

RESOLUTION NO. 03
SERIES OF 2019

INTRODUCED BY: DAN SHELDON
SECONDED BY: AL BLUM

**A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
ACCEPTING AND APPROVING AN EASEMENT AGREEMENT WITH DENVER FIRST
CHURCH FOR A NON-MOTORIZED PUBLIC TRAIL, AUTHORIZING THE EXPENDITURE
OF FUNDS IN PAYMENT THEREFOR, AND REPEALING RESOLUTION 9, SERIES 2016**

WHEREAS, the City of Cherry Hills Village has the general authority, in accordance with its Home Rule Charter and Section 31-15-101(1)(d), Colorado Revised Statutes, to acquire, hold and dispose of real property; and

WHEREAS, the City is participating in and is the recipient of transportation improvement program (TIP) funding for two multi-use underpasses at Hampden Avenue and Colorado Boulevard (collectively, the "Underpass Project"); and

WHEREAS, the Underpass Project requires the realignment of the High Line Canal trail south of Hampden Avenue onto the Denver First Church of the Nazarene property in the vicinity of Hampden Avenue and South Monroe Street; and

WHEREAS, as a Project participant, the City has agreed to acquire the trail easement from Denver First Church; and

WHEREAS, pursuant to Resolution 9, Series 2016, the City Council originally accepted and approved a non-motorized public trail easement agreement with Denver First Church ("Original Proposed Trail Easement"), but the Original Proposed Trail Easement was never signed or recorded; and

WHEREAS, since City Council approved the Original Proposed Trail Easement, the City of Denver identified a new location for the required trail easement, and City staff has determined that the new location will save the City construction costs for the Project; and

WHEREAS, City Council desires to repeal Resolution 9, Series 2016 to facilitate approval and acceptance of an easement in the new location, as set forth herein; and

WHEREAS, the City has agreed to pay Ninety-Eight Thousand Dollars and No Cents (\$98,000.00) for the non-motorized public trail easement consisting of 0.342 acres (14,888 square feet), more or less ("Trail Easement"); and

WHEREAS, Denver First Church has agreed to convey the Trail Easement to the City in accordance with the terms and conditions set forth in the easement agreement attached to this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

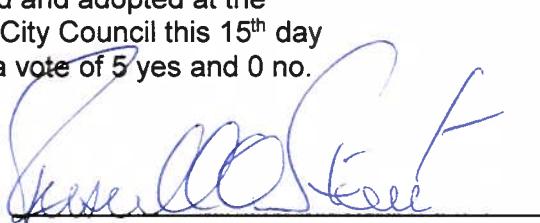
Section 1. The City Council accepts and approves the Non-motorized Public Trail Easement Agreement with Denver First Church, in substantially the same form as set forth in Attachment A, attached hereto and incorporated herein by reference, subject to minor modifications and revisions approved by the City Manager and City Attorney that do not increase the City's financial obligations, and authorizes the Mayor to execute the same.

Section 2. The City Council repeals Resolution 9, Series 2016 which approved and accepted the original trail easement.

Section 3. This Resolution is effective upon adoption.

Introduced, passed and adopted at the regular meeting of the City Council this 15th day of January, 2019, by a vote of 5 yes and 0 no.

(SEAL)


Russell O. Stewart, Mayor

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

Approved as to form:

Kathie B. Guckenberger
Kathie B. Guckenberger, City Attorney

EXHIBIT A
NON-MOTORIZED PUBLIC TRAIL EASEMENT AGREEMENT

Following recording, return to:

Marcus McAskin
Michow Cox & McAskin LLP
6530 S. Yosemite Street, Ste. 200
Greenwood Village, CO 80113

EASEMENT AGREEMENT
FOR NON-MOTORIZED PUBLIC RECREATIONAL TRAIL

THIS EASEMENT AGREEMENT FOR NON-MOTORIZED PUBLIC TRAIL (the "Agreement") is entered into on this 15th day of January, 2019 (the "Effective Date"), by and between DENVER FIRST CHURCH OF THE NAZARENE, a Colorado non-profit corporation, whose address is 3800 E. Hampden Avenue, Englewood, Colorado 80113 (the "Grantor") and the CITY OF CHERRY HILLS VILLAGE, COLORADO, a home rule municipal corporation of the State of Colorado, whose address is 2450 East Quincy Avenue, Cherry Hills Village, Colorado, 80113 (the "City"). The Grantor and City are collectively referred to herein as the "Parties."

WHEREAS, the Grantor holds fee simple title to the property commonly known as 3800 E. Hampden Avenue, Cherry Hills Village, Colorado, and generally described as follows:

LOT 1, BLOCK 1, AMENDED PLAT OF LOT 1, BLOCK 1, HIGHLINE MEADOWS IN CHERRY HILLS, City of Cherry Hills Village, County of Arapahoe, State of Colorado, recorded in the real property records of Arapahoe County Clerk and Recorder at reception D5049755 (AIN: 2077-01-1-26-001), (the "Grantor Parcel"); and

WHEREAS, upon the terms and conditions set forth in this Agreement, the Grantor desires to convey to the City the right of public access and use to a limited portion of the northern boundary of the Grantor Parcel in order to advance public recreational opportunities on that certain recreational trail commonly known as the High Line Canal Trail and to enhance the character and quality of life within the City of Cherry Hills Village; and

WHEREAS, the City is desirous of installing and maintaining a non-motorized recreational trail within the boundaries of the Grantor Parcel, inclusive of a retaining wall within the Easement, described in Exhibit A, and associated landscaping and irrigation; and

NOW THEREFORE, in consideration of the sum of Ninety Eight Thousand Dollars (\$98,000.00), paid by City, receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor hereby grants, bargains, sells, and conveys to the City and its successors and assigns, a non-exclusive, permanent and perpetual easement generally located within the fifty foot (50') landscape buffer designated on the Final Plat for Highline Meadows in Cherry Hills, Cherry Hills Village, County of Arapahoe, State of Colorado, recorded at reception number A7083141 ("Landscape Buffer"); said easement parcel, consisting of 0.344 acres (14,898 square feet), more or less, as legally described in Exhibit A to this Agreement to be known for purposes of this Agreement as the "Easement."



It is the primary purpose and intent of this Agreement to permit and facilitate the City's installation, and perpetual operation and maintenance of a public recreational trail on the Easement for non-motorized use, including but not limited to pedestrian, equestrian, and bicycle uses together

with such fencing, surface improvements, landscaping, retaining walls, utilities, and directional signage as may be existing within the Easement or deemed appropriate by the City for installation in the future to support such non-motorized use(s) to connect the High Line Canal Trail from a pedestrian underpass to be constructed under Hampden Avenue to a footbridge to be constructed and located west of the Grantor Parcel (collectively, the "Easement Improvements").

The Easement granted to the City by this Agreement shall be subject to the following terms and conditions:

1. Subject to Paragraph 2, the City shall be permitted to access and use the Easement for purposes of operating, maintaining, repairing, and/or replacing the Easement Improvements or any portion thereof or construct Easement Improvements on the Easement after preparing "Construction Documents" for Grantor's review, approval, and issuance of a written notice to proceed ("NTP"). The Construction Documents shall set forth the specifications and drawings for construction of the Easement Improvements. The Construction Documents shall also include a landscape plan as described in Paragraph 3 of this Agreement. Collectively, the Easement Improvements and landscape plan shall constitute the "Construction Documents". The Easement Improvements shall be designed, constructed and located within the Landscape Buffer and outside of any Buildable Area of the Grantor Parcel. For purposes of this Agreement, "Buildable Area" means the area of the Grantor Parcel outside of any required yards (setbacks). Grantor shall be required to review and accept the City's construction documents for such Easement Improvements as provided in Paragraph 2 of this Agreement.
2. Within forty-five (45) days of receipt of the Construction Documents, the Grantor shall complete its review of the Construction Documents and either authorize the NTP or provide the City with a written explanation of any deficiency in the Construction Documents with such specificity to allow the City to cure the Deficiency. As used herein, "Deficiency" means any material departure in type or quantity of materials or location of the Easement Improvements or landscaping from the terms of this Agreement. The City shall correct any Deficiency and provide revised Construction Documents to Grantor. Grantor shall have five (5) business days from date of receipt of revised Construction Documents to review the City's resubmitted Construction Documents and authorize the NTP or provide written explanation of any unresolved Deficiency. This process shall continue until Grantor authorizes the NTP.

If Grantor fails to approve the NTP or provide a Deficiency notice within the above-specified review periods, the Construction Documents shall be deemed approved and the City shall be authorized to commence construction of the Easement Improvements. Grantor shall not unreasonably withhold or delay issuance of an NTP; however, it shall not be considered "unreasonable" for the Grantor to withhold issuance of the NTP, if in Grantor's reasonable determination, the Construction Documents will encroach within the Buildable Area of the Grantor Parcel or demonstrate a Deficiency as defined above. Prior to issuance of a NTP, the City is authorized to enter the Easement to perform survey or design work associated with the Easement Improvements. Upon the Grantor's approval of the Construction Documents, the Construction Documents shall be made a part of this Agreement and shall bind the City in its use and access of the Easement, including in its construction, operation, maintenance, repair, re-design and/or removal of the Easement Improvements. The City shall operate, maintain, replace, repair, re- design and or remove the Easement Improvements in a reasonable manner and in conformance with the approved Construction Documents.

3. The Construction Documents shall include a landscape plan to include conifer trees of a minimum caliper of five inches (5") and other vegetation (collectively, the "Landscaping"), as conceptually illustrated in Exhibit B, attached hereto and incorporated herein by reference, to the reasonable satisfaction of Grantor. The landscape plan shall cover the area at the north end of the Grantor

Parcel within the Easement, as depicted in Exhibit B. The City shall install and maintain irrigation improvements within the Easement at its sole cost and expense.

4. Except as limited by the terms of this Agreement, the Construction Documents, and issuance of the NTP, the City, its agents, and contractors shall have and exercise the right of ingress and egress in, to, through, over, under and across the Easement, by motorized vehicle or otherwise, as reasonably necessary for the construction, operation, maintenance, repair, replacement, re-design and/or removal of Easement Improvements within the Easement.
5. Grantor intends to submit applications to the City to rezone and subdivide the Grantor Parcel, and to dedicate the Easement in fee simple to the City. If such applications are approved by the City, the City, in the course of such subdivision, shall apply the Easement as a credit (and subsequent fee dedication of same) toward the Grantor's open space, park and trail land dedication requirement under Section 17-3-30 of the City's subdivision regulations, as may be amended from time to time. Whether or not the Grantor Parcel is subdivided, the entirety of the Grantor Parcel shall be included in minimum land calculations directed by the Cherry Hills Village Municipal Code. Upon dedication of the Easement to the City in fee simple, this Easement Agreement shall terminate without further action by the Parties.
6. All Easement Improvements described in the Construction Documents, and or necessitated to bring the City into compliance with this Agreement and/or the Construction Documents, shall be paid for by the City. At all times, the City shall be obligated to maintain the Easement and the Easement Improvements in good repair and condition, and nothing contained herein shall create any obligation on the part of the Grantor to maintain the Easement or the Easement Improvements. The City shall be solely responsible for any damages and/or liabilities on the Grantor Parcel arising from the City's use, including uses related to construction, operation, maintenance, repair, re-design, replacement and/or removal of the Easement Improvements, and/or any use by the public, including of the High Line Canal Trail.
7. The Grantor shall bear no future costs or expenses of any kind related to the City's or public's access or use of the Easement or its construction, operation, maintenance, repair, re-design, replacement and/or removal of the Easement Improvements. Any costs or expense related to the City's construction, operation, maintenance, removal, repair, re-design, replacement or re-installation of any Easement Improvements shall be the sole obligation of the City. The City will budget and appropriate funds for construction and maintenance of the Easement and Easement Improvements as part of the City's annual budget process, and subject to annual appropriations.
8. The City agrees to indemnify and hold harmless the Grantor, its officers, employees, trustees, agents and insurers from and against all liability, claims and demands on account of injury, loss or damage, including without limitation claims, suits or causes of action arising from bodily damage or any other loss of any kind whatsoever, including attorneys' fees and expenses that might be incurred by the Grantor or asserted against it, which arise out of or are in any manner connected with the City's or public's use or access of the Easement, including for purposes of the City's construction, operation, maintenance, repair, re-design, and/or removal of Easement Improvements or any portion thereof.
9. The grant of the Easement and the terms and conditions of this Agreement shall be effective upon the recordation of a fully executed copy of this Agreement in the real property records of the Arapahoe County Clerk and Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, cancelled or terminated by the written consent of all of the then record owners of the Easement and the Grantor Parcel. Upon Grantor's acceptance of the City's Construction Documents, the City shall promptly record the

Construction Documents as an exhibit to this Agreement in the real property records of the Arapahoe County Clerk and Recorder.

10. Except as otherwise provided in the Construction Documents, the City and Grantor shall not construct or place any structure or building, street light, power pole, yard light or mailbox, whether temporary or permanent, or place any shrub or tree, woody plant, nursery stock, garden or other landscaping design feature (collectively referred to as "Property Alterations") on or within any part of the Easement. Except as otherwise provided in the Construction Documents, Property Alterations situated on the Easement as of the date of this Agreement may be removed by and at the sole expense of the City without any liability therefore. Any Property Alterations placed on the Easement by City or Grantor subsequent to the date hereof without the other parties' consent may be removed by the City at the expense of the party placing the Property Alterations.
11. Notwithstanding any provision of this Agreement or the Construction Documents, it is specifically agreed between and among the Parties that the Grantor shall not take any action that would impair the lateral or subjacent support for the Easement or Easement Improvements, and the City shall not take any action that would impair the lateral or subjacent support of the Grantor Parcel, including but not limited to Grantor's parking facility located on the Grantor Parcel.
12. It is expressly acknowledged and agreed that the City shall have the right and authority to grant temporary construction easements or license agreements to any appropriate governmental entity as are reasonably necessary for purposes of construction, reconstruction, operation, use, maintenance, repair, replacement and/or removal of the Easement Improvements consistent with the terms of this Agreement and the Construction Documents.
13. The City agrees that at such time and in the event that the Easement described herein ceases permanently to be used and operated as part of the recreational trail known as the High Line Canal Trail, the City shall process a vacation of the Easement through City Council and provide Grantor with written notice has been provided to Grantor confirming said vacation. Upon City Council vacating the Easement, the Easement shall terminate and the real property interest represented by the Easement shall revert to the Grantor, and its successors and/or assigns. Upon a vacation of the Easement as contemplated by this Paragraph 13, the City agrees to record a notice of termination of Easement or similar document in the real property records of Arapahoe County, Colorado. Upon vacation and termination of the Easement and upon Grantor's written request, the City shall be obligated at its sole expense to return the Easement to the condition it was in as of the date of execution of this Easement Agreement.
14. The City acknowledges that Grantor may submit future land development applications and further acknowledges that the Easement and Easement Improvements will not factor negatively into the City's review of any such development applications as the Easement Improvements are located within the Landscape Buffer.
15. The rights and obligations created by this Agreement may not be assigned, including but not limited to the City's rights and obligations to construct, operate, maintain, repair, re-design, and/or remove the Easement Improvements in accordance with the terms of this Agreement.
16. This Agreement may be enforced in law or in equity, including a suit for specific performance and/or damages. As a condition to seeking judicial enforcement of this Agreement, the parties must first attempt to resolve the dispute according to the following dispute resolution process:

A. The Grantor's designee and the City Manager of Cherry Hills Village shall meet to facilitate a resolution. If a resolution is agreed upon, it shall be memorialized in writing and signed by the Parties.

B. If the Grantor's designee and the City Manager of Cherry Hills Village are unable to resolve the dispute within a reasonable time, the Parties may, by mutual agreement, elect to resolve the dispute by mediation or arbitration, or either Party may seek judicial enforcement of this Agreement.

C. This dispute resolution process shall not restrict the right of any Party to institute a legal proceeding to obtain provisional injunctive relief during the pendency of the dispute resolution process, but any other action shall be subject to prior exhaustion of the procedures above.

17. This Agreement, as may be amended, shall be interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the District Court for Arapahoe County, Colorado.

18. This Agreement, as may be amended, constitutes the whole agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on the Parties with respect to the subject matter of this Agreement.

19. Nothing in this Agreement is intended to waive any protection afforded to the City, its officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* or any other applicable law providing immunity to the City, its officials, employees, and agents.

20. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is declared illegal or invalid for any reason, such illegality or invalidity shall not affect the remainder of this Agreement.

21. The rights and responsibilities set forth in this Agreement, as may be amended, are intended to be covenants on the Grantor Parcel and the Easement, and are to run with the land.

22. In the event either party seeks to enforce its rights hereunder through litigation, arbitration or another legal proceeding, the court or panel shall award to the prevailing party in such litigation, arbitration or other legal proceeding, as part of its judgment or award, its reasonable attorneys' fees and costs.

23. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by national overnight courier company or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to other party. The notice addresses of the City and Grantor are as follows:

CITY:

City Manager
City of Cherry Hills Village
2450 E. Quincy Ave.
Cherry Hills Village, CO 80113

GRANTOR:

Denver First Church of the Nazarene
3800 E. Hampden Avenue
Englewood, CO 80113

With a copy to:

City Attorney
c/o Michow Cox & McAskin LLP
6530 S. Yosemite Street, Ste. 200
Greenwood Village, CO 80111

With copies to:

Valissa Tsoucaris
3000 Holly Street
Denver, CO 80207

Steve Ferris
Real Estate Garage
1522 Blake St., #350
Denver, CO 80202

24. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same Agreement.

25. Recordation of Agreement. The City shall record this Agreement once the Agreement is fully executed by the City and Grantor. Recording costs shall be paid by the City. The City shall, promptly after recording, provide a copy of same to Grantor at the address set forth in Paragraph 23 above.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below.

GRANTOR:

DENVER FIRST CHURCH OF THE NAZARENE, a Colorado
non-profit corporation

By: John Bruneau

Name: John Bruneau

Title: Secretary, Board of Trustees, Denver First Church of the Nazarene

ss.

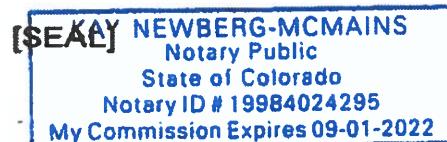
STATE OF COLORADO

COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 14 day of July,
2019, by JOHN BRUNEAU, as the SECRETARY OF BOARD of
DENVER FIRST CHURCH OF THE NAZARENE, a Colorado non-profit corporation.

Witness my hand and official seal.

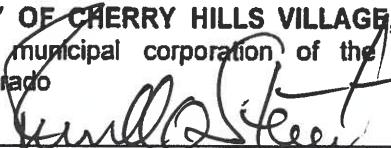
My commission expires: 09/01/2022



Notary
Public

CITY:

CITY OF CHERRY HILLS VILLAGE, a home
rule municipal corporation of the State of
Colorado

By:  _____

Russell O. Stewart, Mayor

ATTEST:


Anna Gillespie
City Clerk

APPROVED AS TO FORM:

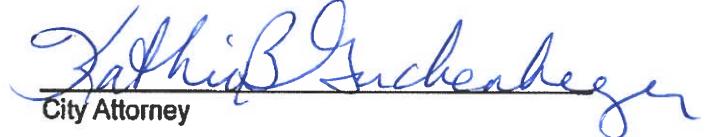

Kathie B. Guckenheger
City Attorney

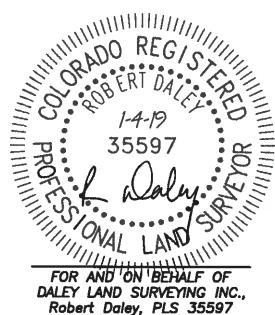
EXHIBIT A

A tract or parcel of land over and across that parcel of land described as Lot 1, Block 1, Amended Plat of Lot 1, Block 1, Highline Meadows in Cherry Hills, as recorded at Reception No. D5049755 in the Public Records of Arapahoe County, located in the Northeast Quarter of Section 1, Township 5 South, Range 68 West, of the Sixth Principal Meridian, County of Arapahoe, State of Colorado, said parcel being more particularly described as follows:

For the purposes of this description the bearings are referenced to the north line of the Northeast Quarter of Section 1, Township 5 South, Range 68 West, of the Sixth Principal Meridian, assumed to bear North 89°48'14" East, a distance of 2642.16 feet. (S89°48'1"E, 2642.16' Plat), monumented by a 3" Aluminum Cap marked LS 19003 on a 2 $\frac{1}{2}$ " pipe in range box at the northwest corner of said Northeast Quarter and by a 3 $\frac{1}{4}$ " Aluminum Cap marked LS 25375 on a 2 $\frac{3}{4}$ " pipe in range box at the northeast corner of said Northeast Quarter of Section 1.

Beginning at the northwest corner of said Lot 1, Block 1, Amended Plat of Lot 1, Block 1, Highline Meadows in Cherry Hills, whence the Northwest Corner of said Northeast Quarter of Section 1, bears North 85°17'16" West, a distance of 1016.71 feet; THENCE North 89°48'14" East, along the north line of said Lot 1, Block 1, also being the South right-of-way line of East Hampden Avenue, a distance of 248.71 feet; THENCE along a curve to the right, an arc length of 47.32 feet, said curve having a radius of 30.00 feet, a delta angle of 90°22'28", a chord bearing of South 45°00'05" East and a chord length of 42.56 feet; THENCE South 00°11'09" West, a distance of 19.80 feet; THENCE South 89°48'14" West, a distance of 317.84 feet to the west line of said Lot 1, Block 1; THENCE along said west line along a non-tangent curve to the right, an arc length of 39.93 feet, said curve having a radius of 89.65 feet, a delta angle of 25°31'09", a chord bearing of North 33°05'18" East and a chord length of 39.60 feet; THENCE continuing along said west line, North 45°50'57" East, a distance of 24.35 feet to the northwest corner of said Lot 1 and the Point of Beginning.

Containing 14888 Square Feet, or 0.342 Acres, more or less.

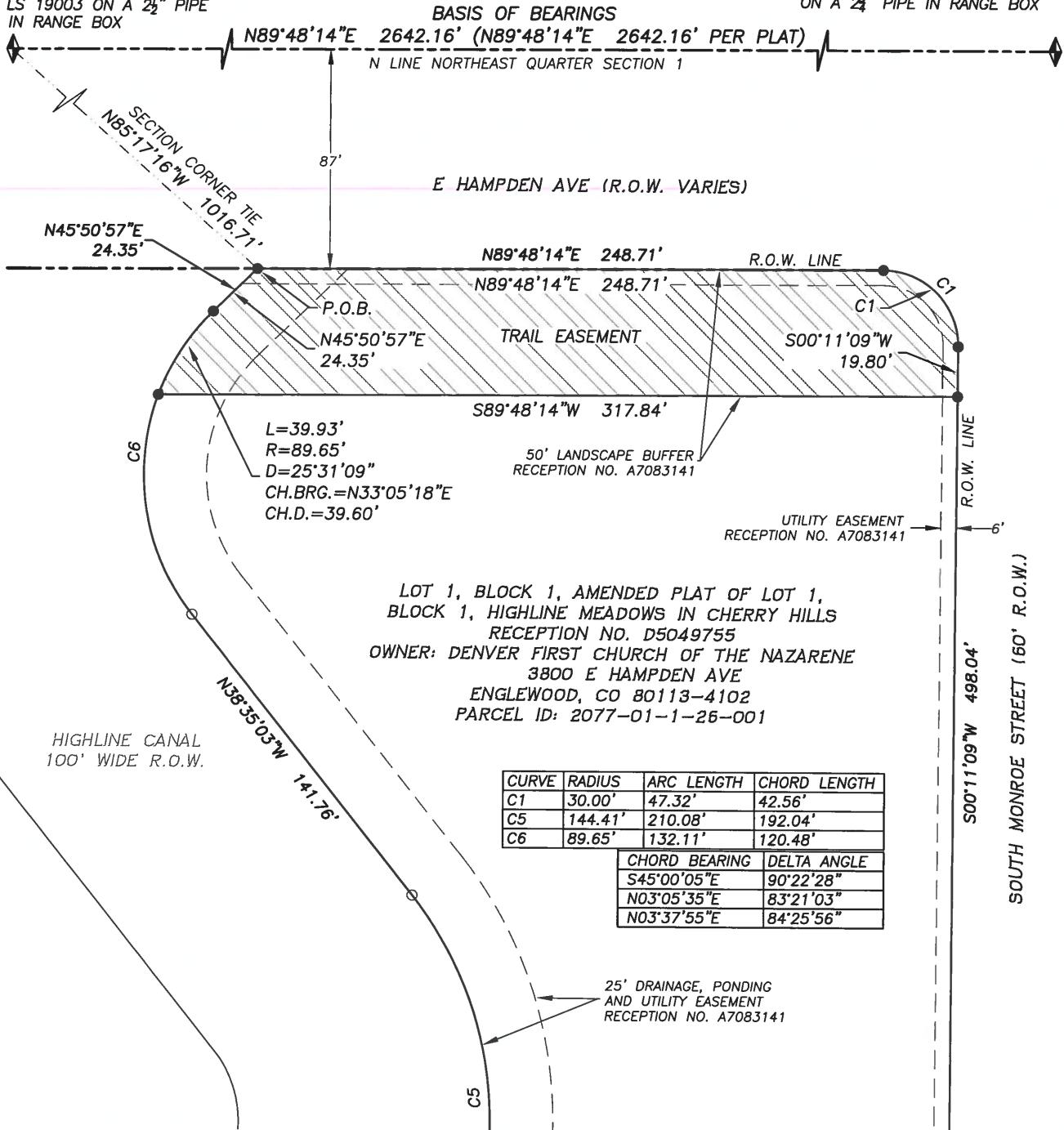


SHEET 1 OF 2	EXHIBIT TRAIL EASEMENT	THIS DOES NOT REPRESENT A MONUMENTED SURVEY.
DATE: 1/4/2019 DRWN BY: RD CHECKED BY: AW JOB No. 1503-017		

EXHIBIT A

NW CORNER, NE QUARTER
SEC. 1, T5S, R68W.
FND 3" ALUM CAP
LS 19003 ON A 2 $\frac{1}{2}$ " PIPE
IN RANGE BOX

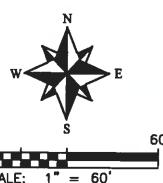
NE CORNER, NE QUARTER
SEC. 1, T55, R68W
FND 3¹/₄" ALUM CAP CDOT LS 25375
ON A 2¹/₂" PIPE IN RANGE BOX



SHEET 2 OF 2

DATE: 1/4/2019
DRWN BY: RD
CHECKED BY: AV
JOB No. 1503-C

**EXHIBIT
TRAIL EASEMENT**



THIS DOES NOT REPRESENT
A MONUMENTED SURVEY.



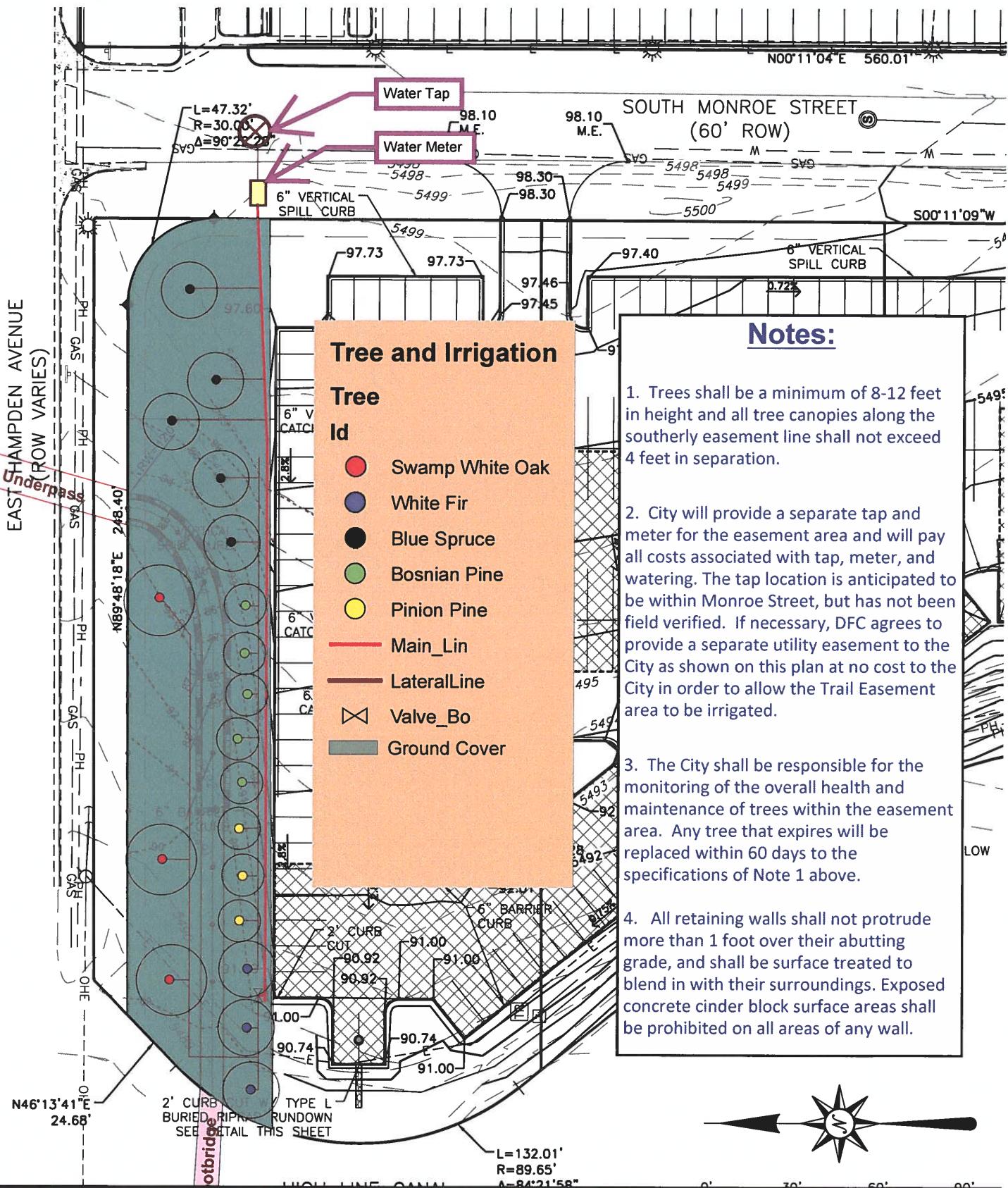


Exhibit B - Preliminary Landscape and Irrigation Plan