

After recording return to:
Chevron Pipe Line Company
2875 S. Decker Lake Drive, Suite 150
Salt Lake City, UT 84119
Attn.: Melissa Horiuchi

11814975
03/07/2014 02:10 PM \$28.00
Book - 10215 Pg - 8328-8337
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CHEVRON PIPE LINE CO
ATT: MELISSA HORIUCHI
2875 S DECKER LAKE DR STE 150
SLC UT 84119
BY: HPP, DEPUTY - WI 10 P.

ENCROACHMENT AGREEMENT

This ENCROACHMENT AGREEMENT (this "Agreement") is entered into this 6th day of March, 2014, by and between CHEVRON PIPE LINE COMPANY, a Delaware corporation (hereinafter "Chevron"), and the UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah (hereinafter "Landowner").

WITNESSETH:

WHEREAS, Chevron is the present owner of an easement and right-of-way (hereinafter "Right-of-Way") more particularly described in that certain document entitled "Pipeline Easement" dated June 12, 1996, between Landowner, as grantor, and Chevron, as grantee, recorded on in Volume 7421, Page 0339, Official Records of Salt Lake County, State of Utah (hereinafter "Right-of-Way Grant"); and

WHEREAS, Landowner is currently the owner of property located in the vicinity of Red Butte Gardens Amphitheater underlying said Right-of-Way, more particularly described on Exhibit A attached hereto (hereinafter "Property"); and

WHEREAS, Landowner desires permission to construct and maintain multiple encroachments on said Right-of-Way, more particularly described on Exhibit B attached hereto (hereinafter, individually and collectively, the "Encroachment"); and

WHEREAS, in said Right-of-Way Grant Landowner agreed not to build, construct, create, nor permit others to build, construct or create, any building, structure, reservoir, improvement, or other obstruction or excavation on the Right-of-Way, or in any manner impair or interfere with Chevron's present or prospective exercise of any of its rights granted in the Right-of-Way Grant, without the prior written consent of Chevron, which shall not be unreasonably withheld or delayed, all as more specifically set forth in the Right-of-Way Grant; and

WHEREAS, Chevron is willing to grant Landowner permission to construct and maintain the Encroachment, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Rights Granted. Landowner shall have the right to construct and maintain the Encroachment as set forth above. Landowner shall not modify or alter said Encroachment, nor build, construct, create, nor permit others to build, construct or create, any building, structure, reservoir, improvement, or other obstruction or excavation on said Right-of-Way, without the prior written consent of Grantee, which shall not be unreasonably withheld or delayed.
2. No Obstruction of Use. Landowner shall not in any manner impair or interfere with Chevron's present or prospective exercise of any of its rights granted in said Right-of-Way Grant, without the prior written consent of Chevron, which shall not be unreasonably withheld or delayed.
3. Excavation. As required by law, Landowner shall notify Blue Stakes of Utah at 811 and Chevron at (801) 539-7339 at least forty-eight (48) hours in advance of any excavation in the Right-of-Way and shall promptly and

properly refill all excavations made by or for Landowner on said Right-of-Way. Landowner shall ascertain from Chevron, and plainly mark before any excavations are made and during all times that work is being performed, the exact location of all pipelines or other facilities which may be below the surface of the ground or otherwise not plainly visible. Landowner hereby accepts sole responsibility for so doing and shall be solely liable for all loss, damage, injury or death caused or contributed to by any lack of or improper marking.

4. **No Interference With Pipeline Operations.** At such times as Chevron's determines, in its sole reasonable discretion, that any Encroachment interferes with Chevron's use of or operations upon said Right-of-Way, Landowner shall, at its own risk and expense, within sixty (60) days after written request by Chevron, relocate the Encroachment and shall restore said Right-of-Way as nearly as possible to the same state and condition it was in prior to the construction and relocation of the Encroachment.
5. **Right to Maintain and Repair Pipeline.** Chevron, any of its affiliates (as defined in Paragraph 10 hereof), or any designated representative, may, at any time Chevron deems necessary, excavate in, on or under said Right-of-Way for repair, maintenance, or any purpose whatsoever permitted under the Right-of-Way Grant. Chevron shall provide reasonable notice to Landowner when circumstances allow; however, in the event of an emergency, Chevron shall not be required to provide such notice to Landowner. If Chevron finds, in its sole reasonable discretion and in exercising any rights granted to it by the Right-of-Way Grant, that it must remove any portion of said Encroachment to gain access to its pipelines, Chevron may remove the Encroachment, and after Chevron has completed the work, Landowner agrees to perform any replacement of the Encroachment Landowner deems necessary at Landowner's own sole cost and expense. Chevron will provide Landowner with as much advance notice as is reasonably practical prior to the removal of an Encroachment. In the event of an emergency, Chevron will notify Landowner of any removal no less than forty-eight (48) hours following its removal. Landowner acknowledges that Chevron will not be responsible or liable to Landowner for any damage to the Encroachment caused by Chevron during removal. Consistent with the requirements of Section 5 of the Right-of-Way Grant, all work performed by Chevron within the Right-of-Way shall be performed with due diligence in a good and workmanlike manner, and in compliance with all requirements of law, and (ii) in performing such work, Chevron shall make all reasonable efforts not to interfere with or impair Grantor' use of occupancy of the remainder of the Property.
6. **Agreement to Run With the Land.** This Agreement shall run with the land and be binding on all future Property owners.
7. **Amendment.** This Agreement may only be amended by a writing signed by Landowner and Chevron or their successors, legal representatives, assignees or transferees.
8. **Landowner's Failure to Cure.** Upon the violation by Landowner of any of the terms and conditions set forth herein and the failure to remedy the same within thirty (30) days after written notice from Chevron to do so, then, at the option of Chevron, this Agreement and the rights herein given Landowner shall terminate.
9. **Termination.** Chevron or Landowner may terminate this Agreement by giving the other party written notice of termination, not less than ninety (90) days prior to a designated termination date. Such termination shall not release Landowner from any liability or obligation hereunder, whether of indemnity or otherwise, which may arise or accrue after said date in connection with any exercise of the rights herein granted. Upon the termination of the rights herein given, Landowner shall at its own risk and expense remove said Encroachment and restore said Right-of-Way as nearly as possible to the same state and condition it was in prior to any construction of said Encroachment. If Landowner should fail to do so within sixty (60) days after such termination, Chevron may do so at the risk of Landowner, and all cost and expense of such removal and the restoration of said Right-of-Way as aforesaid shall be paid by Landowner upon demand. Further, in case of a lawsuit to enforce or collect the same, Landowner also agrees to pay Chevron reasonable attorneys' fees to be fixed and allowed by the court.
10. **Landowner's Indemnification.** Landowner agrees to defend, indemnify and hold Chevron, and its affiliates (as used in this Paragraph, "affiliates" means Chevron Corporation and any company in which Chevron Corporation now or hereinafter owns, directly or indirectly, at least fifty percent (50%) of the shares of stock entitled to vote at a general election of the directors, and their respective officers, directors, employees, agents, successors and assigns (hereinafter "Indemnitee"), and each of them, harmless from and against all

liability fine, penalty, cost, expense or claims thereof for loss of or damage to property to whomever belonging (including, but not limited to, Indemnitee's pipelines), or injury to or death of any person (including an employee of Landowner or Indemnitee), for loss or damage arising from attachments, liens or claims of materialmen or laborers, or for environmental damage, including all claims and reasonable attorneys' fees relating to any of the foregoing, resulting from the exercise of the rights herein granted. Such indemnity shall apply whether or not Indemnitee was or is claimed to be passively, concurrently or actively negligent, and regardless of whether liability without fault is imposed or sought to be imposed on Indemnitee. This indemnity shall not apply where such loss, damage, injury, liability or claim is the result of the sole gross negligence or willful misconduct of Indemnitee.

11. **No Invalidation By Conflict.** Any applicable statutory, regulatory, or judicial limitations or restrictions now or hereafter imposed that Landowner hereto asserts affects the validity or enforceability of any provision of this Agreement shall operate to amend such provision only to the minimum extent necessary to bring such provision into conformity with the particular statutory, regulatory, or judicial requirements at issue. As so modified, the affected provision shall continue in force and effect to the fullest extent permitted by applicable law.
12. **Assignment.** This Agreement shall not be assigned, sublet or transferred in whole or in part by either party, except with the prior written consent of the other party, which shall not be unreasonably withheld, and any attempt to do so without such written consent shall be void.
13. **Notices.** All notices and other communications required under this Agreement shall be in writing, and delivered personally, or sent certified mail or via facsimile to the party set forth below:

Chevron Pipe Line Company
 Right-of-Way Specialist
 2875 S. Decker Lake Drive, Suite 150
 Salt Lake City, UT 84119
 Fax: 801-975-2333

Landowner:
 University of Utah,
 Facilities Management
 1795 E. South Campus Drive, Room 222
 V. Randall Turpin University Services Building
 Fax: 801-581-6081

Either party may change its address to which notices are sent pursuant to this Paragraph by giving notice thereof to the other party in the manner set forth in this Paragraph.

14. **Choice of Law.** The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to its choice of law rules.

15. Resolution of Disputes.

- A. **Generally.** The Parties shall exclusively and finally resolve any dispute between them using direct negotiations, mediation and arbitration as set below.
- B. **Negotiation.** If a dispute arises, a Party shall initiate the resolution process by giving notice setting out in writing and in detail the issues in dispute and the value of the claim to the other Party. A meeting between the Parties, attended by individuals with decision-making authority, must take place within thirty days from the date the notice was sent in an attempt to resolve the dispute through direct negotiations.
- C. **Mediation.** If the dispute cannot be settled by direct negotiations within thirty days of initiation of the resolution process, either Party may initiate mediation by giving notice to the other Party. The place of mediation shall be Salt Lake City, Utah.
- D. **Arbitration.** The following provisions shall apply to arbitration proceedings: (i) the place of arbitration shall be Salt Lake City, Utah; (ii) one arbitrator shall conduct the arbitral proceedings in accordance with The International Institute for Conflict Prevention & Resolution ("CPR") Rules and

CPR is the appointing authority; (iii) this Agreement is governed by, and interpreted under the laws of the State of Utah, without regard to its choice of law rules, except that the substantive and procedural rules of the Federal Arbitration Act, 9 U.S.C. §§ 1 – 16, shall govern; (iv) the arbitrator does not have the power to award, nor shall the arbitrator award, any punitive, indirect or consequential damages (however denominated); (v) each Party shall bear its own costs of legal representation and witness expenses; (vi) the arbitrator must render a reasoned award in writing, the award shall be based upon a decision which must detail the finding of fact and conclusions of law on which it rests, and the award is final and binding; (vii) the dispute shall be resolved as quickly as possible; (viii) the arbitration award must be issued within three months from completion of the hearing, or as soon as possible thereafter; and (ix) Chevron and Landowner irrevocably waive their right to any form of appeal, review or recourse to any court or other judicial authority for any dispute under this Agreement, to the extent that such waiver may be validly made.

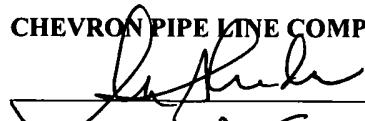
E. University of Utah a Governmental Entity. Chevron is hereby informed that the University of Utah is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63G-2-101 et seq., 1953, as may be amended ("GRAMA"). Pursuant to GRAMA, certain records within the University of Utah's possession or control may be subject to public disclosure. The University of Utah hereby informs Chevron that any person or entity that provides the University of Utah with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63G-2-309 of GRAMA, provide to the University of Utah, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in this Agreement, the University of Utah may disclose any information or record to the extent required by GRAMA or otherwise required by law. The University of Utah is a governmental entity under the Utah Governmental Immunity Act of the Utah Code, Section 63G-7-101 et seq. 1953 (as amended) (hereinafter, the "Act"). Nothing in this Agreement shall be construed to be a waiver by the University of Utah of any protections, rights, or defenses applicable to the University of Utah under the Act. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary elsewhere in this Agreement, all indemnity obligations of the University of Utah contained in this Agreement are subject to the Act, are limited to the amounts established in Section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of the University of Utah or its agents or contractors.

F. Survival. This Section 15 remains in force and effect and binding on the Parties after termination or completion of this Agreement.

16. Pre-Existing Rights. This Agreement is made subject to all valid and existing licenses, leases, grants, exceptions, reservations and conditions affecting said Right-of-Way. Nothing in this Agreement shall be deemed to modify or amend the provisions of the Right-of-Way Grant in any way.

IN WITNESS WHEREOF, on the date first above written, the parties hereto have executed this Agreement in duplicate.

CHEVRON PIPE LINE COMPANY

By: 

Name: LISA A SHREDLER

Title: Area Manager - West

"Attorney in Fact"

LANDOWNER

By: Amee B. Combe

Name: Amee B. Combe

Title: Vice President for Administrative Services

EXHIBIT A

RED BUTTE GARDENS AMPHITHEATER AREA DESCRIPTION:

A STRIP OF LAND 33 FEET WIDE ACROSS A PORTION OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, BEING 16.5 FEET PERPENDICULARLY DISTANT EACH SIDE OF THE CENTERLINE OF AN EXISTING EIGHT INCH (8") DIAMETER PIPELINE, WHOSE LOCATION SHALL CONTROL SAID RIGHT-OF-WAY AND EASEMENT, AND BEING FURTHER DESCRIBED BY THE FOLLOWING SURVEY LINE:

BEGINNING AT A POINT ON THE NORTH FENCE LINE OF RED BUTTE CREEK, SAID POINT BEING 5187.83 FEET NORTH $38^{\circ}17'36''$ WEST FROM THE SOUTHEAST CORNER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING 2422.33 FEET NORTH $29^{\circ}16'36''$ WEST FROM A SALT LAKE CITY MONUMENT AT THE INTERSECTION OF TABBY LANE AND COLOROW DRIVE (BASIS OF BEARING BEING SOUTH $35^{\circ}21'39''$ EAST BETWEEN TWO STREET MONUMENTS IN THE CENTER OF COLOROW DRIVE FROM THE MONUMENT AT THE INTERSECTION OF SAID COLOROW DRIVE AND TABBY LANE) AND RUNNING THENCE NORTH $46^{\circ}59'26''$ WEST 279.75 FEET, MORE OR LESS, TO A POINT AT THE BLOCK VALVE FACILITY AT RED-BUTTE GARDENS, SAID POINT BEING WEST 2089.42 FEET AND SOUTH 1038.33 FEET FROM THE MONUMENT AT THE NORTHWEST CORNER OF TRACT "E" AS SHOWN ON THE BUREAU OF LAND MANAGEMENT TRACT SURVEYS OF TOWNSHIP 1 NORTH AND 1 SOUTH, RANGE 1 EAST, OF THE SALT LAKE MERIDIAN, UTAH; THENCE NORTH $46^{\circ}57'01''$ WEST 29.96 FEET, MORE OR LESS, TO THE SOUTH LINE OF RED BUTTE CANYON ROAD.

THE LENGTH OF SAID DESCRIBED SURVEY LINE IS 309.71 FEET, AND THE EASEMENT CONTAINS 10220.43 SQ. FT., OR 0.235 ACRES, MORE OR LESS, AS DESCRIBED.

Parcel - 16031000042000

EXHIBIT B**APPROVED/PERMITTED ENCROACHMENTS**

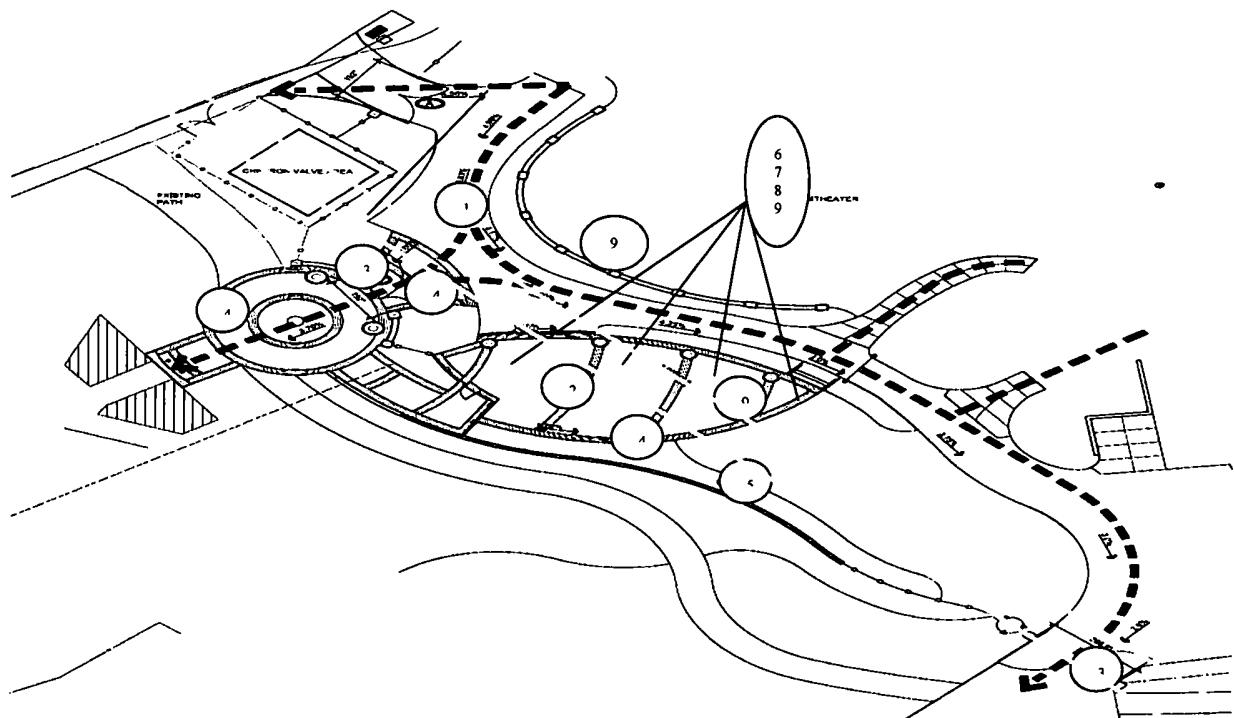
1. Electrical Conduits- All electrical must cross below pipeline with 24" separation and additional warnings to alert when excavation is getting close to the electrical conduits. Landowner is to bundle the conduits to minimize the crossings. All crossings must cross perpendicular to the easement. Whenever possible crossings must be 90 degree crossings.
2. Drain pipe- 6" French drain system near concession area and welcome plaza. The drain connects into existing system north east of the concession area.
3. Gates- Main entrance gate when open will encroach into the easement. Since the gate will be closed when no event is scheduled, this will be permitted without further mitigation.
4. Pavers- Interlocking pavers, bedded in sand and a road base foundation at the main entrance to the amphitheater and the concession area. The pavers will be banded and held in place with a non-metallic band. Cement band will not be permitted.
5. Additional Fill- On the southwest side of the concession area, the landowner would bring in additional fill to level the area. The landowner will bring in 1 or 2 feet of fill over the pipelines and more in the west side of the easement. The pipelines would be 10 feet deep with the additional fill.
6. Planter boxes- They will sit on the surface, $\frac{3}{4}$ " irrigation lines will be connected to the planter boxes.
7. Drain Line- A 4" drain line was installed near the planter boxes to drain excess water. This is in addition to the irrigation lines.
8. Irrigation Lines- Irrigation lines are permitted to cross within the easement. The control boxes must be located outside of the easement.
9. Low Voltage Lighting- Must be encased in rigid, non metallic conduit with 24" separation and cross below the pipeline.
10. Stacked Stone Wall – Located behind the ticket booth will be set in bed of gravel and stacked only. No cement will be used to bind wall in order to make it easily removed should CPL have maintenance to perform.
11. Ticket Booth – Located on the west side of the CPL easement. The ticket booth will be permitted to be placed within the CPL easement as long as it is placed at a minimum of 6 feet from the nearest pipeline. The measurements of the ticket booth are 6' 11" wide and 15' 3" in length. The ticket booth will be placed on the pavers. There will be no additional footings, concrete or anchors associated with the ticket booth.
12. Communication Line- Must be encased in rigid, non-metallic conduit with 24" separation. It will be permitted to cross above the pipelines.

EXHIBIT B

Aerial view of the Red Butte Garden Amphitheater (2010)

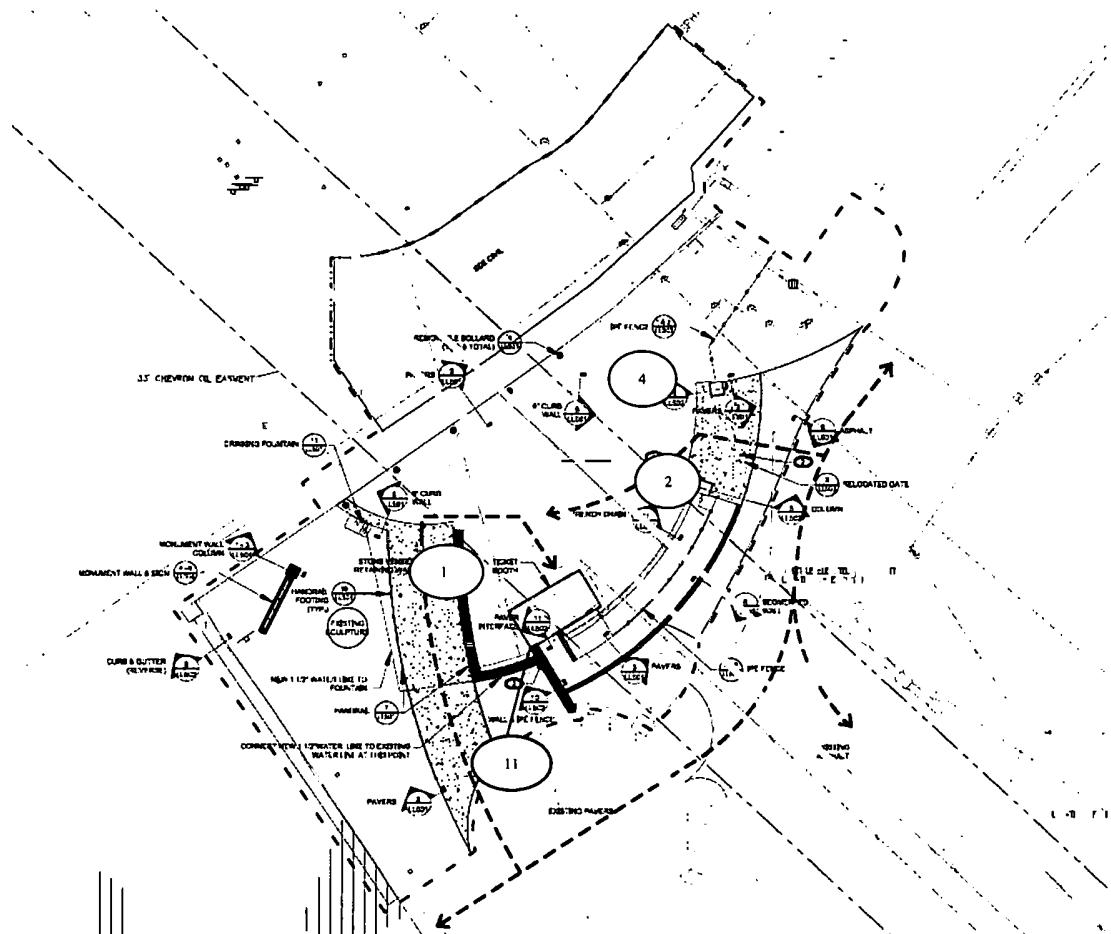


Yellow lines indicate approximate location of the pipelines.



Phase I Construction drawing dated 5/3/2011
Numbers correspond with descriptions on EXHIBIT B / Page 6

EXHIBIT B



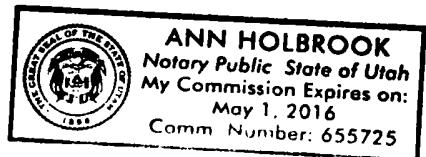
Phase II Construction bid drawing dated 2/12/14
Numbers correspond with descriptions on **EXHIBIT B / Page 6**
Yellow lines indicate approximate location of the pipelines.

State of Utah)
: ss.
County of Salt Lake)

On the 27 day of February, 2014, personally appeared before me Arnold B. Combe, who being by me duly sworn, did say that he executed the foregoing instrument as Vice President for Administrative Services of the University of Utah and he acknowledged to me that the University of Utah executed the same.

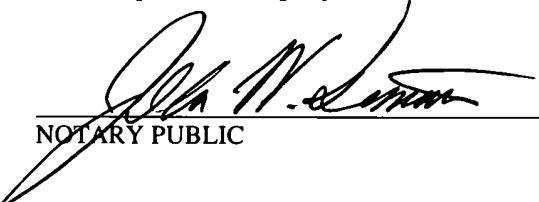
Ann Holbrook
Notary Public
Residing at: Salt Lake City, Utah

My Commission Expires:
May 1, 2016



STATE OF California)
COUNTY OF Kern) ss.

The foregoing instrument was acknowledged before me this 6th day of March, 2014, by
Lisa A. Shredor, the Attorney-in-Fact of **Chevron Pipe Line Company**.


NOTARY PUBLIC

