

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**”) is made between CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“**Grantor**”) and the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“**Board**”), a municipal corporation of the State of Colorado. Each party to this Agreement may be referred to individually as “**Party**,” and collectively as “**Parties**.”

The Parties agree as follows:

1. **GRANT OF EASEMENT:** For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged by the Grantor, the Grantor grants to the Board, its successors and assigns, the permanent, non-exclusive easement (the “**Easement**”) to enter, re-enter, occupy, and use the property located in the City and County of DENVER, State of Colorado described in the attached **Exhibit A** (the “**Easement Area**”) to construct, install, inspect, monitor, maintain, repair, substitute, change the size of, replace, remove, enlarge, and operate one or more water pipelines and all underground and surface appurtenances (referred to herein, collectively, as the “**Facilities**”) in, through, over, and across the Easement Area. By way of example and not by way of limitation, the parties intend to include (i) mains and conduits within the term “**pipeline(s)**,” and (ii) valves, vaults, manholes, hydrants, electric or other related control systems, underground cables, wires, connections, ventilators, and the like within the term “**appurtenance(s)**.”

2. **EXHIBITS:** The following Exhibits are attached to and incorporated in this Agreement:

Exhibit A – Legal Description and Map (CAD drawing No. 21193-1) of the Easement Area.

Exhibit B – 51st Avenue Right of Way (proposed) over the Easement Area (“51st Avenue Segment”).

In the event the survey, the legal description in **Exhibit A**, and/or the drawing attached to **Exhibit A** are found to be inaccurate, each Party will comply with the other Party’s request to execute, acknowledge, initial, and/or deliver any documentation necessary to correct such inaccurate documents to fulfill the purposes of this Agreement.

3. **BOARD’S RIGHT OF ACCESS:** The Board shall have the right of ingress and egress in, through, over, and across the Easement Area in any manner and for any purpose necessary for the full enjoyment of the right of occupancy and use provided in this Agreement.

4. **NO DEDICATION:** No right of access by the general public to any portion of the Easement Area is conveyed by this Agreement.

5. **SLOPE:** Due to variations in topography, the Easement Area and the pipe(s) may take on an uphill or downhill direction having a slope of greater than 4 percent; however, sloping within the Easement Area across its width (cross slope) may not exceed 4 percent in any direction to ensure stability of maintenance equipment and vehicles, except as otherwise approved by Board.

6. **PERMITTED IMPROVEMENTS:** The Easement Area shall be free of obstacles, except as expressly permitted in Paragraph 21.1.

7. **PROHIBITED OBSTRUCTIONS:** Except as expressly identified in this Agreement, the Easement Area shall be free of obstacles throughout the Easement Area. Except as otherwise provided herein with respect to the Permitted Improvements, the Grantor shall not construct, place, plant, or allow any of the following, whether temporary or permanent, on any part of the Easement Area: structure, building, fence,

retaining wall, overhang, street light, power pole, yard light, mail box, sign, or trash receptacle; shrub, tree, woody plant, or nursery stock; or any other obstruction of any kind (collectively referred to as “Prohibited Obstructions”). The Board may, without notice to Grantor, remove any Prohibited Obstructions situated on the Easement Area without liability for damages and at the sole expense of the Grantor.

8. PROHIBITED ACTIONS: Except as otherwise provided herein, the Grantor shall not stop, limit, hinder, or interfere with the construction, maintenance, repair, replacement, removal, enlargement, or operation of the Facilities within the Easement Area.

9. ENVIRONMENTAL: The Grantor, and its contractor, shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any governmental authority concerning the use or handling of Hazardous Substances in connection with all work undertaken by or for the Grantor within the Easement Area. If, as a result of the Grantor’s ownership, use, or occupancy of the Easement Area, any law, ordinance, rule or regulation relating to Hazardous Substances is violated, the Grantor shall be solely responsible for any penalties, fines, costs and expenses including legal fees and court costs incurred, caused by, resulting from or connected with such violation or violations. If, as a result of the Board’s access, use, or occupancy of the Easement Area, any law, ordinance, rule or regulation relating to Hazardous Substances is violated, the Board shall be solely responsible for any penalties, fines, costs and expenses including legal fees and court costs incurred, caused by, resulting from or connected with such violation or violations.

10. DEFINITION: As used in this Agreement, the term “**Hazardous Substances**” means any hazardous material on or within the Easement Area, including, but not limited to, any substances defined as or included in the definition of “**hazardous substance**,” “**hazardous material**” or “**toxic substances**” in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published, and/or promulgated pursuant to said laws.

11. INSTALLATION: The Grantor shall be responsible for the initial installation of the Facilities within the Easement Area at Grantor’s sole expense. The Facilities shall be installed in accordance with the Board’s then-current Engineering Standards. The Parties shall cooperate to prepare and approve final plans and specifications for the Facilities.

12. RESTORATION: The Grantor, at the Grantor’s expense, shall be solely responsible for the maintenance of the surface of the Easement Area, including the Permitted Improvements. When the Board deems it necessary to reconstruct, repair, relocate, remove, replace, enlarge, operate or in any way maintain any of the Facilities, the Board will backfill, compact and resurface the area of excavation, to include replacement of asphalt and/or concrete pavement, curbs and gutters, damaged by the Board’s activity, to the grade and condition existing immediately prior to excavation, as nearly as reasonable. The Board will exercise all reasonable means to prevent damage to pavement, curbs and gutters which are situated within the Easement Area but outside of the immediate area of excavation. The Board shall repair and/or replace, as nearly as reasonable to the original condition, the Easement Area, including any pavement, curbs and/or gutters that are damaged as a result of the Board’s activities.

13. GRANTOR’S RETAINED INTERESTS: The Grantor has retained the right to the undisturbed use and occupancy of the Easement Area, including the right to construct, use, inspect, repair, replace and maintain the Levee Improvements, insofar as such use and occupancy is consistent with and does not impair any grant contained in this Agreement.

14. DOMINANT EASEMENT: The Board shall have a dominant right of occupancy of the Easement Area for the exercise of the Board's functions. Except as otherwise provided in this Agreement, the exercise of any rights in the Easement Area other than those retained by the Grantor shall be within the reasonable discretion of the Board. The Board may permit such other uses of the Easement Area not retained by the Grantor, as long as they do not impair the Board's dominant rights, upon the payment of reasonable compensation to the Board and upon such terms, limitations, and conditions as the Board may find reasonably necessary.

15. PUBLIC UTILITIES:

15.1. Crossings: Other public utilities such as sanitary sewer, storm sewer, gas, electric, and cable lines may be installed in the Easement Area as long as they do not interfere with the Board's rights and as long as the utilities are crossing the pipeline(s) at right angles, or at substantially right angles. Any gas, electric, or cable line that crosses the pipeline(s) and is not metallic or concrete shall be encased within steel conduit and/or concrete ducts.

15.2. Parallel: In order to reserve to the Board's pipeline(s) at least 20 feet of the Easement Area width, any and all utilities that parallel the Facilities, , shall not be permitted within 10 feet of the Facilities without prior express and written permission of the Board, with exception to those utilities shown and approved on the Denver Water Plan #20938.

16. SUBJACENT AND LATERAL SUPPORT; EARTH COVER:

16.1. The Board shall have the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights described in this Agreement. The Grantor shall take no action that would impair the earth cover over, or the lateral or subjacent support for, any of the Facilities within the Easement Area.

16.2. The Board's Engineering Standards require no less than 4½ feet and no more than 10 feet of earth cover, measured vertically from the top of any pipeline(s). Deviation from this requirement shall be permitted only upon prior, written permission from the Board. If such permitted deviation undertaken by the Grantor requires any alterations, repairs or replacements to any pipeline(s), such alteration, repair or replacement shall be at the Grantor's expense.

17. ABANDONMENT:

17.1. The Board may commence the exercise of its rights to use the Easement immediately, or it may postpone the exercise of all or some part of its rights under this Agreement to some future time, which shall not constitute abandonment.

17.2. If the Board abandons use and operation of the Facilities laid pursuant to this Agreement, such abandonment shall not constitute abandonment of the Board's rights under this Agreement.

18. TITLE: The Grantor has full right and lawful authority to make the grant contained in this Agreement. The Grantor shall defend the Board in the exercise of the Board's rights under this Agreement against any defect in the Grantor's title to the land involved or the Grantor's right to make the grant contained in this Agreement.

19. NOTICES: The Parties shall contact the persons listed below, or other persons that may be designated by the Board in writing from time to time, for all matters related to administration of this

Agreement. All notices, requests, demands, information and other communications required or permitted to be provided under this Agreement shall be in writing and shall be deemed to have been given and effective: (a) when delivered personally to the other party or (b) seven days after posting in the United States mail, first-class postage prepaid, properly addressed as follows.

If to the Board:

City and County of Denver, acting by and through
its Board of Water Commissioners
Attention: Chief Engineering Officer
1600 W. 12th Avenue
Denver, CO 80204

If to the Grantor:

Manager of the Department of Transportation and
Infrastructure
City and County of Denver
201 W. Colfax Ave., Dept. 614
Denver, CO 80202

with a copy to:

City and County of Denver, acting by and through
its Board of Water Commissioners
Attention: Director of Engineering-Property
1600 W. 12th Avenue
Denver, CO 80204

with a copy to:

Municipal Operations
City Attorney's Office
201 W. Colfax Ave., Dept. 1204
Denver, Colorado 80202

20. GENERAL PROVISIONS:

20.1. Successors and Assigns: This Easement and each and every one of the benefits and burdens of this Agreement are covenants running with the land and shall inure to the benefit and be binding upon the respective legal representatives, heirs, devisees, executors, administrators, successors and assigns of the Parties, and any subsequent owners of title to any part of the land upon which the Easement is located. The Board may transfer and delegate any or all of the rights granted and obligations imposed by this Agreement without any prior consent of or notice to the Grantor.

20.2. Perpetual Duration – No Merger: No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in any portion of the property upon which the Easement is located to the Board, or its successors or assigns. It is the express intent of the Parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in any portion of the property upon which the Easement is located now or hereafter held by the Board or its successors or assigns.

20.3. Construction: This Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties.

20.4. Venue and Governing Law: For the resolution of any dispute arising from this Agreement, venue shall be in the courts of the City and County of Denver, State of Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado, without regard to its conflict of laws principles.

20.5. No Attorneys' Fees and Costs: Except as otherwise specifically provided in this Agreement, if there is any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Agreement, each Party shall pay for its own attorney(s)' and other professional(s)' fees, costs and expenses.

20.6. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement shall remain in full force and effect.

20.7. No Waiver: The failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the Agreement's provisions, and, notwithstanding such failure, no Party shall be thereby released from any obligations under the Agreement.

20.8. Non-Business Days: Except as otherwise specifically provided in this Agreement, all periods of time set forth in this Agreement shall be calendar days, not business days. If any date for any obligation under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colorado Rule of Civil Procedure 6, then the relevant date shall be extended automatically until the next business day.

20.9. Headings: The headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof, and shall not be considered part of this Agreement or affect its interpretation.

20.10. Governmental Immunity Act: The parties understand and agree that the Board is relying upon, and has not waived, the monetary limitations of \$350,000 per person, \$990,000 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.

20.11. Article X of the Charter: This Agreement is made under and conformable to the provisions of the Charter of the City and County of Denver, which control the operation of the Denver Municipal Water System, consisting of Article X of the Charter. Insofar as applicable, the Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this Agreement.

20.12. Entire Agreement: This Agreement constitutes the entire agreement between the Board and the Grantor and replaces all prior written or oral agreements and understandings. The terms of this Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing signed by all Parties.

20.13. Counterparts and Originals: A copy of the Agreement may be executed by each Party, separately, and may be delivered by mail or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

20.14. Representation of Authority of Signatories: Each individual executing this Agreement on behalf of the Grantor represents and warrants that the execution and delivery of this Agreement and all related documents have been duly authorized by the Grantor for which the individual is signing and that the individual has the legal capacity to execute and deliver this Agreement and thereby bind the Grantor.

20.15. Effective Date: This Agreement shall become effective on the date it is signed by the Board's Chief Engineering Officer.

21. SPECIAL PROVISIONS: To the extent that any special provisions listed below or attached are in conflict with any other provisions of this Agreement, the special provisions shall control and supersede any such conflicting provisions.

21.1. Notwithstanding the foregoing Paragraph 6 (“Permitted Improvements”) and Paragraph 7 (“Prohibited Improvements”), the Board hereby acknowledges and agrees that the Easement Area is intended to become a public roadway and that the Grantor shall have the right to make related improvements within the Easement Area, including but not limited to street paving, curbs, gutters, storm inlets, street lighting, power poles, and related improvements (the “**Permitted Improvements**”).

21.2. The Parties hereby acknowledge that the Grantor plans to dedicate additional public right-of-way for 51st Avenue which will include a segment that will include all, or substantially all, of the Easement Area. The anticipated alignment of the 51st Avenue segment is depicted in **Exhibit B** attached hereto (the “51st Avenue Segment”). Pursuant to the terms of this Section 21.2, upon dedication of the 51st Avenue Segment, this Easement shall automatically terminate as to the Easement Area within the 51st Avenue Segment. As shown in Exhibit B, the Parties anticipate that the 51st Avenue Segment to be dedicated will include all or substantially all of the Easement Area. If the final alignment of the 51st Avenue Segment results in some small and immaterial (in the Board’s sole reasonable discretion) slivers of the Easement Area to remain outside of the area dedicated, the Board shall release any such slivers as the Parties intend for all of the Board’s Facilities to be contained within the dedicated area. Any termination and release under this Section 21.2 shall be effective automatically upon the adoption of a dedication ordinance, or similar instrument, by the Grantor; provided that, if requested by the Grantor, the Board shall execute an amendment to this Agreement or other written instrument provided by the Grantor confirming the effect and extent of the termination and release resulting from any such dedication.

SIGNATURES FOLLOW ON THE NEXT PAGE

Contract Control Number:
Contractor Name:

FINAN-202262814-00
BOARD OF WATER COMMISSIONERS

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202262814-00
BOARD OF WATER COMMISSIONERS

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT "A"
LEGAL DESCRIPTION

Bearings used herein are based on north line of the southwest quarter of Section 14, being N89°50'37"W using the City and County of Denver Control Coordinates, as monumented on the west by the west quarter corner of Section 14, Township 3 South, Range 68 West of the 6th P.M., a found 3.25" aluminum cap in box stamped PLS 27259, S15 S14. and monumented on the east by the center one-quarter corner of Section 14, Township 3 South, Range 68 West of the 6th P.M., being a found 2.5" brass cap stamped PLS 17650 C1/4 S14.

A parcel of land situate in the southwest one-quarter (SW 1/4) of Section 14, Township 3 South, Range 68 West of the 6th Principal Meridian; and being a portion of those parcels of land described in Book 4898 at Page 160, Book 4898 at Page 162, Book 4888 at Page 112, Book 4888 at Page 569, Book 9665 at Page 565 and Book 353 at Page 167, as recorded with the City and County of Denver Clerk and Recorders Office, State of Colorado; and being more particularly described as follows:

COMMENCING at the center one-quarter corner of Section 14, being 2.5" Brass Cap stamped LS 17650;

Thence S58°04'55"W 1502.84 feet to the Point of Beginning;

Thence S46°59'27"W, 53.80 feet;

Thence N67°20'39"W, 54.29 feet;

Thence N78°35'39"W, 77.28 feet to a point on the south right-of-way line of 51st Avenue;

Thence along the south right-of-way line of said 51st Avenue, S89°50'39"E, 90.66 feet;

Thence along the east right-of-way line of said 51st Avenue, N00°20'24"E, 32.84 feet;

Thence S67°20'39"E, 76.01 feet;

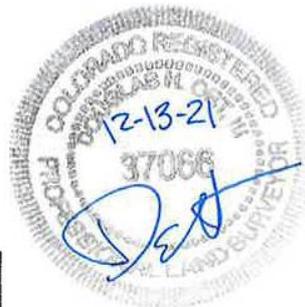
Thence S56°05'39"E, 5.04 feet to the POINT OF BEGINNING.

Containing 3,830 square feet or 0.088 acres, more or less.

Legal Description Statement:

I, Douglas H. Ort, a licensed land surveyor in the State of Colorado, do hereby state that the above legal description was prepared by me or under my direct supervision, and on the basis of my knowledge, information and belief, is correct.

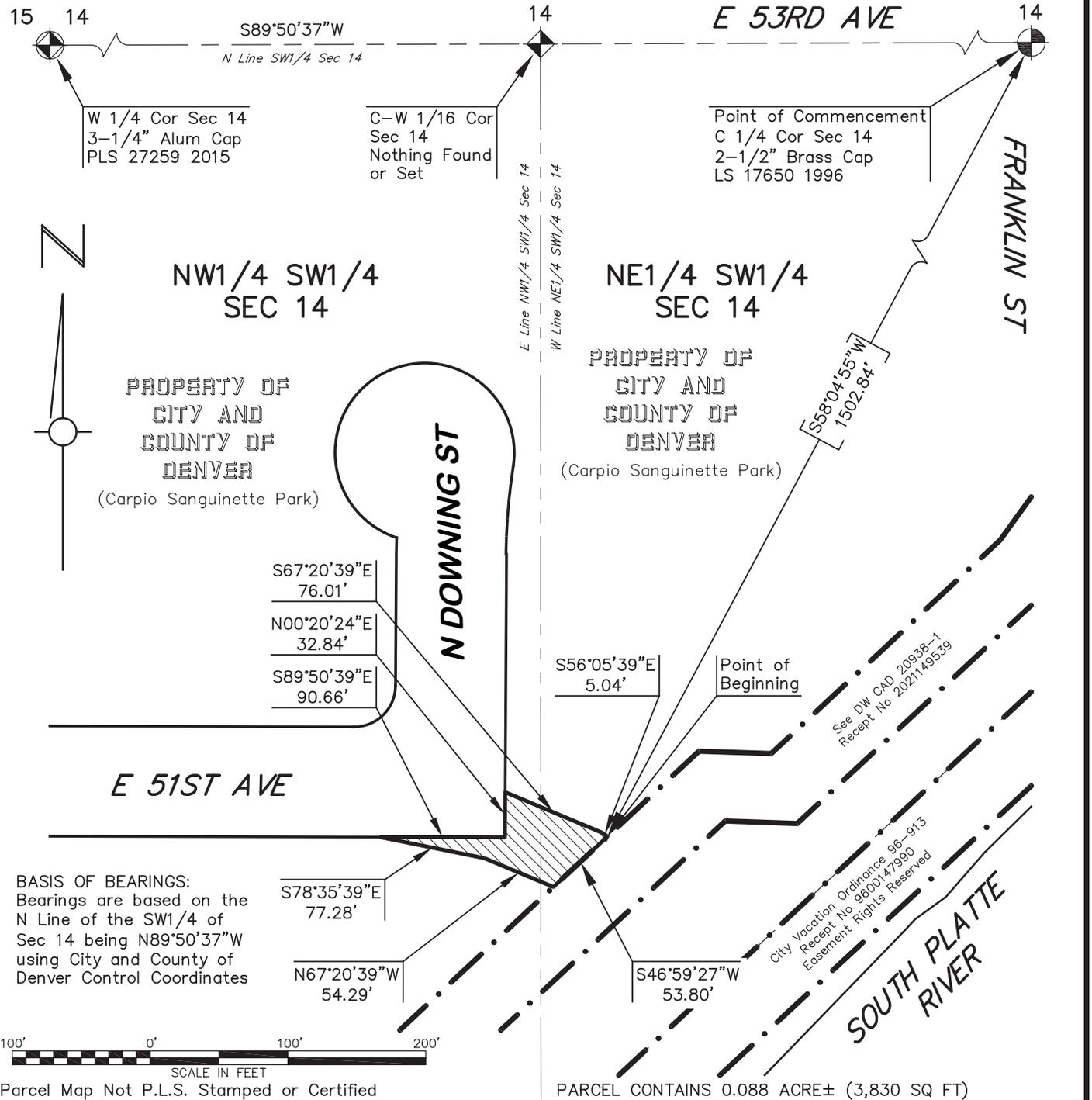
Douglas H. Ort III Colorado PLS 37066
Wilson & Company
1675 Broadway, Suite 200
Denver, CO 80202
DHOrtIII@wilsonco.com



Reviewed by DWD Property	Initials	Date
		12/20/2021

EXHIBIT A

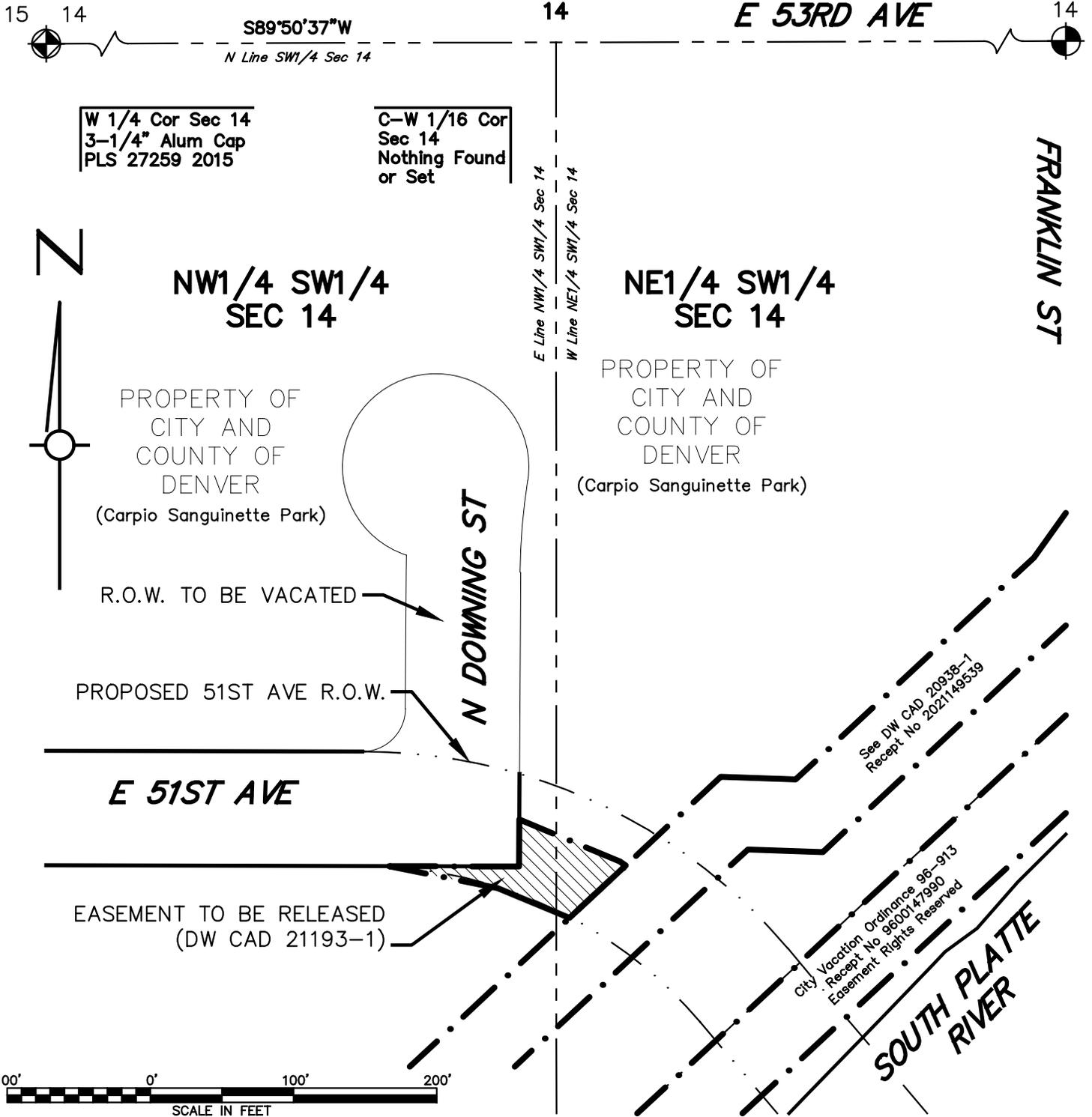
SW 1/4 SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST 6th PM
 ----- CITY AND COUNTY OF DENVER -----



<p>LEGEND</p> <p>[Hatched Box] EASEMENT ACQUIRED</p> <p>[Dashed Line] BNDRY EXISTING DW ESMT</p>	<p>DOCUMENT DATED: SEC'Y FILE DOC. RIMS ITEM NO. TRANS NO.</p>	<p align="center">MAIN</p> <p align="center">EASEMENT ACQUIRED FROM CITY AND COUNTY OF DENVER</p>	<p>DENVER WATER</p> <p>1600 West 12th Ave Denver, Colorado 80204-3412 T: 303.628.6000 F: 303.628.6851 denverwater.org</p>	
	<p>DRN. --- PM. <i>ALL</i> S. LAB</p>			<p>SCALE: 1" = 100'</p>
	<p>APPD. <i>Larry A Bailey</i></p> <p>SHEET 1 OF 1 SHEET</p>			<p>DATE: DECEMBER 20, 2021</p> <p>CAD 21193-1_PMGT</p>

EXHIBIT B

SW 1/4 SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST 6th PM
----- CITY AND COUNTY OF DENVER -----



W 1/4 Cor Sec 14
 3-1/4" Alum Cap
 PLS 27259 2015

C-W 1/16 Cor
 Sec 14
 Nothing Found
 or Set

**NW1/4 SW1/4
 SEC 14**

**NE1/4 SW1/4
 SEC 14**

PROPERTY OF
 CITY AND
 COUNTY OF
 DENVER
 (Carpio Sanguinette Park)

PROPERTY OF
 CITY AND
 COUNTY OF
 DENVER
 (Carpio Sanguinette Park)

R.O.W. TO BE VACATED

PROPOSED 51ST AVE R.O.W.

E 51ST AVE

EASEMENT TO BE RELEASED
 (DW CAD 21193-1)

See DW CAD 20938-1
 Receipt No 2021149539

City Vacation Ordinance 96-913
 Receipt No 9600147990
 Easement Rights Reserved

**SOUTH PLATTE
 RIVER**



<p>LEGEND</p> <p> DW 21193 EASEMENT</p> <p> BNDRY EXISTING DW ESMT</p>	<p>DOCUMENT DATED: SEC^Y FILE DOC.</p>	<p align="center">EXHIBIT B</p> <p align="center">51ST AVENUE RIGHT OF WAY (PROPOSED) OVER THE EASEMENT AREA ("51ST AVENUE SEGMENT")</p>	<p>D DENVER WATER</p> <p>1600 West 12th Ave Denver, Colorado 80204-3412 T: 303.628.6000 F: 303.628.6851 denverwater.org</p>	
	<p>RIMS ITEM NO.</p>			<p>DATE: DECEMBER 9, 2021</p>
	<p>TRANS NO.</p>			<p>SCALE: 1" = 100'</p>
	<p>DRN. --- PM. <i>aell</i> S. LAB</p> <p>APPD. <i>Larry A Bailey</i></p> <p>SHEET 1 OF 1 SHEET</p>			<p>CAD 21193-1_PMGT</p>