

RESOLUTION NO. _____-18

A RESOLUTION AUTHORIZING THE USE OF EMINENT DOMAIN TO ACQUIRE REAL PROPERTY OWNED BY ROBERT T. WILCOX AND DIANE Y. WILCOX NEEDED FOR THE WEST COLORADO AVENUE RECONSTRUCTION, 31ST STREET TO U.S. HIGHWAY 24, PROJECT

WHEREAS, the City of Colorado Springs ("City") currently provides transportation and drainage systems and other public works and ways as authorized by Article 1, Section 1-20(d) of the Charter of the City of Colorado Springs; and

WHEREAS, the voters of the City, along with other participating governments, approved the establishment of the Pikes Peak Rural Transportation Authority ("PPRTA") to fund infrastructure and capital projects within an area which includes the City; and

WHEREAS, on November 6, 2012, by vote of the public, the PPRTA Sales and Use Tax Extension was approved thereby extending the PPRTA through 2024; and

WHEREAS, the West Colorado Avenue Reconstruction, 31st Street to U.S. Highway 24, Project (the "Project") consists of capital improvements to transportation and other systems and ways within and through the jurisdictional boundaries of City of Colorado Springs, the City of Manitou Springs, and El Paso County, essential for the public health, safety and welfare of those communities, which is a valid and necessary public purpose; and

WHEREAS, the Project was identified by PPRTA as a Priority "A" Regional Collaborative Project; and

WHEREAS the PPRTA committed funding for final design, plans, and construction of the Project on January 1, 2015; and

WHEREAS, the acquisition of one parcel of right of way in fee simple, one permanent public improvement easement and two temporary construction easements owned by Robert T. Wilcox and Diane Y. Wilcox ("Wilcox") identified on attached **Exhibits 1 through 3** (the "Property"), is necessary for the construction of the Project and public improvements within the City limits; and

WHEREAS, despite repeated attempts by the City to negotiate an amicable acquisition of the Property with Wilcox, the City has been unable to negotiate an agreement for the purchase of the Property; and

WHEREAS, pursuant to the provisions of Article XX, Section 1 of the Colorado Constitution and the City Charter, the City is empowered to acquire property within or without its territorial limits by lease, purchase, gift, bequest, dedication, or other suitable

means of conveyance, or through institution of eminent domain proceedings, for all land necessary for the City; and

WHEREAS, acquisition of the Property is subject to the procedures of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests*, and Title 38 of the Colorado Revised Statutes; and

WHEREAS, negotiations with Wilcox have reached an impasse and the City has an imminent need to secure the Property for construction of the Project improvements; and

WHEREAS, the City has a need to acquire possession of the Property immediately to allow the Project to proceed as scheduled and to avoid delays which could have a significant adverse impact on this Regional Collaborative Project and the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council hereby finds it to be in the interest of the public health, safety, and welfare and that it has a need for and it is necessary to acquire the Property from Wilcox for the purpose of constructing the Project which is for a public purpose.

Section 2. The City Attorney is hereby authorized to take all action necessary to acquire the Property and to seek immediate possession of the Property by a voluntary Possession and Use Agreement, eminent domain, or other appropriate proceedings.

Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado, this ____ day of _____, 2018.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

EXHIBIT "A"

PROJECT CODE: 12-013

DATE: APRIL 12, 2018

PARCEL RW-79

SITUS

**THE SE 1/4 OF SECTION 3, TOWNSHIP 14 SOUTH, RANGE 67 WEST
SIXTH PRINCIPAL MERIDIAN
EL PASO COUNTY, COLORADO**

LEGAL DESCRIPTION

A parcel being a portion of Lot 2 in Block 2 of Grandview and Love and Quinby's Addition to Colorado City, situated in the southeast quarter of Section 3, Township 14 South, Range 67 West, of the 6th Principal Meridian, also being the property conveyed in Reception Number 002310509 recorded in the Office of the Clerk and Recorder in the County of El Paso, State of Colorado, said parcel being more particularly described as follows:

COMMENCING at the south quarter corner of said Section 3, thence N41°17'22"E, 857.72 feet to the point of intersection of the north Right of Way line of Colorado Avenue and the east Right of Way line of 32nd Street, said point being the TRUE POINT OF BEGINNING;

1. Thence along said east Right of Way line N38°40'28"E, 40.68 feet;
2. Thence S36°18'46"W, 32.49 feet to a non-tangent curve;
3. Thence along the arc of a curve to the left 8.39 feet, said curve having a radius of 19.00, a central angle of 25°18'36", and a chord which bears S23°46'51"W, 8.33 feet to a point on said north Right of Way line;
4. Thence along said Right of Way line N54°09'47"W, 3.48 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 39 square feet (0.001 acres), more or less.

Basis of Bearings: Bearings are based on the south line of the southwest ¼ of Section 3, Township 14 South, Range 67 West, of the 6th Principle Meridian, being South 88°57'27" West between the Southwest Corner, a 2 ½" aluminum cap stamped PLS 22573, and the South ¼ Corner, a 2 ½" aluminum cap stamped PLS 22573.

Prepared for and on behalf of El Paso County
Micheal L. Bouchard, PLS #24941
Farnsworth Group, Inc.
4655 Forge Road, Suite 150
Colorado Springs, Co 80907

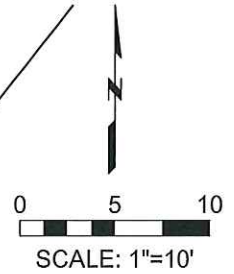


EXHIBIT 1-1

EXHIBIT "B"

SE 1/4 SECTION 3
T 14 S., R 67 W., 6TH PM

32ND STREET



EXISTING ROW

N38°40'28"E 40.68'
S36°18'46"W 32.49'

PROPOSED ROW

(RW-79)
74034-20-025
ROBERT T. WILCOX AND
DIANE Y. WILCOX
31 SOUTH THIRTY SECOND STREET
COLORADO SPRINGS, CO 80804
39 SQ FT (0.001 ACRES)

GRANDVIEW AND LOVE
AND QUINBY'S ADDITION
TO COLORADO CITY
BLOCK 2

LOT 2

POB PE-79
S41°17'22"W 857.72'
TO S¼ COR. SEC. 3

N54°09'47"W 3.48'

Δ=25°18'36" R=19.00 L=8.39'
CH=S23°46'51"W 8.33'

COLORADO AVENUE

EXHIBIT 1-2

NOTE: THIS EXHIBIT DOES NOT REPRESENT A
MONUMENTED LAND SURVEY. IT IS ONLY
INTENDED TO DEPICT THE ATTACHED
PROPERTY DESCRIPTION

• INDICATES A COURSE CHANGE ONLY



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Farnsworth
GROUP
4755 FORGE ROAD, SUITE 150
COLORADO SPRINGS, CO. 80907
(719) 590-9194 / (719) 590-9111 Fax

COLORADO AVENUE
PARCEL RW-79

ROBERT T. WILCOX
DIANE Y. WILCOX

Project No: 12-013
Date: 04-12-2018
1 OF 1

GRANT OF PERMANENT PUBLIC IMPROVEMENT EASEMENT

Robert T. Wilcox and Diane Y. Wilcox , whose legal address is 32 Garden Drive, Colorado Springs, CO 80904, (“Grantor”) being the owners of the hereinafter described real property located in the County of El Paso and State of Colorado, for and in consideration of TEN AND 00/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, does hereby grant and convey unto **The City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation**, (“City”) and City’s successors, assigns and representatives, a **permanent public improvement easement** (“Easement”) for all public improvement purposes, including but not limited to the installation, construction, reconstruction, operation, repair, replacement, alteration and maintenance of such improvements, in such number and size, and with such accessory parts and structures, and with all surface and subsurface appurtenances incidental thereto as City may from time to time deem necessary, over and across Grantor’s real property known as 31 South 32nd Street, Colorado Springs, Colorado, and known as El Paso County Tax Schedule Number 7403420025 (“Grantor’s Property”)

The exact location of the Easement PE-79-REV (the “Easement Area”) is more particularly described on Exhibit A and depicted on Exhibit B, attached hereto and by this reference incorporated herein and made a part hereof.

Public improvements include, but are not limited to, streets, sidewalks, storm drainage improvements, street lighting, facilities for the transmission and/or distribution of water, gas, electricity, fiber, wastewater, and any and all appurtenances related to public improvements.

Together with rights of ingress and egress to the Easement Area and in, on, over, across, under and through Grantor’s Property as may be necessary to exercise the rights granted to the City herein.

Grantor shall not erect or construct any building or other permanent structure within the Easement Area, and Grantor shall not block, restrict or interfere with the City’s use of or access to the Easement Area. Grantor covenants and agrees that no act shall be permitted or committed within the Easement Area which is inconsistent with the rights herein granted, and that the grade or ground level of the Easement Area shall not be changed by Grantor by excavation or filling by more than one foot, without the written consent of the City; and Grantor shall refrain from all acts within the Easement Area which might reduce the safety of or cause a hazard to or which might increase the cost of maintenance, operation, repair, removal, or replacement of the City’s facilities and improvements.

All rights, title and privileges herein granted or reserved, including all benefits and burdens shall run with the land and shall be binding upon and inure to the benefit of Grantor and the City, their respective heirs, executors, administrators, successors, assigns, and legal representatives.

This Easement grant is without warranty of title and is subject to all prior liens, encumbrances, easements, restrictions, reservations and rights of way affecting Grantor’s Property.

RES File # 19442
Parcel No: PE-79-REV

Grantor Int: _____ City Ints: _____
Date: _____ Date: _____

EXHIBIT 2-1

EXHIBIT "A"

PROJECT CODE: 12-013

DATE: APRIL 12, 2018

PARCEL PE-79-REV

SITUS

**THE SE 1/4 OF SECTION 3, TOWNSHIP 14 SOUTH, RANGE 67 WEST
SIXTH PRINCIPAL MERIDIAN
EL PASO COUNTY, COLORADO**

LEGAL DESCRIPTION

A permanent easement being a portion of Lot 2 in Block 2 of Grandview and Love and Quinby's Addition to Colorado City, situated in the southeast quarter of Section 3, Township 14 South, Range 67 West, of the 6th Principal Meridian, also being the property conveyed in Reception Number 002310509 recorded in the Office of the Clerk and Recorder in the County of El Paso, State of Colorado, said permanent easement being more particularly described as follows:

COMMENCING at the south quarter corner of said Section 3, thence N41°31'15"E, 858.06 feet to a point on the north Right of Way line of Colorado Avenue, said point being the TRUE POINT OF BEGINNING;

1. Thence along the arc of a curve to the right 8.39 feet, said curve having a radius of 19.00 feet, a central angle of 25°18'36", and a chord bears N23°46'51"E, 8.33 feet;
2. Thence N36°18'46"E, 32.49 feet to a point on the east Right of Way line of 32nd Street;
3. Thence along said east Right of Way line N38°40'28"E, 82.53 feet;
4. Thence S53°48'01"E, 1.93 feet;
5. Thence S36°12'07"W, 53.24 feet;
6. Thence S51°19'32"E, 8.43 feet;
7. Thence S36°02'24"W, 24.50 feet;
8. Thence N53°57'36"W, 9.40 feet;
9. Thence S36°26'09"W, 44.93 feet to a point on the north Right of Way line of Colorado Avenue;
10. Thence along said north Right of Way line N54°09'47"W, 2.68 feet to the TRUE POINT OF BEGINNING.

The above described permanent easement contains 690 square feet (0.016 acres), more or less.

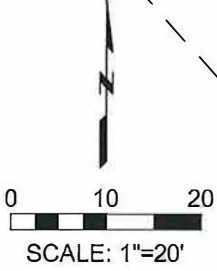
Basis of Bearings: Bearings are based on the south line of the southwest ¼ of Section 3, Township 14 South, Range 67 West, of the 6th Principle Meridian, being South 88°57'27" West between the Southwest Corner, a 2 ½" aluminum cap stamped PLS 22573, and the South ¼ Corner, a 2 ½" aluminum cap stamped PLS 22573.

Prepared for and on behalf of El Paso County
Micheal L. Bouchard, PLS #24941
Farnsworth Group, Inc.
4655 Forge Road, Suite 150
Colorado Springs, Co 80907



EXHIBIT "B"

SE 1/4 SECTION 3
T 14 S., R 67 W., 6TH PM



32ND STREET



(PE-79-REV)
74034-20-025
ROBERT T. WILCOX AND
DIANE Y. WILCOX
31 SOUTH THIRTY SECOND STREET
COLORADO SPRINGS, CO 80804
690 SQ FT (0.016 ACRES)

PE-79

GRANDVIEW AND LOVE
AND QUINBY'S ADDITION
TO COLORADO CITY
BLOCK 2

LOT 2

EXHIBIT 2-4

NOTE: THIS EXHIBIT DOES NOT REPRESENT A
MONUMENTED LAND SURVEY. IT IS ONLY
INTENDED TO DEPICT THE ATTACHED
PROPERTY DESCRIPTION

• INDICATES A COURSE CHANGE ONLY

A=25°18'36" R=19.00 L=8.39'
CH=N23°46'51"E 8.33'

POB PE-79
S41°31'15"W 858.06'
TO S¼ COR. SEC. 3
N54°09'47"W 2.68'

COLORADO
AVENUE

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COLORADO SPRINGS, CO. 80907
(719) 590-9194 / (719) 590-9111 Fax

COLORADO AVENUE
PARCEL PE-79-REV

ROBERT T. WILCOX
DIANE Y. WILCOX

Project No: 12-013
Date: 04-12-2018
1 OF 1

TEMPORARY CONSTRUCTION EASEMENTS

Robert T. Wilcox and Diane Y. Wilcox whose legal address is 32 Garden Drive, Colorado Springs, CO 80904 (“Grantor”), being the owners of the hereinafter described real property located in the County of El Paso and State of Colorado, for and in consideration of TEN DOLLARS AND 00/100 CENTS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, does hereby grant and convey unto **THE CITY OF COLORADO SPRINGS, COLORADO**, a home rule city and Colorado municipal corporation, whose address is 30 South Nevada Avenue Suite 502 Colorado Springs, CO 80903 and its successors, assigns and representatives, (“City”) temporary construction easements (“Easements”) over and across a portion of Grantor’s real property known as 31 South 32nd Street, Colorado Springs, CO, also known as El Paso County Tax Schedule Number 7403420025 (“Grantor’s Property”).

The exact location of the Easements (TE-79A-REV and TE-79B-REV) (the “Easement Areas”) is more particularly depicted on Exhibit A attached hereto and by this reference incorporated herein and made a part hereof.

Grantor grants the Easements to the City for the purpose of construction of public improvements.

Together with the necessary rights of ingress and egress to the Easement Areas for the above-referenced purposes, in, on, over, across, under and through Grantor’s Property.

These privileges and Easements shall be temporary in duration and shall expire thirty (30) days after completion of construction, or 12 months from the time construction activity begins on the Easements, whichever occurs first.

The City, at its sole discretion, shall have the option to extend the Easements for one additional 12-month term by providing a minimum of 30 days’ written notice to the Grantor of the City’s intent to extend the Easements and tendering payment of 110% of the consideration paid for the initial easement period to Grantor prior to the expiration of the term of the Easements. In the event Grantor transfers Grantor’s Property, Grantor will ensure that the successor in title receives actual notice of the Easements prior to said transfer. In the event the Grantor’s Property has been conveyed by Grantor during the term of the Easements, the successor in title to Grantor’s Property subject to the Easements will provide the City with an executed IRS Form W-9, Request for Taxpayers Identification Number and Certification (“W-9”) to facilitate payment of consideration for the Easements’ extension. If receipt of said W-9 from successor in title to Grantor’s Property delays payment processing by the City beyond the expiration date of the original term of the Easements, such condition shall not serve to invalidate the City’s option or extension of the Easements.

City shall notify Grantor no later than forty-eight (48) hours prior to the actual start of its use of the Easements. Upon completion of the construction of improvements facilitating the City’s need for this Easements, City will restore the Easement Areas to the condition prior to construction and will repair any and all damage that may arise from the City’s construction activities.

Grantor shall not erect or construct any building or other permanent structure within the Easement Areas or interfere with City’s access to the Easement Areas during the period of the Easements.

Temporary Construction Easement
Robert T. Wilcox and Diane Y. Wilcox

The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the Grantor and City.

Signed, sealed and delivered this _____ day of _____, 2018.

GRANTOR:
Robert T. Wilcox and Diane Y. Wilcox

By: _____
Robert T. Wilcox

By: _____
Diane Y. Wilcox

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by Robert T. Wilcox and Diane Y. Wilcox.

Witness my hand and official seal:

My Commission Expires: _____

Notary Public

CITY:
THE CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation

Accepted by:

By: _____
Darlene Kennedy, Real Estate Services Manager

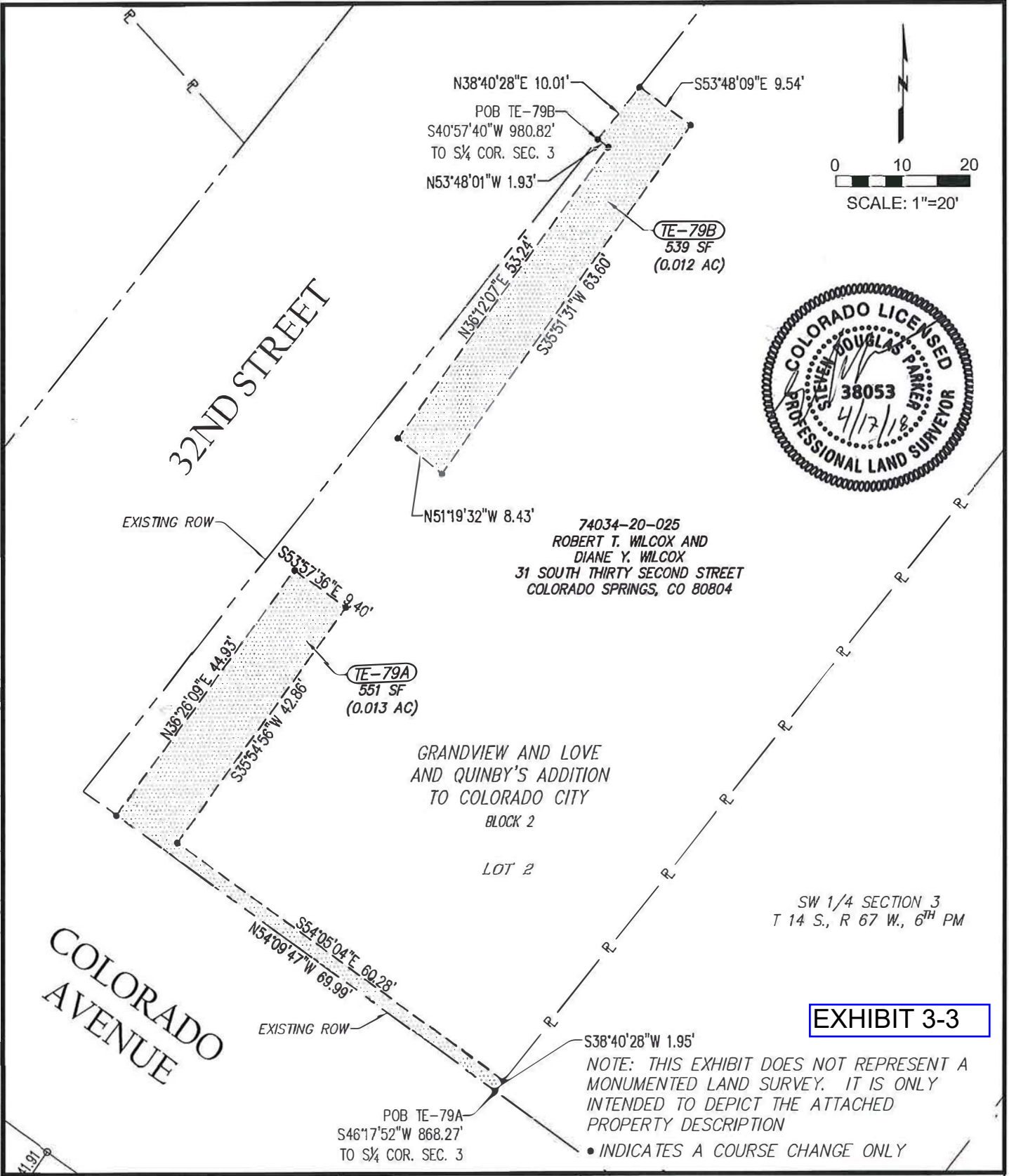
Date

By: _____
Mike Chaves, Engineering Manager

Approved as to form:

City Attorney Office

EXHIBIT "A"



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Farnsworth
GROUP
4755 FORGE ROAD, SUITE 150
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(719) 5909194 / (719) 590-9111 F ox

COLORADO AVENUE TE-79-REVA&B	
ROBERT T. WILCOX DIANE Y. WILCOX	Project No: 12-013 Date: 04-16-2018
1 OF 1	