

WHEN RECORDED, RETURN TO:

South Farm, L.L.C.
Attn: Donald Wallace
4393 Riverboat Road #450
Salt Lake City, Utah 84123

10813085
10/08/2009 01:54 PM \$39.00
Book - 9769 Pg - 4639-4653
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: KSR, DEPUTY - WI 15 P.

ACCESS AND CONSTRUCTION AGREEMENT

This ACCESS AND CONSTRUCTION AGREEMENT is made and entered as of the
30th day of September, 2009, by and between the Utah Department of Transportation, a
department of the State of Utah, and South Farm, L.L.C., a Utah limited liability company.

RECITALS

- A. The capitalized terms used in these Recitals are defined in Section 1, below.
- B. South Farm and the Department have entered into a Right of Way Agreement and an Addendum thereto of even date regarding the donation of the Properties from South Farm to the Department for the purposes of the Department's constructing the MVC Project.
- C. That Right of Way Agreement and Addendum made certain provisions for design of and access to the Section.
- D. To make sure that the provisions for design and access rights related to the Benefitted Lands survive the closing of the transactions contemplated in the Right of Way Agreement and Addendum the parties mutually determined to enter into of this Agreement which the parties acknowledge is entered into and recorded after the donation of the Properties is completed.

NOW, THEREFORE, in consideration of \$10.00, the mutual covenants contained herein, and other good and valuable consideration (including, but not limited to, the reaffirmation of the obligations of the Parties after the closing of the Right of Way Agreement and Addendum), the

1*

receipt and sufficiency of which is hereby conclusively acknowledged, the Department and South Farm hereby agree to the following:

TERMS

1. **Definitions.** As used in this Agreement, the following terms are defined as follows:
 - 1.1. "Benefitted Lands" means those properties (of which the Properties were a part) illustrated on Exhibit "A" (denoted as being inside the "Project Boundary") to which the benefits of this Agreement are intended to run as more fully specified below;
 - 1.2. "Construction Contract" means the contract with the Contractor for the construction of Phase I.
 - 1.3. "Contractor" means the entity selected by the Department to construct Phase I.
 - 1.4. "Department" means the Utah Department of Transportation.
 - 1.5. "Frontage Roads" means those two one-way streets constructed as a part of Phase I.
 - 1.6. "MVC Project" means the Mountain View Corridor Project as described in the FEIS and ROD.
 - 1.7. "Phase I" means the initial phase of the MVC Project.
 - 1.8. "Phase II" means the second phase of the MVC Project.
 - 1.9. "Property" means the totality of the land conveyed by South Farm to the Department pursuant to the Right of Way Contract and Addendum of even date herewith.
 - 1.10. "Rosecrest" means the master planned community being developed by South Farm, through which a portion of the Mountain View Corridor Project passes.
 - 1.11. "Section" means the portion of the MVC Project between Redwood Road and 9000 South.
 - 1.12. "South Farm" means the owner of the property over which a portion of the MVC Project passes.

2. **Cooperation in Design.** The Department acknowledges that the precise location and design of the Section (including interchanges, access points, utility crossings and overall layout) is important to Grantor in terms of maximizing the developability of Rosecrest and in minimizing any adverse impacts of the MVC project on Rosecrest. The Department will involve Grantor in considering the design of those portions of the Section that impact Rosecrest.

3. **Construction of the Section.**

3.1. The portion of the Section running south from approximately 10200 South is intended to be constructed in multiple phases:

3.2. Phase I as constructed on the Property will include construction of the Frontage Roads. The Department shall require the design and construction of Phase I, to include the following access features to the Frontage Roads as illustrated in Exhibit "A":

3.2.1. At approximately 4000 West, 14700 South will extend across the Mountain View Corridor roadway (denoted as the "Interchange" on Exhibit "A"). When 14700 South is constructed and dedicated as a city street it will access the frontage roads via stop signs or traffic signal, depending on future warrant studies and funding.

3.2.2. At approximately 4500 West 14400 South, Rosecrest Road will extend across the Mountain View Corridor roadway (denoted as "Rosecrest Road" on Exhibit "A"). When Rosecrest Road is constructed and dedicated as a city street it will access the frontage roads via stop signs or traffic signal, depending on future warrant studies and funding

3.2.3. Where the Section crosses Juniper Canyon, a pedestrian trail crossing (denoted as the "Pedestrian Crossing" on Exhibit "A") under the Frontage Roads.

3.2.4. Additional connections to the Frontage Roads will be coordinated with the Grantor (as generally illustrated on Exhibit "A") up to a maximum of 5 total access points for every mile of the Section (which shall be measured on a rolling basis from each access to the next mile). The connection location for access point #3 on the Frontage Roads will be identified following analysis and design of the slip ramp locations. Each of these access points to the Frontage Roads shall be open to the public and shall comply in its location and design with all applicable siting and safety standards as required by the Department's rules. These access points will be described in the legal description by station and offset and a Limited Access line will be placed on the new property line at all other locations. Because these specific access points will be open to the public the Department shall not impose any charge on Grantor, Herriman City or others taking from or through Grantor (except for standard review and inspection fees for permits required to complete the access) for making the connections specified in Sections 3.2.1. 3.2.2 or 3.2.4 directly or indirectly to the Frontage Roads (as generally illustrated by the "Planned Roads" shown on Exhibit "A") or to any other roads

that may become Department roads and which connect to the Frontage Roads from the Benefitted Lands.

3.3.Phase II includes constructing a limited access freeway between the Phase I frontage roads including the following access features as illustrated in Exhibit "A":

- 3.3.1. The "Interchange" at approximately 4000 West 14700 South will be grade separated and, eventually, at the Department's discretion, the intersections with the Frontage Roads will be signalized.
- 3.3.2. The Rosecrest Road intersection will be converted to grade-separated crossing with access to the frontage roads but no access to the freeway portion of the MVC Project.
- 3.3.3. The Pedestrian Crossing at Juniper Canyon will be continued under the limited access freeway.

4. **Access to, from and across the Property.** The provisions specified below reserving to Grantor certain rights to use the Property shall survive the closing and the transfer of the Special Warranty Deeds:

4.1.Prior to Construction. The Department will allow the Grantor access through and/or across the Properties to the Benefitted Lands until issuance of Notice to Proceed for construction of the Section. Grantor shall not perform any construction, grading, utility work, or removal of material on the Properties except as approved through easements or permits.

4.2.During Construction of Phase I.

- 4.2.1. The Department acknowledges that Grantor may need to cross the Property during construction of Phase I. The Department shall convey to Grantor or its designee non-exclusive easements for the construction, operation and maintenance of roads, walkways and utilities across the Property in the vicinity of the crossings at Rosecrest Road, the Interchange and Juniper Crest Road (14700 South). The exact description of such easements shall be determined by UDOT upon consulting with Grantor and shall be consistent with the FEIS, the ROD and the Re-evaluation. Access locations across the corridor may need to be adjusted during critical construction operations and will be coordinated with the Grantor.
- 4.2.2. Grantor acknowledges that it is critical that the construction is not interrupted or impaired. However, the Department shall cause the Contractor to coordinate with Grantor for the use of the accesses provided in Section 3.2.1 as may be required by Grantor so long as such use does not cause the Contractor to incur any unreasonable costs that are not reimbursed by Grantor or any material time delays.

4.3. After Construction. If Grantor or the specified utility providers need to cross the Property after the completion of any phase of the construction of the Section for construction of any subsurface infrastructure Grantor or a specified utility provider may do so at the designated crossings and at its cost so long as the design and location of the crossing is coordinated with the Department. Grantor or the specified utility provider must obtain a permit and/or temporary construction easement or license from the Department for such crossings. Such a permit or easement shall be issued to Grantor or the specified utility provider at no cost other than the Department's standard processing and engineering review fees, but may include requirements to bore if utilities are to be placed under new pavement.

4.4. Dedication if Section not Built. If the Section is not built, the Department shall dedicate the land affected by the foregoing improvements to the City of Herriman. If Grantor desires to construct utility crossings at locations other than those set forth above, the Department shall consider such requests but shall have no obligation to approve any utility crossings that would interfere with the future construction or operation of the Section.

4.5. Indemnification. Grantor shall require anyone performing work or accessing the Department's property pursuant to this Section 4 to indemnify, defend and hold harmless the Department and its Contractors and subcontractors, in a form reasonably acceptable to the Department, from any claims or damages, including costs and attorneys fees, incurred by reason of performing the work permitted by this Section except for any such damage that may be caused by negligent or intentional conduct of the Department, its employees or its Contractors and subcontractors.

5. Utilities.

5.1. Sewer and Culinary Water Conduit Lines. The Department shall cause the Contractor to design, construct, purchase materials and install, at the Department's expense, a sanitary sewer and a culinary water conduit line across the Property from east boundary of the Property completely to the west boundary at each of the intersections/crossings at Juniper Crest Road (approximately 4700 West 14150 South, shown as "Access #1" on Exhibit "A"), 14700 South and Rosecrest Road as specified in Sections 3.2.1 and 3.2.1 and as generally illustrated on Exhibit "B". The design of the sanitary sewer and culinary water conduit lines shall be coordinated with Herriman City, Grantor, the South Valley Sewer District and the Jordan Valley Water District. The sanitary sewer and a culinary water conduit lines shall be appropriately and securely capped at the boundaries of the Property as generally illustrated in Exhibit "B". Upon completion the ownership of the sanitary sewer and a culinary water conduit lines shall be transferred to the South Valley Sewer District and the City, respectively, by a Bill of Sale. The Department shall not charge

any monies for the Grantor, the South Valley Sewer District or the City to connect to such lines.

5.2. Other Utility Crossings. The Department shall cause its Contractor to coordinate with Grantor, Herriman City, the South Valley Sewer District, the Jordan Valley Water District, Comcast, Qwest and Rocky Mountain Power for the design and construction of the intersections/crossings specified in Section 3.2.1. and 3.2.1. and Juniper Crest to maximize the ability of Grantor, Herriman City or any applicable utility providers to install required utility conduits during construction of the intersection/crossing. However, the Grantor, Herriman City and applicable utility providers cannot cause material delays to the project because of the coordination.

5.3. Juniper Canyon. If Juniper Canyon is crossed by the Section (either the Frontage Roads or the limited access freeway) by use of a system other than a bridge then the Department shall cause the Contractor to design, construct, purchase materials and install, at the Department's expense, a storm water pipeline, a secondary water line and/or a culinary water conduit line across the Property from east boundary of the Property completely to the west boundary at the Juniper Canyon crossing. The Department shall not charge any monies for the Grantor, the Jordan Valley District or the City to connect to such lines.

5.4. Storm Water. The Department shall consult with Herriman City in designing and constructing the storm water system for the Section to comply and coordinate with the storm water master plan for Herriman City.

6. **Running with the Land/Touch and Concern.** The parties acknowledge and intend that the rights granted pursuant to this Agreement run with the land benefitted by such rights as illustrated on Exhibit "A" and that such rights "touch and concern" both the Properties and with the land benefitted by such rights as illustrated on Exhibit "A".

7. **Notices.**

To Grantor: South Farm, L.L.C.
Attn: Donald Wallace
4393 Riverboat Road #450
Salt Lake City, Utah 84123

To the Department: Utah Department of Transportation
4501 South 2700 West, Box 148420
Salt Lake City, UT 84114

7. **Further Assurances.** Each Party shall execute, as and when requested and for no additional consideration, any additional documents necessary to implement the terms of this Agreement.

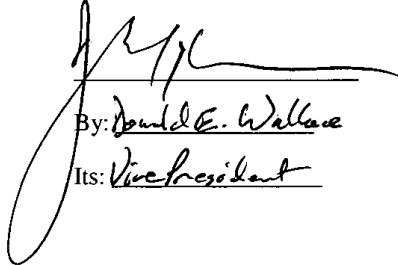
8. **Non-Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

9. **Governing Law/Venue.** This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of Utah. This Agreement shall be enforced and governed under the laws of the State of Utah, and jurisdiction for any action based on this Agreement shall be with the District Court of Salt Lake County, State of Utah.

10. **Complete Agreement.** This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

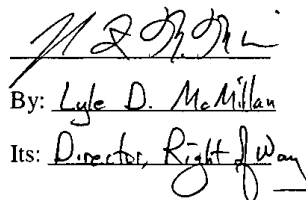
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

SOUTH FARM
South Farm, LLC



By: Donald E. Wallace
Its: Vice President

DEPARTMENT
Utah Department of Transportation



By: Lyle D. McMillan
Its: Director, Right of Way

Approved as to form and legality:

Deputy Attorney General

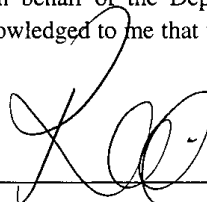
UDOT ACKNOWLEDGMENT

STATE OF UTAH)

:ss.

COUNTY OF SALT LAKE)

On the 20 day of ~~October~~ ^{September}, 2009, personally appeared before me Lynd D. Williams who being by me duly sworn, did say that he is the POW Director of the Utah Department of Transportation, a department of the State of Utah, and that said instrument was signed on behalf of the Department by authority of its governing body and said Director acknowledged to me that the Department executed the same.



NOTARY PUBLIC

My Commission Expires:

Residing at:

6-13-2012

SAC



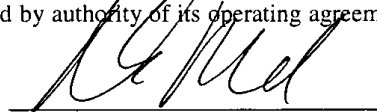
DEVELOPER ACKNOWLEDGMENT

STATE OF UTAH)

:SS.

COUNTY OF SALT LAKE)

On the 30th day of September, 2009, personally appeared before me Donald E. Wallace, who being by me duly sworn, did say that he is the Vice President of South Farm, LLC , a Utah limited liability company, and that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.



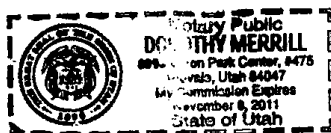
NOTARY PUBLIC

My Commission Expires:

11/10/2011

Residing at:

S. C. County

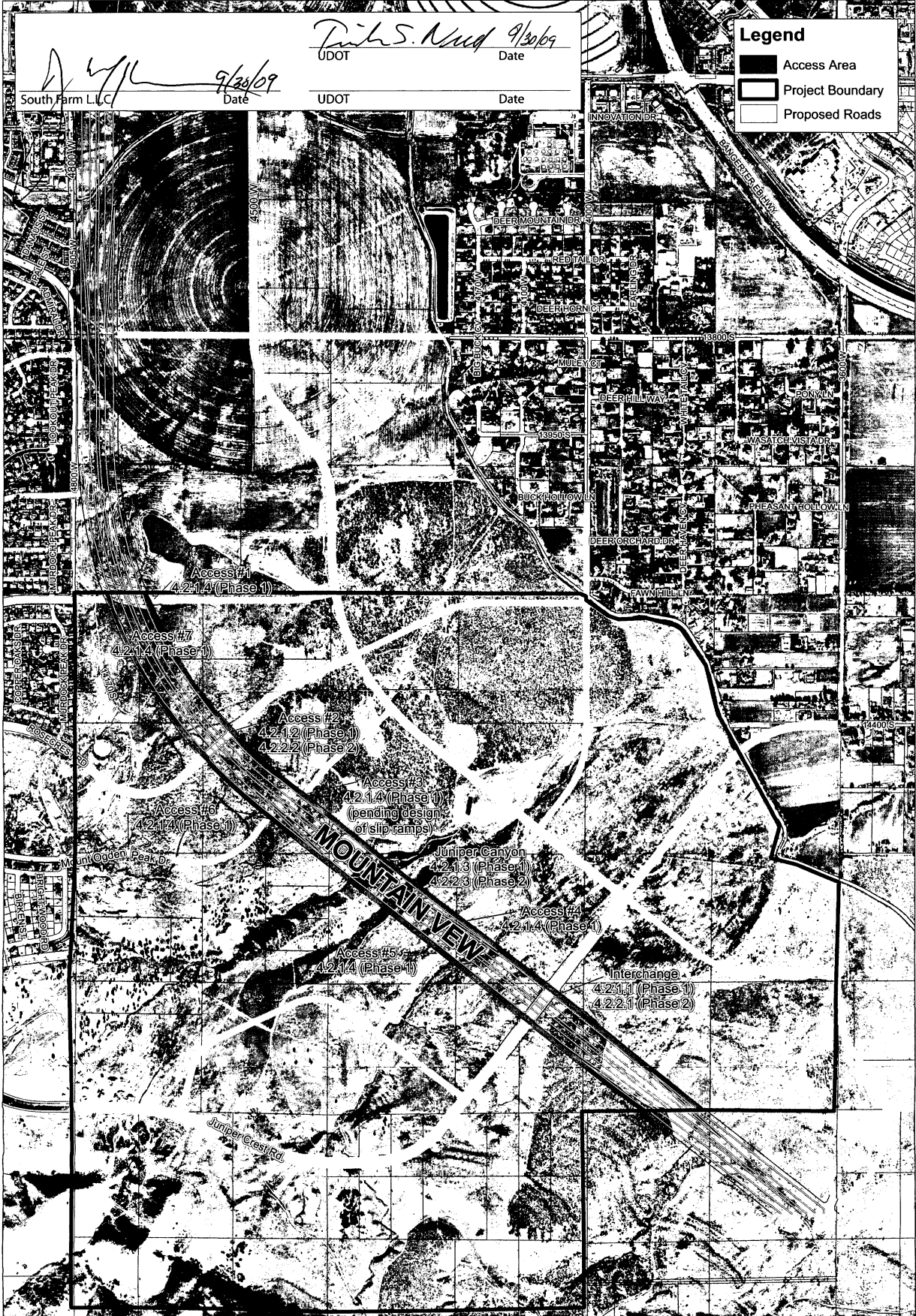


10*

BK 9769 PG 4648

Schedule of Exhibits

- Exhibit "A" Illustration of Access Points
- Exhibit "B" Schedule of Utility Crossings




A. W. J. 9/30/09
 South Farm L.L.C. Date

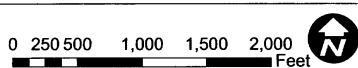
Tim S. Reed 9/30/09
 UDOT Date

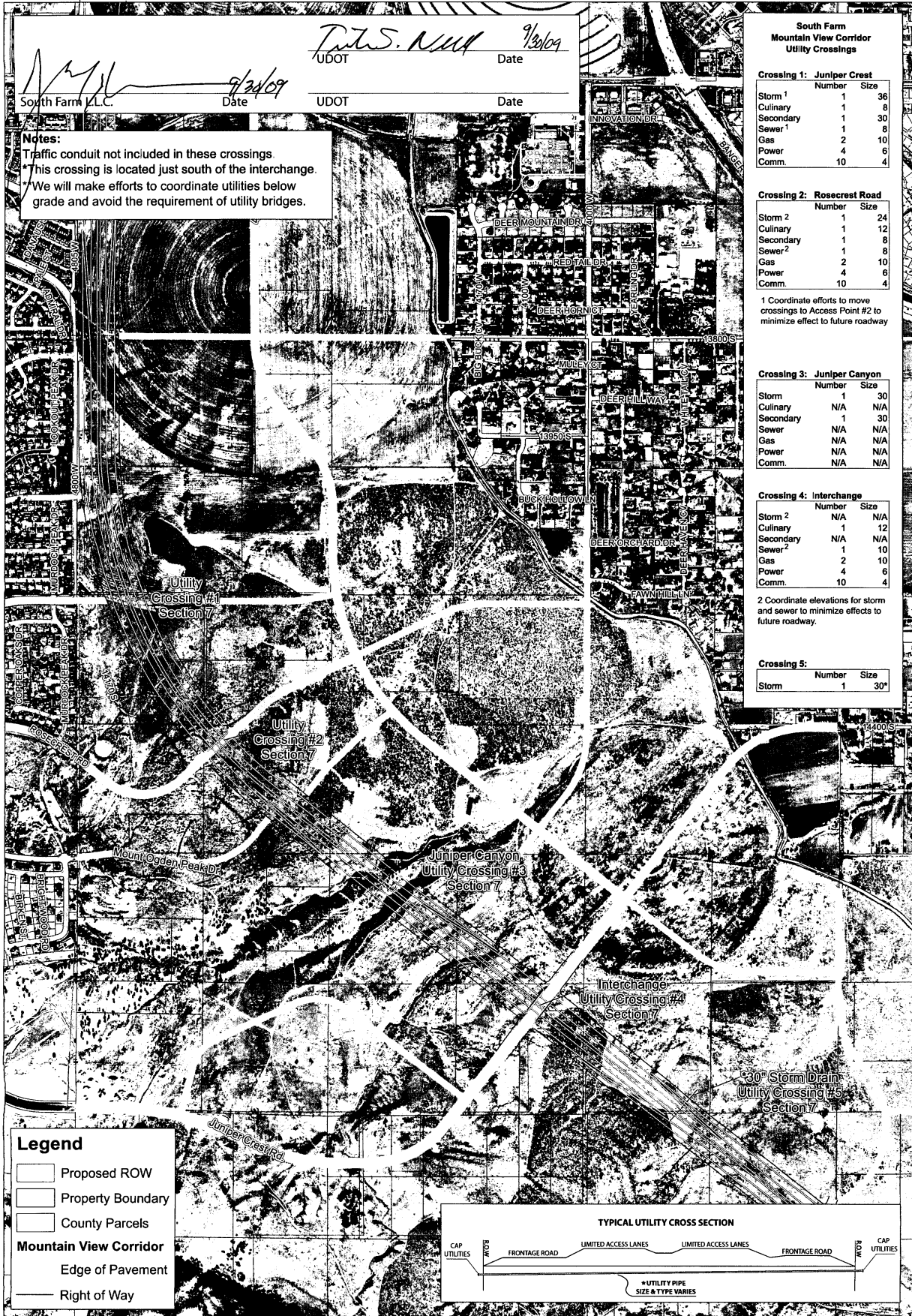
Legend

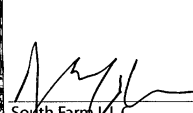
- Access Area
- Project Boundary
- Proposed Roads

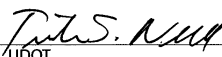
 The Sorenson Group

Mountain View
 Exhibit A: "Frontage Road Concept"






 Date: 9/24/09
 South Farm L.L.C.

Peter S. Nunn
 
 Date: 9/24/09
 UDOT

Notes:
 Traffic conduit not included in these crossings
 This crossing is located just south of the interchange.
 We will make efforts to coordinate utilities below grade and avoid the requirement of utility bridges.

South Farm Mountain View Corridor Utility Crossings

Crossing 1: Juniper Crest

	Number	Size
Storm 1	1	36
Culinary	1	8
Secondary	1	30
Sewer 1	1	8
Gas	2	10
Power	4	6
Comm.	10	4

Crossing 2: Rosecreek Road

	Number	Size
Storm 2	1	24
Culinary	1	12
Secondary	1	8
Sewer 2	1	8
Gas	2	10
Power	4	6
Comm.	10	4

1 Coordinate efforts to move crossings to Access Point #2 to minimize effect to future roadway

Crossing 3: Juniper Canyon

	Number	Size
Storm	1	30
Culinary	N/A	N/A
Secondary	1	30
Sewer	N/A	N/A
Gas	N/A	N/A
Power	N/A	N/A
Comm.	N/A	N/A

Crossing 4: Interchange




	Number	Size
Storm 2	N/A	N/A
Culinary	1	12
Secondary	N/A	N/A
Sewer 2	1	10
Gas	2	10
Power	4	6
Comm.	10	4

2 Coordinate elevations for storm and sewer to minimize effects to future roadway.



Crossing 5:

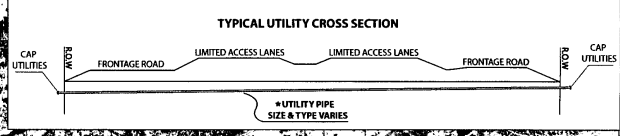
	Number	Size
Storm	1	30"

Legend

-  Proposed ROW
-  Property Boundary
-  County Parcels

Mountain View Corridor

-  Edge of Pavement
-  Right of Way



TAX PARCEL #'S

33-07-300-012-0000 AND 33-07-400-006-0000

**LEGAL DESCRIPTION
EAST HERRIMAN BOUNDARY**

A parcel of land lying in Sections 6, 7, 8, 17 and 18 in Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

BEGINNING at the Southwest corner of said Section 7; thence North 00°09'22" West along the west line of said Section 7 for 2693.831 feet to the West Quarter corner of said Section 7; thence North 00°07'48" West along the west line of said Section 7 for 2673.457 feet to the Northwest corner of said Section 7; thence South 89°53'57" East along the north line of said Section 7 for 2640.568 feet to the North Quarter corner of said Section 7; thence North 00°01'31" West along the centerline of said Section 6 for 1331.683 feet to the Northwest corner of the south half of the Southeast Quarter of said Section 6; thence South 89°45'31" East along the north line of the south half of the Southeast Quarter of said Section 6 for 1464.944 feet to the west line of the Welby Canal; thence along said canal for the following forty (40) courses; South 28°09'27" East for 48.044 feet; thence South 35°11'01" East for 310.277 feet; thence South 37°17'31" East for 165.659 feet; thence South 44°49'05" East for 112.612 feet; thence South 51°23'01" East for 215.838 feet; thence South 42°10'48" East for 52.329 feet; thence South 31°33'56" East for 106.838 feet; thence South 26°17'40" East for 212.555 feet; thence South 29°31'21" East for 106.223 feet; thence South 38°02'18" East for 58.641 feet; thence South 49°41'00" East for 161.798 feet; thence South 53°28'05" East for 229.399 feet; thence South 53°25'35" East for 44.402 feet; thence South 53°24'55" East for 174.082 feet; thence South 55°48'08" East for 160.484 feet; thence South 70°39'18" East for 54.337 feet; thence South 86°58'33" East for 56.348 feet; thence North 84°00'14" East for 161.248 feet; thence South 87°22'44" East for 52.180 feet; thence South 80°15'14" East for 270.231 feet; thence South 77°44'20" East for 52.132 feet; thence South 65°48'00" East for 51.809 feet; thence South 50°22'11" East for 50.211 feet; thence South 40°18'00" East for 51.808 feet; thence South 33°26'33" East for 241.730 feet; thence South 31°29'26" East for 154.228 feet; thence South 20°20'08" East for 106.043 feet; thence South 13°33'51" East for 423.556 feet; thence South 21°37'17" East for 56.533 feet; thence South 27°10'54" East for 412.294 feet; thence South 28°35'35" East for 433.534 feet; thence South 31°31'04" East for 428.536 feet; thence South 19°55'19" East for 50.061 feet; thence South 00°54'13" East for 47.742 feet; thence South 20°48'38" West for 158.104 feet; thence South 13°19'41" West for 59.086 feet; thence South 35°53'24" East for 60.836 feet; thence South 74°29'39" East for 212.583 feet; thence South 67°35'12" East for 100.955 feet; thence South 67°18'51" East for 355.561 feet to a point on the north-south centerline of said Section 8; thence South 00°48'17" West along said north-south centerline for 1031.406 feet to the Northeast corner of the Southeast Quarter of the Southwest Quarter of said Section 8; thence South 89°38'38" West along the north line of the Southeast Quarter of the Southwest Quarter of said Section 8 for 1318.984 feet to the Northwest corner of the Southeast Quarter of the Southwest Quarter of said Section 8; thence South 00°38'06" West along the west line of the Southeast Quarter of the Southwest Quarter of said Section 8 for 1338.858 feet to the Southwest corner of the Southeast Quarter of the Southwest Quarter of said Section 8; thence South 89°26'52" West along the south line of the Southwest Quarter of the Southwest Quarter of said Section 8 for 1315.112 feet to the Southwest corner of said Section 8; thence North 00°27'58" East along the east line of said Section 7 for 938.443 feet; thence North 89°18'16" West for 660.00 feet; thence South 00°28'17" West for 990.000 feet to the south line of said Section 7; thence North 89°18'16" West along the south line of said Section 7 for 1318.955 feet to the northeast corner of the northwest quarter of the northwest quarter of the northeast quarter of said Section 18; thence South 00°08'10" East for 660.237 feet to the southeast corner of the

northwest quarter of the northwest quarter of the northeast quarter of said Section 18; thence North 89°13'15" West for 331.318 feet to the southwest corner of the northwest quarter of the northwest quarter of the northeast quarter of said Section 18; thence South 00°00'26" East for 659.734 feet to the southeast corner of the west half of the southwest quarter of the northwest quarter of the northeast quarter of said Section 18; thence South 89°08'17" East for 998.435 feet to the northeast corner of the southwest quarter of the northeast quarter of said Section 18; thence South 00°23'36" East along the east line of said southwest quarter for 1322.507 feet to the southeast corner of said southwest quarter; thence South 88°58'28" East along the east-west center line of said Section 18 for 1343.200 feet to the West Quarter corner of said Section 17; thence North 00°54'21" West for 250.435 feet; thence North 89°06'19" East for 989.004 feet; thence North 00°54'21" West for 662.000 feet; thence North 89°06'19" East for 1598.184 feet to the north-south center line of said section; thence South 00°31'23" West along said north-south center line for 1117.083 feet; thence South 88°45'14" West for 2569.325 feet to the west line of said section; thence South 01°40'53" West along said west line for 1354.395 feet; thence North 89°07'16" West along a line parallel with and (262.75 feet) perpendicular to the south line of the north half of the southeast quarter of said Section 18 for 3617.516 feet to the west line of Government Lot No.12; thence North 00°12'38" East along said west line for 2899.936 feet to the northwest corner of Government Lot No.6; thence South 89°07'18" East along the north line of said Lot No. 6 for 969.584 feet to the northwest corner of the southwest quarter of the northeast quarter of said Section 18; thence North 00°07'19" East along the north south center line of said Section 18 for 1318.467 feet to the North Quarter corner of said Section 18; thence North 89°16'13" West along the north line of said Section 18 for 2586.177 feet to the POINT OF BEGINNING.

Containing 1169.6056 Acres. Gross

LESS AND EXCEPTING TRACT #1

Parcel 33-07-100-005 described as the south half of the east half of the northwest quarter of the northwest quarter of Section 7, Township 4 South, Range 1 West, Salt Lake Base and Meridian, being more particularly described as: Commencing at the Northwest corner of Section 7, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 89°53'57" East along the north line of said section for 660.142 feet; thence South 00°00'44" West for 668.717 feet to the northwest corner of the south half of the east half of the northwest quarter of the northwest quarter of said section, said corner being the POINT OF BEGINNING; thence South 89°52'05" East along the north line of said south half for 658.485 feet to the northeast corner of said south half; thence South 00°09'15" West along the east line of said south half for 669.074 feet to the southeast corner of said south half; thence North 89°50'13" West along the south line of said south half for 656.829 feet to the southwest corner of said south half; thence North 00°00'44" East along the west line of said south half for 668.717 feet to the POINT OF BEGINNING.

Containing 10.0988 acres.

ACREAGE TOTALS

East Herriman Boundary Gross	1169.6056
<u>Less and Except Tracts 1</u>	<u>10.0988</u>
East Herriman Boundary Net	1159.5068

September 4, 2008

N:\SL0006-BP\Documents\Legal Descriptions\East Herriman Bndy.doc