

REQUEST FOR COUNCIL ACTION

SUBJECT: Encroachment Agreement with Welby Jacob Water Users Company

SUMMARY: Approve an Encroachment Agreement with Welby Jacob Water Users Company to extend a box culvert, in an amount not to exceed \$8,400.00.

FISCAL

IMPACT: Funding for this Agreement is in the Capital Projects Stormwater Account

STAFF RECOMMENDATION:

Staff recommends the City Council approve Resolution No. 14-16 authorizing the Mayor to execute three original copies of the Encroachment Agreement between West Jordan City and Welby Jacob Water Users Company in an amount not to exceed \$8,400.00.

MOTION RECOMMENDED:

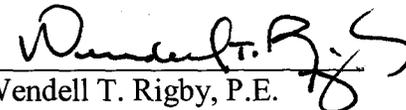
"I move to adopt Resolution No. 14-16 authorizing the Mayor to execute three original copies of the Encroachment Agreement between West Jordan City and Welby Jacob Water Users Company in an amount not to exceed \$8,400.00.

Roll Call vote required

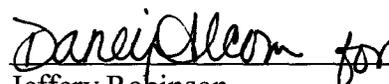
Prepared by:


David Murphy, P.E.
Engineering Manager for CIP

Reviewed by:


Wendell T. Rigby, P.E.
Director of Public Works

Reviewed as to Legal Sufficiency:


Jeffery Robinson
City Attorney

Recommended by:


Richard L. Davis
City Manager

BACKGROUND DISCUSSION:

This storm drain master planned project replaces old corrugated metal pipe under 4000 West, which is also under sized for the future capacity required. A new box culvert is proposed to be built that will carry both current and future 100-year storm flows.

As part of the Bingham Creek – 4000 West box culvert project, and as part of the future widening of 4000 West, a box extension is required for the Welby-Jacob Canal structure on the east side of 4000 West Street. This request comes from the City to the Welby-Jacob Canal Company, and therefor requires review costs and fees be paid by the City to the Canal Company.

Attachments:

Resolution
Agreement (3)

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation
RESOLUTION NO. 14-16

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN ENCROACHMENT AGREEMENT
WITH WELBY JCAOB WATER USERS COMPANY FOR THE BINGHAM CREEK PROJECT

Whereas, the City Council of the City of West Jordan has reviewed an Encroachment Agreement between the City of West Jordan and Welby Jacob Water Users Company (a copy of which is attached as **Exhibit A**) for the extension of an existing box culvert located at approximately 9285 South 4000 West, in an amount not to exceed \$8,400.00; and

Whereas, the City Council of the City of West Jordan desires to enter into the attached Encroachment Agreement with Welby Jacob Water Users Company for the extension of an existing box culvert located at approximately 9285 South 4000 West

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

Section 1. After approval as to legal form, the Mayor is hereby authorized and directed to execute the Encroachment Agreement between the City of West Jordan and Welby Jacob Water Users Company for an amount not to exceed \$8,400.00.

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 29th day of January 2014.

CITY OF WEST JORDAN

ATTEST:

By: _____
Mayor Kim V. Rolfe

MELANIE BRIGGS
City Recorder

Voting by the City Council

Jeff Haaga
Judy Hansen
Chris McConnehey
Chad Nichols
Ben Southworth
Justin D. Stoker
Mayor Kim V. Rolfe

"AYE"

"NAY"

**WELBY JACOB WATER USERS COMPANY
ENCROACHMENT AGREEMENT WITH
WEST JORDAN CITY**

[Box Culvert Extension, 9285 South 4000 West, West Jordan, Utah]

This Agreement is made and entered into among the **Welby Jacob Water Users Company**, a Utah non-profit corporation, 1156 South State, Suite 201, Orem, Utah 84097, hereinafter referred to as "Company," and **West Jordan City**, a Utah municipal corporation, 8000 South Redwood Road, West Jordan, Utah 84005, herein referred to as "Applicant."

RECITALS

A. Applicant desires to obtain the Company's consent to encroach upon its Welby Canal to extend an existing box culvert in the Company's Welby Canal at approximately 9285 South 4000 West, West Jordan, Utah. Applicant's project and any related facilities are herein referred to as the "Works." This Agreement preserves in the Company all of its rights to continue operating its canal.

B. The Company has agreed to allow Applicant to encroach on the Welby Canal, provided the terms of this Agreement are strictly adhered to and provided the Works, and any associated facilities, do not in any manner whatsoever interfere with the Company's use, operation, maintenance, and repair of its canal and related facilities.

AGREEMENT

In consideration of the mutual benefits which will accrue to the parties hereto, the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to set forth the conditions under which Applicant may install the Works. The purpose of this Agreement is also to protect and preserve the Company's ability to use, operate, maintain, and repair its canal and related facilities. This Agreement shall be limited to said purposes.

2. Period.

The term of this Agreement shall be 25 years, unless terminated earlier pursuant to the Termination paragraph below. If the Agreement is not terminated prior to its expiration, it shall automatically be extended for successive 25-year periods without any action of the parties.

3. Termination.

The Company, at its option, may terminate this Agreement if Applicant fails to begin construction of the Works within two (2) years of the date this Agreement is signed by both parties. Upon a determination by the Company Board of Directors that there has been a material failure of Applicant to strictly comply with the terms of this Agreement, Company may, at its option, terminate this Agreement without prior notice and without

providing a chance to cure. Company may, at its option, terminate this Agreement without cause, upon sixty (60) days written notice if Company terminates its use of the Welby Canal or any portion of the Welby Canal or related facilities.

The notice required by this section shall be sent to Applicant at:

David Murphy
West Jordan City
8000 South Redwood Road
West Jordan, UT 84088

4. Location.

The Works shall be located on the Welby Canal at approximately 9285 South 4000 West, West Jordan, Utah 84088 as referenced on the attached Exhibits A1-A6.

5. Design, Construction and Installation.

The Applicant has submitted plans, drawings and specifications of the Works to the Company, copies of which are attached as Exhibits A1-A6 and incorporated as part of the Agreement. The Applicant shall construct and install the Works strictly in accordance with these plans, drawings, and specifications, and the provisions of this Agreement, as determined by the Company. Applicant has no right to make any other alterations or changes to the Company's canal or properties. Any notes or conditions included in the attached drawings are incorporated herein as conditions of this Agreement. The Company approves these plans, drawings, and specifications, subject to any red-line drawings or instructions therein. The Company and the Company's engineers shall under no circumstances have any responsibility for design or construction of the Works. The Applicant must obtain the written approval of the Company to alter the Works in any manner.

6. Rights Reserved; Continued Operation of the Welby Canal.

The Company reserves all of its rights necessary to continue operating and maintaining its canal. Applicant's construction of the Works shall not in any manner whatsoever interfere with the Company's use, operation, maintenance, and repair of its canal and related facilities. This Agreement, and any interest Applicant acquires by this Agreement, is subordinate and subject to the rights of the Company to operate and maintain its canal and related facilities. The Company reserves the right to allow others to encroach upon the canal property to construct facilities that do not interfere with the Applicant's Works.

7. Maintenance and Ownership.

Applicant shall keep the Works in good repair, so the Works do not impair or threaten the operation or safety of the Company's canal, as determined by Company. Applicant will repair any disrepair or wear of the Works that affect or threaten operation of the Welby Canal, as determined by Company. The maintenance and repair of the Works and any and all associated facilities shall be the sole responsibility of Applicant.

8. Hold Harmless-Indemnification.

a. The Company does not assume any liability resulting from this Agreement or the exercise thereof by Applicant, or as a result of the design, construction, use or maintenance of the Works Applicant constructs.

b. Applicant shall indemnify, defend and hold the Company and all of its respective officials, board members, officers, managers, agents, and employees harmless from any injury or damage, or any other claim (whether meritorious or not), to any persons or property that may result from, or is claimed to result from, in whole or in part, any act, error, or omission or fault of the Applicant in exercising any of the privileges herein conferred or any design, construction, operation, use maintenance, repair or replacement of any part of the Works to be designed or constructed by Applicant or that is caused by the Works.

c. Applicant shall defend the Company from and against any action challenging Applicant's use of the land and canal subject to this Agreement.

d. Applicant shall not interfere with the operation, maintenance and repair of the Company's canal. As determined by Company, Applicant shall be strictly responsible for any damage to, obstruction of, or interference with the use, operation, maintenance, repair, or replacement of the Welby Canal or related facilities caused in whole or in part by Applicant or any design, construction, operation, use, repair or replacement the Works to be constructed by Applicant. Applicant agrees that if the operation, maintenance or repair of said canal is made more expensive by reason of this Agreement, Applicant will reimburse the Company the full amount of such additional expenses within 30 days of receipt of an itemized bill.

e. Company makes no warranty, express or implied, as to its title to the Welby canal or related land or facilities, or as to the validity of any other rights granted under this Agreement.

9. Preservation of Natural Landscape.

The Applicant shall exercise care to preserve the natural landscape and shall conduct its construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings. All trees, native shrubbery and vegetation shall be preserved and shall be protected from damage to the extent possible. Upon completion of the installation of the Works, the construction site shall be smoothed and graded in a manner to conform to the natural topography of the landscape and shall be repaired, replanted, reseeded or otherwise corrected as directed by the Company at Applicant's expense.

10. Special Provisions Related to Construction Activities.

The Applicant agrees to the following special provisions related to construction of the Works:

- a. The Applicant shall notify Franson Civil Engineers and the Company water master 24 (twenty-four) hours prior to the beginning of construction work and shall re-notify Franson Civil if it recommences work following any cessation of work for more than 4 (four) days. The contact person at Franson Civil is Todd Adams. His phone number is (801) 756-0309. The water master is Mr. Richard Shafer. His phone number is (801) 651-7440.
- b. All construction must be completed to Company standards, as determined by Franson Civil and the Company. The Works shall be constructed according to the drawings attached as Exhibits A1-A6. Any changes in these design drawings must be reviewed and accepted in writing by Franson Civil and the Company.
- c. Applicant's construction and maintenance of the Works may not interfere with delivery of water in the Company's canal.
- d. The canal right-of-way shall extend 1 rod (16.5 feet) on the uphill side of the canal centerline and 2 rods (33 feet) on the downhill side, measured from the center of the canal.
- e. If the Company is not satisfied with the compaction efforts, it may require the Applicant to perform compaction testing at the Applicant's cost. All failed material shall be removed and recompacted to specifications.
- f. All embankment materials shall be compacted impermeable soils.
- g. The Applicant agrees to maintain the canal operation and maintenance road (O&M Road) free from obstructions following construction.
- h. Canal floor and embankment material removed for excavation shall be replaced with 12-inch minimum thickness of 10^{-6} cm/sec permeability clay material, compacted to 96-percent modified proctor in 6-inch maximum lifts.
- i. Open-cut trenches shall be cut at minimum 2 horizontal to 1 vertical so that backfill can be properly compacted.

BOX CULVERT

- j. The Applicant agrees to finish the curb and gutter as a driveway type finish to allow access to the roadway from the O&M road.
- k. The top of the wing walls shall be a minimum of 6 inches higher than the high water mark in the canal. Culvert wing walls should flare at a 45-degree angle then a 90-degree angle into the canal banks, a minimum of 2 feet perpendicular to the canal banks. The angles shown on the drawings are acceptable in this instance. Placement of wing walls cannot interfere with the O&M road.
- l. All concrete used in the construction of the wing walls, headwalls, and apron shall have a minimum compressive strength of 4,000 psi. The concrete mix shall include between 5 and 7 percent air entrainment. The box culvert shall be rated for HS 20 loading.
- m. Any utility lines being installed in conjunction with this work and not identified on the drawings shall be encased in a steel sleeve of appropriate size to allow

replacement of the utility in the event it becomes necessary. The length of all casings shall extend to the edge of the canal right-of-way.

- n. Blank conduits for future utilities shall be installed a minimum of 2 feet beneath the box culvert and should extend to the edge of the canal right-of-way.
- o. In locations where steel casing pipe is used for blank conduits, soil tests for resistivity shall be done and submitted to Franson Civil Engineers. Soils with a soil resistivity (ohm cm) of 2,500 or less shall have cathodic protection with a 25-year life or have cellular concrete placed in the annular space between the carrier pipe and casing pipe.
- p. Trench plugs are to be placed at each end of the casings. The plug shall be the width of the trench and 12 inches above and below the casing pipes. It shall run a distance of 24 inches along the casing and shall consist of 90-percent clay and 10-percent bentonite. Bentonite chips are not acceptable.
- q. Concrete cut-off walls are required on the inlet and outlet, a minimum of 2 feet below the bottom of the concrete slab (apron).
- r. The Applicant shall be responsible for installing, operating, maintaining, inspecting, repairing, and replacing the box culvert and the box culvert surface. The purpose of the box culvert is to allow the Company to continue to operate. The Company will have the exclusive use of the box culvert for the carriage of water. The Company will be responsible for routine cleaning of the box culvert for purposes of allowing water to be carried only. All other inspection and maintenance will be the responsibility of the Applicant.
- s. The Company is relying on information provided by the Applicant concerning the slope of the canal and the delivery capabilities of the box culvert. If Company determines that the box culvert cannot pass minimum flows, without backing up water upstream from the box culvert, the Company may remove or modify the box culvert. The Applicant shall bear all costs for modifications to the box culvert as necessary to ensure proper operation of the canal.
- t. This agreement does not give permission for any conduits to be occupied by a utility or other companies. Each crossing requires an agreement from the Company.

11. Assignment.

This Agreement shall not be assigned or transferred by Applicant without the prior written consent of the Company.

12. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and cannot be altered except through a written instrument signed by each of the parties.

13. Governing Law.

This Agreement shall be enforced and governed under the laws of the State of Utah, and jurisdiction for any action based on this Agreement shall be with the District Court of Salt Lake County, State of Utah.

14. Attorneys' Fees/Costs. In the event of a suit between the parties, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees, engineering fees, or other professional and/o expert fees.

15. Exhibits. The Exhibits attached are a part of this Agreement as if fully set forth herein.

16. Refundable Fee.

The Applicant paid a fee to Company of Eight Thousand Four Hundred dollars (\$8,400.00) for this project, of which Two Thousand dollars (\$2,000.00) may be refunded to the Applicant if unused in processing Applicant's application and upon satisfactory and timely completion of the Works as determined by Company. If the Works are not satisfactorily and timely completed, as determined by Company, the Company may use the refundable fee to complete the Works as determined by the Company. The parties agree that use of the refundable fee by the Company does not constitute liquidated damages. Within 30 days of receipt of an itemized bill, the Applicant shall pay any and all reasonable costs that exceed the refundable fee that the Company incurs to satisfactorily complete the Works.

The parties have executed this Agreement to be effective the _____ day of _____, 201~~2~~⁴

WELBY JACOB WATER USERS COMPANY

WEST JORDAN CITY

By: _____
Darryl Lehmitz, President

By: _____

Printed Name: _____

Its: _____



CALL UTILITIES
IN ACCORDANCE WITH
UTAH RULES AND REGULATIONS
AT LEAST 48 HOURS PRIOR TO
THE COMMENCEMENT OF ANY
CONSTRUCTION.

BINGHAM CREEK CULVERT IMPROVEMENTS 4000 WEST CROSSING

4000 WEST 9250 SOUTH
WEST JORDAN, UTAH

INDEX OF DRAWINGS

- C-0.0 COVER SHEET
- C-1.0 GENERAL NOTES SHEET
- C-2.0 CULVERT CROSSING ENLARGED PLAN
- C-2.1 CANAL CROSSING ENLARGED PLAN
- C-3.0 EROSION CONTROL PLAN
- C-4.0 WEST JORDAN CITY DETAILS
- C-4.1 WEST JORDAN CITY DETAILS
- C-4.2 DETAILS
- PP-1 STREET PLAN AND PROFILE

DATE PRINTED
October 10, 2013

UTILITY DISCLAIMER
THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

NOTICE TO CONTRACTOR
ALL CONTRACTORS AND SUBCONTRACTORS SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

NOTICE TO DEVELOPER CONTRACTOR
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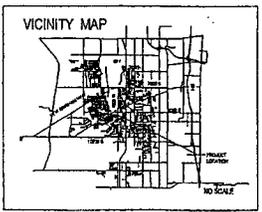
CITY ENGINEER ACCEPTANCE OF IMPROVEMENT PLANS
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DEVELOPER

WEST JORDAN CITY
8475 SOUTH REDWOOD ROAD
WEST JORDAN, UTAH 84088



Exhibit A-1



GENERAL NOTES

1. ALL NOTES TO BE READ IN CONJUNCTION WITH THE GENERAL NOTES SHEET.
2. CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

ENGINEER/SURVEYOR:



DATE: 10/10/13
SCALE: AS SHOWN
PROJECT: BINGHAM CREEK CULVERT IMPROVEMENTS
SHEET: C-0.0

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OCT 25 2013

BINGHAM CREEK CULVERT IMPROVEMENTS
4000 WEST CROSSING
October 10, 2013



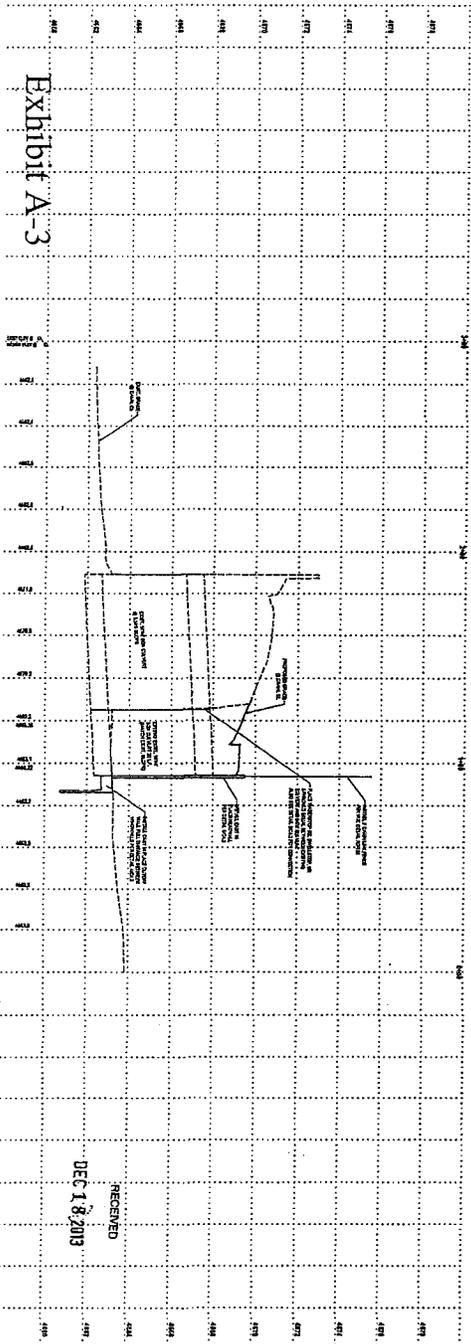
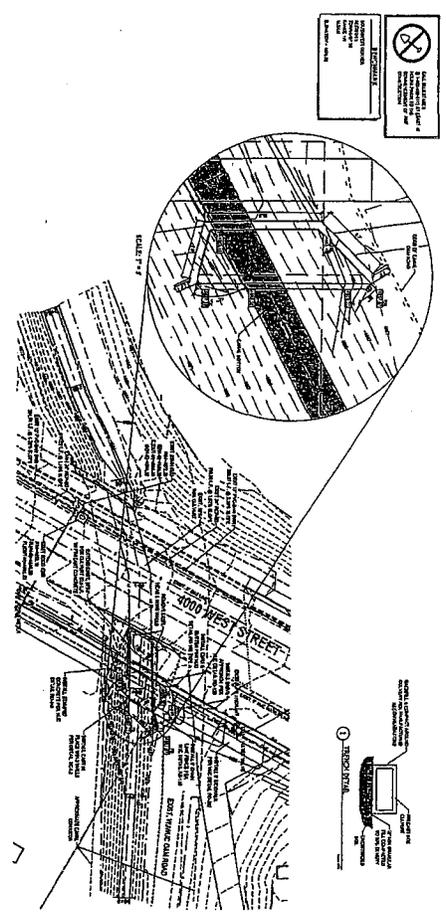


Exhibit A-3

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SYMBOL	DESCRIPTION
1	PROPOSED SIDEWALK
2	EXISTING SIDEWALK
3	PROPOSED ASPHALT DRIVEWAY
4	EXISTING ASPHALT DRIVEWAY
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18	EXISTING ASPHALT DRIVEWAY
19	PROPOSED ASPHALT DRIVEWAY
20	EXISTING ASPHALT DRIVEWAY



ENVISION
SALT LAKE CITY
1000 WEST CROSSING
PLAZA & ROYALE
4000 WEST STREET
SALT LAKE CITY, UT 84119
PHONE: 801.471.1100
FAX: 801.471.1100
WWW.ENVISIONINC.COM

BINGHAM CREEK CULVERT IMPROVEMENTS
4000 WEST CROSSING
4000 WEST 9250 SOUTH
WEST JORDAN CITY, UTAH



DAVID L. JOHNSON
REGISTERED PROFESSIONAL ENGINEER
No. 11111
EXPIRES 12/31/14

WEST JORDAN
CIVIL CROSSING
PLAN & PROFILE
4000 WEST STREET

C-21

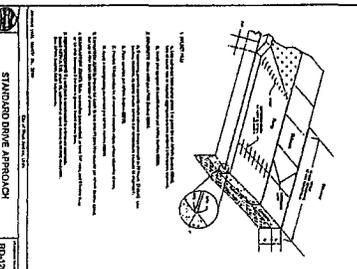
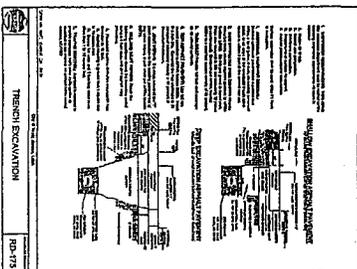
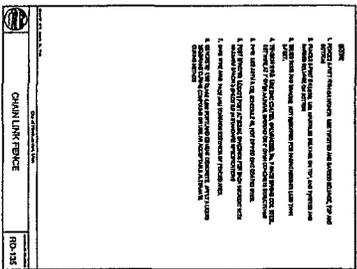
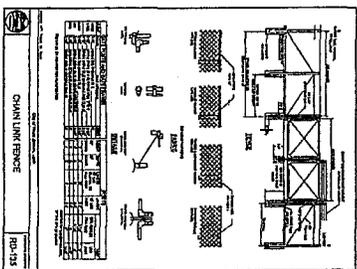
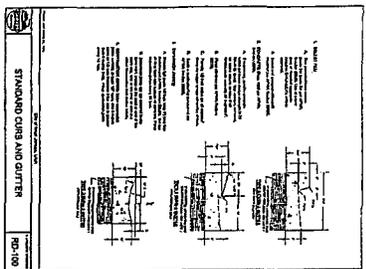
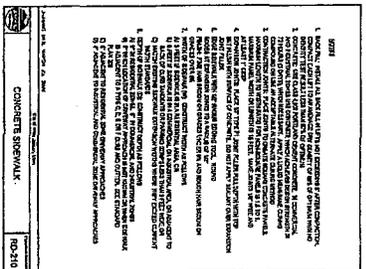
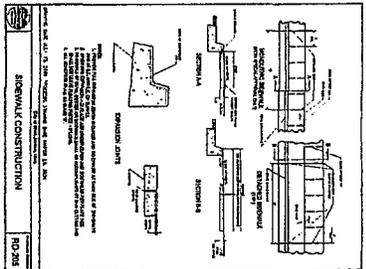
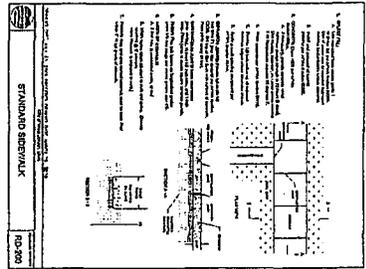


Exhibit A-4

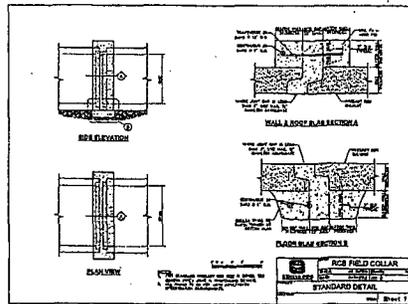
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DETAILS
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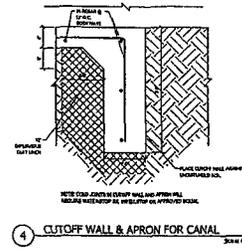
ENSTEN
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PLANNERS

14100 S. 11100
TROY, UT 84070
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WWW.ENSTEN.COM

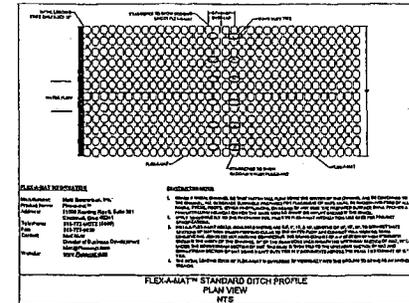
BINGHAM CREEK CULVERT IMPROVEMENTS
4000 WEST CROSSING
4000 WEST 9250 SOUTH
WEST JORDAN CITY, UTAH



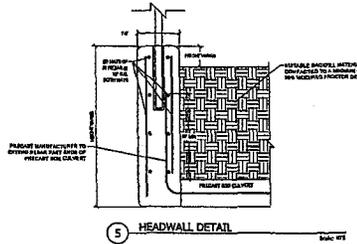
8 CONNECTION TO EXISTING CULVERT
Scale: 1/4" = 1'-0"



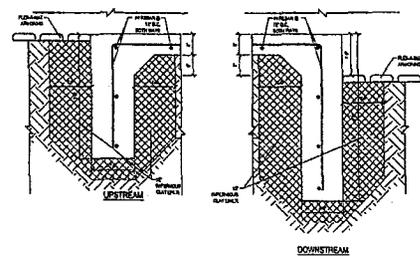
4 CUTOFF WALL & APRON FOR CANAL
Scale: 1/4" = 1'-0"



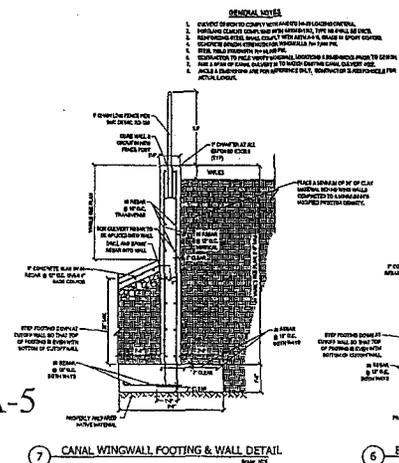
1 FLEX-A-MAT CHANNEL ARMORING
Scale: 1/4" = 1'-0"



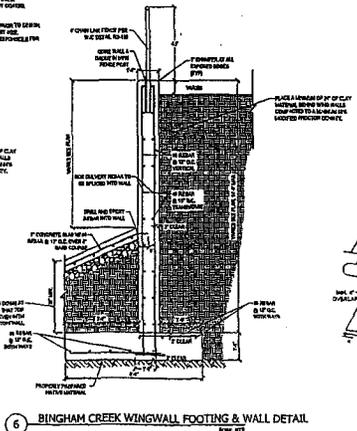
5 HEADWALL DETAIL
Scale: 1/4" = 1'-0"



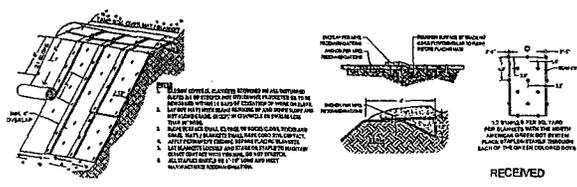
2 CUTOFF WALL & APRON FOR BINGHAM CREEK
Scale: 1/4" = 1'-0"



7 CANAL WINGWALL FOOTING & WALL DETAIL
Scale: 1/4" = 1'-0"



6 BINGHAM CREEK WINGWALL FOOTING & WALL DETAIL
Scale: 1/4" = 1'-0"



3 EROSION CONTROL BLANKET DETAILS
Scale: 1/4" = 1'-0"

Exhibit A-5



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DETAILS

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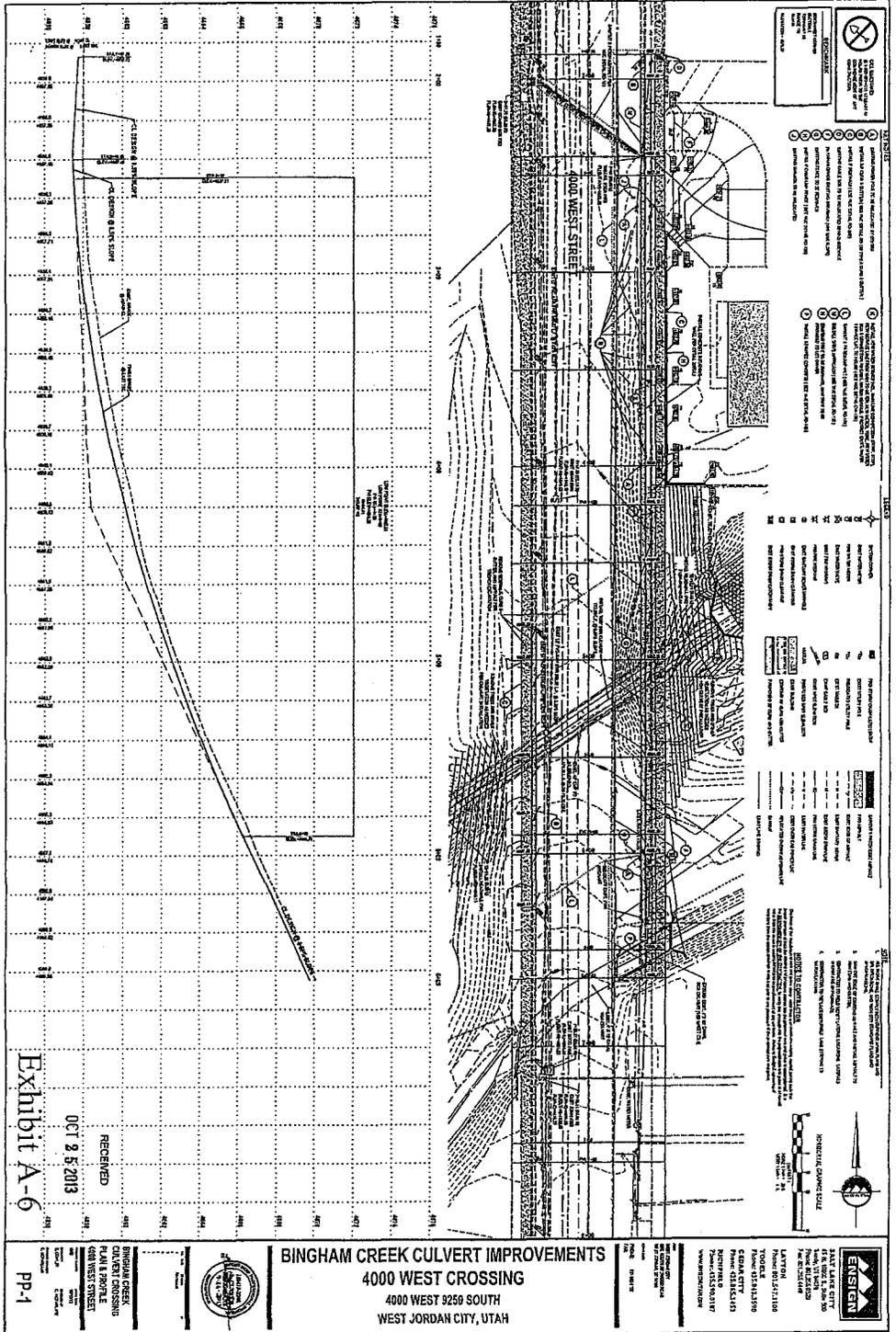


Exhibit A-6

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BINGHAM CREEK
4000 WEST CROSSING
4000 WEST STREET

BINGHAM CREEK CULVERT IMPROVEMENTS
4000 WEST CROSSING
4000 WEST STREET
WEST JORDAN CITY, UTAH

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