



76  
\*W2631797\*

When recorded please return to:

Josh Chambers  
Harris, Preston & Chambers, P.C.  
31 Federal Avenue  
Logan, Utah 84321

E# 2631797 PG 1 OF 28  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
25-APR-13 1155 AM FEE \$75.00 DEP JKC  
REC FOR: REED MACKLEY

**RIGHT OF WAY AND EASEMENT GRANT**

For value received, Utah Transit Authority, a public transit district organized pursuant to the laws of the State of Utah ("UTA" or "Grantor") hereby grants to M&M Storage, LLC, individually and as an interest holder of North Weber Land Owners, LLC, ("M&M") and North View Holdings, LLC (collectively M&M Storage, LLC and North View Holdings, LLC are referred to as "Grantees"), their respective successors and assigns, an easement (the "Easement") for a sewer line and a storm drain line, through, across, on, upon, over and under certain real property of Grantor as more particularly described in Exhibit 1 hereto, and a right of way for ingress and egress to access the Easement on, across, and to the real property of Grantor.

This Right of Way and Easement Grant is not intended to be affected by, or the rights granted hereunder released by, those certain instruments titled "Release of Easement Effective February 15, 2016" and dated March 3, 2011, which instruments were recorded in the Weber County Recorder's Office on March 23, 2011 as Entry Nos. 2520367 and 2520368. For all purposes, this Right of Way and Easement Grant is intended to survive and be superior to the March 3, 2011 "Release of Easement Effective February 15, 2016" (executed by North Weber Land Owners, LLC) and the March 3, 2011 "Release of Easement Effective February 15, 2016" (executed by M&M Storage, LLC), which were recorded in the Weber County Recorder's Office on March 23, 2011 as Entry No. 2520367 and Entry No. 2520368, respectively.

The Easement is substantially as depicted on Exhibit 1.B hereto, in the areas marked as "Easement required from UTA for sewer," "Easement required from UTA for storm drain," and "Easement required from UTA for sewer and storm drain,"

Grantor is the owner of real property in Weber County, Utah, more particularly described on Exhibit 2, attached hereto, and hereafter collectively referred to as the "UTA Parcels".

As described in Exhibit 1 and depicted on Exhibit 1.B, the Easement runs through, across, on, upon, over and under a portion of the UTA Parcels (such portion of the UTA Parcels burdened by the Easement is hereafter referred to as the "Easement Property").

The burden of the Easement shall run with the UTA Parcels (described above) and the benefit of the Easement shall run with the real property of Grantees in Weber County, Utah, more particularly described on Exhibit 3, attached hereto, and hereafter referred to as the "M&M Parcels".

The Easement is intended to be appurtenant to, and for the benefit of, the M&M Parcels. Additionally, Grantees may allow the North Weber Land Owners, LLC to share in the benefits of the Easement.

All Exhibits attached to this Right of Way and Easement Grant are incorporated by reference. The rights and obligations set forth in this Right of Way and Easement Grant shall run with the UTA Parcels and the M&M Parcels in perpetuity, and be binding upon and shall benefit the respective heirs, successors, and assigns of the parties hereto.

Each party hereto shall execute and deliver all such further and additional instruments, agreements, and other documents as may be reasonably requested by the other party in order to fully carry out the obligations and rights contemplated by this Right of Way and Easement Grant. In the event a survey is desired to more precisely verify or mark the location of the Easement, over which the Easement granted hereunder is located, both Grantor (and its heirs, successors, and assigns) and Grantees (and their respective heirs, successors, and assigns) will cooperate with each other, and the party requesting the survey shall be solely responsible for the costs and expenses of such survey.

The Easement granted by this instrument is subject to the following terms and conditions:

1. Grantee shall notify UTA prior to entering the Easement Property, by calling UTA's Rail Traffic Control office at 801-287-5455 or 801-287-5454. The Easement does not reserve to UTA the right to exclude Grantee from the Easement Property, and as such, Grantee is not required to obtain permission from UTA prior to entering the Easement Property for purposes incidental to the Easement, such as routine inspection of the sewer or storm drain lines. Rather, the telephone notification required hereunder is for safety and administrative purposes.
  - a. Grantee is not required to notify UTA prior to entering any portion of the Easement Property that is physically separated from the UTA railroad tracks by a fence. As of the date of execution of this Right of Way and Easement Grant, the Easement Property located to the north of 2700 North Street is separated from the UTA tracks by a fence. Therefore, as of the date of execution of this Right of Way and Easement Grant, Grantee may enter that portion of the Easement Property north of 2700 North without first providing telephone notification to UTA.
  - b. Grantee, at its sole cost and expense, may install additional fencing in additional areas of the Easement Property, and thereby eliminate the need for telephone notification to UTA prior to entry into such areas. Such additional fencing may be installed only with the express approval of UTA. The parties recognize and agree that any such fencing must conform to reasonable UTA standards, and must not interfere with UTA facilities or access thereto.

2. If Grantee intends to perform any construction, repair, or maintenance work in the Easement Property that has the potential to impact any UTA tracks, signal houses, signal lines or other UTA facilities, Grantee shall notify UTA of the work, and shall provide UTA with a summary of the method and manner of the work at least ten (10) days in advance of the proposed work. Any work involving excavation within ten (10) feet of any UTA facility will be presumed to have the potential to impact UTA facilities, and will require notification to UTA as described hereunder. Such notice shall be made to UTA's Real Estate Department at 669 West 200 South, Salt Lake City, Utah 84101, (801) 262-5626. UTA may require Grantee (and its contractors or other agents seeking access to the Easement Property) to attend a track access coordination meetings, safety training or other instruction as may be deemed reasonably necessary by UTA. UTA shall issue to Grantee a permit to enter the Easement Property, and Grantee shall comply with all reasonable conditions, instructions and requirements of such permit and with all reasonable instructions or directions given by UTA including, if required, daily telephone notification to the Rail Traffic Control office prior to each entry into the Easement Property.
  - a. If the proposed work involves any people, vehicles, equipment, material, or excavations within ten (10) feet of any UTA track improvements, then UTA reserves the right to limit the work to specific times of day, in order to ensure the safety of Grantee's workers and the general public.
  - b. If the proposed work involves excavation, UTA reserves the right to impose shoring and/or cribbing requirements as UTA deems reasonably necessary to protect UTA's track improvements. UTA shall bear the cost of any such shoring or cribbing requirements deemed necessary by UTA.
  - c. If the proposed work requires area outside of the Easement Property, Grantee must obtain additional permitting to conduct such work. Such permit will be processed by UTA as a new request for entrance to UTA owned right of way.
  - d. If the proposed work involves replacing or relocating Grantee's pipeline where it crosses under UTA's track improvements, UTA reserves the right to approve the depth of the pipeline, and the method and manner of the work. Such approval shall not be unreasonably withheld, conditioned or delayed.
  - e. Except as may be required for (and only at the actual time of) performance of any construction or maintenance in the Easement Property, and then only in compliance with all safety requirements imposed by UTA, Grantee shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform, fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Easement Property (other than the sewer line and storm drain lines and associated facilities).
  - f. Upon completion of any construction or maintenance relating to the sewer or storm drain pipelines, Grantee shall restore the surface of the Easement Property to its prior

condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Grantee disturbed or removed from the Easement Property and placement of appropriate seed mixture to prevent erosion.

- g. UTA shall have the right, but not the obligation, to observe any and all work performed in the Easement Property.
3. Grantee shall have the right to enter the Easement Property in the event of an emergency to make repairs necessary to protect against imminent and serious injury or damage to persons or property. Grantee shall take all precautions necessary to ensure that such emergency entry does not compromise the safety of any operations conducted in the Easement Property by UTA. Grantee must notify UTA's Rail Traffic Control office at 801-287-5455 or 801-287-5454 of the emergency access and the work being performed as soon as possible.
4. UTA may install, at its sole cost and expense, any and all signs of any character and nature whatsoever (e.g. location of sewer line, precautionary and/or warning signs, etc.) that UTA deems necessary or advisable in connection with the operation of the sewer line or storm drain line.
5. If a contractor is to perform any construction or maintenance in the Easement Property on Grantee's behalf, then the Grantee shall cause its contractor to comply with all applicable provisions of this Easement. Additionally, Grantee shall require its contractor to execute a Contractor's Right of Entry Agreement (the "Contractor Agreement"), substantially in the form attached hereto as Exhibit 4. Grantee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Grantee in the Construction or Maintenance of the Pipeline are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.
6. The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use the Easement Property, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing facilities or improvements upon, along, above, or across any or all parts of the Easement Property and other UTA property, all or any of which may be freely done at any time or times by UTA. Notwithstanding the foregoing, if UTA installs, constructs, or relocates any UTA facilities or improvements within the Easement Property, and such facilities or improvements unreasonably interfere with the Grantee's use of the Easement, then UTA shall, at its cost, either (i) remove, modify, or relocate the facilities or improvements to Grantee's satisfaction, or (ii) relocate the sewer or storm drain line to a reasonable location where it isn't unreasonably interfered with by the UTA facility or improvement.
  - a. The parties acknowledge and agree that as of the execution of this Right of Way and Easement Grant, certain UTA facilities either currently exist in the Easement Property

(such as the signal house depicted on sheet M1075.2 of Exhibit 1) or are planned to be constructed in the future within the Easement Property (such as the future UTA track as depicted on sheet M1075.3 of Exhibit 1). The parties agree that facilities currently existing on or within the Easement Property, and future facilities as depicted on Exhibit 1, do not as depicted unreasonably interfere with Grantee's use of the Easement.

This instrument is not intended nor shall it ever be construed to dedicate any of the property described herein to public use. The general public is not granted access to the UTA Parcels or the M&M Parcels.

A delay in enforcement of any rights granted to Grantees under this Right of Way and Easement Grant shall not be construed as a waiver of such rights.

The language used in this Right of Way and Easement Grant shall be deemed to be language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

In the event of any conflict between this Right of Way and Easement Grant and the Contractor Agreement (attached hereto as Exhibit 4), the terms and provisions of this Right of Way and Easement Grant shall control, and the terms and provisions of the Contractor Agreement shall be ineffective to the extent of such conflict.

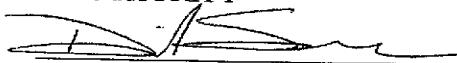
In the event that any condition, covenant, or other provision contained herein is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Right of Way and Easement Grant and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

This Right of Way and Easement Grant shall be recorded in the records of the Weber County Recorder.

DATED this 25 day of April 2013.

[Signatures on following pages]

UTAH TRANSIT AUTHORITY

By: 

Printed Name: DERRICK SORENSEN  
Title: MGR OF PROPERTY  
ACQUISITIONS/DISPOSITIONS

STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

On the 4 day of April, 2013, personally appeared before me,  
Derrick Sorensen who being duly sworn by me did say that he is the  
Mgr of Property Acq. & Dis. of Utah Transit Authority, and said person acknowledged to me that  
he is authorized to execute this instrument on behalf of Utah Transit Authority.

My Commission expires:

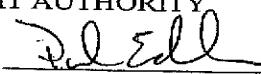
January 31, 2016

Notary Public





UTAH TRANSIT AUTHORITY

By: 

Printed Name: PAUL EDWARDS  
Title: SENIOR PROGRAM MANAGER

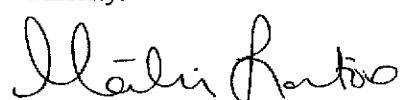
STATE OF UTAH )  
:ss  
COUNTY OF SALT LAKE )

On the 4 day of April, 2013, personally appeared before me,  
Paul Edwards who being duly sworn by me did say that he is the  
Senior Program Manager of Utah Transit Authority, and said person acknowledged to me that  
he is authorized to execute this instrument on behalf of Utah Transit Authority.

My Commission expires:

January 31, 2016

Notary Public



M&M Storage, LLC

By J Reed Mackley  
Printed Name: J Reed Mackley  
Title: Member

STATE OF UTAH )  
COUNTY OF Weber )  
ss )

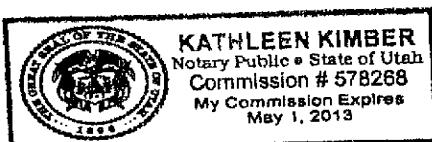
On the 25<sup>th</sup> day of April, 2013, personally appeared before me, J Reed Mackley who being duly sworn by me did say that he is the member of M&M Storage, LLC, and said person acknowledged to me that he is authorized to execute this instrument on behalf of M&M Storage, LLC.

My Commission expires:

May 1, 2013

Notary Public

Kathleen Kimber



North View Holdings, LLC

By J Reed Mackley  
Printed Name: J Reed Mackley  
Title: Member

STATE OF UTAH )  
COUNTY OF Weber )  
ss )

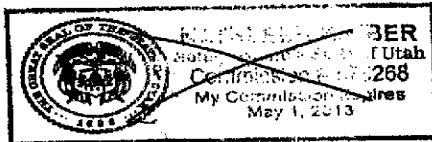
On the 25<sup>th</sup> day of April, 2013, personally appeared before me, J Reed Mackley who being duly sworn by me did say that he is the member of North View Holdings, LLC, and said person acknowledged to me that he is authorized to execute this instrument on behalf of North View Holdings, LLC.

My Commission expires:

May 1, 2013

Notary Public

Kathleen Kimber



**Exhibit 1**

**M & M STORAGE 16 FOOT SEWER EASEMENT DESCRIPTION**

A 16.00 foot sewer easement being 8.00 feet each side of the following described centerline.

A part of the Northeast Quarter of Section 36 and the Southeast Quarter of Section 25, Township 7 North, Range 2 West, Salt Lake Base and Meridian U.S. Survey.

Beginning at a point which is 382.73 feet North  $89^{\circ}34'13''$  West along the South Section line of said Section 25 and 1556.23 feet South  $0^{\circ}25'47''$  West from the Southeast corner of said Section 25; and running thence North  $27^{\circ}57'15''$  West 390.38 feet; thence North  $24^{\circ}50'01''$  West 366.54 feet; thence North  $10^{\circ}30'26''$  West 38.38 feet; thence North  $27^{\circ}52'12''$  West 73.11; thence North  $19^{\circ}25'13''$  West 168.62 feet; thence North  $22^{\circ}59'36''$  West 235.28 feet; thence North  $23^{\circ}36'00''$  West 294.98 feet; thence North  $38^{\circ}57'41''$  West 243.63 feet; thence North  $25^{\circ}54'11''$  West 799.67; thence North  $21^{\circ}40'44''$  East 150.85 feet to the point of termination.

E# 2631797 PG 9 OF 28

**Exhibit 1.B**

**Depiction of Easement**

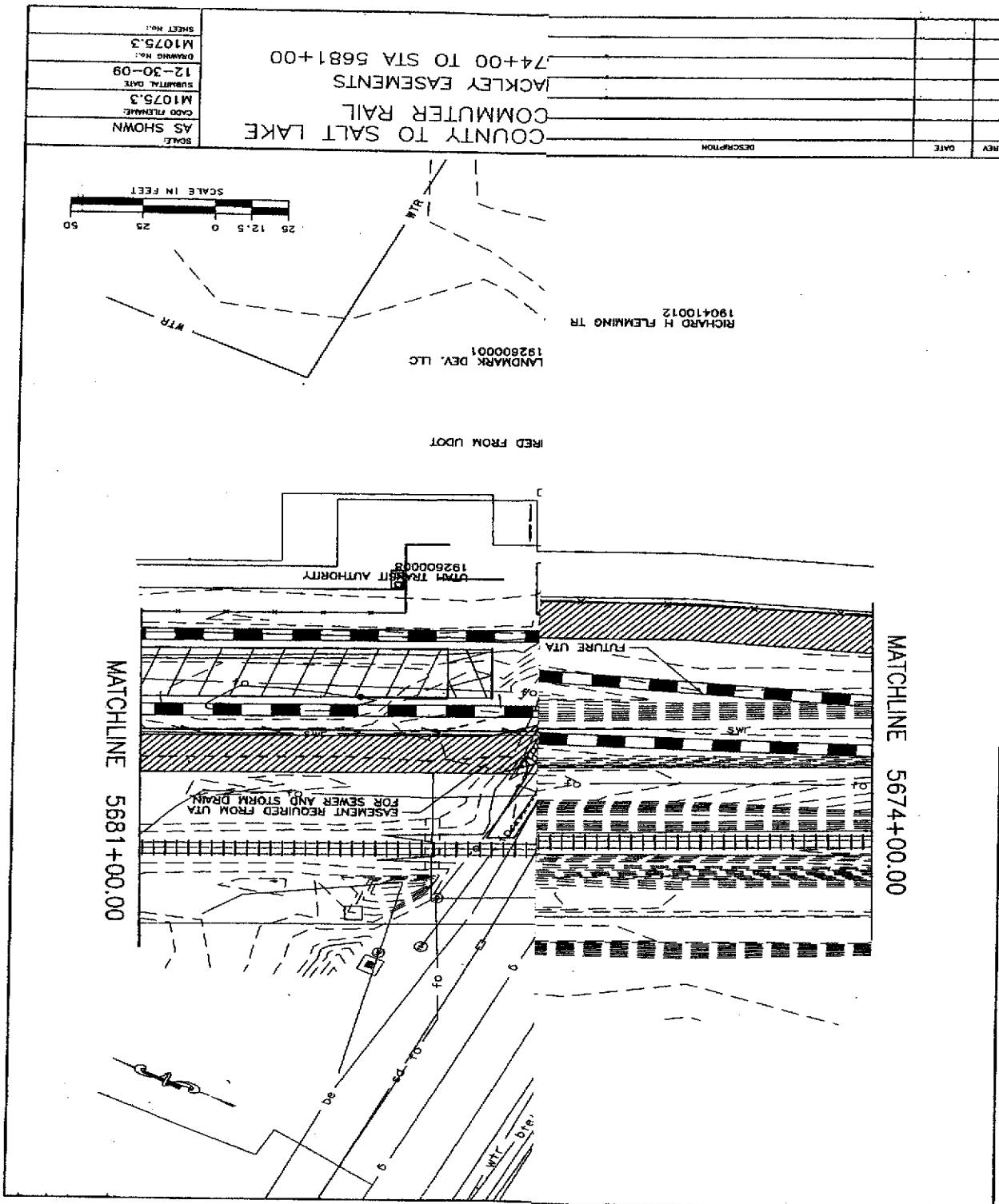


# 2631797 R 11 F 28

P0021611 08-27  
16-FEB-2011

File: G:\PAC027\Commerical\Real 2002\3-0\Design & Construction Contracts\3-2\Design\3-2-20 CAD\WORKING FILES\Nwogosa\Hochley\MI075.3.dwg

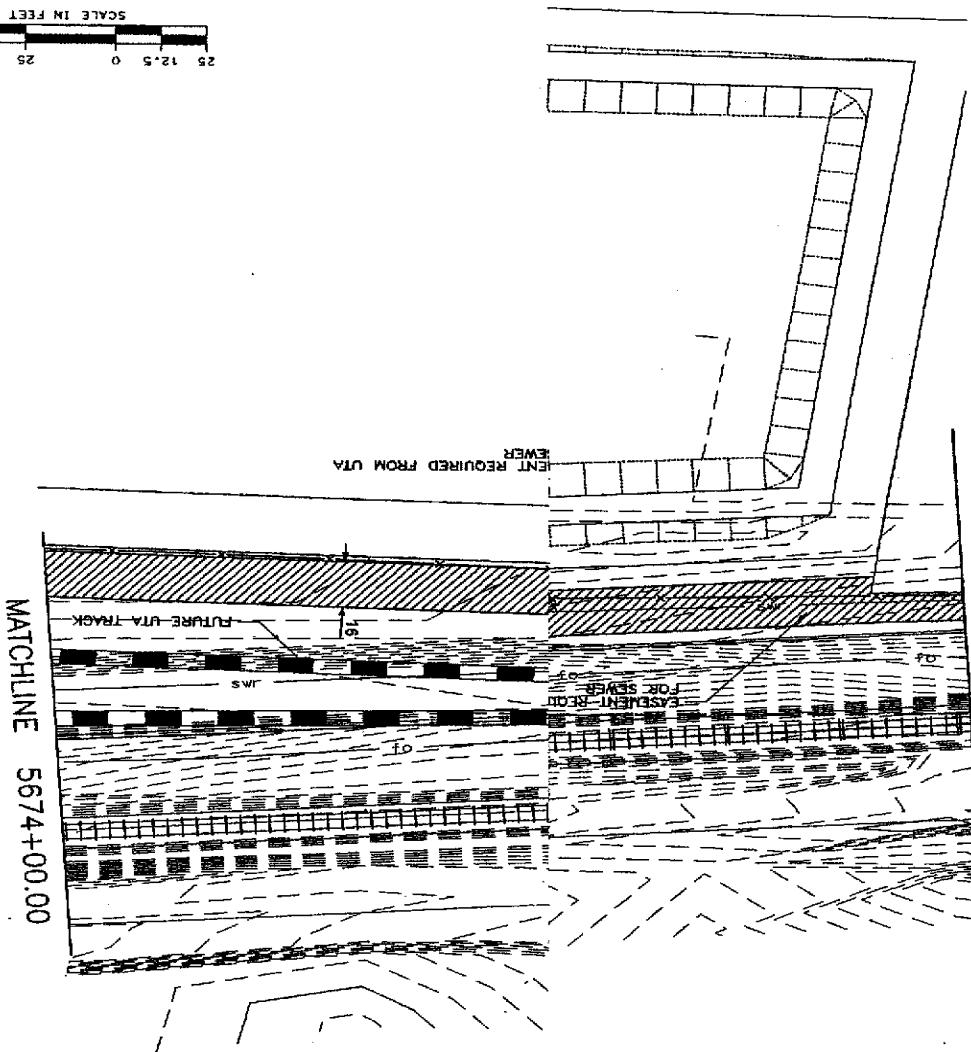
MATCHLINE 5674+00.00



ER 2631797 PG 12 B 28

P0021811 08-24  
16-FEB-2011 File: G:\R0027 Commuter Rail 2001\3-0 Design & Construction Contracts\3-2 Designs\3-2-20 CAD\WORKING FILES\NBurgess\Worlcity\W101732.dwg

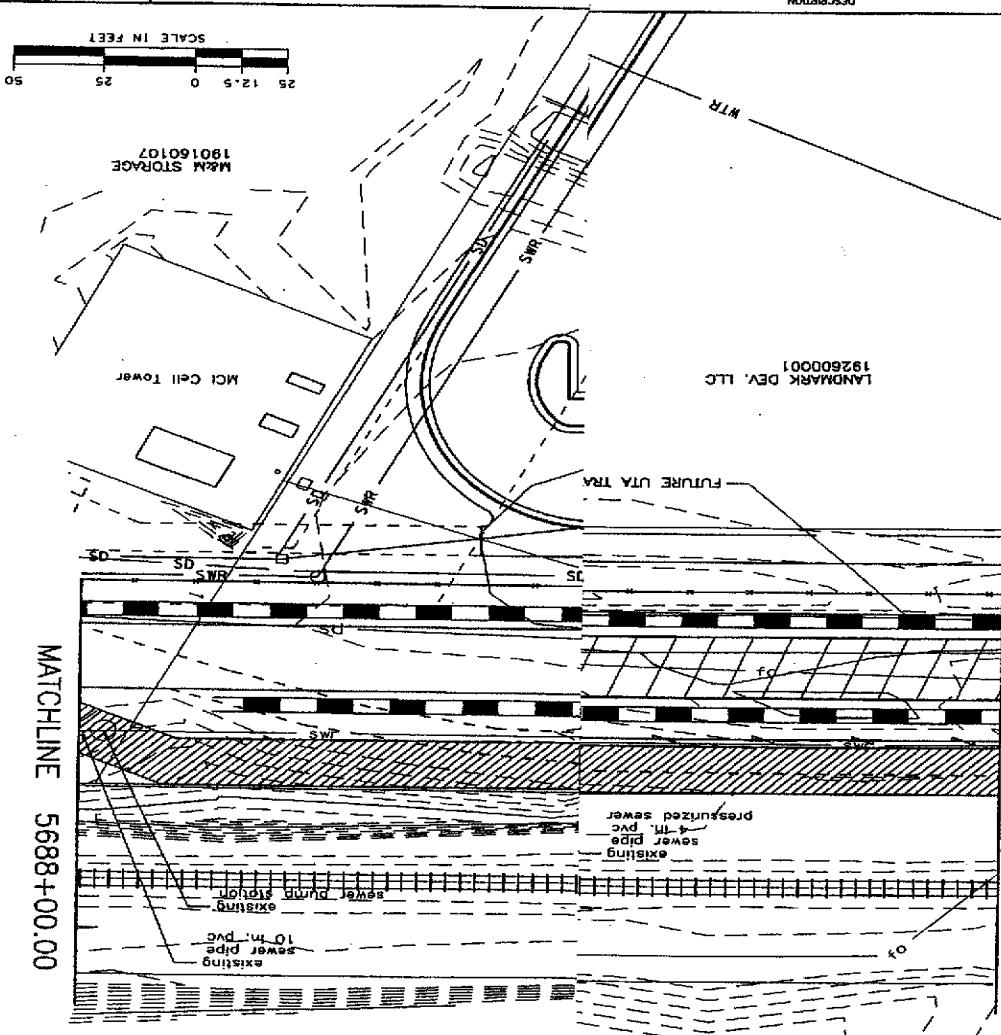
MATCHLINE 5667+00.00



POJ2181

古

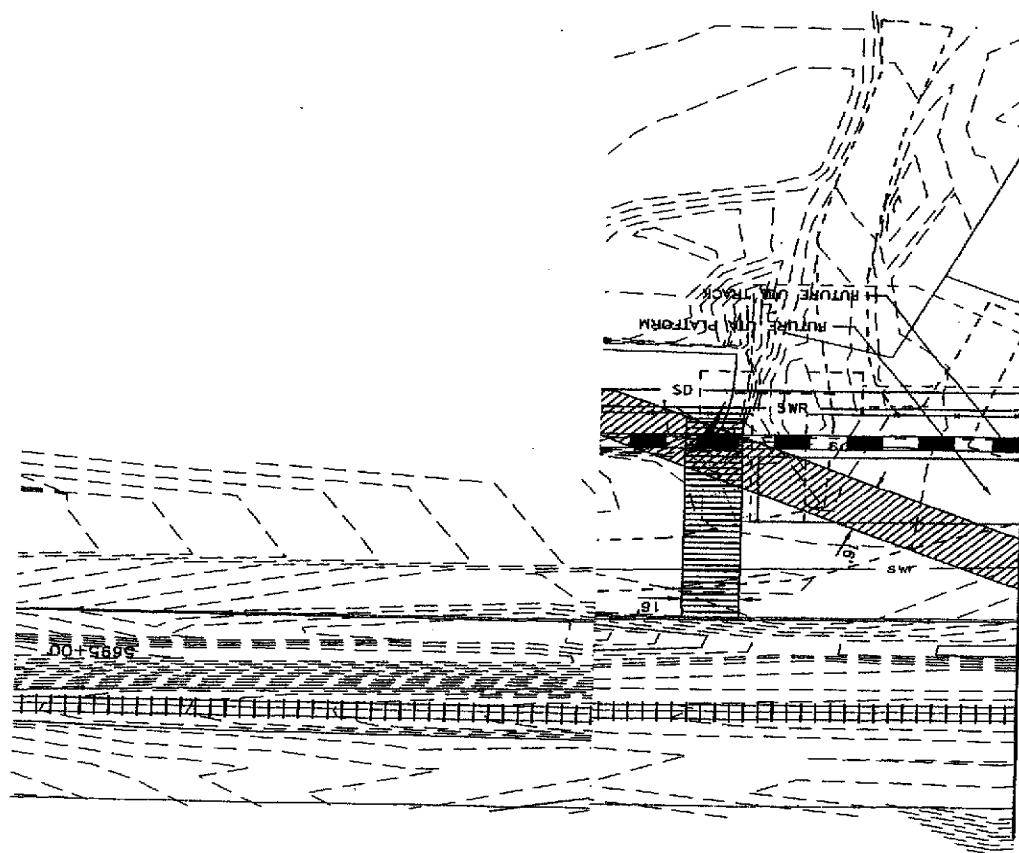
MATCHLINE 5681+00.00



卷之三

P0021811 1008  
16-FEB-2011 File: G:\80027\Commuter Rail 2002\J-0\Design & Construction Contracts\J-2\Design\J-2-20\CAD\WORKING FILES\Nebraska\ModKey\uncheckedit076.1.dwg

MATCHLINE 5688+00.00



REV	DATE	DESCRIPTION	SCALE
		COUNTY TO SALT LAKE AS SHOWN	
		COMMUTER RAIL	
		TACKLEY EASEMENTS	
		188+00 TO STA 5695+00	
		12-30-09	
		Surveillance Date	
		11076.1	
		Original No.	
		Sheet No.	

**Exhibit 2**

**Legal Description of the UTA Parcels**

The UTA Parcels consist of the following parcels located on the north side of 2700 North Street:

ALL OF LOT 8, MOUNTAIN VIEW LANDING COMMERCIAL SUBDIVISION, PLEASANT VIEW CITY, WEBER COUNTY, UTAH; also known as Tax ID No. 19-260-0008.

and

ALL OF LOT 9, MOUNTAIN VIEW LANDING COMMERCIAL SUBDIVISION, PLEASANT VIEW CITY, WEBER COUNTY, UTAH, also known as TAX ID No. 19-260-0009

Along with the following parcels located on the south side of 2700 North Street:

PARCEL NO. 19-041-0092, more particularly described as follows:

PART OF THE NORTHEAST 1/4, SECTION 36, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, BEGINNING AT A POINT ON THE SOUTH LINE OF 2700 NORTH STREET, AND AT THE NORTHWEST CORNER OF THE GRANTORS PARCEL, SAID POINT BEING NORTH 89°49'03" WEST 1093.92 FEET ALONG THE SECTION LINE AND SOUTH 00°10'57" WEST 55.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 36, THENCE SOUTH 89°49'03" EAST 62.22 FEET ALONG SAID SOUTH LINE OF 2700 NORTH STREET, THENCE SOUTH 00°11'03" WEST 36.24 FEET TO A POINT OF CURVATURE, THENCE 52.93 FEET ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 120.00 FEET, THROUGH A CENTRAL ANGLE OF 25°16'18" (LONG CHORD = SOUTH 12°27'06" EAST 52.50 FEET) TO A POINT OF TANGENCY; THENCE SOUTH 25°05'15" EAST 92.95 FEET TO THE GRANTORS SOUTH PROPERTY LINE, THENCE SOUTH 89°37'59" WEST 28.38 FEET ALONG SAID SOUTH LINE TO THE GRANTORS SOUTHWEST PROPERTY CORNER, THENCE NORTH 26°08'32" WEST 191.68 FEET ALONG THE GRANTORS WESTERLY PROPERTY LINE TO THE POINT OF BEGINNING. (E# 2161111 PARCEL 1)

ALSO: BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE OREGON SHORT LINE RAILROAD, AND AT THE NORTHWEST CORNER OF THE GRANTORS PROPERTY, SAID POINT BEING NORTH 89°49'03" WEST 1149.71 FEET ALONG THE SECTION LINE AND SOUTH 00°10'57" WEST 55.00 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT OF WAY LINE AND THE SOUTH LINE OF 2700 NORTH STREET AND SOUTH 26°08'32" EAST 192.27 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE FROM THE

NORTHEAST CORNER OF SAID SECTION 36, THENCE SOUTH 26°08'32" EAST 505.39 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE TO GRANTORS SOUTHWEST PROPERTY CORNER, THENCE SOUTH 89°51'50" EAST 45.06 FEET ALONG GRANTORS SOUTH PROPERTY LINE, THENCE NORTH 20°35'07" WEST 333.15 FEET, THENCE NORTH 25°05'15" WEST 157.29 FEET TO GRANTORS NORTH PROPERTY LINE, THENCE SOUTH 89°37'59" WEST 83.91 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING. (E# 2161111 PARCEL 2).

ALSO: A PARCEL OF LAND IN FEE FOR THE "WEBER COUNTY TOSALT LAKE COMMUTER RAIL" A UTAH TRANSIT AUTHORITY PROJECT, BEING ALL OF THE GRANTORS PROPERTY DEFINED AS PARCEL 1 IN THATCERTAIN WARRANTY DEED, RECORDED OCTOBER 3, 1997, AS ENTRY1496469, BOOK 1884, PAGE 1096, SITUATE IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT OF INTERSECTION OF THE EASTERNLY RIGHT OF WAY LINE OF THEOREGON SHORT LINE RAILROAD AND THE SOUTH LINE OF 2700 NORTH STREET, SAID POINT BEING THE NORTHWEST CORNER OF THE GRANTORS PROPERTY, SAID POINT BEING NORTH 89°49'03" WEST 1149.71 FEET ALONG THE SECTION LINE AND SOUTH 00°10'57" WEST 55.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 36, THENCE SOUTH 26°08'32" EAST 192.27 FEET ALONG SAID EASTERNLY RIGHT OF WAY LINE TO GRANTORS SOUTHWEST PROPERTY CORNER, THENCE SOUTH 89°37'59" EAST 55.52 FEET TO GRANTORS SOUTHEAST PROPERTY CORNER, THENCE NORTH 26°08'32" WEST 191.68 FEET TO THE SOUTHLINE OF SAID 2700 NORTH STREET, THENCE NORTH 89°49'03" WEST 55.79 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.(E# 2161112)

And

PARCEL NO. 19-041-0093, more particularly described as follows:

SITUATE IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERNLY RIGHT OF WAY LINE OF THE OREGON SHORT LINE RAILROAD AND AT THE NORTHWEST CORNER OF THE GRANTORS PROPERTY, SAID POINT BEING NORTH 89D49'03" WEST 1149.71 FEET ALONG THE SECTION LINE AND SOUTH 00D10'57" WEST 55.00 FEET TO THE POINT OF INTERSECTION OF SAID EASTERNLY RIGHT OF WAY LINE AND THE SOUTH LINE OF 2700 NORTH STREET AND SOUTH 26D08'32" EAST 697.66 FEET ALONG SAID EASTERNLY RIGHT OF WAY LINE FROM THE NORTHEAST CORNER OF SAID SECTION 36, THENCE SOUTH 26D08'32" EAST 622.11 FEET ALONG SAID EASTERNLY RIGHT OF WAY LINE TO GRANTORS SOUTHWEST PROPERTY CORNER, THENCE

NORTH 64D13'21" EAST 3.76 FEET ALONG GRANTORS SOUTH PROPERTY LINE, THENCE NORTH 22D35'45" WEST 103.60 FEET, THENCE NORTH 23D36'39" WEST 93.45 FEET TO THE SOUTH LINE OF THE EASMENT GRANTED TO THE UTAH DEPARTMENT OF TRANSPORTATION(UDOT) IN THAT CERTAIN EASEMENT RECORDED OCTOBER 7, 2004, AS ENTRY 2061125, PAGES 1 & 2; THENCE NORTH 75D06'17" EAST 5.82 FEET ALONG SAID SOUTH LINE TO THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO THE UTAH DEPARTMENT OF TRANSPORTATION (UDOT) IN THAT CERTAIN WARRANTY DEED, RECORDED OCTOBER 7, 2004 AS ENTRY 2061124, PAGES 1 & 2; THENCE NORTH 26D08'32" WEST 338.19 FEET TO THE NORTHWEST CORNER OF SAID UDOT PROPERTY, THENCE NORTH 74D29'43" EAST 13.74 FEET ALONG THE NORTH LINE OF SAID UDOT PROPERTY, THENCE NORTH 20D35'07" WEST 71.23 FEET TO GRANTORS NORTH PROPERTY LINE, THENCE SOUTH 89D51'50" WEST 45.06 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

ALSO: A PARCEL OF LAND IN FEE FOR THE "WEBER COUNTY TOSALT LAKE COMMUTER RAIL" A UTAH TRANSIT AUTHORITY PROJECT, BEING PART OF THE GRANTOR'S PROPERTY DEFINED IN THAT CERTAIN WARRANTY DEED, RECORDED OCTOBER 7, 2004, AS ENTRY 2061124, PAGES 1 & 2, SITUATE IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTHWEST CORNER OF THE GRANTORS PROPERTY SAID POINT BEING NORTH 89D49'03" WEST 1149.71 FEET ALONG THE SECTION LINE AND SOUTH 00D10'57" WEST 55.00 FEET TO THE POINT OF INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF THE OREGON SHORT LINE RAILROAD AND THE SOUTH LINE OF 2700 NORTH STREET AND SOUTH 26D08'32" EAST 785.98 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE AND NORTH 63D51'28" EAST 20.00 FEET PERPENDICULARLY DISTANT FROM SAID EASTERLY RIGHT OF WAY LINE FROM THE NORTHEAST CORNER OF SAID SECTION 36, THENCE RUNNING PARALLEL WITH SAID EASTERLY RIGHT OF WAY LINE SOUTH 26D08'32" EAST 208.06 FEET ALONG THE GRANTORS WESTERLY PROPERTY LINE, THENCE NORTH 22D22'57" WEST 205.96 FEET TO THE NORTH LINE OF GRANTORS PROPERTY, THENCE SOUTH 74D29'43" WEST 13.74 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING. (E#2171279)

ALSO: A PARCEL OF LAND IN FEE FOR THE "WEBER COUNTY TOSALT LAKE COMMUTER RAIL", A UTAH TRANSIT AUTHORITY PROJECT, BEING PART OF THE GRANTORS PROPERTY DEFINED IN THAT CERTAIN WARRANTY DEED, RECORDED DECEMBER 16, 2003 AS ENTRY 1999045 PAGES 1 & 2, SITUATE IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, AS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE

EASTERLY RIGHT OF WAY LINE OF THE OREGON SHORT LINE RAILROAD AND AT THE NORTHWEST CORNER OF THE GRANTORS PROPERTY, SAID POINT BEING NORTH 89D49'03" WEST 1149.71 FEET ALONG THE SECTION LINE AND SOUTH 00D10'57" WEST 55.00 FEET TO THE POINT OF INTERSECTION OF SAID EASTERLY RIGHT OF WAY LINE AND THE SOUTH LINE OF 2700 NORTH STREET AND SOUTH 26D08'32" EAST 1319.77 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE FROM THE NORTHWEST CORNER OF SAID SECTION 36, THENCE SOUTH 26D08'32" EAST 60.69 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE, THENCE NORTH 22D35'45" WEST 60.79 FEET TO THE NORTH LINE OF GRANTORS PROPERTY, THENCE SOUTH 64D13'21" WEST 3.76 FEET ALONG THE NORTH LINE OF GRANTORS PROPERTY TO THE POINT OF BEGINNING. (E# 2173702)

**Exhibit 3**

**Legal Description of the M&M Parcels**

The M&M Parcels consist of the following parcels located to the north of the UTA Parcels:

PART OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, U S SURVEY; BEGINNING ON THE EASTERLY RIGHT OF WAY LINE OF THE O S L RAILROAD AT A POINT WHICH BEARS WEST 1689.86 FEET NORTH 1035.13 FEET AND NORTH 26D46' WEST 48 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 25, RUNNING THENCE SOUTH 26D46' EAST 318.00 FEET, THENCE NORTH 89D28'42" EAST 562 FEET, THENCE NORTH 156.38 FEET THENCE NORTH 89D28'42" EAST 390.55 FEET, MORE OR LESS, TO THE WEST LINE OF U S HIGHWAY 89, 91 AND 30-S, THENCE NORTHWESTERLY ALONG THE WEST LINE OF U S HIGHWAY 89, 91 AND 30-S A DISTANCE OF 142.25 FEET, MORE OR LESS, TO A POINT NORTH 89D26'39" EAST 1025.312 FEET FROM THE POINT OF BEGINNING, THENCE SOUTH 89D26'39" WEST 1025.312 FEET TO THE POINT OF BEGINNING.

TAX ID NO. 19-016-0107. ✓ *PL*

and

PART OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, U S SURVEY: BEGINNING AT A POINT WHICH IS 1002.13 FEET NORTH 89D34'13" WEST ALONG THE SECTION LINE AND 797.04 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION, RUNNING THENCE NORTH 0D25'47" EAST 156.38 FEET, THENCE NORTH 89D54'29" EAST 398.32 FEET TO THE WESTERLY RIGHT OF WAY LINE OF U S HIGHWAY 89, 91 AND 30-S THENCE SOUTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE AND THE ARC OF A 11,519.20 FOOT RADIUS CURVE TO THE LEFT A DISTANCE OF 51.76 FEET (CENTRAL ANGLE EQUALS 0D15'27" AND LONG CHORD BEARS SOUTH 30D34'20" EAST 51.76 FEET) THENCE SOUTH 33D56'07" EAST 134.57 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE, THENCE SOUTH 89D54'29" WEST 500.94 FEET TO THE POINT OF BEGINNING.

TAX ID NO. 19-016-0121. ✓

**Exhibit 4**

**FORM OF CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

This Contractor's Right of Entry Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between Utah Transit Authority, a public transit district organized pursuant to the laws of the State of Utah ("UTA"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with a principal address of \_\_\_\_\_ ("Contractor").

**RECITALS**

WHEREAS, UTA granted to M&M Storage, LLC and North View Holdings, LLC (collectively, "Grantee") an easement (the "Easement") for the installation, use, and operation of certain sewer and storm drain lines (the "Pipelines") on, under, and across UTA's FrontRunner North right of way (the "Right of Way") in Pleasant View, Utah.

WHEREAS, Contractor has been retained by Grantee for the purpose of \_\_\_\_\_ [briefly describe nature of work on Pipelines] (the "Work") within the Easement, and Contractor desires a license to enter the Right of Way for the purpose of performing the Work.

**AGREEMENT**

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. **Definition of Contractor.** For purposes of this Agreement, all references in this Agreement to the Contractor shall include any contractors, subcontractors, officers, agents, employees and others acting under Contractor's authority.
2. **IMPORTANT NOTICE.** THIS AGREEMENT AND ITS EXHIBITS CONTAIN SPECIAL PROVISIONS, MANDATED SPECIALIZED TRAINING FOR WORKERS WITHIN THE RAILROAD RIGHT-OF-WAY, TRACK ACCESS PERMIT REQUIREMENTS, NOTIFICATION REQUIREMENTS, AND OTHER OUT-OF-THE-ORDINARY SPECIFICATIONS THAT MUST BE STRICTLY FOLLOWED. CONTRACTOR SHALL REVIEW THIS AGREEMENT INCLUDING ITS EXHIBITS THOROUGHLY AND AGREES TO STRICTLY COMPLY WITH ALL PROVISIONS AND REQUIREMENTS.
3. **ACCESS TO THE RIGHT OF WAY** Before entering the Right-of-Way, Contractor shall request permission from UTA at least ten days (or such shorter period as may be approved by UTA) prior to performing any construction, repair, maintenance, or other Work in or otherwise materially affecting the Right of Way. Contractor's request to

access the Right of Way shall be specific as to the time, date and activities for which Contractor seeks permission. The request shall also include a summary of the method and manner in which the Work will be performed. As part of the application process, UTA may require Contractor (and its employees or other agents seeking access to the Right of Way) to attend any **track access coordination** meetings, **safety training** or other instruction as may be deemed necessary by UTA. Once granted, UTA's permission to enter the Right of Way shall be **formalized in writing** and delivered to Contractor. After permission has been granted, Contractor shall comply with all conditions, instructions and requirements of such permit and with all instructions or directions given by UTA including, if required, daily telephone notification to the applicable rail dispatch center prior to each entry into the Right of Way and again upon departure. All contact with UTA shall be coordinated through UTA's Real Estate Department at 669 West 200 South, Salt Lake City, Utah 84101, (801) 262-5626. Provided that Contractor complies with the provisions of this Section, UTA agrees not to unreasonably withhold, condition, or delay its approval of Contractor's request.

4. **Right Granted; Purpose.** UTA hereby grants Contractor the right to enter upon and have ingress to and egress from the Right of Way for the purpose of performing the Work as shown in the attached drawings dated \_\_\_\_\_, 20\_\_\_\_ (the drawings are appended hereto as Exhibit "A" and incorporated herein by this reference). The scope of the right of entry shall be limited solely to such purpose. Contractor shall strictly comply with the drawings attached as Exhibit "A." The right of entry granted herein shall commence on \_\_\_\_\_ and continue until \_\_\_\_\_, unless Contractor shall have sooner completed the Work (at which time the right of entry shall automatically terminate). At the completion of the Work, Contractor shall restore the surface of the Right of Way to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Contractor disturbed or removed from the Right of Way.
5. **Protection of Utilities.** Various utilities exist on, over and under the surface of the Right of Way. Prior to commencing any construction, repair, maintenance, or other Work with respect to the Pipelines, Licensee shall properly investigate and determine the location of all such utilities. In addition to the required investigation, Licensee shall have all utilities in the area of the Pipeline "blue-staked" and clearly marked prior to any excavation. Licensee shall make arrangements for the protection of all utilities and shall commence no excavation, boring or other penetration in the Right of Way until all such protection has been accomplished.
6. **Third Person Property Rights.** Contractor shall be solely responsible for obtaining any property rights, easements, rights of way or other permission from third persons as may be necessary to perform the Work including, without limitation, any needed permission from the owner of any adjacent railroad corridor. Contractor shall also be solely responsible for obtaining any necessary franchises, permits or other necessary approvals from governmental authorities.

7. Condition of Right of Way. Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Work contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety requirements, Contractor shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform, fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Right of Way.
8. Compliance with Law. In the prosecution of the Work, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments applicable to the Work. All Work shall be performed in a workmanlike manner and in compliance with all applicable industry standards. Contractor shall perform and stage construction so as to ensure the safety of: (a) Contractor's agents and employees; (b) any and all passenger or freight operations conducted on the Right of Way; (c) surrounding property owners; and (d) the public in general. Without limiting the generality of the foregoing, Contractor shall conduct the Work in compliance with all requirements of the Federal Railroad Administration, the United States Occupational Safety and Health Administration ("OSHA"), and the Utah Department of Transportation.
9. Costs of Construction and Maintenance. As between Contractor and UTA, Contractor shall be solely responsible for any and all costs related to the Work. In the event that UTA, in its sole discretion, determines that any monitors, observers, safety inspectors, flagmen or other persons are required given the nature of the Work to be performed, UTA may, at its sole discretion, provide such personnel at UTA's sole cost and expense.
10. Safety. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Work. As reinforcement to, and in addition with all additional safety requirements that may be required pursuant to paragraph 4 of this Agreement, Contractor specifically agrees as follows:
  - 10.1 Contractor shall keep all Work locations in the Right of Way free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the Work. Contractor shall promptly notify UTA of any OSHA reportable injuries arising during the Work. Contractor shall have a non-delegable duty to control its employees while in the Right of Way to ensure that such employees do not use, are not under the influence of, and do not have in their possession, any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of Work.
  - 10.2 Contractor shall ensure that all of its employees or other agents to perform work within the Right of Way have attended Roadway Worker Safety training as required by UTA.
  - 10.3 The employees of Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use

of their hands or feet. Employees shall wear sturdy and protective work boots and at least the following protective equipment: (a) protective head gear that meets American National Standard Z89.1-latest revision; (b) eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision; and (c) hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

- 10.4 All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the UTA, any of Contractor's equipment is unsafe for use on the Right of Way, Contractor shall remove such equipment from the Right of Way.
11. Indemnification. As consideration for the right of entry conveyed pursuant to this Agreement, Contractor agrees to protect, defend, release, indemnify and hold harmless UTA from and against any and all costs, claims, damages, fines, fees, penalties, attorneys' fees or other losses proximately caused by: (a) the prosecution of the Work contemplated by this Agreement by Contractor, or any employees, principals or agents of Contractor; (b) any mechanic's, materialman's, tax or other lien asserted against the Right of Way as the result of the Work; (c) the failure to properly obtain any permit or other approval necessary for the Work; or (d) Contractor's material breach of any provision of this Agreement.
12. Insurance. Contractor shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Contractor will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number \_\_\_\_\_, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of any work performed on or associated with the Pipeline crossing located on railroad right of way at Mile Post \_\_\_\_\_ at or near \_\_\_\_\_, County, Utah"

13. Entire Agreement; Counterparts. 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. However, this Agreement shall not supersede the Settlement Agreement dated \_\_\_\_\_, 2011 or the Right of Way and Easement Grant. Furthermore, in the event of any conflict between this Agreement and the Settlement Agreement dated \_\_\_\_\_, 2011, the terms and provisions of the Settlement Agreement shall control, and the terms and provisions of this Agreement shall be ineffective to the extent of such conflict. Furthermore, in the event of any conflict between this Agreement and the Right of Way and Easement Grant, the terms and provisions of the Right of Way and Easement Grant shall control, and the terms and provisions of this Agreement shall be ineffective to the extent of such conflict. 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. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

14. Termination. This Agreement and right of entry granted hereunder may be terminated by UTA in the event that Contractor continues in default with respect to any provision of this Agreement for a period of five days after receipt of notice from UTA identifying the nature of Contractor's breach. Notwithstanding the foregoing, in the event that the nature of Contractor's breach constitutes an imminent threat to persons or property, UTA may immediately suspend the right of entry granted herein until such time as Contractor remedies the breach.
15. Special Provisions. Special provisions, if any, are included in the attached Exhibit "C" (Exhibit "C" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

**UTAH TRANSIT AUTHORITY**

Reviewed and Approved as to Form for  
UTA

By: \_\_\_\_\_

Property Administrator

\_\_\_\_\_

By: \_\_\_\_\_

Paul Edwards  
Senior Program Manager

\_\_\_\_\_

\_\_\_\_\_

E# 2631797 PG 25 OF 28

**CONTRACTOR**

By: \_\_\_\_\_  
Name:  
Title:

E# 2631797 PG 26 OF 28

**EXHIBIT "A" TO CONTRACTOR'S ROE**

**CONSTRUCTION PLANS**

[Insert engineering drawings showing the proposed Work including proposed construction methods, shoring and cribbing requirements and milepost location]

**EXHIBIT "B" TO CONTRACTOR'S ROE**

**INSURANCE REQUIREMENTS**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial general liability policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2 million each occurrence or claim and an aggregate limit of at least \$4 million. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Contractor in the Agreement. Exclusions for railroads (except where the Pipeline is in all places more than 50 feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
- B. Automobile liability insurance providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2 million each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. Worker's compensation and employer's liability insurance covering Contractor's statutory liability under the laws of the State of Utah. If Contractor is self-insured, evidence of State approval must be provided.

Contractor and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Contractor's insurance shall be primary with respect to any insurance carried by UTA. Contractor's policy(ies) shall contain a provision that the insurance company will furnish UTA 30 days' advance written notice of any cancellation or lapse, or the effective date of any reduction in the amount or scope of coverage.

The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A and Class VII or better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**EXHIBIT "C" TO CONTRACTOR'S ROE**

**SPECIAL PROVISIONS**

Contractor must first obtain a Track Access Permit from UTA before any access will be allowed on UTA property. The contact person for obtaining a Track Access Permit is \_\_\_\_\_ at (801) \_\_\_\_-\_\_\_\_\_.  
\_\_\_\_\_

Note: Track Access Permits will not be issued without first having an executed Contractor's Right of Entry Agreement with UTA and UTA having received proof of insurance as provided in the Right of Entry Agreement.