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Chuck Broerman
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El Paso County, CO
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RESOLUTION NO. 22-364

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION TO APPROVE AND ACCEPT A NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT WITH THE CITY OF FOUNTAIN FOR THE INSTALLATION OF UNDERGROUND ELECTRICAL TRANSMISSION LINES ADJACENT THE FOUNTAIN CREEK REGIONAL TRAIL IN FOUNTAIN CREEK REGIONAL PARK

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(c)-(d), 30-11-102, 30-11-103, and 30-11-107(1)(a), the Board of County Commissioners of El Paso County Colorado (hereinafter "Board" or "County") has the legislative authority to convey and sell real and personal property for the use of the County when deemed by the Board to be in the best interests of the citizens of El Paso County; and

WHEREAS, the County owns property upon which the City of Fountain ("Fountain") owns and maintains electrical transmission infrastructure in which it is necessary for Fountain to construct, maintain, change, renew, relocate, and/or enlarge and operate it transmission lines, both above and below ground, for the transmission and distribution of electrical energy; and

WHEREAS, due to construction necessary at or near Fountain's electrical infrastructure, it is necessary for the County to permit Fountain access to the property to enable Fountain to perform inspection, construction, reconstruction, operation, use, maintenance, repair, replacement, or removal of necessary infrastructure; and

WHEREAS, due to the foregoing, the County desires to grant a non-exclusive permanent easement to Fountain pursuant to the attached Non-Exclusive Permanent Easement Agreement, attached hereto as Exhibit 1, pursuant to the terms and conditions therein stated; and

WHEREAS, the Board has determined that it would serve the best interests of the public to approve granting the Non-Exclusive Permanent Easement from El Paso County to Fountain; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners hereby approves the Non-Exclusive Permanent Easement between El Paso County and the City of Fountain, subject to the terms and conditions cited therein.

BE IT FURTHER RESOLVED, that Stan VanderWerf, duly elected, qualified member and Chair of the Board of County Commissioners, or Cami Bremer, duly elected, qualified member and Vice-Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

Done this 1st day of November, 2022 at Colorado Springs, Colorado.

ATTEST:

By: _____
Chuck Broerman
County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: _____
Stan VanderWerf, Chair

NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT

This Non-Exclusive Permanent Easement Agreement ("Agreement") is made and entered into this _____day of _____, 2022, by and between El Paso County by and through the Board of County Commissioners of El Paso County, Colorado ("Grantor"), whose address is 200 South Cascade Avenue, Suite 100, Colorado Springs, Colorado, 80903 and the City of Fountain ("Grantee"), whose address is 116 South Main Street, Fountain, Colorado, 80817. Both Grantor and Grantee may hereinafter be collectively referred to as the "Parties."

Recitals

WHEREAS, Grantee has determined that its facilities described in Paragraph 1 should, for engineering and maximum efficiency purposes, be constructed along a certain utilities corridor; and

WHEREAS, Grantor owns real property (the "Property"), described in **Exhibit "A,"** attached hereto and incorporated herein by reference, through which Grantee's facilities described in Paragraph 1 below, as approved by Grantee, will pass.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreement contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

Agreement

1. **Conveyance of Permanent Easement.** Grantor hereby grants and conveys to the Grantee a perpetual non-exclusive easement, (the "Permanent Easement") to enter, occupy and use the property described in **Exhibit "B,"** attached hereto and incorporated herein by this reference, to construct, reconstruct, use, operate, maintain, repair, patrol, replace, enlarge or remove one or more electrical conduits, vaults, meters, switches, transformers, or any other utility structures related to the electrical transmission lines being installed, and all necessary underground or aboveground cables, wires and appurtenances thereto, including, but not limited to, electrical or other control systems, cables, wires, connections and surface appurtenances related to the electrical transmission lines being installed, (the "Improvements") in, through, over and across the Permanent Easement.

2. **Easement Map.** **Exhibit "C"**, attached hereto and incorporated herein by this reference, is a graphic representation of the Permanent Easement. In the event the legal description set forth in Exhibit B is inconsistent with the graphic representation in Exhibit C, the legal description in Exhibit B shall control.

3. **Ingress and Egress.** Grantee may access the Permanent Easement from any property owned by Grantor only through the use of existing or future access easements from or access agreements with Grantor. Such access may be utilized to perform construction, reconstruction, operation, use, inspection, maintenance, repair, replacement or removal of the Improvements.

4. **Additional Construction.** Grantee shall have the right to lay, construct, maintain, operate, alter, repair, patrol, remove, change the size of or replace, at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall not be lost by mere passage of time, and Grantor shall not stop, hinder or impede construction of such additional improvements or limit the same.

5. **Grantor's Rights Unaffected.** Except as provided in Paragraph 6 hereof, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Improvements.

6. **Surface Installations in Permanent Easement**. Grantor shall notify Grantee in writing of any structure or building that Grantor desires to construct or place on any part of the Permanent Easement. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such structure or building on the Improvements. Grantor shall work with Grantee to ensure that any such structure or building does not negatively impact Improvements. No structure or building may be erected on any part of the Permanent Easement without the mutual agreement of the parties. Any structure or building constructed or placed on, in, above, or under the Permanent Easement without the mutual consent of the parties as detailed above, may be removed by Grantee without liability for damages arising therefrom and Grantor shall reimburse Grantee for all expenses associated with

removing such violating structure or building. As used in this provision, "structure(s)" and "building(s)" include, but are not limited to the following: dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, playhouses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, dog runs, basketball/sports courts, retaining walls, posts, or poles.

The Grantor shall not undertake to construct or place improvements within the Permanent Easement that necessitate the relocation, reconstruction, removal, or abandonment of any of the Improvements that are located within the Permanent Easement.

Grantor reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), structures or buildings that do not interfere with Grantee's use of the Permanent Easement, trails with use limited to walking, bicycling, and horse-back riding, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

The foregoing notwithstanding, in no event shall Grantor:

(1) Construct or place, longitudinally along or otherwise within the Permanent Easement, any tree, underground pipeline, cable, wire, conduit or other utility without the prior written consent of Grantee, which shall not be unreasonably withheld or delayed; or

(2) Change, by excavation or filling, the present grade or ground level of the Permanent Easement by more than one foot without the prior written consent of Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration within the Permanent Easement of landfills, land excavations, water impoundments, and other land uses which might endanger or interfere with any Improvements, including Grantee's rights of maintenance and reasonable access.

7. **Surface Restoration to Land.** Grantee shall replace, repair or reimburse Grantor for the reasonable cost of replacement or repair for any physical damage done by or resulting from actions or operations of Grantee to the Property or any of Grantor's Improvements thereon, whether within or outside the Permanent Easement. Grantee, in constructing, using, patrolling, maintaining, repairing or altering the Improvements, shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Notwithstanding the foregoing, Grantee shall not be liable for damage to structures; buildings, or any other articles whatsoever, constructed or installed on the Permanent Easement in violation of the terms of this Agreement, including, but not limited to, any tree(s) which interfere with the Improvements or the rights granted herein.)

All backfill shall be placed in accordance with Section K.1.3.B of the El Paso County Engineering Criteria Manual. If the nearby spur of the Fountain Creek Regional Trail is disturbed, it shall be rebuilt to El Paso County Park's Tier III Trail specifications as depicted in **Exhibit "D."** Should a vegetated area be disturbed, whether through the installation, construction, reconstruction, operation, maintenance, repair, replacement, and/or removal of the Improvements, the disturbed area shall be revegetated using the low-grow seed mix as specified in **Exhibit "E."** Trees that are removed during the aforementioned processes do not need to be replaced but shall be revegetated with the specified low-grow seed mix.

8. **Maintenance of Permanent Easement.** Grantee shall have the right from time to time to cut, trim, control, and remove trees, brush and other obstructions which injure or interfere with the Grantee's use, occupation or enjoyment of the Permanent Easement or with the operation, maintenance, repair and patrolling of the Improvements without liability for damages arising therefrom.

10. Subjacent and Lateral Support. Grantor shall not impair the lateral or subjacent support for the Improvements. Grantee shall not impair the lateral or subjacent support for the Property either within or outside the Permanent Easement, or any of Grantor's Improvements thereon.

11. Binding Effect. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties.

12. Nature of Easement and Additional Uses. This Permanent Easement shall be permanent and run with the land. It shall also be deemed to touch and concern the land. Exercise of any rights in the Permanent Easement other than those retained by Grantor shall be within the sound discretion of Grantee. Grantee agrees to permit and authorize such other uses of the Permanent Easement, not reserved in Grantor, as will not impair Grantee's rights upon such reasonable terms, limitations, and conditions as Grantee shall find reasonably necessary to protect the right of occupancy of the Permanent Easement for Grantee's purposes without undue or unnecessary injury to or impairment of the estate retained by Grantor.

13. No Third Party Beneficiaries. Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause or action or other right.

14. Mechanics' and Materialmen's Liens. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Property for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly authorized by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Property.

15. Grantor Authority; "AS IS condition; and Grantee's Responsibility to Obtain Other Approvals. The Grantor covenants that it has the authority to grant the easement to and use of the Property as set forth herein to the extent it is owned by the Grantor. Grantee agrees and understands that it commences its use of the Property "AS IS" and without any warranties of any kind or nature, including without any warranties as to the state of the Grantor's title to the Property. Grantee acknowledges that the Property is a public facility and that the Grantor cannot completely control or be responsible for the acts of the public (excluding Grantor's employees, agents, and representatives) within the Property. Grantor agrees and understands that it is Grantee's responsibility to obtain any necessary approvals from, and/or address any applicable issues with, the following: private property owners; the U.S. Army Corps of Engineers regarding wetlands impacts; the U.S. Fish and Wildlife Service regarding impacts to listed species including, but not limited to, Preble's Meadow Jumping Mouse; and the Regional Floodplain Administrator regarding floodplain issues.

16. Waiver. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants or agreements herein contained, or the failure of either party in any one or more instances to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants or agreements, and no forbearance by either party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

17. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

18. Entire Agreement. This Agreement represents the entire agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto with respect to the subject matter of this instrument, unless stated in writing and signed by Grantee and Grantor.

19. Notice. All notices necessary or required under this Agreement ("Notice") shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to Grantee: City of Fountain
116 South Main Street
Fountain Colorado 80817

If to Grantor: Board of County Commissioners of El Paso County, Colorado
Attn: Todd Marts, Director
El Paso County Community Services Department
2002 Creek Crossing
Colorado Springs, CO 80906
Phone: (719) 520-6399

Notice given by personal delivery, overnight delivery or mail shall be effective upon actual receipt. The Parties may change any address to which Notice is to be given by giving notice as provided above of such change of address.

20. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over the Agreement, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

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

-SIGNATURES ON FOLLOWING PAGES-

NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT

GRANTOR:
(SEAL)

El Paso County

By: _____
Stan VanderWerf, Chair
El Paso County Board of County Commissioners

Attest

By: _____
County Clerk & Recorder

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____ as Chair, Board of County Commissioners of El Paso County, Colorado and as attested to by _____, County Clerk & Recorder.

Witness my hand and official seal.

My commission Expires: _____

_____(SEAL)
Notary Public

APPROVED AS TO FORM:

_____
County Attorney's Office

Exhibit 1

NON-EXCLUSIVE PERMANENT EASEMENT AGREEMENT

GRANTEE: CITY OF FOUNTAIN

By: _____
Name: Scott Trainor
Title: City Manager

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 14th day of October 2022 by Scott Trainor as City Manager, CITY OF FOUNTAIN.

Witness my hand and official seal.

My Commission Expires: 9/17/24

Notary Public Silvia Huffman (SEAL)

SILVIA HUFFMAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20004009569
MY COMMISSION EXPIRES 09/17/2024

APPROVED AS TO FORM:

Date: 10/11/22

City of Fountain
City Attorney Office – Utilities Division

Exhibit 1

EXHIBIT A

Parcel Schedule Number: 5606100019

Location: Trapper Lane

Acres: 8.23

Legal Description:

TRACT IN SE4 SEC 31-15-65 & NE4 SEC 06-16-65 AS FOLS, COM AT POI OF SLY LN OF SKYRUD SUB & W LN OF GRINDE DR, TH N 89<55'59" W ON SLY LN OF SD SUB EXT 309.52 FT FOR POB, N 27<52'55" E 193.68 FT, N 3'30'47" E 217.23 FT, N 01<50'04" W 262.79 FT, N 14<52'13" E 181.61 FT, N 40<47'25" E 144.58 FT, N 26<20'08" E 142.90 FT, N 19<54'52" E 152.62 FT, N 68<26'51" E 152.97 FT, N 03<22'19" E 82.15 FT, S 74<35'08" W 830.64 FT, S 21<09' E 158.86 FT, S 36<31'24" E 161.95 FT, S 06<07'51" E 187.22 FT, S 14<32'20" E 216.96 FT, S 11<48'08" E 189.22 FT, S 13<23'45" W 144.54 FT, S 05<10'45" E 124.80 FT TO A PT ON SLY LN OF SKYRUD SUB EXT, TH S 89<55'59" E 57.10 FT TO POB

Source: El Paso County Assessor's Office Real Estate Property Search

EXHIBIT B

A portion of that parcel of land described under Reception No. 097089175, records of El Paso County, being a portion of the Southeast Quarter of Section 31, Township 15 South, and a portion of the Northeast Quarter of Section 6, Township 16 South, all in Range 65 West of the 6th P.M., described as follows:

Bearings are based on the South line of Lot 2, Skyrud Subdivision Filing No. 2A as recorded under Reception No. 218714192, records of El Paso County, monumented at both ends with a #5 rebar and green plastic cap, stamped "PLS 38245", and is assumed to bear N 90°00'00" W, a field measured distance of 188.75 feet.

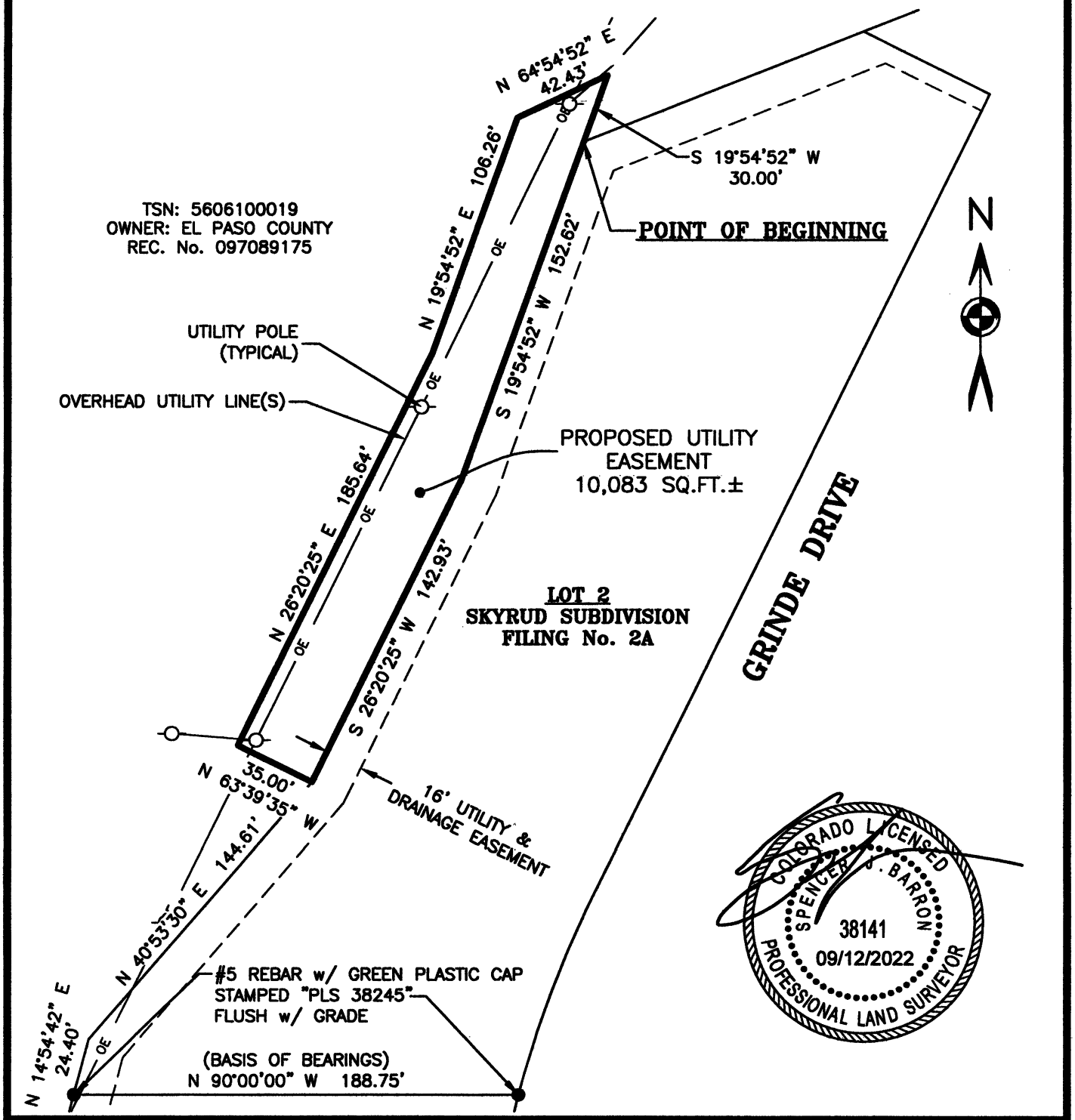
BEGINNING at the Northwest corner of said Lot 2;
thence the following two (2) courses along the Westerly line of said Lot 2:
1) S 19°54'52" W, a distance of 152.62 feet;
2) S 26°20'25" W, a distance of 142.93 feet;
thence N 63°39'35" W, a distance of 35.00 feet;
thence N 26°20'25" E, a distance of 185.64 feet;
thence N 19°54'52" E, a distance of 106.26 feet;
thence N 64°54'52" E, a distance of 42.43 feet;
thence S 19°54'52" W, a distance of 30.00 feet to the Point of Beginning.

Containing a calculated area of 10,083 square feet (0.23 acres) of land more or less.

Spencer J. Barron
State of Colorado Professional Land Surveyor No. 38141
For and on behalf of Barron Land, LLC

BARRON LAND
BOUNDARY ▲ MAPPING ▲ SURVEYING ▲ CONSTRUCTION
2790 N. Academy Blvd. Suite 311
Colorado Springs, CO 80917
P: 719.360.6827
F: 719.466.6527
www.BARRONLAND.com

EXHIBIT C



1" = 60'

60 0 60 120

BARRON LAND

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2790 N. Academy Blvd. Suite 311
Colorado Springs, CO 80917

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F: 719.466.6527

www.BARRONLAND.com

DATE: 09/12/2022 REV. DATE:

PROJECT No.: 21-037 SHEET 2 OF 2

EXHIBIT D

Crushed Limestone Trail Surfacing:

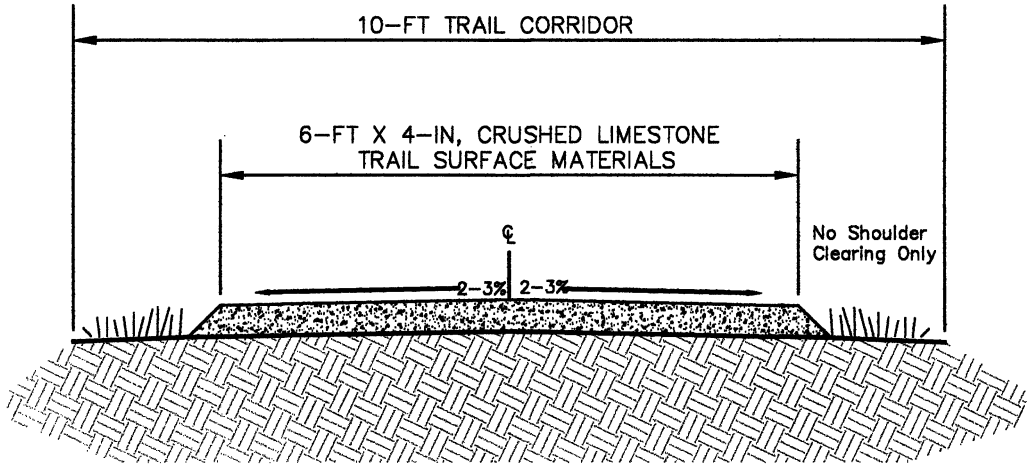
a. This item consists of supplying, placing and compacting crushed limestone surfacing on the existing base material and/or newly placed base course trail platform as described in project specifications, or as directed by the Engineer. This material is sometimes labeled as "crushed limestone", "Colorado white fines", or "breeze".
b. Crushed limestone surfacing shall consist of 3/8" minus crushed limestone to a compacted depth of 4" and meeting the following grading requirements:

• Sieve Size	% Passing
• Particle Size	% Passing
• 3/8"	100%
• #4	70 - 100%
• #8	45 - 70%
• #16	30 - 55%
• #30	20 - 45%
• #200	7 - 15%

c. The rock must be crushed into irregular and angular particles to allow interlocking into a tight matrix. The crushed rock must have adequate fines and some natural binders in order to cement the particles together after the fines are moistened, compacted, and allowed to dry. The fines, when laid to a depth of 4 inches, should bind to each other in a consolidated slab which is porous yet resistant to water falling on the surface. If the gradation of crusher fines does not meet the 7% passing the #200, clay fines may be added and mixed with the aggregate.
d. Crushed limestone surfacing shall be "dense grade" limestone. The material shall be uniform in quality and substantially free from extraneous material.
e. Limestone shall be placed with a method that provides a finished surface of evenly mixed material free from large pockets of separated rock.
f. Crushed limestone material shall be within +/- 2% of the optimum moisture content at time of compaction.
g. Crushed limestone shall be compacted by mechanical methods to 95% of Standard Proctor maximum dry density (per ASTM D698 or AASHTO T-99).

TIER III 6-FT DETAIL

NOT TO SCALE



EL PASO COUNTY TYPICAL DETAILS

EL PASO COUNTY TYPICAL TRAIL DETAILS

TIER III TRAIL

EL PASO COUNTY, COLORADO

DATE: APRIL 19, 2017
JOB NO. ****
DRAWN BY: N/A
CHECKED BY: N/A

EXHIBIT E

El Paso County Low Grow Mix (PB-32825-09)

Species	Purety	Germ	% Mix
Decotah Cert. Switchgrass	19.98%	90%	20%
Rocky Mountain Fescue	9.65%	95	10.00%
Green Needlegrass,	9.62%	97	10.00%
Slendor Wheatgrass	9.52%	97	10.00%
Western Wheatgrass	9.40%	92	10.00%
Indian Ricegrass	4.99%	90	5.00%
Sand Dropseed	4.57%	97	5.00%
Sandberg Bluegrass	4.94%	84	5.00%
Bluebunch Wheatgrass	4.57%	55	5.00%
Sideoats Grama	4.03%	95	5.00%
Blue Grama	4.00%	80	5.00%
Little Bluestem	3.79%	87	5.00%
Big Bluestem	3.16%	95	5.00%
Inert	7.11%	0	
Crop	0.15%	0	
weed	0.09%	0	