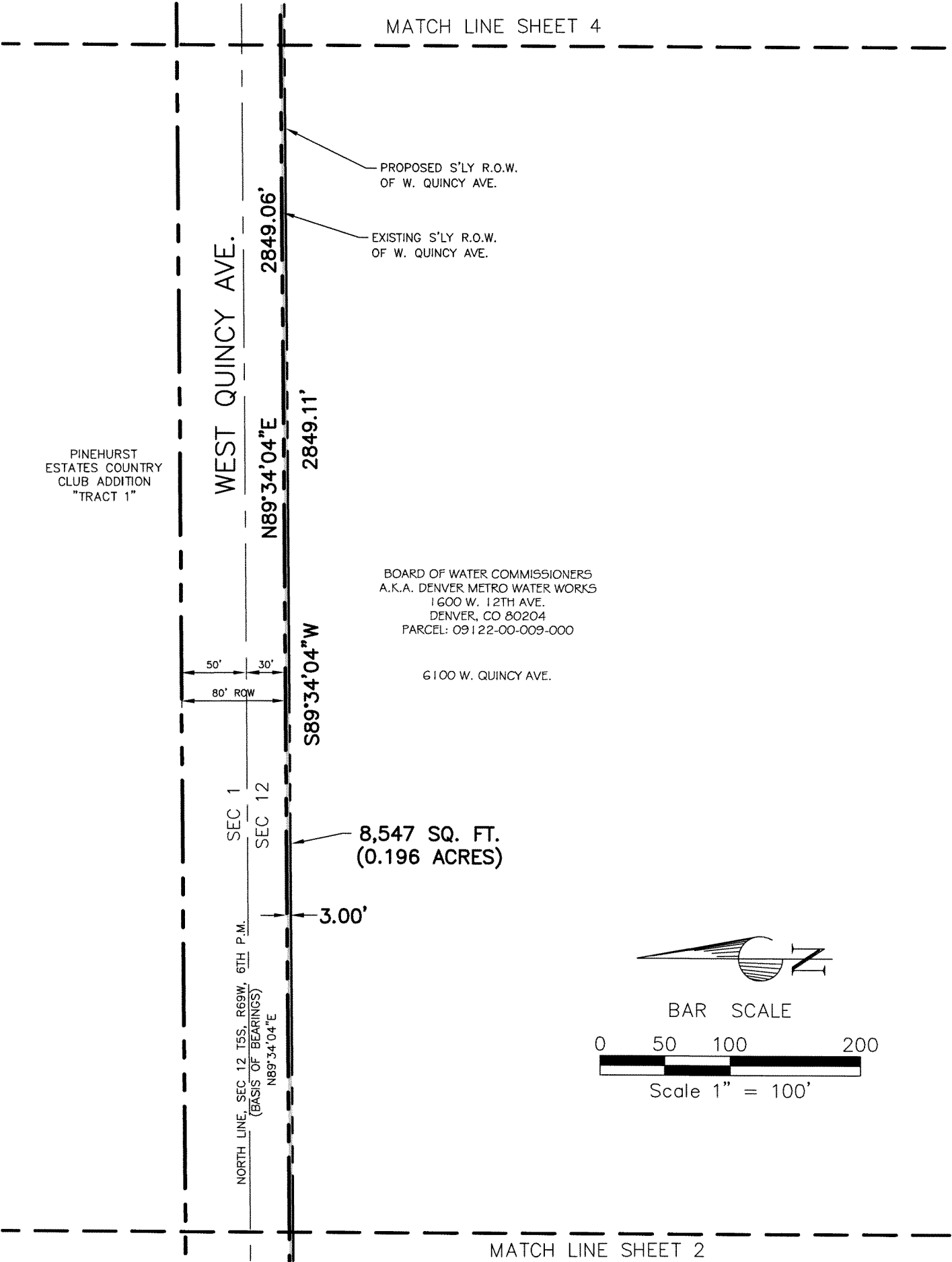
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SHEET 4 OF 6

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PARCEL 1 NOTES:

PARCEL MAP
SEC 12, T5S, R69W, 6th PM



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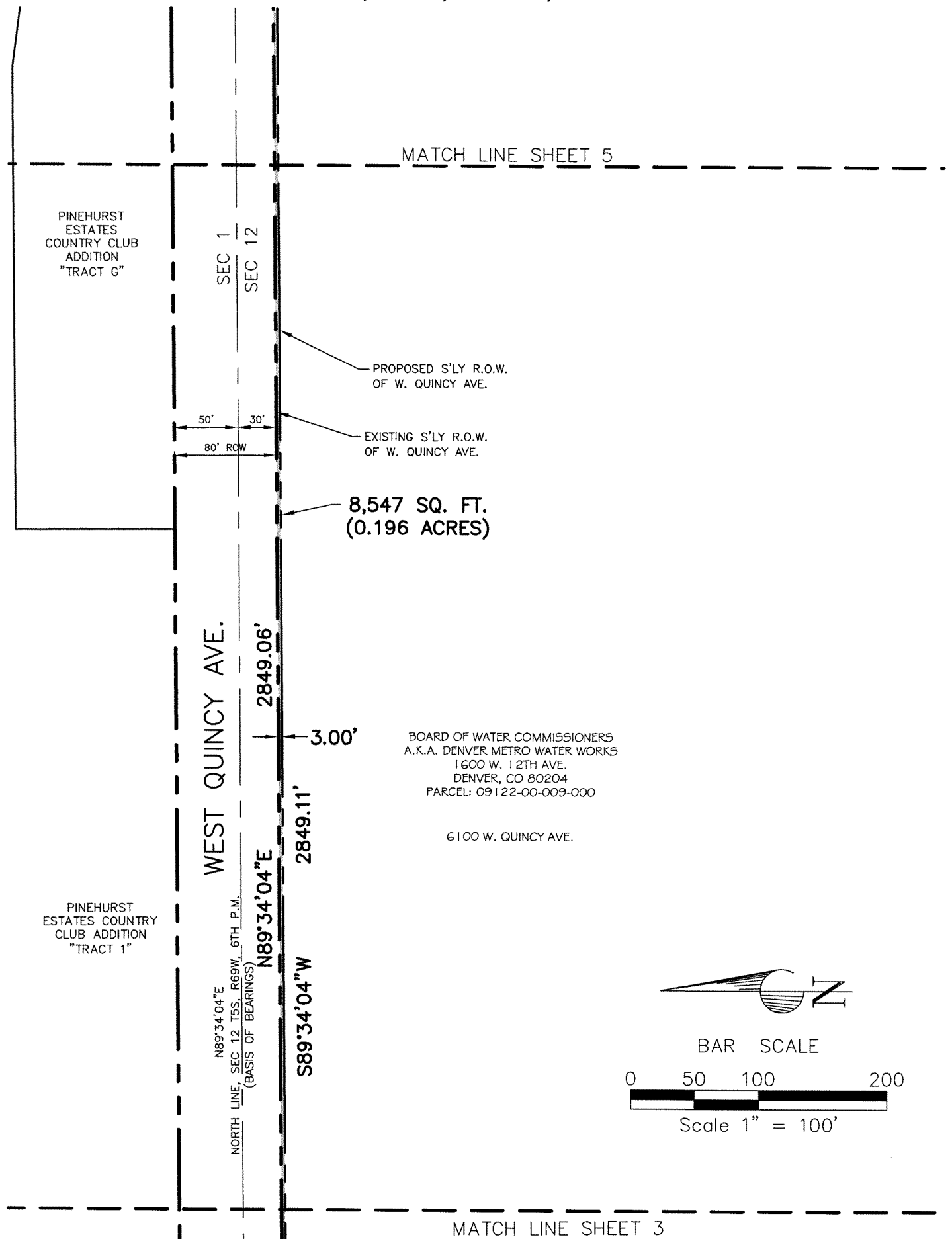
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PARCEL 1

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PARCEL MAP SEC 12, T5S, R69W, 6TH PM



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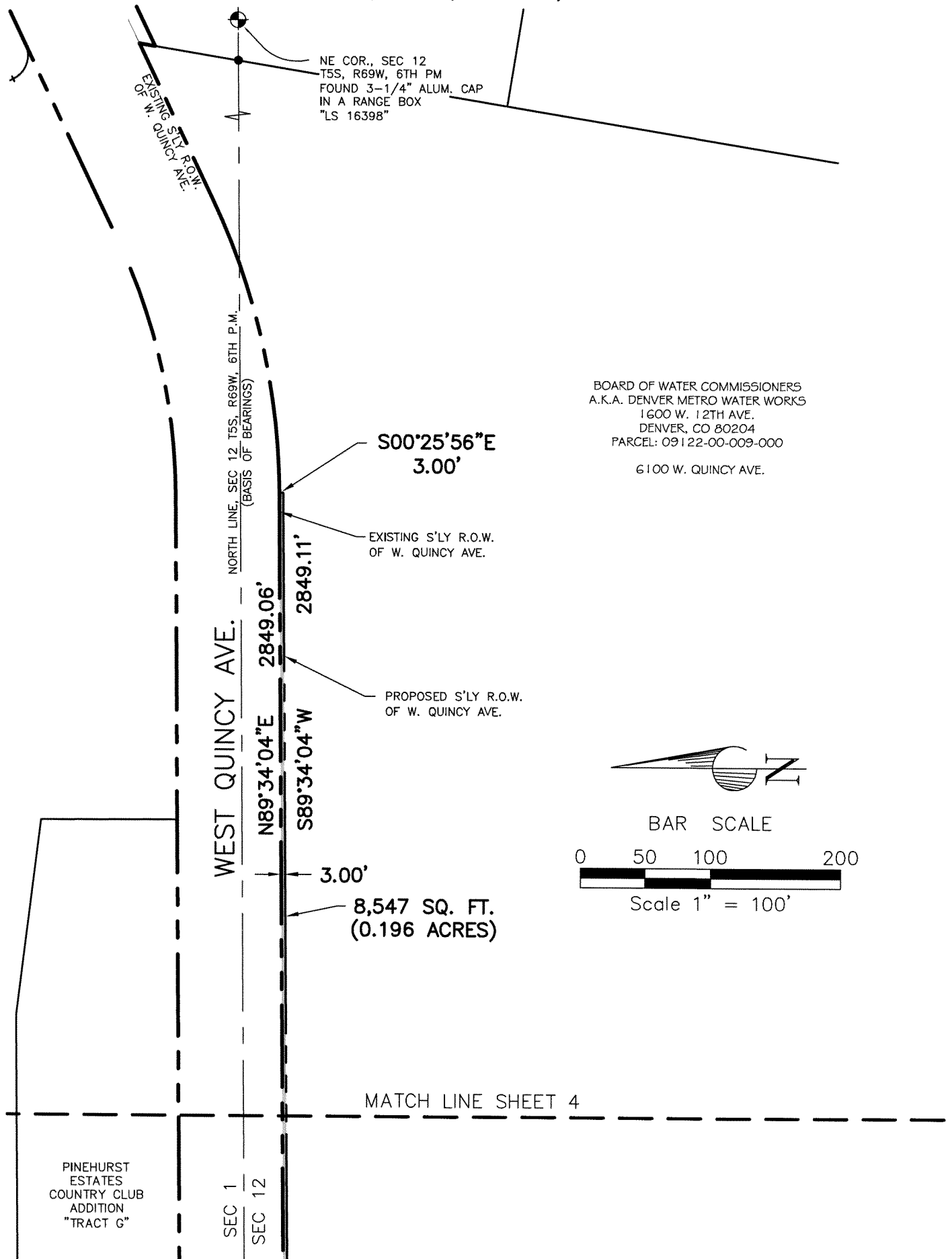
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PARCEL 1

NOTES: _____

PARCEL MAP SEC 12, T5S, R69W, 6TH PM



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CITY AND COUNTY OF DENVER
TEMPORARY EASEMENT
TO BE ACQUIRED
FROM

TEMPORARY EASEMENT
NO: 1

BOARD OF WATER COMMISSIONERS,
A.K.A. DENVER METRO WATER WORKS

FOR

PROJECT NO: CE 82054
CITY AND COUNTY OF
DENVER

WEST QUINCY AVE.

EXHIBIT B

EXHIBIT "A"

PROJECT NUMBER: Quincy ROW
TEMPORARY EASEMENT NUMBER: 1
DATE: February 11, 2011

DESCRIPTION

A Temporary Easement No. 1 containing 67,866 sq. ft. (1.558 acres), more or less, in Section 12, Township 5 South, Range 69 West, of the Sixth Principal Meridian, in the City and County of Denver, Colorado, said tract or parcel being more particularly described as follows:

Commencing at the Northwest corner of Section 12, thence N. 89°34'04" E. along the North line of said Section 12, a distance of 575.02 feet; Thence S. 00°31'16" W., departing said line, a distance of 33.01 feet, more or less, to a line parallel and distant South 3.00 feet, measured at right angles, from the South Right of Way line of West Quincy Ave., being also the TRUE POINT OF BEGINNING;

1. Thence N. 89°34'04" E. along said parallel line, a distance of 2081.93 feet;
2. Thence S. 00°25'56" E., departing said parallel line, a distance of 5.00 feet to a line parallel and distant 8.00 feet, measured at right angles, from said South Right of Way line;
3. Thence S. 89°34'04" W., along said parallel line, a distance of 1182.33 feet;
4. Thence S. 00°25'56" E., departing said parallel line, a distance of 100.50 feet to a line parallel and distant 108.50 feet, measured at right angles, from said South Right of Way line;
5. Thence S. 89°34'04" W., along said parallel line, a distance of 240.00 feet;
6. Thence N. 00°25'56" W., departing said parallel line, a distance of 50.00 feet to a line parallel and distant 58.50 feet, measured at right angles, from said South Right of Way line;
7. Thence S. 89°34'04" W., along said parallel line, a distance of 660.52 feet to the westerly boundary of a parcel of land at 6100 West Quincy Avenue under the ownership of the Board of Water Commissioners of the City and County of Denver;
8. Thence N. 00°31'16" E., a distance of 55.51 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 67,866 sq. ft. (1.558 acres), more or less.

Basis of Bearings: All bearings are based on a line between the Northwest corner of Section 12, T. 5 S., R. 69 W., being a found 3-1/4" Denver Water Department brass cap in a range box marked "LS 16398" and the Northeast corner of said Section 12, being a found 3-1/4" aluminum cap in a range box marked "LS 16398"; said line bears N89°34'04"E.



For and on Behalf of the
City and County of Denver
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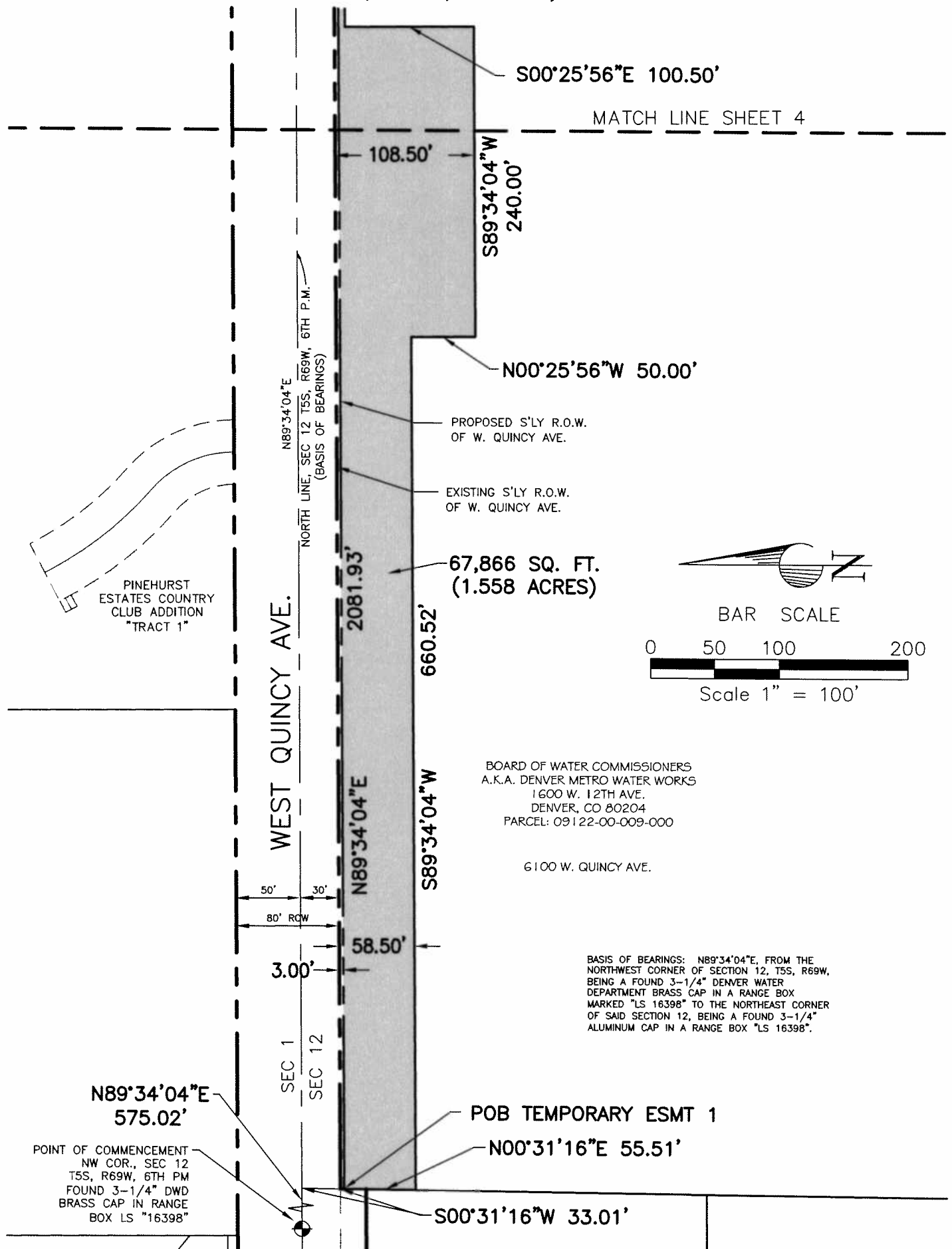
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TEMPORARY EASEMENT NO. 1

NOTES:

PARCEL MAP SEC 12, T5S, R69W, 6TH PM



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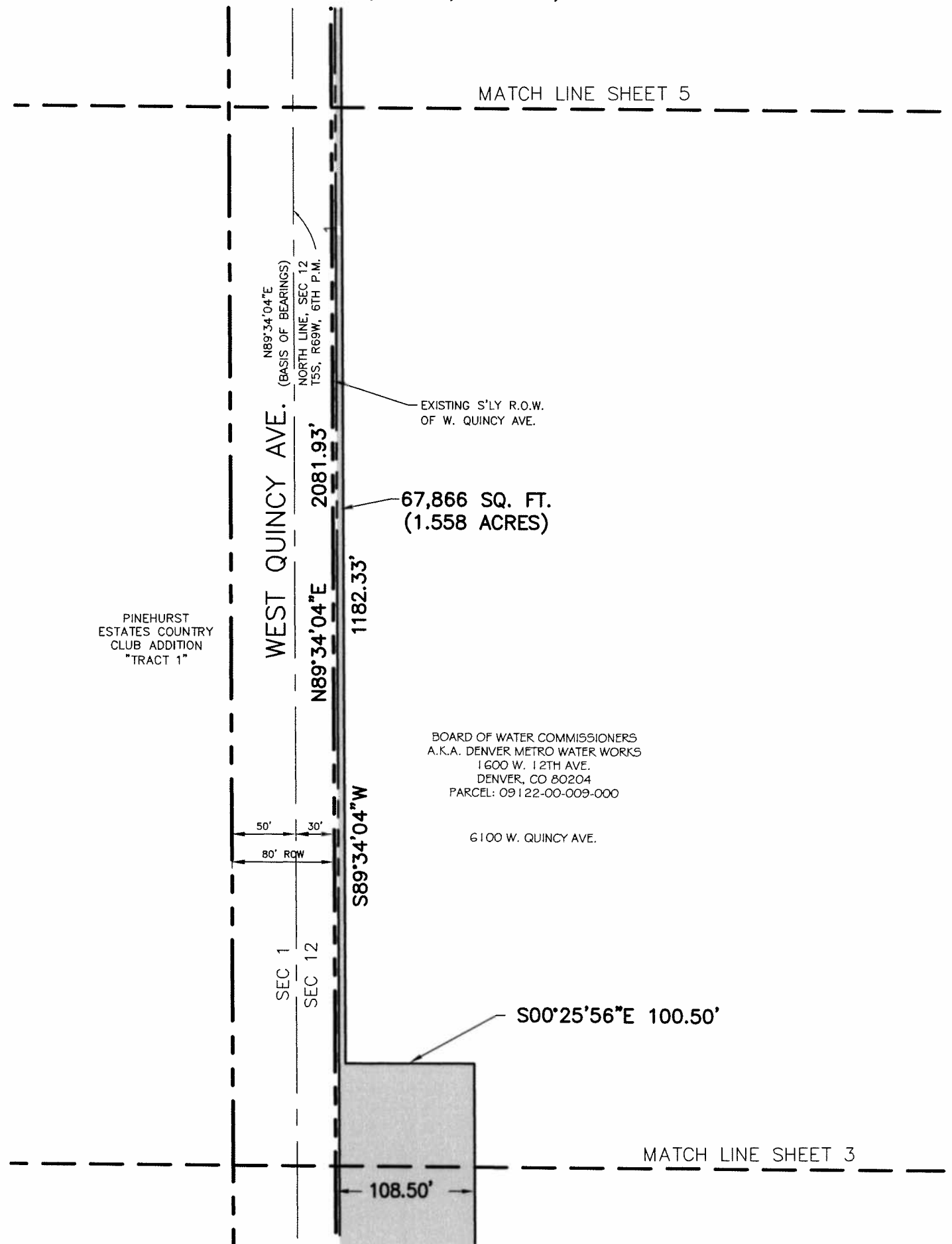
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TEMPORARY EASEMENT NO. 1

NOTES: _____

PARCEL MAP SEC 12, T5S, R69W, 6TH PM



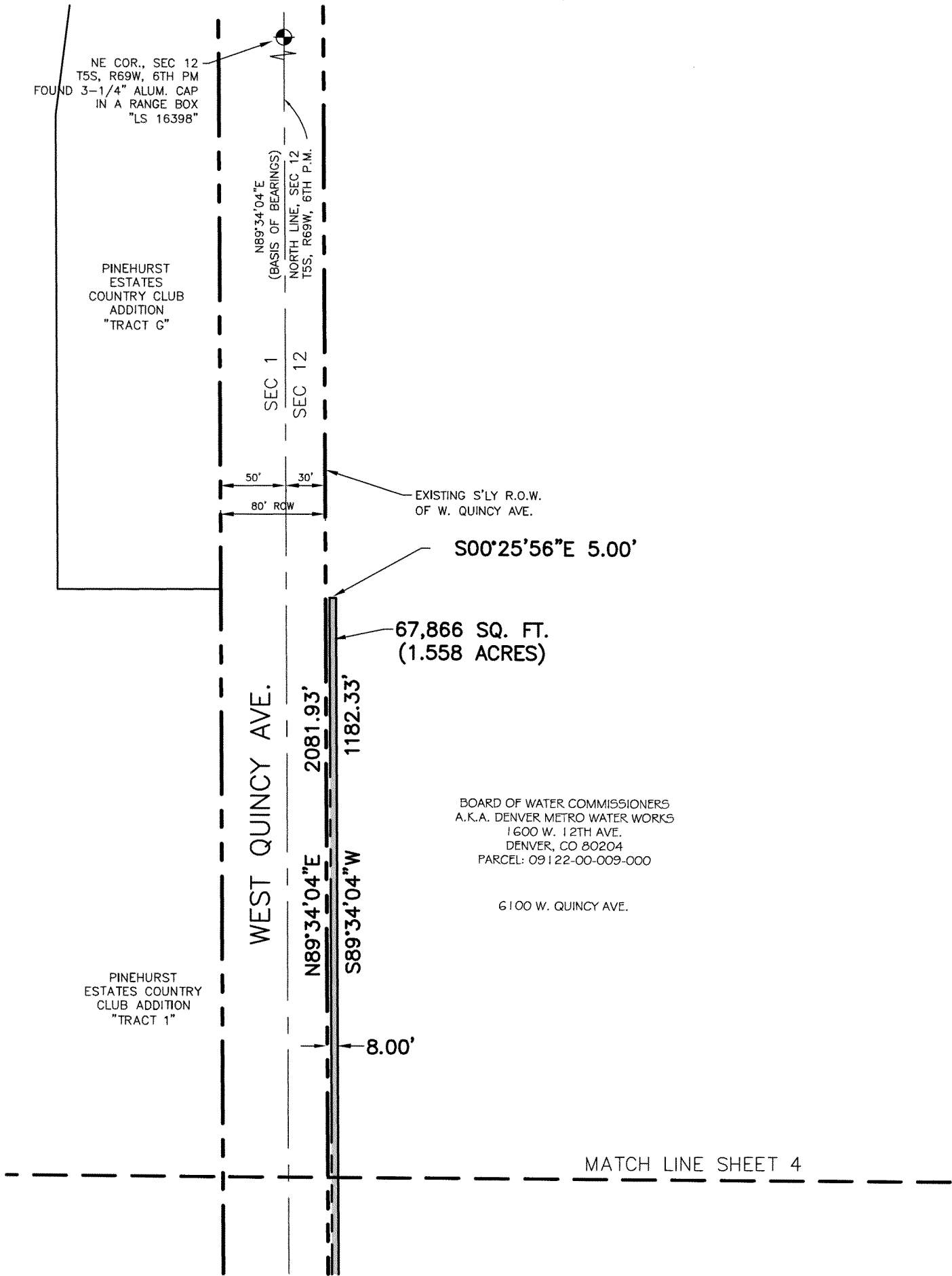
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TEMPORARY EASEMENT NO. 1 NOTES:

PARCEL MAP
SEC 12, T5S, R69W, 6TH PM



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AGREEMENT DATE: _____
(TO BE COMPLETED BY DENVER WATER – PROPERTY MANAGEMENT)

TEMPORARY CONSTRUCTION AND SLOPE EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION AND SLOPE EASEMENT AGREEMENT, is made and entered into this _____ day of _____, 2011, by and between the **CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS**, hereinafter called "**BOARD**" and the **CITY AND COUNTY OF DENVER**, a Municipal Corporation and Home Rule City of the State of **Colorado** hereinafter referred to as "**CITY**"

WITNESSETH:

For and in consideration of the sum of **Ten and no/100 Dollars (\$10.00)** and other good and valuable consideration to the **BOARD** in hand paid by **CITY**, the receipt and sufficiency of which is hereby acknowledged, the **BOARD** hereby grants to **CITY**, its successors and assigns, a Temporary Construction and Slope Easement within that portion of the **BOARD's Marston Lake** property as described on the Board's CAD drawing 15738-1_pmgt, attached hereto and made a part hereof (the "property" or "premises").

It is hereby mutually covenanted and agreed by and between the parties hereto as follows:

1. In granting this Temporary Construction and Slope Easement Agreement, the **BOARD** reserves unto itself, its successors and assigns, the sole, exclusive and permanent right to make full use of the property involved including entering and re-entering as may be necessary or convenient in the operation of the water plant and system under the control of the **BOARD**. The **BOARD** retains all right to operate, maintain, install, repair, remove, replace or relocate any of its facilities, including all underground and surface appurtenances thereto, and electric or other related control systems, underground cables, wires and connections and surface appurtenances located within the **BOARD's** property at any time and in such a manner as it deems necessary or convenient provided that the **BOARD** shall make reasonable effort to provide **CITY** with thirty (30) days' notice of any work which may affect **CITY'S** installations except in cases of emergency, when the **BOARD** shall notify **CITY** as soon as possible subsequent to emergency repair, removal or relocation of **BOARD** facilities. The **BOARD** also reserves the right to grant other parties access and other lawful uses in the property that will not interfere with or endanger **CITY's** rights herein granted including maintaining the appropriate slope for Quincy Avenue.
2. The Temporary Construction and Slope Easement Agreement granted shall be used only for a 3-to-1 slope construction and construction access for the City's project to improve and expand Quincy Avenue between Pierce Street and the entrance of the **BOARD'S** Marston Water Treatment Plan ("Project"). No other use of the property is authorized. Vehicles and equipment shall be strictly confined to the description shown on the **BOARD's** CAD drawing 15738-1_pmgt. **CITY** shall provide signs and temporary fencing on the **BOARD's** property to inform the construction equipment and vehicle operators of the physical limits of this Agreement.
3. This Temporary Construction and Slope Easement Agreement shall expire as follows, and shall not be extended unless specifically agreed to in writing between the **BOARD** and **CITY**:
 - 10 months after the access begins and no later than December 31, 2011, with regard to property inside the Board's fencing of Marston Reservoir; and
 - 24 months after the access begins and no later than March 5, 2013, with regard to property outside the Board's fencing of Marston Reservoir.

CITY shall terminate its use of the property, clear the area of all debris left from the use of the property and restore the area to the complete satisfaction of the BOARD within ten (10) days from the date of termination of use of the area as described above.

4. All work authorized by this Temporary Construction and Slope Easement Agreement shall be performed by **CITY** at no expense to the **BOARD** except as specifically set forth in the parties' Intergovernmental Agreement which was made effective as of October 20, 2010 relating to the Project. This Temporary Construction and Slope Easement Agreement shall in no way imply that ownership of the land underlying or surrounding **CITY's** work is being conveyed.
5. This Temporary Construction and Slope Easement Agreement in no way implies approval for or **BOARD** acceptance of any usage, other than that specified herein, of the **Marston Lake** property for **CITY's** or others' purposes.
6. **CITY** shall notify the **BOARD** at least forty-eight (48) hours prior to commencing work. In the event of an emergency, the **CITY** shall notify the **BOARD** at 303-628-6801 (Dispatch). During regular working hours, the **CITY** shall notify the **BOARD's Marston Water Treatment Plant Supervisor, Peter Muncaster at 303-628-6712**.
7. **CITY** shall at no time obstruct **BOARD** roadways, or ingress to or egress from such roadways. **CITY** shall conduct all access and construction in such a manner that the **BOARD** at all times shall have full and complete access to its property.
8. All **BOARD** Monuments damaged or destroyed shall be re-installed by a licensed Surveyor.
9. All fencing and gates on **BOARD's** facilities must be maintained and kept secured during construction and replaced as deemed necessary by the **BOARD's** representative.
10. Chain link fencing shall be relocated to the highest point of the newly constructed slope. The exact location of the fence shall be field located and agreed upon by **CITY** personnel with **Marston Water Treatment Plant Supervisor, Peter Muncaster at 303-628-6712**
11. No water shall be discharged into or upon **BOARD** property or facility, but **CITY** shall provide for carriage of any water over or across **BOARD** property or facility in a manner satisfactory to the **BOARD's** representative.
12. Certain **BOARD** properties may contain habitat for listed "threatened" or "endangered" species under the Endangered Species Act (ESA). **CITY** shall be responsible for determining the presence of such habitat and taking measures to comply with the ESA.
13. The **CITY** hereby agrees that the **BOARD** is not responsible to pay any damages and costs for any liability, damages or claims of whatever nature arising in any way out of the **CITY's** occupancy of the premises and its operations hereunder, which is caused by any negligent or wrongful act or omission of the **CITY** or the **CITY's** officers, agents or employees.
14. All obligations of the **CITY** are subject to prior appropriation of funds by the Denver City Council for these purposes and paid into the treasury of the **CITY**.

15. The **CITY** understands and agrees that it is fully responsible for compliance with all rules and regulations relating in any way to the use, storage, treatment, or disposal of hazardous materials, including, but not limited to, chemicals and petroleum products. The **CITY** agrees to strictly comply with all federal, state, and local regulations that in any way relate to hazardous materials. If, as a result of the **CITY's** occupancy of the premises and its operation hereunder, any such law, ordinance, rule, or regulation is violated, the **CITY** or its contractor shall ***be responsible for*** any penalties, fines, costs, and expenses caused by, resulting from, or connected with such violation or violations.
16. The rights granted by this Temporary Construction and Slope Easement Agreement may not be assigned without the written consent of the **BOARD**, however, the Board agrees that the City's contractor and subcontractors may perform work allowed herein on behalf of the City. .
17. Each and every one of the benefits and burdens of this Temporary Construction and Slope Easement Agreement shall inure to and be binding upon the respective successors and assigns of the parties hereto.
18. In case **CITY** shall abandon or cease to use the Temporary Construction and Slope Easement Agreement herein granted, all right, title, and interest of **CITY** hereunder shall cease and terminate and the **BOARD** shall hold said premises, as the same may then be, free from the rights herein granted.
19. This Temporary Construction and Slope Easement Agreement is subject to prior agreements, licenses, and grants, recorded or unrecorded, and it is **CITY's** responsibility to determine the existence of any conflicting rights or uses.

Signature page to follow

THIS TEMPORARY CONSTRUCTION AND SLOPE EASEMENT AGREEMENT shall become effective on the date it is signed by the appropriate representatives of the CITY.

ATTESTED AND APPROVED:

Robert J. Mahoney, Director of Engineering

APPROVED AS TO FORM:

Legal Division

CITY AND COUNTY OF DENVER
acting by and through its
BOARD OF WATER COMMISSIONERS

By: _____
James S. Lochhead, CEO/Manager

Date: _____

{S E A L}

ATTEST:
Stephanie Y. O'Malley, Clerk and Recorder
Ex-Officio Clerk of the City and County
of Denver, Colorado

Clerk and Recorder

APPROVED AS TO FORM:
David R. Fine, Attorney for the
City and County of Denver

By: _____
Asst. City Attorney

CITY AND COUNTY OF DENVER,
a Municipal Corporation and Home Rule
City of the State of Colorado

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: _____
Manager of Public Works

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No. _____

By: _____
Auditor