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**GARY W. OTT**  
 RECORDER, SALT LAKE COUNTY, UTAH  
 SOUTH JORDAN  
 1600 W TOWNE CENTER DR  
 SOUTH JORDAN UT 84095-8265  
 BY: KLD, DEPUTY - WI 15 P.

**When Recorded Return to:**

Anna West  
 City Recorder  
 South Jordan City  
 1600 West Towne Center Drive  
 South Jordan, UT 84095

**AGREEMENT**

**THE AGREEMENT**, made and entered into this 22nd day of October, 2008, by and between **WEST JORDAN CITY**, a municipal corporation, hereinafter called "WJC" and **SOUTH JORDAN CITY**, a municipal corporation, hereinafter called the "SJC."

**WITNESSETH:**

**WHEREAS**, SJC desires to obtain from WJC, a perpetual nonexclusive right of way and easement to lay, maintain, operate, repair, inspect, protect, install, remove, and replace certain specified water pipelines, valves, and other water transmission and distribution structures, and facilities, hereinafter called "Facilities" within certain specified property, highways, streets, roads, alleys, and/or rights of way which are within the jurisdiction and responsibility of WJC, together with the right of ingress and egress in SJC, its officers, employees, agents, contractors, and assigns to enter upon said public rights of way with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, remove and replace said Facilities; and

**WHEREAS**, WJC is willing to grant said easement and rights of way under terms and conditions set forth in this Agreement,

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. WJC hereby grants, conveys, sells and sets over unto SJC, its successors and assigns, a perpetual nonexclusive easement to lay, maintain, operate, repair, inspect, protect, install, remove, and replace water pipelines, valves, and other water transmission and distribution structures and facilities, (the Facilities) over and through the property specified in Appendix A, which is property owned by WJC, together with the right of ingress and egress in SJC, its officers, employees, agents, contractors, and assigns to enter upon said property with such equipment as is necessary to install, maintain, operate, repair, inspect, protect remove and replace the Facilities. WJC will execute and deliver a written evidence of easement in recordable form at the request of SJC.

2. Grant of Rights of Way. WJC hereby grants, conveys, sells and sets over unto SJC, its successors and assigns, perpetual nonexclusive rights of way to lay, maintain, operate, repair, inspect, protect, install, remove, and replace the Facilities) over and through certain highways, streets, roads, alleys, and public rights of way specified on Appendix B (hereinafter collectively called "streets") which are within the jurisdiction and responsibility of WJC, together with the right of ingress and egress in SJC, its officers, employees, agents, contractors, and assigns to enter upon said streets with such equipment as is necessary to install, maintain, operate, repair, inspect, protect remove and replace the Facilities.

3. Construction and Location. The Facilities shall be installed at those locations within the streets as shall be determined in accordance with plans, specifications and maps prepared by SJC's engineer and approved by WJC's Engineer, provided that SJC shall give WJC's senior Engineer at least 48 hours electronic written notice prior to the commencement of construction. A print of the drawings showing the proposed location of the Facilities shall be submitted to WJC's Engineer who shall review the same prior to commencement of the work. WJC's Engineer shall thereafter give approval to SJC as expeditiously as possible. Upon compliance with this Agreement and applicable permit requirements a permit shall issue from WJC to SJC's contractor allowing said contractor to proceed with the work in accordance with the terms hereof. All construction shall be carried forward to completion in accordance with SJC's plans and specifications previously approved by WJC's Engineer. Following completion of construction, numbered detail sheets will be furnished to WJC showing the distance from the right of way line to the pipeline center line in all streets and public rights of way, and other clear location identification for non right of way properties, where said Facilities are installed. All applicable regulations of WJC pertaining to excavation of the trench shall be fully complied with by the contractor.

3. Protection of Traffic During Construction. SJC shall require its contractor to conduct its construction operation so that there shall be a minimum of interference or interruption to WJC with respect to the handling of traffic. SJC's contractor shall at all times require such watchmen, barricades, lights, or other reasonable measures for the protection of traffic as may be reasonably required to warn and safeguard the public against injury or damage during construction of the Facilities and shall hold WJC harmless from any and all liabilities arising from said construction commenced under the terms of this easement.

4. Compaction of Backfill. The backfilling of any trench within the paved portion of the street the shoulders thereof, or the portion under or intersecting the street shall be thoroughly compacted. The method of compaction shall be subject to review by WJC at the time the plans and

specifications are reviewed by WJC's Engineer. SJC shall require its contractor to comply with WJC's standard permit requirements.

5. Restoration of Existing Pavement; Damages. SJC shall require its contractor to replace any hard surface removed or damaged with the same type and depth of hard surface as that which is adjoining, including the gravel base material. In the event weather conditions do not permit immediate replacement of permanent hard surface, a temporary surface shall be placed until such time as weather conditions are favorable, at which time the temporary surface shall be removed and replaced with a permanent road surface. If the gravel surface, gravel shoulder, or gravel surface approach roads become fouled with clay or other unsuitable material, such surfacing shall be removed and replaced with new gravel surfacing material. The repairs to hard surface shall include hard surfaces which are damaged by construction equipment used in constructing the Facilities. In all cases the SJC hereby agrees to cause its contractor to restore those portions of the street through which the work actually traverses, to as near its original condition as is reasonably possible. SJC will take full responsibility to repair, restore and/or compensate for any damage done to City property, private property in WJC, or to persons in connection with the construction of the Facilities. Any restoration construction work performed by SJC or its contractor shall have a warranty for the benefit of WJC warranting the quality and durability of the restoration construction work for a period of one (1) year from the completion of the work and its acceptance by WJC.

6. Disposal of Surface Material in Cleaning Up Street. Upon completion of the work all surplus material shall be removed from within the limits of the street. The disturbed surface shall be carefully graded to the lines and grades established. Any highway facility such as signs and culverts which are disturbed or damaged during the process of the work shall be promptly restored to as near their original condition as is reasonably possible.

7. Maintenance of Facilities by SJC. The Facilities and their attached appurtenances shall at all times be maintained repaired and operated by and at the expense of SJC; provided that SJC and/or its contractor shall seek and obtain all needed permits from WJC prior to any excavation/encroachment work on the Facilities located within WJC's rights of way or under City property, and shall notify WJC's senior engineer at least 48 hours prior to setting up any cones or other traffic diversion mechanisms associated with maintenance of the Facilities.

8. Reconstruction of Street. In the event that any street or portion thereof is so reconstructed at any future date as to location grade or width so as to require the adjustments of water valves SJC shall assume and pay all costs incident to the adjustment of water valves or other facilities thereof.

Any such work shall include a warranty for the benefit of WJC as described in section 5, above.

9. Crossing of Facilities and Expansion of Street System; Possible Relocation of Facilities. It is expressly understood and agreed by the parties hereto that as part of the consideration for this Agreement that WJC shall have the right to cross said Facilities at any point deemed necessary in the future construction and expansion of WJC street system provided that WJC shall use due care and diligence in the protection of the Facilities in making such crossings. In this connection SJC agrees to the mandatory relocation of its Facilities at its sole cost and expense if deemed necessary by WJC in connection with any such future construction and expansion activities by WJC in its rights of way. Moreover WJC may construct or cause to be constructed curb and gutter and/or sidewalk over the area through which the Facilities will lay. Such construction is at the sole discretion of WJC, and any access at such points to the Facilities by SJC will require SJC to repair such curb, gutter and/or sidewalk. Any requirement by WJC for the mandatory relocation of SJC Facilities pursuant to this agreement shall be proceeded by no less than six (6) months written notice to SJC.

10. Indemnification. SJC agrees to indemnify and hold harmless WJC from claims, demands, judgments, costs, expenses and damage of every kind and nature suffered or incurred by or on behalf of any person or entity arising out of injury to or death of any person or damage to the property of any person resulting from the construction, maintenance, operation, repair and use of SJC's Facilities. WJC agrees to indemnify and hold harmless SJC from claims, demands, judgments, costs, expenses and damage of every kind and nature suffered or incurred by or on behalf of any person or entity arising out of injury to or death of any person or damage to the property of any person resulting from the construction, maintenance, operation, repair and use of WJC's streets. This Agreement shall in no manner constitute an admission of any liability as to any third party or give any third party any greater or further right or cause of action. It is hereby expressly understood and agreed that neither WJC nor SJC is hereby acknowledging any liability for any act of negligence, whether of omission or commission, of their respective agents, servants, contractors or employees.

11. Agreement Not to be Assigned. Neither party shall assign this Agreement or any interest hereunder without the prior written consent of the other party first obtained.

12. Successors and Assigns. All covenants and agreements herein contained shall be binding upon the parties hereto and their respective successors in interest and assigns.

13. Conveyed Property Rights Subject To Prior Rights in WJC. The easement over property and the rights of way through City streets provided for in this Agreement are subject to the right of WJC at all times as WJC deems necessary to construct roads sidewalks or to carry out any other municipal purpose over or through the areas covered by this easement and/or the rights of way. When SJC's Facilities and appurtenances or any of them materially interfere with any WJC municipal purpose SJC will remove and or relocate such Facilities and appurtenances within a reasonable time after notice to do so by WJC and at the sole expense of SJC.

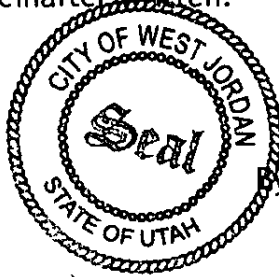
14. Governmental Immunity. No provision in this Agreement, expressed or implied, shall be construed to be a waiver of either party's rights or defenses otherwise available under the Governmental Immunity Act of Utah.

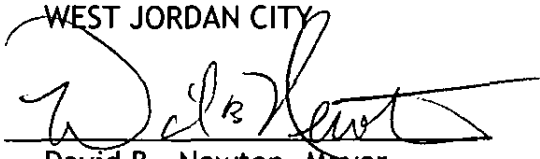
15. Default. If either party is in default under this Agreement for a period of (a) fifteen (15) calendar days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty (30) calendar days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any and all remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement and declare it void *ab initio*. If the non-monetary default may not reasonably be cured within a thirty (30) calendar day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty (30) calendar day period and proceeds with due diligence to fully cure the default.

16. Cash Consideration. SJC shall pay to WJC at signing the discounted flat fee of \$3000, representing \$1000 per right of way and easement, except for the pre-existing 1300 West right of way which is being provided *gratis*. The parties acknowledge the nominal nature of these fees, given the market price for easements and rights of way calculated on a square foot basis.

[proceed to signature page]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective, duly authorized representative as of the day and year first hereinafter written.



WEST JORDAN CITY  
 By:   
 David B. Newton, Mayor

STATE OF UTAH )  
 ) :SS  
 COUNTY OF SALT LAKE )

On this 29 day of October, 2008, personally appeared before me David B. Newton, who being by me duly sworn did say that he is the Mayor of WEST JORDAN CITY, and that the foregoing instrument was signed in behalf of said municipal corporation and political subdivision of the State of Utah, and he acknowledged to me that said corporation executed the same.

  
 NOTARY PUBLIC




Residing in Salt Lake County, Utah

My commission expires: May 30, 2009

Approved as to form:

  
 Assistant City Attorney

SOUTH JORDAN CITY

By:   
 John Geilman, City Manager

ATTEST:

  
 City Recorder



**APPENDIX A**

**LEGAL DESCRIPTION  
15' WATERLINE EASEMENT  
WEST JORDAN CITY**

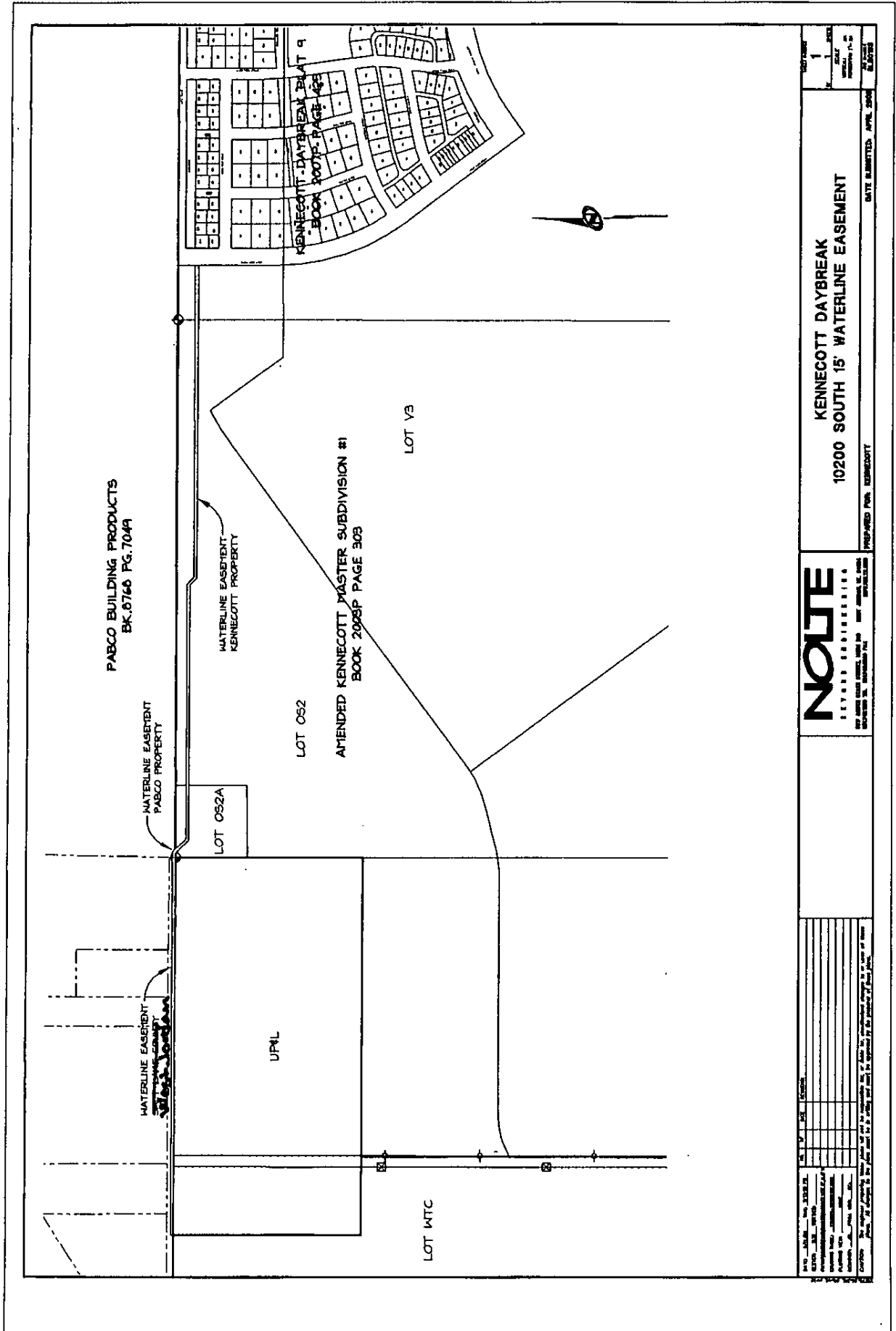
A fifteen (15) foot wide waterline easement, located in the Southeast Quarter of Section 11, Township 3 South, Range 2 West, Salt Lake Base and Meridian, said easement extending seven and one half (7.5) feet on each side of and lying parallel and adjacent to the following described centerline:

Commencing at the Southeast Corner of Section 11, Township 3 South Range 2 West, Salt Lake Base and Meridian (the basis of bearing being North 89°57'24" East - 2699.959 feet between the Southwest Corner and the South Quarter Corner of said Section 12) and running thence North 01°02'49" East for 7.501 feet to the POINT OF BEGINNING; thence North 89°55'04" West parallel to and being 7.50 feet north of the south line of said Section 11 for 1890.127 feet to the END of this description.

EXCEPTING THEREFROM any portion lying outside the boundaries of West Jordan City.

Contains: (approx. 1,890 l.f.)

Exhibit "A"



<p><b>NOTICE</b>          SEVEN SUBDIVISIONS          FOR WHICH THESE PLANS WERE FILED ARE OPEN TO THE PUBLIC FOR RECORDATION IN THE PUBLIC RECORDS OF THE STATE OF ALASKA.</p>		<p><b>KENNECOTT DAYBREAK</b>  <b>10200 SOUTH 15' WATERLINE EASEMENT</b></p>	<p>DATE SUBMITTED: APRIL 2000</p>
<p>DATE: 4/10/00          DRAWN BY: J. J. JENSEN          CHECKED BY: J. J. JENSEN          APPROVED BY: J. J. JENSEN          TITLE: PLANNING ENGINEER</p>	<p>SCALE: 1" = 100'          SHEET NO.: 1 OF 1          PROJECT NO.: 10200</p>	<p>PREPARED FOR: KENNECOTT</p>	



**Exhibit "B - 1"**

**Legal Description**

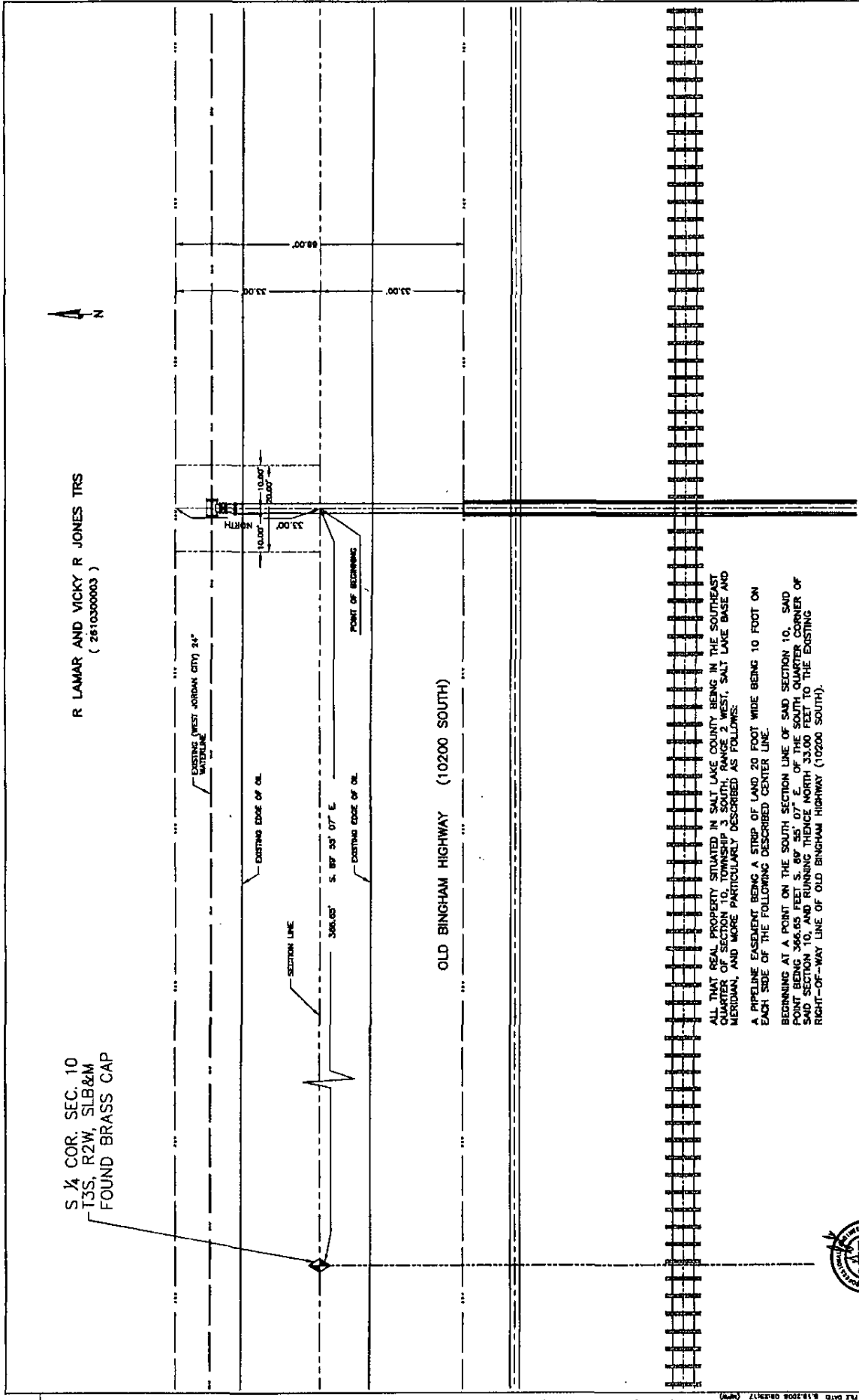
**20 Foot Water Line Right of Way (10200 South 6710West)**

All that real property situated in Salt Lake County being in the Southeast Quarter of Section 10, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and more particularly described as follows:

A pipeline right of way being a strip of land 20 foot wide being 10 foot on each side of the following described center line.

Beginning at a point on the south section line of said section 10, said point being 366.65 feet South  $89^{\circ}55'07''$  East of the South Quarter Corner of said Section 10, and running thence North 33.00 feet to the existing right-of-way line of Old Bingham Highway (10200 South).

# Exhibit "B-1"



S 1/4 COR. SEC. 10  
-T35, R2W, SLB&M  
FOUND BRASS CAP

R LAMAR AND VICKY R JONES TRS  
( 2810300003 )

OLD BINGHAM HIGHWAY (10200 SOUTH)

ALL THAT REAL PROPERTY SITUATED IN SALT LAKE COUNTY BEING IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
A PIPELINE EASEMENT BEING A STRIP OF LAND 20 FOOT WIDE BEING 10 FOOT ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE.  
BEGINNING AT A POINT ON THE SOUTH SECTION LINE OF SAID SECTION 10, SAID POINT BEING 366.65 FEET S. 89° 35' 07" E. OF THE SOUTH QUARTER CORNER OF SAID SECTION 10, AND RUNNING THENCE NORTH 33.00 FEET TO THE EXISTING RIGHT-OF-WAY LINE OF OLD BINGHAM HIGHWAY (10200 SOUTH).

		SHEET 2 OF 2
PROJECT: ZONES NO. 6 AND NO. 7 PIPELINES SOUTH JORDAN CITY CROSSING NO. 2 EASEMENT		SCALE: AS SHOWN
DESIGNED BY: [ ]	CHECKED BY: [ ]	DATE: JUNE 2008
DRAWN BY: [ ]	DATE: [ ]	REVISIONS:
CLIENT: Kennecott Land 5295 South 350 West Suite 473 Murray, UT 84107		

**Exhibit "B -2"**

**Legal Description**

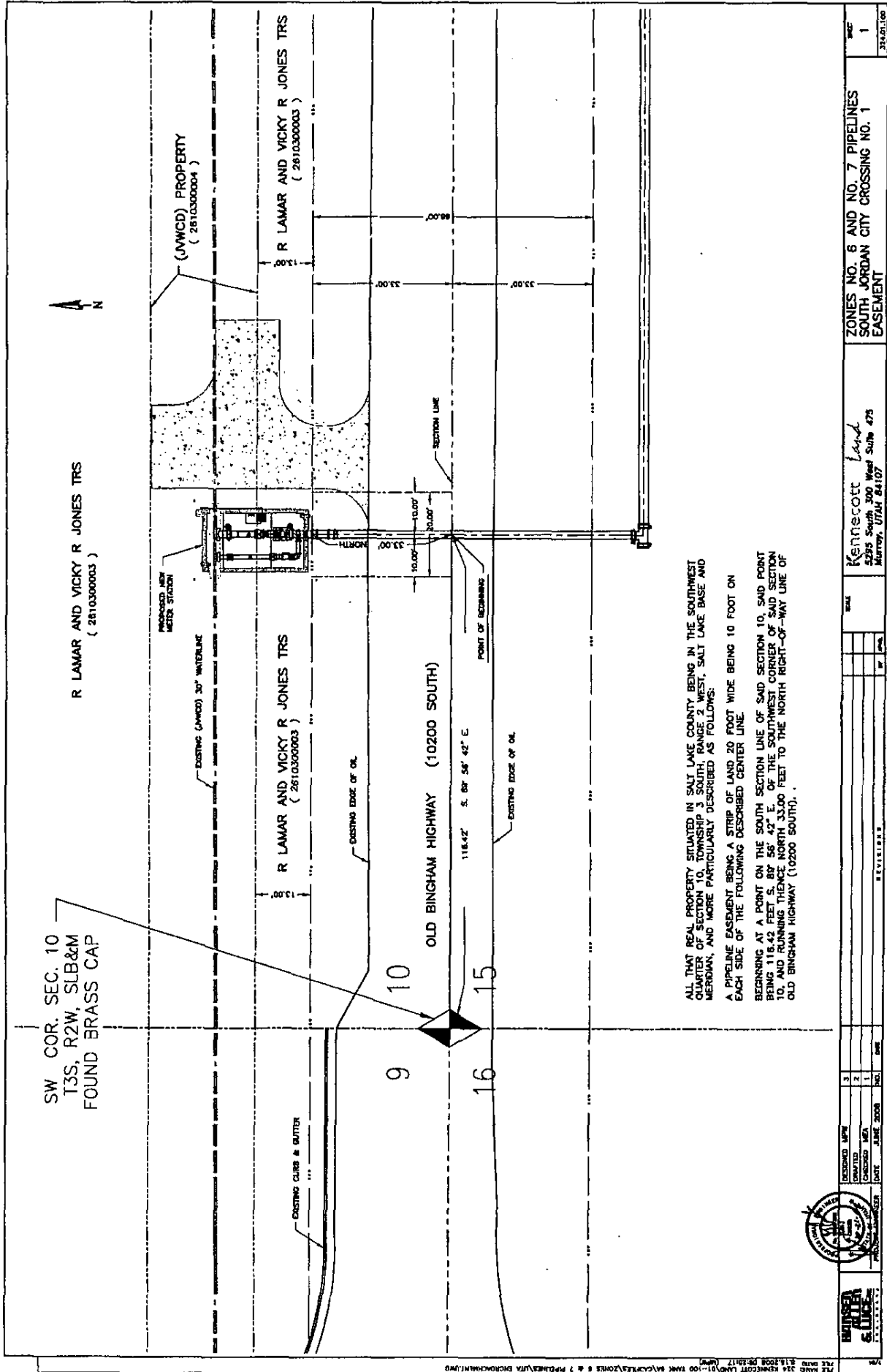
**20 Foot Water Line Right of Way (10200 South 7156West)**

All that real property situated in Salt Lake County being in the Southwest Quarter of Section 10, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and more particularly described as follows:

A pipeline right of way being a strip of land 20 foot wide being 10 foot on each side of the following described center line.

Beginning at a point on the south section line of said section 10, said point being 116.42 feet South 89°56'42" East of the Southwest Corner of said Section 10, and running thence North 33.00 feet to the existing right-of-way line of Old Bingham Highway (10200 South).

# Exhibit "B-2"



ALL THAT REAL PROPERTY SITUATED IN SALT LAKE COUNTY BEING IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 3, SOUTH, RANGE 2, WEST, SALT LAKE BASE AND MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 A PIPELINE EASEMENT BEING A STRIP OF LAND 20 FOOT WIDE BEING 10 FOOT ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE.  
 BEGINNING AT A POINT ON THE SOUTH SECTION LINE OF SAID SECTION 10, SAID POINT BEING 118.42 FEET S. 89° 58' 42" E. THE SOUTHWEST CORNER OF SAID SECTION 10, AND RUNNING THENCE NORTH 33.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF OLD BINGHAM HIGHWAY (10200 SOUTH).



DESIGNED BY	3	DATE	JUNE 2008
DRAWN BY	2	DATE	
CHECKED BY	1	DATE	
PROJECT NO.	21421.00		
PROJECT NAME	ZONES NO. 6 AND NO. 7 PIPELINES SOUTH JORDAN CITY CROSSING NO. 1 EASEMENT		
PREPARED BY	Kenscott Land Survey, UTAH 84107		
SCALE	5295 South 300 West Suite 475 Murray, UTAH 84107		

## **Exhibit "B -3"**

### **Legal Description**

#### **15 Foot Water Line Right of Way (1300 West -9000 South to 9400 South)**

All that real property situated in Salt Lake County being in the located in the Western half of Section 2, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and more particularly described as follows:

A pipeline right of way being a strip of land 15 foot wide being 7.5 feet on each side of the following described center line.

Beginning at a point West 13.16 feet from the Southwest corner of said section 2, North 00°02'02" East 2,484.47 feet; thence North 45°00'00" West 21.09 feet; thence North 00°37'28" East 36.61 feet.

# Exhibit "B-3"



N00°37'28"E  
36.61'  
N45°00'00"W  
21.09'

N00°02'02"E  
2484.47'

BEGINNING AT A POINT WEST 13.16' FROM THE  
NORTHWEST CORNER OF SECTION 11 OF T.3S, R.1W OF  
SALT LAKE BASE AND MERIDIAN, FOR A 15' WIDE  
WATERLINE EASEMENT, COMMENCING FROM POINT  
N00°02'02"E 2484.47'; N45°00'00"W 21.09';  
N00°37'28"E 36.61' TO CENTER OF VAULT

NW CORNER OF SEC 11 OF T.3S, R.1W OF  
SALT LAKE BASE AND MERIDIAN

SOUTH JORDAN CITY

			DATE	REVISIONS	BY
			10/08		
			1300 WEST WATERLINE EASEMENT		

**THE CITY OF WEST JORDAN, UTAH**

A Municipal Corporation

RESOLUTION NO. 09-144

**A RESOLUTION AUTHORIZING THE EXECUTION  
BY THE MAYOR OF A RIGHT OF WAY AGREEMENT  
BETWEEN THE CITY OF WEST JORDAN  
AND SOUTH JORDAN CITY**

WHEREAS, the City Council of the City of West Jordan desires to enter into an agreement with South Jordan City, granting easements for construction of water facilities in the City of West Jordan

WHEREAS, the Mayor is authorized to execute this agreement pursuant to Utah Code Annotated 10-3-1223, after the City Attorney approval as to legal form,

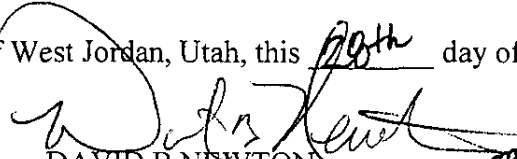
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to execute the Right of Way Agreement entitled as follows:

“Right of Way Agreement”


Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of the City of West Jordan, Utah, this 29th day of October 2008.

  
DAVID B. NEWTON  
Mayor



ATTEST:

  
MELANIE S. BRIGGS, MMC  
City Clerk/Recorder

Voting by the City Council

Kathy Hilton  
Melissa K. Johnson  
Jim J. Lems  
Kim V. Rolfe  
Ben Southworth  
Lyle C. Summers  
Mayor David B. Newton

"AYE"

"NAY"