

RESOLUTION NO. 04
SERIES OF 2019

INTRODUCED BY: MIKE GALLAGHER
SECONDED BY: AL BLUM

**A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT
REGARDING MAINTENANCE OF THE HIGH LINE CANAL UNDERPASSES
AT HAMPDEN AVENUE AND COLORADO BOULEVARD**

WHEREAS, C.R.S. Section 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service, or facility; and

WHEREAS, Section 13.6 of the Cherry Hills Village Home Rule Charter authorizes the City Council, by resolution or by ordinance, to enter into contracts or agreements with other governmental units or special districts for receiving services; and

WHEREAS, the cities of Cherry Hills Village, Denver and the State of Colorado Department of Transportation (Collectively, the "Parties") agree there is a public safety and welfare need to construct a trail underpass for the High Line Canal Trail at Hampden Avenue, located within the jurisdictions of the Parties; and

WHEREAS, the Parties are participating in and are in 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 Parties agree that such intergovernmental cooperation creates efficiencies in operation, resources and cost, and thus furthers the public health, safety and welfare of the residents of the Cities and State; and

WHEREAS, the Parties desire to enter into the attached Intergovernmental Agreement outlining the maintenance and repair responsibilities for each Party in accordance with the terms and conditions set forth therein.

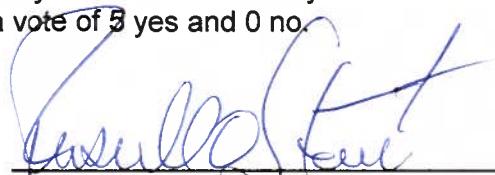
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council accepts and approves the Intergovernmental Agreement with Denver and the State of Colorado, Department of Transportation, 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.

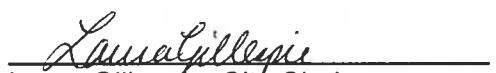
Section 2. This Resolution is effective upon adoption.

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.

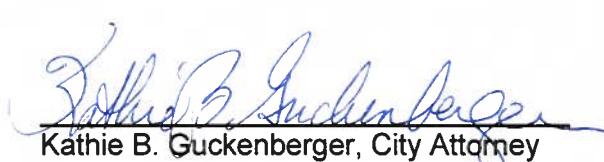
(SEAL)


Russell O. Stewart, Mayor

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:


Kathie B. Guckenberger, City Attorney

ATTACHMENT A
INTERGOVERNMENTAL AGREEMENT REGARDING MAINTENANCE
OF THE HIGH LINE CANAL UNDERPASSES
AT HAMPDEN AVENUE AND COLORADO BOULEVARD

INTERGOVERNMENTAL AGREEMENT REGARDING MAINTENANCE OF HIGH LINE CANAL UNDERPASSES AT HAMPDEN AVENUE AND COLORADO BOULEVARD

This Intergovernmental Agreement ("Agreement") is made and entered into as of the Effective Date (as defined below) by and between **THE CITY OF CHERRY HILLS VILLAGE**, a Colorado municipal corporation ("CHV"), **THE CITY AND COUNTY OF DENVER**, a Colorado municipal corporation ("Denver"), and the **STATE OF COLORADO**, acting by and through its **DEPARTMENT OF TRANSPORTATION** ("CDOT" and referred to herein collectively with CHV and Denver as the "Parties" or each individually as a "Party").

WHEREAS, CHV, in conjunction with Denver, applied for and received federal funding from the Denver Regional Council of Governments ("DRCOG") and CDOT as part of the 2016-2021 Transportation Improvement Program ("TIP") for two multi-use concrete box culvert underpasses, one of which is to be located beneath Hampden Avenue about 1500 feet west of Colorado Boulevard as shown on attached Exhibit C ("Hampden Underpass") and the second of which is to be located beneath Colorado Boulevard about 200 feet north of Hampden Avenue ("Colorado Underpass") (collectively, the "Underpass Project"); and

WHEREAS, Denver is the "Local Agency" for the Underpass Project under the Agreement, dated September 15, 2016, which provides for the financing, design and construction of the Underpass Project with CDOT (Routing #: 16-HA1-ZH-00155; SAP ID #: 471000904) (the "CDOT Agreement"); and

WHEREAS, CHV, Denver, and the Board of County Commissioners of the County of Arapahoe, State of Colorado ("Arapahoe"), are parties to that certain Intergovernmental Agreement Regarding Cost Sharing and Collaboration on the High Line Canal Underpass Project at Hampden Avenue and Colorado Boulevard, dated September 9, 2016 (the "Cost Sharing Agreement"), whereby CHV, Denver, and Arapahoe agreed to allocate responsibility for the maintenance of the Underpass Project by separate agreement; and

WHEREAS, Section 6(I) of the CDOT Agreement sets forth the obligation of Denver to provide for the maintenance of the Underpass Project; and

WHEREAS, pursuant to the CDOT Agreement and the Cost Sharing Agreement, the Parties wish to formalize their maintenance and repair responsibilities associated with the Underpass Project; and

WHEREAS, this Agreement is authorized by Article XIV, Section 18 of the Colorado Constitution and COLO. REV. STAT. § 29-1-203.

NOW, THEREFORE, the Parties agree as follows:

1. **Maintenance.**

A. **Ordinary Maintenance.**

- i. As used herein, the term "Ordinary Maintenance" shall mean and refer to all ordinary and necessary repairs, upkeep, cleaning, and maintenance of the specified portion of the Underpass Project, including, without limitation, all of the work set forth and described in Exhibit A attached hereto.
- ii. CHV shall, at its sole cost and expense, be responsible for completing, on a periodic and as-needed basis, all Ordinary Maintenance on and for all elements of the Hampden Underpass.
- iii. Denver shall, at its sole cost and expense, be responsible for completing, on a periodic and as-needed basis, all Ordinary Maintenance on and for all elements of the Underpass Project north of the Hampden Underpass.
- iv. CDOT shall have no obligation or responsibility for Ordinary Maintenance
- v. The obligation to undertake Ordinary Maintenance shall commence when construction of the Underpass Project is substantially complete and approved for use by Denver. For purposes of this Section 1(A), Ordinary Maintenance shall not include any elements of Capital Maintenance as defined in Section 1(B) below.

B. Structural/Capital Maintenance.

- i. As used herein, the term "Capital Maintenance" shall mean and refer to any and all construction, rehabilitation, replacement, improvement, or major repairs to, for, or of any permanently attached or functional part of the real property or any structural component of any specified portion of the Underpass Project, including, without limitation, all of the work set forth and described in Exhibit B attached hereto.
- ii. CDOT shall, at its sole cost and expense, be responsible for completing, on a periodic and as-needed basis, all Capital Maintenance on and for all elements of the Hampden Underpass.
- iii. Denver shall, at its sole cost and expense, be responsible for completing, on a periodic and as-needed basis, all Capital Maintenance on and for all elements of the Underpass Project located north of the Hampden Underpass.
- iv. The obligation to undertake Capital Maintenance shall commence when construction of the Underpass Project is substantially complete and approved for use by Denver.

2. Performance.

- A. *Maintenance Performance.* If, at any time, Denver is dissatisfied with the state of the Ordinary Maintenance of the Hampden Underpass or the Colorado

Underpass, in addition to any and all remedies available for such condition, Denver may temporarily close the affected underpass in the interest of public health and safety.

- B. *Structural Performance.* If Denver determines at any time that the Hampden Underpass or the Colorado Underpass is not safe for passage or is structurally unsound, or in connection with the completion of any Capital Maintenance work on the Hampden Underpass and/or the Colorado Underpass the Denver Manager of Public Works determines that it is necessary, Denver may close the Hampden Underpass and/or the Colorado Underpass at both access points until such work is completed.
- C. *Notice.* If CHV determines at any time that the Hampden Underpass is not safe for passage or is structurally unsound, the CHV Public Works Director shall notify Denver and CDOT of such determination in writing.
- D. *Necessary Access.* The parties to this Agreement are permitted access to property that is owned or maintained by a party to this Agreement, in connection with this Underpass Project, for the sole purpose of completing the respective tasks described herein, for the duration of this Agreement.
- E. *Inspection.* Parties have the right to provide construction inspection as desired. CDOT shall perform ordinary routine inspections as necessary on the Hampden Underpass.

3. **Term and Termination.** This Agreement may be terminated at any time upon mutual agreement of the Parties, but shall otherwise continue in full force and effect and remain in place as long as the Colorado Underpass and/or the Hampden Underpass remain in service.

4. **Liability.** Nothing contained in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities or limitations of liability available to the Parties against third parties by law.

5. **General Provisions.**

- A. *Reasonable Efforts; Good Faith:* CHV and Denver agree to work diligently together and in good faith, using reasonable efforts to perform the terms and conditions of this Agreement, to resolve any unforeseen issues and disputes, and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement.
- B. *CDOT Agreement:* CDOT hereby acknowledges and agrees that the execution of this Agreement by the Parties and the allocation of responsibilities set forth herein shall comply with and satisfy the terms and conditions set forth in Section 6(I) of the CDOT Agreement.

- C. *Prior Obligations.* All roadway maintenance obligations shall remain in place and are unchanged by this Agreement.
- D. *Appropriation:* Notwithstanding any provision of this Agreement to the contrary, the Parties agree that the rights and obligations under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.
- E. *Non-waiver:* No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.
- F. *Examination of Records/Audit:* The Parties agree that, during the term of this Agreement and for a period of at least three (3) years after the expiration or termination of this Agreement, any duly authorized representative of either Party shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the other Party involving any matter related to this Agreement. Any Party shall be entitled to review and audit the performance of this Agreement at that Party's sole expense.
- G. *Applicable Law/Exercise of Authority:* The Parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, both Parties agree that neither Party shall enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective Parties.
- H. *No Discrimination in Employment:* In connection with the performance of work under this contract, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.
- I. *Conflict of Interest:* The Parties agree that no official, officer or employee of the Parties shall have any personal or beneficial interest whatsoever in the services

or property described herein, and further agree that each Party shall comply with its respective code of ethics.

- J. *Force Majeure*: Neither Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. "*Force majeure*" shall mean causes beyond the reasonable control of a Party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Parties.
- K. *Contracting or Subcontracting*: Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract. No Party shall be liable or have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the other Party contracts or has a contractual arrangement.
- L. *Dispute Resolution*: Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Should a dispute arise between the City and County of Denver and Cherry Hills Village only, Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

M. *No Third-Party Beneficiaries*: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

N. *Claims*: In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

O. *Notice*: All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally, or by appropriate facsimile transmission (receipt verified by telephone), or by certified mail, return receipt requested, to the following:

CHV: City of Cherry Hills Village
2450 East Quincy Avenue
Cherry Hills Village, Colorado 80113

DENVER: Executive Director of Public Works
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

CDOT: CDOT Region 1 Carol Anderson
2000 Holly St. Denver, CO, 80204

P. *Entire Agreement*: This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

Q. *Amendment*: This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

R. *No Assignment*: No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.

S. *Severability*: Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good

faith negotiations and proceed with due diligence to draft a term or condition that will achieve the original intent and purposes of the Parties hereunder.

- T. *Headings for Convenience:* Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit or describe the scope or intent of any provision of this Agreement.
- U. *Authority:* Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.
- V. *Execution of Agreement:* This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all signatories of the Parties.

[SIGNATURE] PAGES TO FOLLOW]

Exhibit A
ORDINARY MAINTENANCE

Cherry Hills Village - Ordinary Maintenance

- a. Headwall assembly on the south side of Hampden Avenue
- b. Wing wall assembly to include (toe wall and apron) on the south side of Hampden Avenue
- c. Approach sidewalks (path) slabs on the south side of Hampden Avenue
- d. Ordinary maintenance inside the Hampden Avenue Box Culvert to include:
 - 1. Snow and ice removal
 - 2. Graffiti removal
 - 3. General debris removal (trash/sweeping)
 - 4. Lighting, striping and signage
 - 5. Vagrancy
 - 6. Vegetation Control/Removal

City and County of Denver – Ordinary Maintenance

Ordinary maintenance inside the Colorado Boulevard Box Culvert to include;

- 1. Snow and ice removal
- 2. Graffiti removal
- 3. General debris removal (trash/sweeping)
- 4. Lighting, striping and signage
- 5. Vagrancy
- 6. Vegetation Control/Removal

Exhibit B
CAPITAL MAINTENANCE

CDOT - Capital Maintenance

CDOT is responsible for the integrity of the concrete within the Hampden Avenue Box Culvert to include:

1. Loss of Structural Integrity (Joint Separation, Misalignment, Seam Defects).
2. Maintenance and repairs of the precast concrete box sections to include:
 - a. Scaling
 - b. Delamination
 - c. Spalling
 - d. Efflorescence
 - e. Honeycombs
 - f. Pop-outs
 - g. Sectional joints
 - h. Sealant material
 - i. Culvert waterproofing
 - j. Sectional ties (hardware)
 - k. Concrete bike path/trail slab within the Hampden Avenue Box Culvert
 - l. Crack Sealing

City and County of Denver Capital Maintenance Colorado Underpass Box Culvert

1. Loss of Structural Integrity (Joint Separation, Misalignment, Seam Defects).
2. Maintenance and repairs of the precast concrete box sections to include:
 - a. Scaling
 - b. Delamination
 - c. Spalling
 - d. Efflorescence
 - e. Honeycombs
 - f. Pop-outs
 - g. Sectional joints
 - h. Sealant material
 - i. Culvert waterproofing
 - j. Sectional ties (hardware)
 - k. Concrete bike path/trail slab within the Colorado Box Culvert
 - l. Crack Sealing

EXHIBIT B

City and County of Denver Capital Maintenance Hampden Underpass Box Culvert

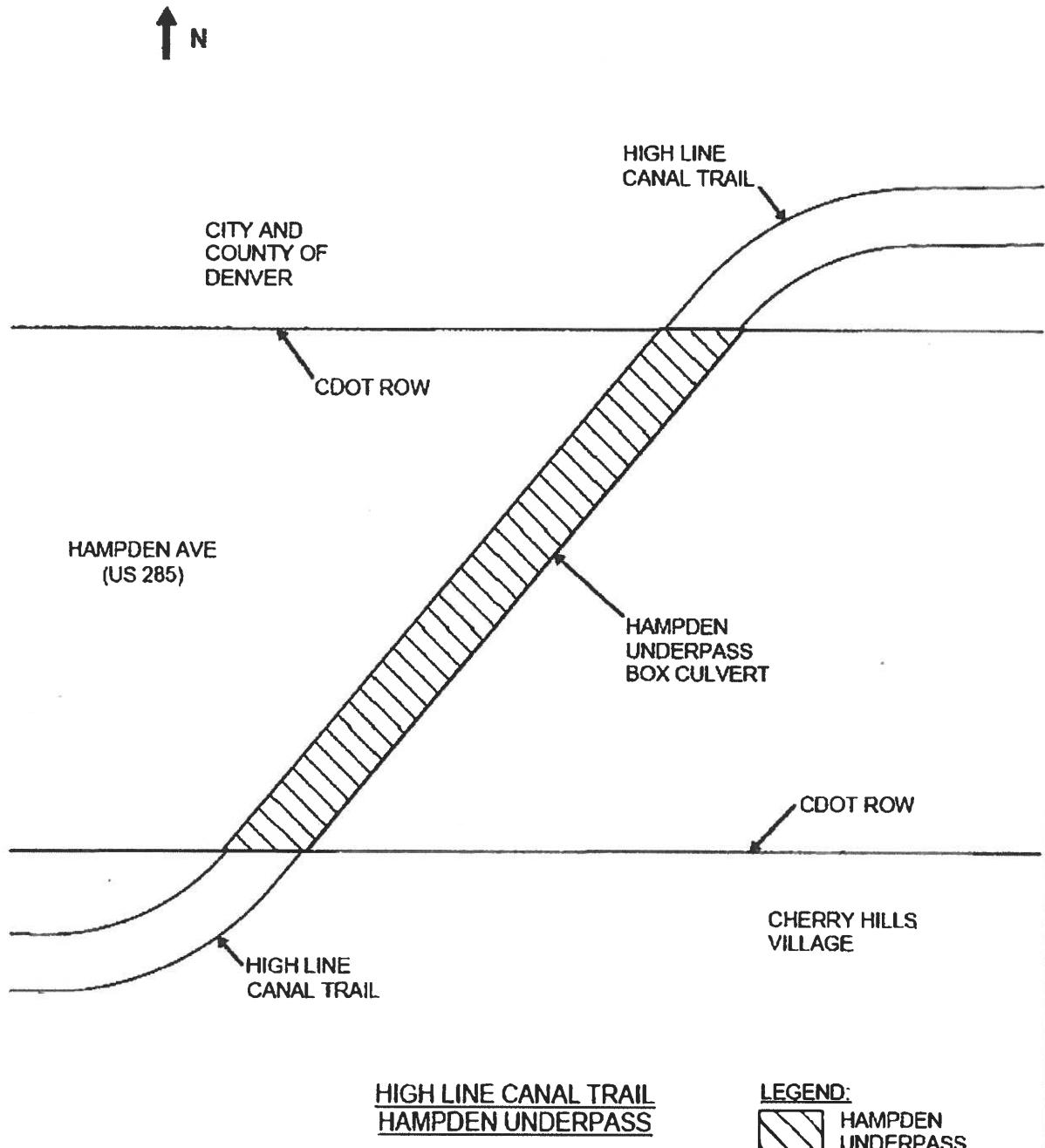
Denver will be responsible for capital maintenance of the concrete approach slabs leading up to the box culvert which are in its jurisdiction and outside of CDOT right of way.

Cherry Hills Village – Capital Maintenance

Cherry Hills Village will be responsible for capital maintenance of the concrete approach slabs leading up to the box culvert which are in its jurisdiction and outside of CDOT right of way.

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EXHIBIT C



HIGH LINE CANAL TRAIL
HAMPDEN UNDERPASS

LEGEND:
 HAMPDEN UNDERPASS

Contract Control Number: PWADM-201845040-00

Contractor Name: City of Cherry of Hills Village

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: PWADM-201845040-00

Contractor Name: City of Cherry of Hills Village

By: 

Name: Russell O. Stewart
(please print)

Title: Mayor
(please print)

ATTEST: [if required]

By: 

Name: Laura Gillespie
(please print)

Title: City Clerk
(please print)

