



## CITY COUNCIL AGENDA

PUBLIC NOTICE is hereby given that the City Council of Spanish Fork, Utah, will hold a regular public meeting in the Council Chambers in the City Office Building, **40 South Main Street**, Spanish Fork, Utah, commencing at **6:00 p.m. on October 2, 2012.**

### AGENDA ITEMS:

#### 1. CALL TO ORDER, PLEDGE, OPENING CEREMONY, RECOGNITIONS:

- a. Pledge, led by invitation
- b. Utah County Health Department & Outrage (Anti-Tobacco Youth Group)

#### 2. PUBLIC COMMENTS:

Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comment will be limited to three minutes per person. A spokesperson who has been asked by a group to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing. The Mayor or Council may restrict the comments beyond these guidelines.

#### 3. COUNCIL COMMENTS:

#### 4. SPANISH FORK 101: Dale Robinson, Parks & Recreation Director - City Greenhouse Program

#### 5. CONSENT ITEMS:

These items are considered by the City Council to be routine and will be enacted by a single motion. If discussion is desired on any particular consent item, that item may be removed from the consent agenda and considered separately.

- a. \* Minutes of Spanish Fork City Council Meeting – [September 18, 2012](#)
- b. \* [1000 North Road Widening Project 2012 – Signal Modification Change Order 2](#)
- c. \* [Questar Agreements for Natural Gas to the North Park Pavilion](#)
- d. \* [Xpress Bill Pay Contract Revision](#)
- e. \* [Goran, LLC. Airport Road Closure & Runway Shift Contract](#)
- f. \* [Staker Parsons Airport Apron Rehab Contract](#)

#### 6. PUBLIC HEARING:

- a. \* [Ordinance # 13-12 Abandoning a Public Access Easement on Lot 20, Canyon View Subdivision Plat B](#)

#### 7. NEW BUSINESS:

- a. Presentation on Business Licenses Program and Potential Modifications
- b. \* [Parlant Technology Contract - Providing a mass communications tool for city use, including emergencies](#)

### ADJOURN:

\* Supporting documentation is available on the City's website [www.spanishfork.org](http://www.spanishfork.org)

Notice is hereby given that:

- In the event of an absence of a quorum, agenda items will be continued to the next regularly scheduled meeting.
- By motion of the Spanish Fork City Council, pursuant to Title 52, Chapter 4 of the Utah Code, the City Council may vote to hold a closed meeting for any of the purposes identified in that Chapter.
- This agenda is also available on the City's webpage at [www.spanishfork.org](http://www.spanishfork.org)

SPANISH FORK CITY does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the employment or the provision of services. The public is invited to participate in all Spanish Fork City Council Meetings located at 40 South Main St. If you need special accommodation to participate in the meeting, please contact the City Manager's Office at 804-4530.

Tentative Minutes  
Spanish Fork City Council Meeting  
September 18, 2012

Elected Officials Present: Mayor G. Wayne Andersen, Councilmembers Steve Leifson, Rod Dart, Keir A. Scoubes, Richard Davis, Brandon Gordon.

Staff Present: David Oyler, City Manager; Jason Sant, Assistant City Attorney; Seth Perrins, Assistant City Manager; Dave Anderson; Community Development Director; Chris Thompson, Public Works Director; Dale Robinson, Parks & Recreation Director; Kent Clark City Recorder/Finance Director; Steve Adams, Public Safety Director; Angie Warner, Deputy Recorder; Kelly Peterson, Electric Superintendent; Bill Bushman, Buildings & Grounds Maintenance Supervisor.

Citizens Present: Efen Bedolla, Blanca Sandoval, Richard T. Banks, Branden Kirk, Anthony Powell, Robyn Miller, Janalee Sermersheim, Colton Shermersheim, Todd Shermersheim, Creed Sermersheim, Jennifer Braithwaite, Clayton Ross, Susan Hayes Geduld, Brenda Messer, Jacob Atkinson.

**CALL TO ORDER, PLEDGE, RECOGNITION:**

Mayor Andersen called the meeting to order at 6:00 p.m.

Jacob Atkinson led in the pledge of allegiance.

**PUBLIC COMMENTS:**

**Agenda Request - Bob Zahrt, Kiwanis Club**

Mr. Zahrt said in 1921 the Spanish Fork Kiwanis Club was established. Mr. Zahrt read the objectives of the Kiwanis Club and what they stand for.

Colton Sermersheim said has been involved with the tennis recreation league for many years. There is an issue that has been happening at the courts for about a year. This gentleman has a business that teaches tennis lessons and is renting courts at the Spanish Fork facilities. He is reserving two courts at the indoor and outdoor courts at prime hours of the day and Saturday mornings. Our membership fees have not changed, but the availability for court times have been cut down drastically. When you pay your fee for a membership at the indoor courts you receive a key & pass, which none of his students have.

Mayor Andersen said we will have a meeting with staff and talk to some citizens and come to a conclusion.

Jennifer Braithwaite said her daughter plays tennis in Spanish Fork Recreation. She agrees with what Mr. Sermersheim presented. Ms. Braithwaite asked the council to get some feedback from the public that use the tennis facilities.

Clayton Ross said he plays at the indoor facility in the mornings. They appreciate being able to use the facility and the low fees. Mr. Ross commented that the gentleman taking up the public time on the courts to make money is not right. He asked the City to find a solution or other options.

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Richard Banks commented how great the planter boxes look on Main Street.

**COUNCIL COMMENTS:**

Councilman Gordon reminded the citizens of the Farmer’s Market on Saturday mornings and this Saturday will include the business fair.

Councilman Davis said the Aero planes, Trains & Automobiles event at the airport was great. They plan to have the event again in 2 years. The airport will be starting the construction for the expansion for the runway soon. Councilman Davis said last week the council and staff went to the ULCT conference to attend meetings and trainings.

Councilman Dart reminded the public that September is National Library Card Signup Month.

Councilman Scoubes reminded the public that this Saturday is the Harvest Moon Hoorah from 3-9pm at the City Park. There will be entertainment, booths, food and activities for all ages. Most things are free but some might have a fee.

Mayor Andersen met with the legislative policy committee that includes other city council and staff. They get together to discuss legislative items that will or might come up relating to cities.

**SPANISH FORK 101:** Dale Robinson, Parks & Recreation Director

Mr. Robinson said he just found out about the tennis issue a couple hours ago. Staff is working on the issue. Mr. Robinson thanked the citizen’s for the information and staff will find a solution.

Mr. Robinson said Mr. Bill Bushman does the work for a grant that saves the city a lot of money. Mr. Robinson turned the time over to Mr. Bushman for a presentation.

Mr. Bushman gave a presentation on energy efficient projects for the buildings and grounds for Spanish Fork City.

Kelly Peterson gave a presentation on the electrical energy efficient projects.

**CONSENT ITEMS:**

- a. Minutes of Spanish Fork City Council Meeting – September 4, 2012
- b. Fairgrounds Arena Priefert Ranch Equipment Change Order Ratification
- c. NRCS Emergency Watershed Protection (EWP) Program Amendment 4
- d. IHI Environmental Master Services Agreement

Councilman Leifson made a **Motion** to **approve** the consent items.

Councilman Dart **Seconded** and the motion **Passed** all in favor.

**PUBLIC HEARING:**

**Proposed Amendment to Title 15 – This proposal would make churches a Conditional Use in the Commercial Downtown Zone.**

Dave Anderson said that right now the Commercial Downtown Zone does not allow churches. This proposal tonight is to add churches to the list. The Commercial Downtown Zone runs from 100 North to 400 North. The Development Review Committee and Planning Commission

97 recommend approval.  
98  
99 Councilman Gordon made a **Motion** to move into Public Hearing.  
100 Councilman Scoubes **Seconded** and the motion **Passed** all in favor at 7:07 p.m.  
101  
102 Mayor Andersen welcomed any public comment.  
103  
104 Brandon Kirk said he is requesting the change because the smaller churches do not have the  
105 funding to build so they usually find current buildings to rent or buy.  
106  
107 Susan Hayes owner of the Prim Rose building and would love to have this approved so she can  
108 sell her building to the church.  
109  
110 Councilman Dart made a **Motion** to move out of Public Hearing.  
111 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:12 p.m.  
112  
113 Councilman Scoubes asked to clarify the area for the change.  
114  
115 Mr. Anderson showed on a map from 100 North to 400 North.  
116  
117 It was clarified that this item is not related to the Prim Rose Retreat building that Ms. Hayes  
118 commented. That is another item on the agenda.  
119  
120 Councilman Davis made a **Motion** to **approve** Ordinance #12-12 Making Text Amendments to the  
121 Commercial Downtown Zone making Churches a Conditional Use.  
122 Councilman Leifson **Seconded** and the motion **Passed** all in favor with a roll call vote.  
123  
124 **Proposed Zone Change – This proposal would change the zoning of a property located at**  
125 **approximately 900 North Expressway Lane from Shopping Center to Commercial 2.**  
126 Dave Anderson said this facility has been a roller skating rink, then a spa retreat. It is located in  
127 the Shopping Center zone and the request is to change it to Commercial 2 to be able to have a  
128 church at this location. The Development Review Committee and Planning Commission  
129 recommend approval.  
130  
131 Mr. Anderson said the Planning Commission suggested changing the zoning for the Wendy's as  
132 well. Staff will present that item at a future council meeting.  
133  
134 Councilman Scoubes made a **Motion** to move into Public Hearing.  
135 Councilman Davis **Seconded** and the motion **Passed** all in favor at 7:21 p.m.  
136  
137 Mayor Andersen welcomed any public comment.  
138  
139 There was none.  
140  
141 Councilman Leifson made a **Motion** to move out of Public Hearing.  
142 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:22 p.m.  
143  
144 Councilman Davis made a **Motion** to **approve** the Efren Bedolla Zone Change located at  
145 approximately 900 North Expressway Lane from Shopping Center to Commercial 2.  
146 Councilman Scoubes **Seconded** and the motion **Passed** all in favor with a roll call vote.  
147

148 **Proposed Amendment to Title 15 – This proposal would make a variety of changes that have**  
149 **been proposed by the City’s Engineering Department.**  
150 Chris Thompson said staff has added to Title 15 that new development will need to have a 50  
151 foot easement along the river so staff is able to have access in emergency situations. Staff has  
152 also made other minor clean up changes in Title 15.  
153  
154 Dave Oyler pointed out on the map some areas along the river that have the 50 feet or more,  
155 where staff were able to access for flood control. This will also help provide adequate room for  
156 the equestrian trail in the future.  
157  
158 Dave Anderson said this is a 50 foot requirement from the bank. The City would compensate the  
159 land owner for the easement in some way.  
160  
161 Dale Robinson said staff has done research and the Provo River Trail has some issues now and  
162 does not have enough land in some spots to access the river. The Spanish Fork River Trail is very  
163 popular and is growing; we may need that footage in the future.  
164  
165 Councilman Leifson made a **Motion** to move into Public Hearing.  
166 Councilman Scoubes **Seconded** and the motion **Passed** all in favor at 7:33 p.m.  
167  
168 Mayor Andersen welcomed any public comment.  
169  
170 There was none.  
171  
172 Councilman Davis made a **Motion** to move out of Public Hearing.  
173 Councilman Gordon **Seconded** and the motion **Passed** all in favor at 7:34 p.m.  
174  
175 Mayor Andersen commented that asking a property owner to just give up 50 foot easement does  
176 not seem right.  
177  
178 Councilman Davis asked if the footage is on both sides of the river.  
179  
180 Chris Thompson said yes they are requesting it on both sides. But only have the trail on one  
181 side.  
182  
183 Mr. Oyler reminded everyone of the flooding two years ago. Staff needs to be able to have  
184 access on both sides for flood control.  
185  
186 Discussion took place regarding the footage requirement.  
187  
188 Councilman Davis suggested 30 feet on both sides.  
189  
190 Mr. Oyler suggested 50 on the trail side, and less on the other side.  
191  
192 Mr. Thompson said 35 ft is adequate for flood control, but the 50 ft would give more room for  
193 future development.  
194  
195 Councilman Scoubes asked about public safety along the river trail. Is there graffiti or damage to  
196 the fences that border the trail; litter.  
197

198 Chief Adams said that there is an advantage to have the open area around the trail so the public  
199 can see clearly around them.

200  
201 Councilman Scoubes agrees to have a wider open area for the trails.

202  
203 Councilman Dart thinks the footage could be less than the 50 feet.

204  
205 Mayor Andersen commented to have equal footage on both sides.

206  
207 Councilman Scoubes asked Mr. Thompson about clear vision for trees in Title 15. It says 14 feet  
208 for park strip trees; that seems high.

209  
210 Mr. Thompson clarified that that footage is from the street up so tree limbs do not overhang in  
211 the street where they could be hit by vehicles.

212  
213 Councilman Leifson made a **Motion** to **approve** the Amendments to Title 15 with a change of 40  
214 Foot Easement on both sides of the river with the necessary changes to the tree standards  
215 discussed.

216 Councilman dart **Seconded** and the motion **Passed** all in favor with a roll call vote.

217

218 **NEW BUSINESS:**

219 **Proposed Skyline Preliminary Plat – This proposal would provide for the subdivision of an 80-acre**  
220 **site into 11 lots. The property is located at approximately 3400 North Main Street.**

221 Dave Anderson said this property is an illegal subdivision. Years ago a property owner took the  
222 80 acre property to Utah County and had it divided into 11 lots. This is a plan for future  
223 development so there could be amendments in the future. The Development Review Committee  
224 and Planning Commission recommend approval with the condition for a right-of way.

225

226 Mayor Andersen asked if there are any wetlands issues.

227

228 Mr. Anderson said if this is approved tonight then the applicant can have the area checked for  
229 wetlands.

230

231 Councilman Gordon made a **Motion** to **approve** the proposed Skyline Preliminary Plat with the  
232 following condition:

233 *1. That the applicant modifies the plat as needed to include any planned right-of-way along*  
234 *the western boundary.*

235 Councilman Dart **Seconded** and the motion **Passed** all in favor.

236

237 **ADJOURN:**

238 Councilman Dart made a **Motion** to **adjourn**.

239 Councilman Scoubes **Seconded** and the motion **Passed** all in favor at 8:29 p.m.

240

241 **ADOPTED:**

242

243

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Angie Warner, Deputy Recorder



# Memo

To: Mayor and City Council  
From: Chris Thompson, Public Works Director/City Engineer  
Date: September 28, 2012  
Re: 1000 North Road Widening Project 2012 - Signal Modification Change Order 2

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## Staff Report

The MUTCD changed their signal standards after the signals along 1000 North were constructed. As part of Costco's traffic study they requested that we update the signals to meet this new standard. This change order is to replace 6 of the left turn signal mounts with the updated "doghouse" type signals.

We also had utility issues on Main Street forcing us to install the base of the one of the traffic signals far enough away from the pedestrian ramp that we needed to install a second pedestrian signal pole for the crossing. This change order is also to install that pole.

We recommend that the city council ratify this change order for the amount of \$13,238.34 with S&L Inc.

Attached: change order



# Spanish Fork City

## Contract Change Order

Change Order Number: 2

Contract for	1000 North Road Widening Project - 2012	Date	9/24/2012
Owner	Spanish Fork City		
To	S&L Inc		

You are hereby requested to comply with the following changes from the contract plans and specifications:

Description of Changes (Supplemental Plans and Specifications Attached)	Decrease in Contract Price	Increase in Contract Price
200 East 1000 North Signal Modification - 2 new Left Turn Modes		\$3,573.00
400 East 1000 North Signal Modification - 4 new Left Turn Modes		\$6,199.00
Main Street 1000 North Signal Modification - Pedestrian Ped		\$595.60
Traffic Control 2 Flaggers		\$1,144.00
Personal and Overhead		\$1,726.74
TOTALS :	\$-	\$13,238.34
NET CHANGE IN CONTRACT PRICE :	\$-	\$13,238.34

**JUSTIFICATION**

See attached memo

The amount of the contract will increase by the sum of : Thirteen Thousand Two Hundred Thirty Eight and 34/100 Dollars  
Dollars      \$13,238.34

The contract total including this and previous change orders will be : Eight Hundred Forty Three Thousand Two Hundred Fifty One and  
13/100 Dollars      Dollars      \$843,251.13

This document will become a supplement to the contract and all provisions will apply herein.

Recommended: \_\_\_\_\_ Date: \_\_\_\_\_  
Engineering Division Manager

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Public Works Director

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Finance Director

# PROPOSED CHANGE ORDER



**S&L Incorporated**  
 935 West Center Street  
 Lindon, Utah 84042  
 Phone: (801) 785-8458  
 Fax: (801) 785-8453

PROPOSAL NO.: 310-012  
 SUBMITTAL DATE: 9/19/2012  
 S&L JOB NO.: 310  
 OWNER CONTRACT NO.: \_\_\_\_\_  
 OWNER CHANGE ORDER NO.: \_\_\_\_\_

<b>TO:</b>	Spanish Fork City
<b>PROJECT:</b>	1000 No. Road Widening Project
<b>DATE:</b>	09/19/12
<b>ATTN:</b>	Lua Salone
<b>EMAIL:</b>	lsalone@spanishfork.org
<b>PHONE:</b>	801-358-8513

*For Office Use Only*

	INITIAL	DATE
S&L APPROVAL:	SM	9/19/2012
OWNER APPROVAL:		

1000 North Signal Modification as per PCO Request with detail provided by Horrocks (pictures/drawings)

PAY ITEM	DESCRIPTION	UNITS	QTY	MATERIAL	LABOR	UNIT PRICE w/tax	AMOUNT
1	200 EAST / 1000 NORTH	EA	2		\$1,786.50	\$1,786.50	\$3,573.00
2	400 EAST / 1000 NORTH	EA	4		\$1,549.75	\$1,549.75	\$6,199.00
3	MAIN ST / 1000 NORTH	EA	1		\$595.60	\$595.60	\$595.60
4						\$0.00	\$0.00
5	TRAFFIC CONTROL (DAY SHIFT WORK)	DAY	2		\$572.00	\$572.00	\$1,144.00
6	2-FLAGGER / MAINTAINER, LIGHT BOARD, CONES, M					\$0.00	\$0.00
7						\$0.00	\$0.00
8						\$0.00	\$0.00
9						\$0.00	\$0.00
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12						\$0.00	\$0.00
13						\$0.00	\$0.00
14						\$0.00	\$0.00
15						\$0.00	\$0.00
16						\$0.00	\$0.00
17						\$0.00	\$0.00
18						\$0.00	\$0.00
19						\$0.00	\$0.00
20						\$0.00	\$0.00
<b>SUB-TOTAL:</b>							<b>\$11,511.60</b>
<b>P&amp;O 15%:</b>							<b>\$1,726.74</b>
<b>TOTAL:</b>							<b>\$13,238.34</b>

# HORROCKS

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## ENGINEERS

**To:** Lua Saluone  
Spanish Fork City

**From:** John Dorny, P.E.,

**Date:** June 20, 2012

**Subject:** 1000 North Signal Modifications

Memorandum

JN 050-1109

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### Introduction

Horrocks was asked to review the Kittelson & Associates, Inc. (KAI) traffic report performed September 21, 2011 for the proposed Costco store on 1000 North. As part of this review we were asked to confirm requests to add protected turn phases at a few of the intersections on 1000 North. This memorandum details the requested changes to the intersections on 1000 North at Main Street, 200 East, and 400 East due to the Costco project and coordination with the I-15 CORE project.

Attached to this memorandum is a page from the 2009 MUTCD for reference. Two signal head types are identified. One circled "A" represents a "five-section" head and "B" a "four-section" head. Pictures of the signal heads to be removed are attached with references to signal heads "A" and "B" for replacement. The original signal design plans are also included and noted with corresponding replacement markings.

Where possible signal heads need to be placed on the "left" and "through" shared lane lines per the MUTCD. "Left Turn Yield on Green" signs may be included if there is room on the signal head but they are not required.

The following changes below should be coordinated with changes to striping and medians. Signal timing, phasing, and detection will need to be adjusted at the time of installation. Please give notice to Horrocks Engineers prior to installation in order to provide minimal impact to traffic.

Based on our review we request the following changes be added to the 1000 North and Main Street signal contract:

#### 200 East and 1000 North

1. Replace the signal head over the left and through shared lane line with a signal head type "A (five-section)" head for both the eastbound and westbound approaches.
2. Match the existing gauge and strand count of additional wiring required for this modification or for future use.
3. The eastbound left turn lane to northbound 200 East needs to be at least 200 feet long.

400 East and 1000 North

1. Replace the signal head over the left and through shared lane line with a signal head type "A (five-section)" head for both the eastbound and westbound approaches.
2. Replace the signal head over the left and through shared lane line with a signal head type "B (five-section)" head for both the northbound and southbound approaches.
3. The southbound approach will need to be restriped to accommodate an exclusive right turn lane, a shared through-left lane, and a dedicated left turn lane.
4. Match the existing gauge of additional wiring required for this modification or for future use.
5. The northbound approach will need to be restriped to accommodate an exclusive left turn lane and a shared through-right lane.

Main Street and 1000 North

UDOT has decided to remove the installation of loop detection on the north leg of the Main Street/1000 North intersection that was previously planned as part of the I-15 CORE project. The new detection will be "matrix" detection using the Wavetronix brand of equipment provided by UDOT from their "State Furnished Items" list.

The additional items include:

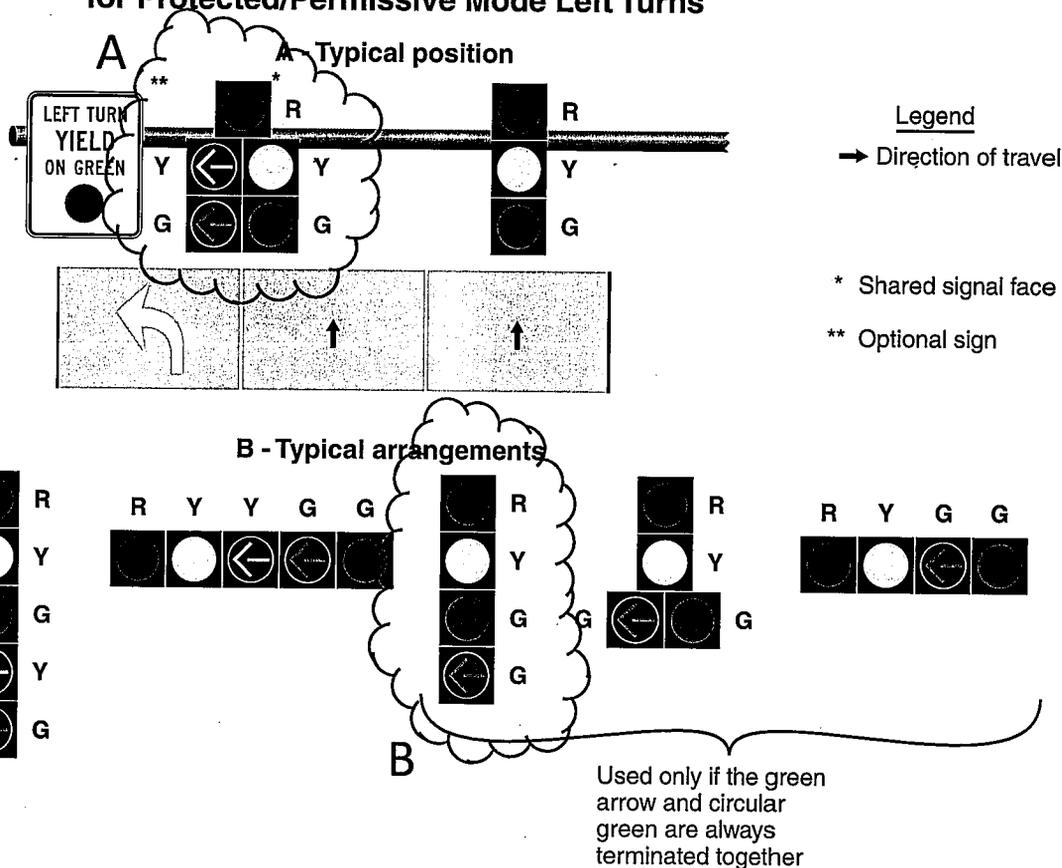
Wavetronix Matrix Sensor (Stop Bar)  
Wavetronix Sensor Mount (6" 3 Axis Aluminum Bracket)  
Wavetronix 100' Cable w/Connector  
Wavetronix Splics Box

The labor to install these items need to be itemized and for reimbursement by the State since the initial detection for the north leg of the intersection was going to be included as part of the I-15 CORE project.

**Contacts**

UDOT State Furnished Items Contact: Larry Montoya (801-965-4924)  
UDOT I-15 CORE Coordination Contact: Eric Rasband (801-857-5562)  
UDOT Region 3 Signal Installation Contact: Adam Lough (801-718-4326)  
UDOT Statewide Signal Engineer Contact: Matthew Luker (801-440-9274)  
Horrocks Signal Timing/Detection Contact: Troy Noall (801-615-0977)  
Horrocks Project Manager Contact: John Dorny (801-318-4397)

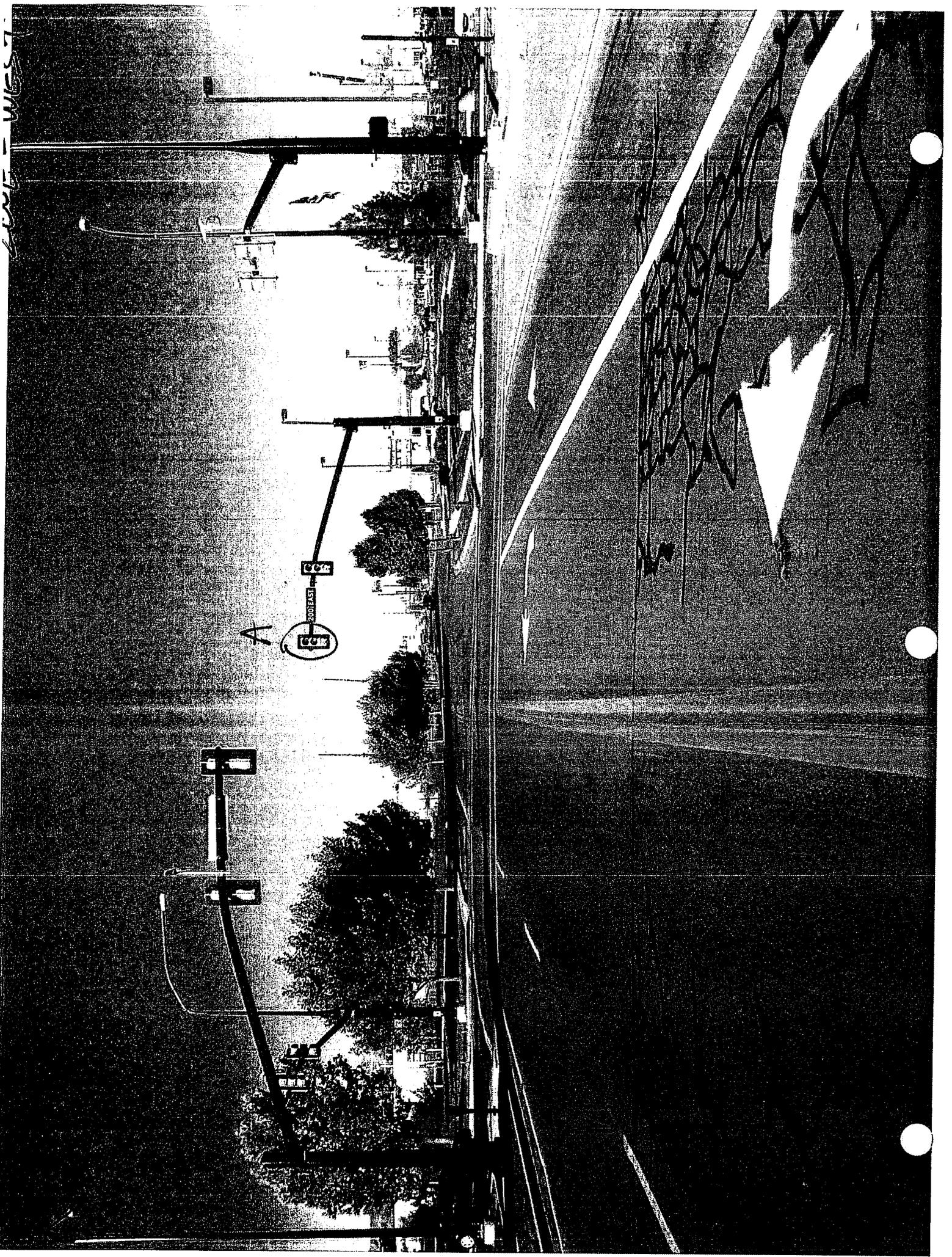
**Figure 4D-11. Typical Position and Arrangements of Shared Signal Faces for Protected/Permissive Mode Left Turns**



03 If a separate left-turn signal face is being operated in a protected/permissive left-turn mode and a flashing left-turn yellow arrow signal indication is provided, it shall meet the following requirements (see Figure 4D-12):

- A. It shall be capable of displaying the following signal indications: steady left-turn RED ARROW, steady left-turn YELLOW ARROW, flashing left-turn YELLOW ARROW, and left-turn GREEN ARROW. Only one of the four indications shall be displayed at any given time.
- B. During the protected left-turn movement, a left-turn GREEN ARROW signal indication shall be displayed.
- C. A steady left-turn YELLOW ARROW signal indication shall be displayed following the left-turn GREEN ARROW signal indication.
- D. During the permissive left-turn movement, a flashing left-turn YELLOW ARROW signal indication shall be displayed.
- E. A steady left-turn YELLOW ARROW signal indication shall be displayed following the flashing left-turn YELLOW ARROW signal indication if the permissive left-turn movement is being terminated and the separate left-turn signal face will subsequently display a steady left-turn RED ARROW indication.
- F. It shall be permitted to display a flashing left-turn YELLOW ARROW signal indication for a permissive left-turn movement while the signal faces for the adjacent through movement display steady CIRCULAR RED signal indications and the opposing left-turn signal faces display left-turn GREEN ARROW signal indications for a protected left-turn movement.
- G. When a permissive left-turn movement is changing to a protected left-turn movement, a left-turn GREEN ARROW signal indication shall be displayed immediately upon the termination of the flashing left-turn YELLOW ARROW signal indication. A steady left-turn YELLOW ARROW signal indication shall not be displayed between the display of the flashing left-turn YELLOW ARROW signal indication and the display of the steady left-turn GREEN ARROW signal indication.

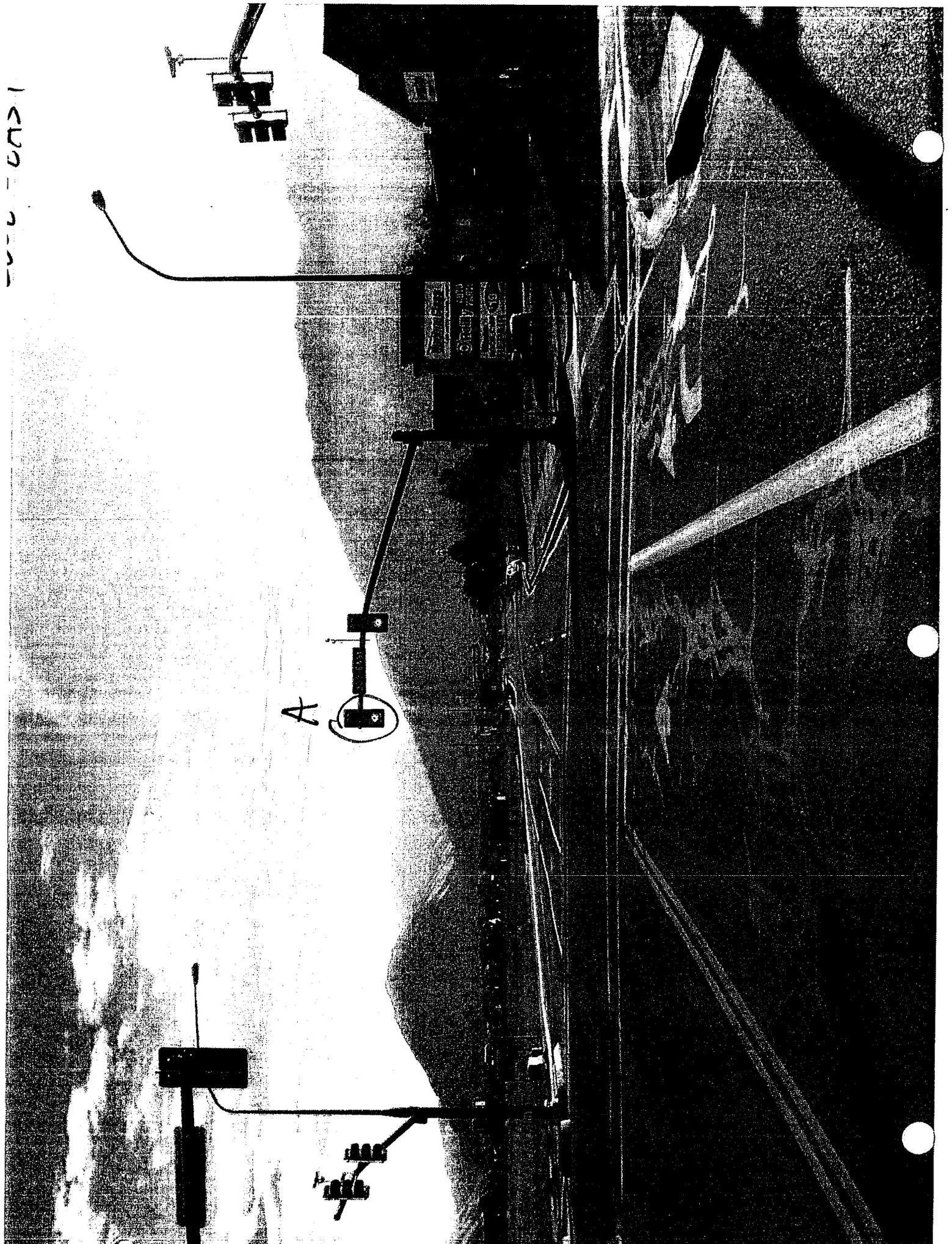
SWIFT - WEST



A

200 EAST  
CITY

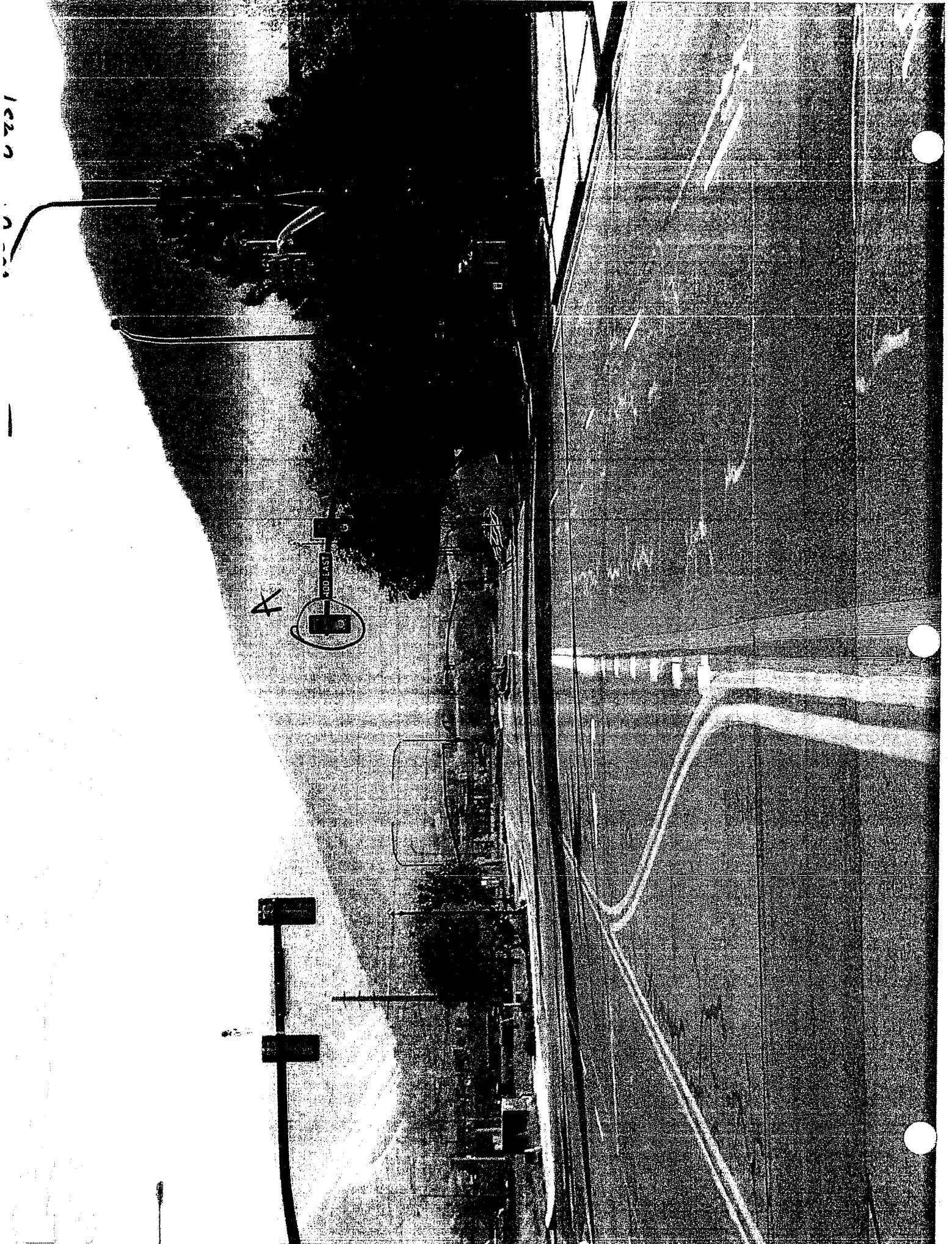
1 (20) - 2-21



A



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A

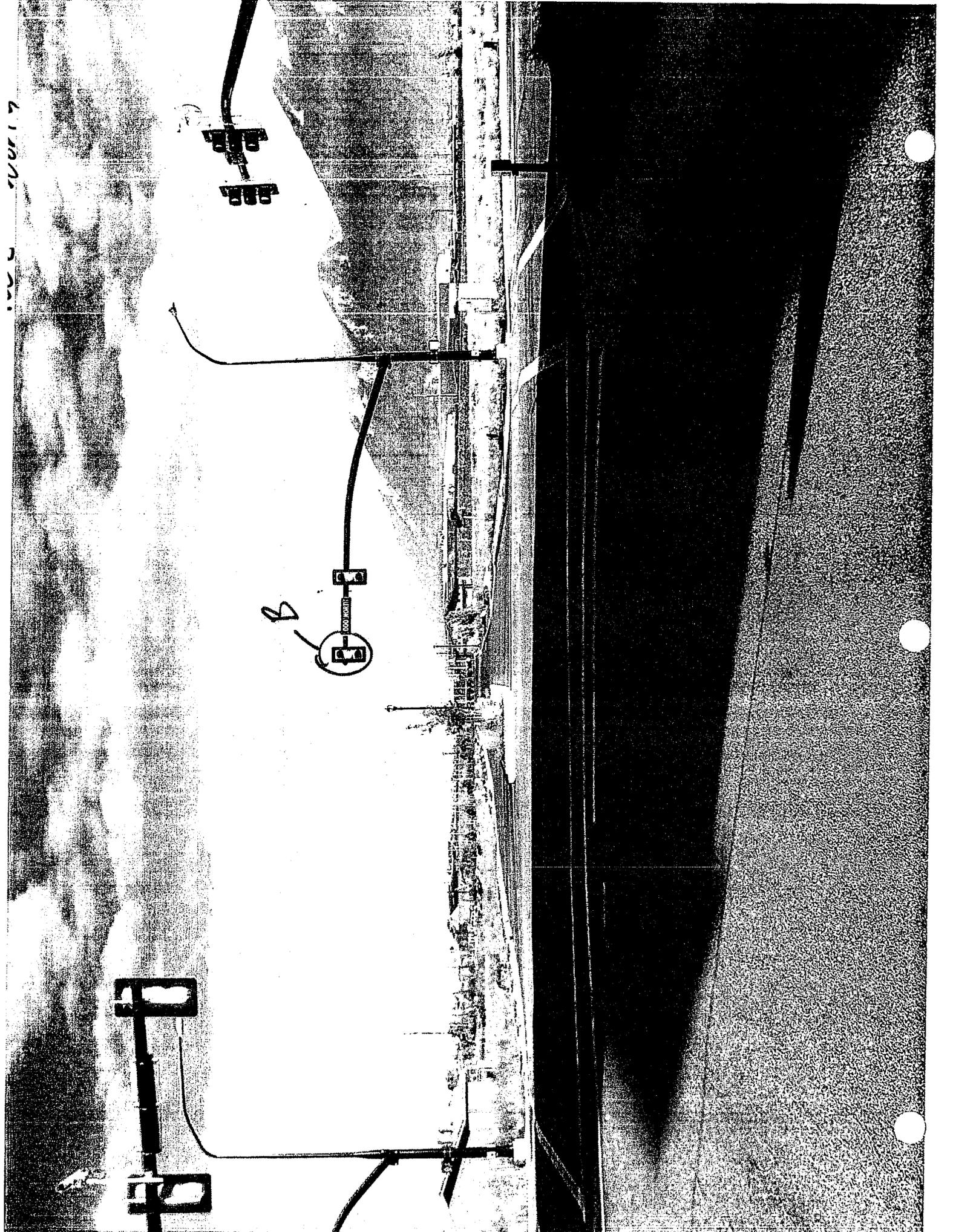




B



STOP

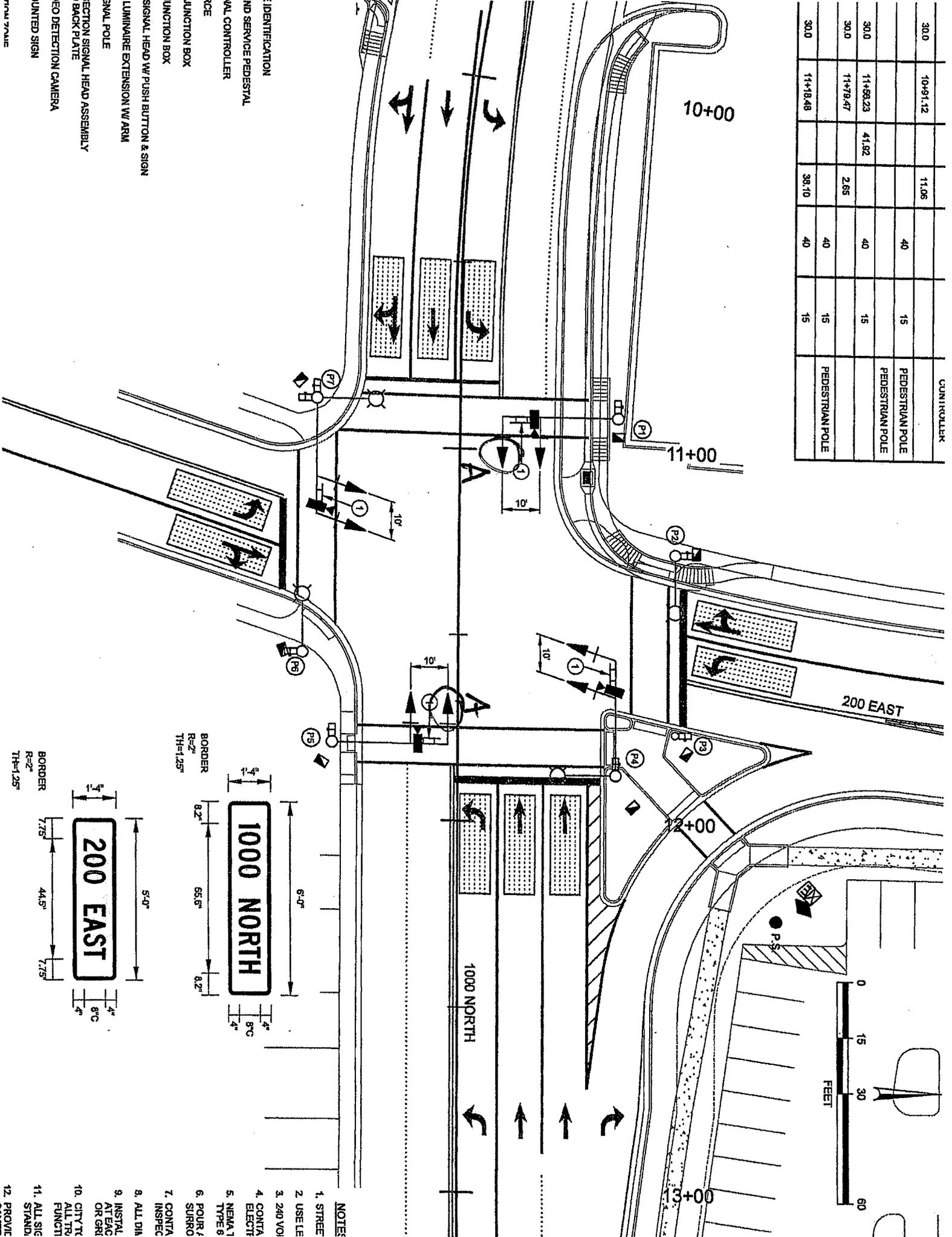


B

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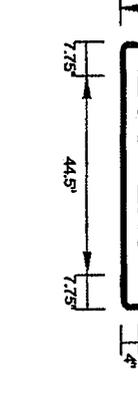
30.0	10+91.12	11.06	40	15	PEDESTRIAN POLE
30.0	11+88.23	41.92	40	15	PEDESTRIAN POLE
30.0	11+79.47	2.65	40	15	PEDESTRIAN POLE
30.0	11+18.48	38.10	40	15	PEDESTRIAN POLE

CUNIPOLLER

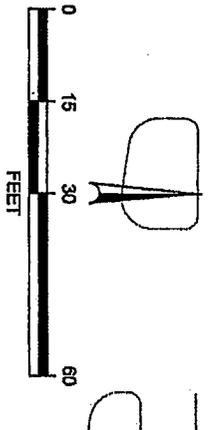


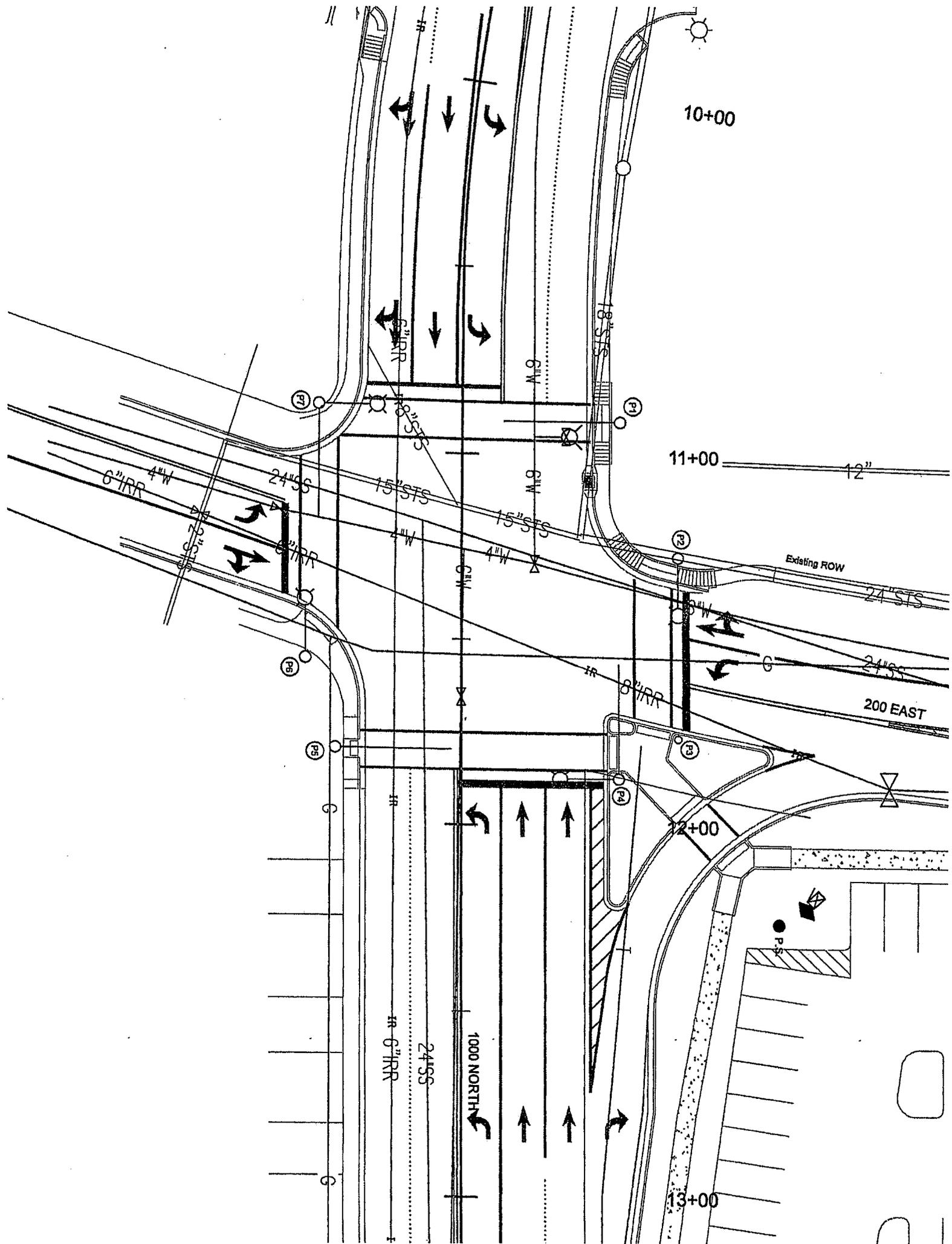
- 1. IDENTIFICATION
- 2. ND SERVICE PEDESTAL
- 3. VAL CONTROLLER
- 4. POLE
- 5. JUNCTION BOX
- 6. JUNCTION BOX
- 7. SIGNAL HEAD W/ PUSH BUTTON & SIGN
- 8. LUMINAIRE EXTENSION W/ ARM
- 9. SIGNAL POLE
- 10. SECTION SIGNAL HEAD ASSEMBLY
- 11. BACK PLATE
- 12. IEO DETECTION CAMERA
- 13. JUNITED SIGN

BORDER  
R=2"  
TH=1.25"

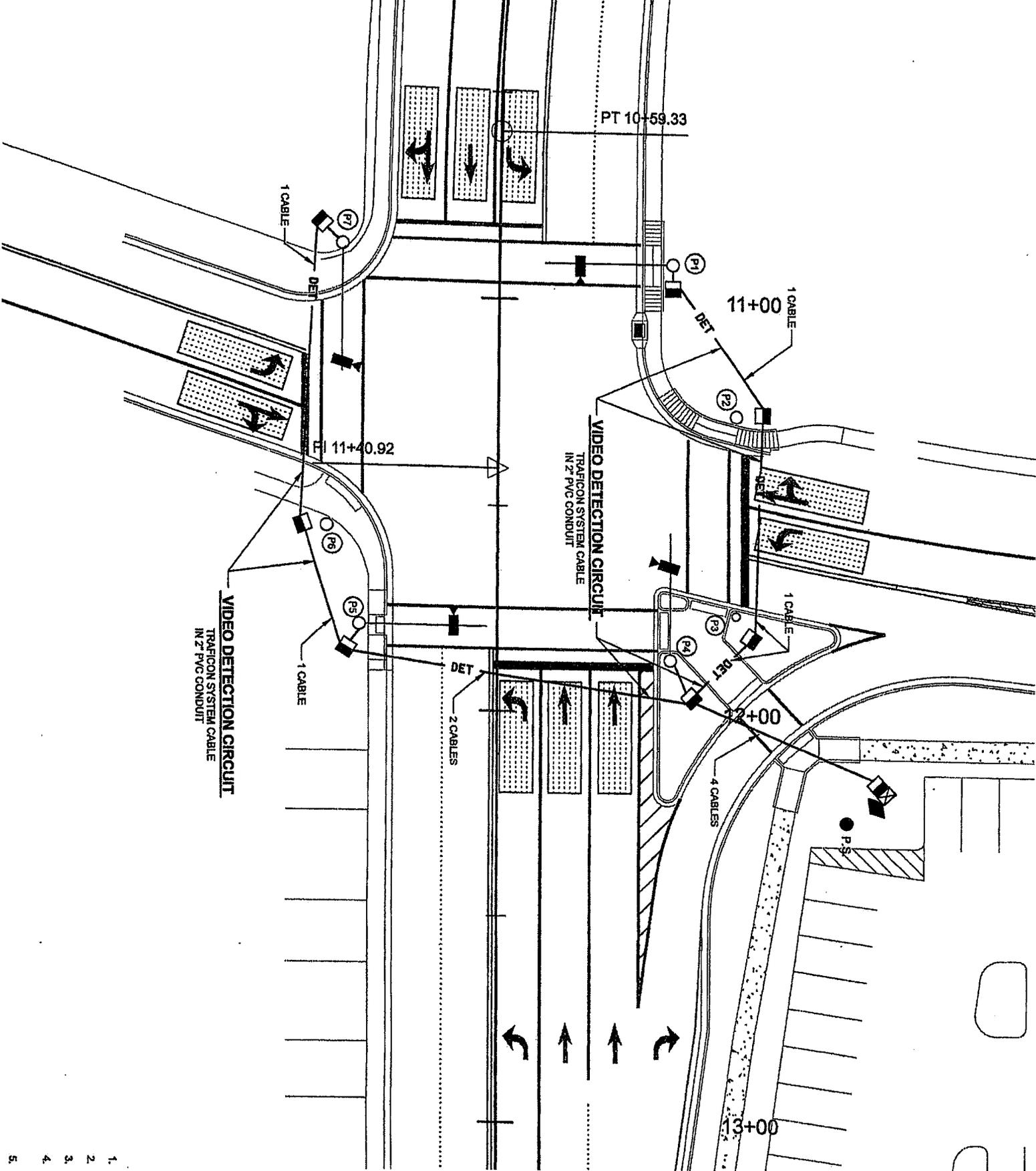


- NOTES
1. STREET
  2. USE LE
  3. 240 VOI
  4. CONTA ELECT
  5. NEMA 1 TYPE 8
  6. FOUR / SURRO
  7. CONTA INSPEC
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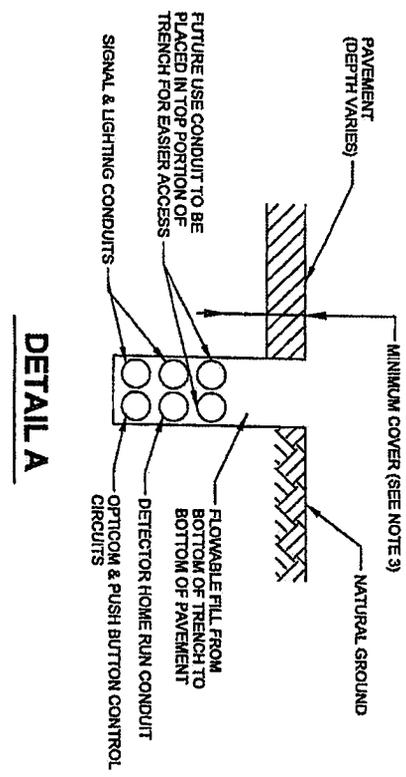
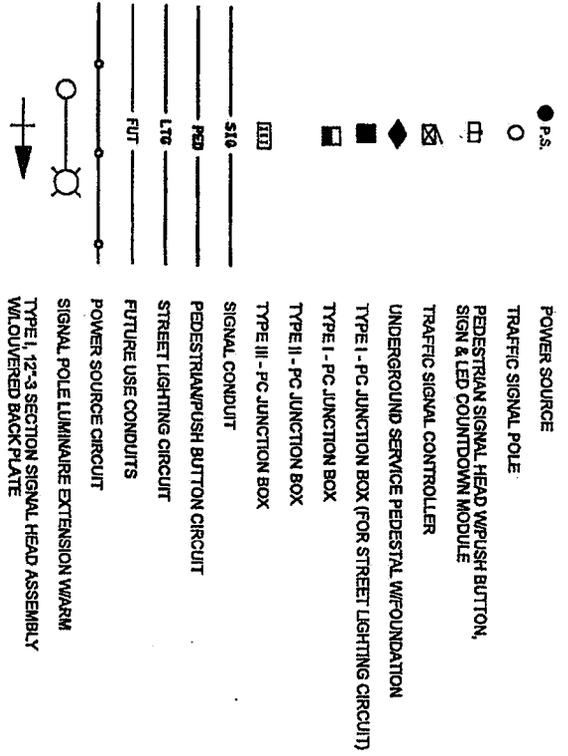
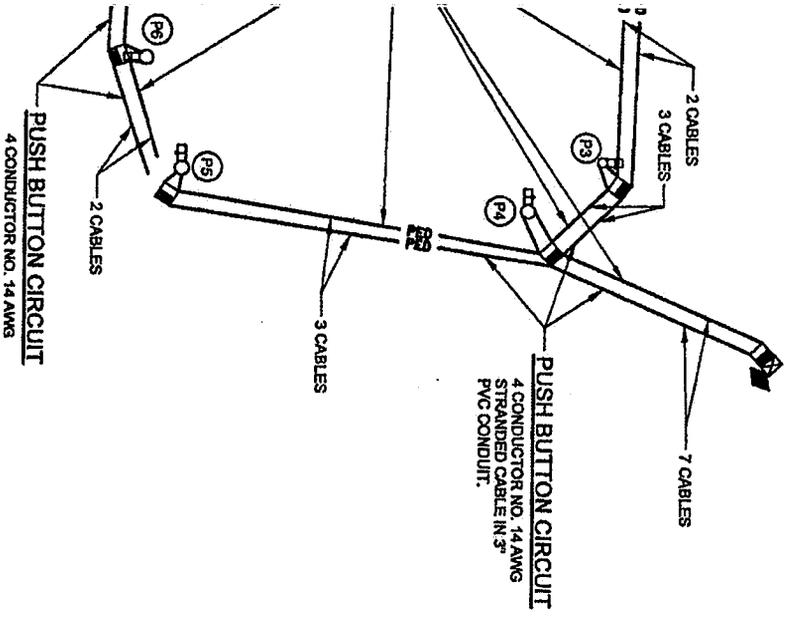
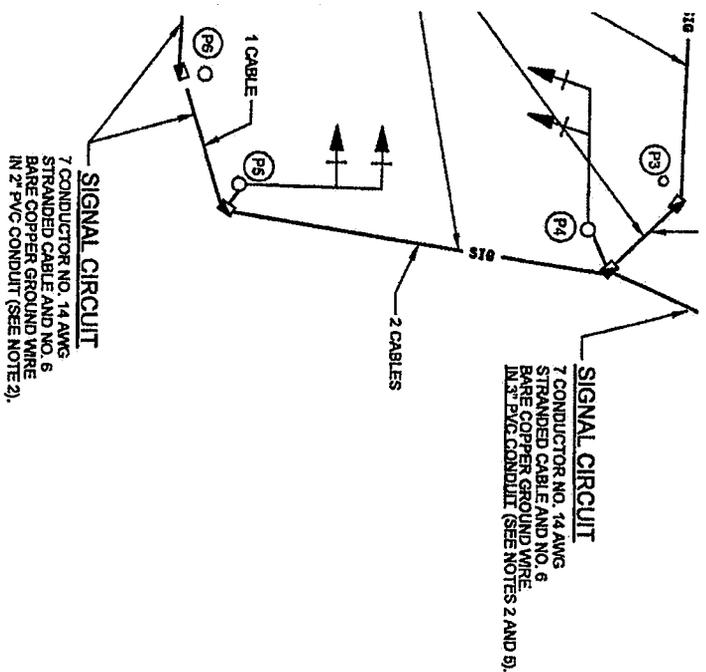




- 1. VIDEO IDENTIFICATION
- 2. SIGNAL CONTROLLER
- 3. ROUND SERVICE PEDESTAL
- 4. SOURCE
- 5. PC JUNCTION BOX
- 6. PC JUNCTION BOX
- 7. SIGNAL POLE
- 8. 3 SECTION SIGNAL HEAD ASSEMBLY
- 9. REED BACK PLATE
- 10. VIDEO DETECTION CAMERA
- 11. R CONDUIT
- 12. SECTION ZONE

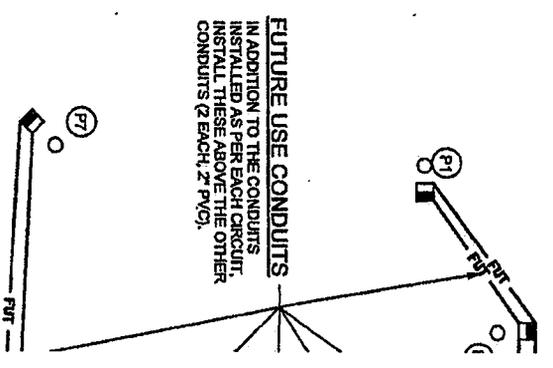
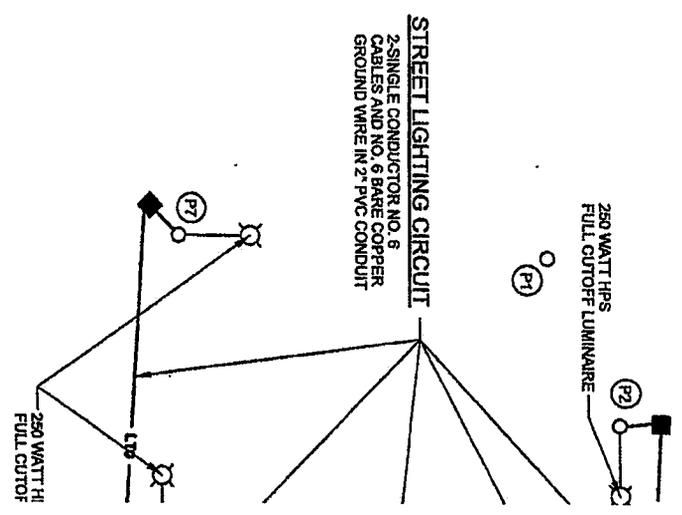


- 1.
- 2.
- 3.
- 4.
- 5.



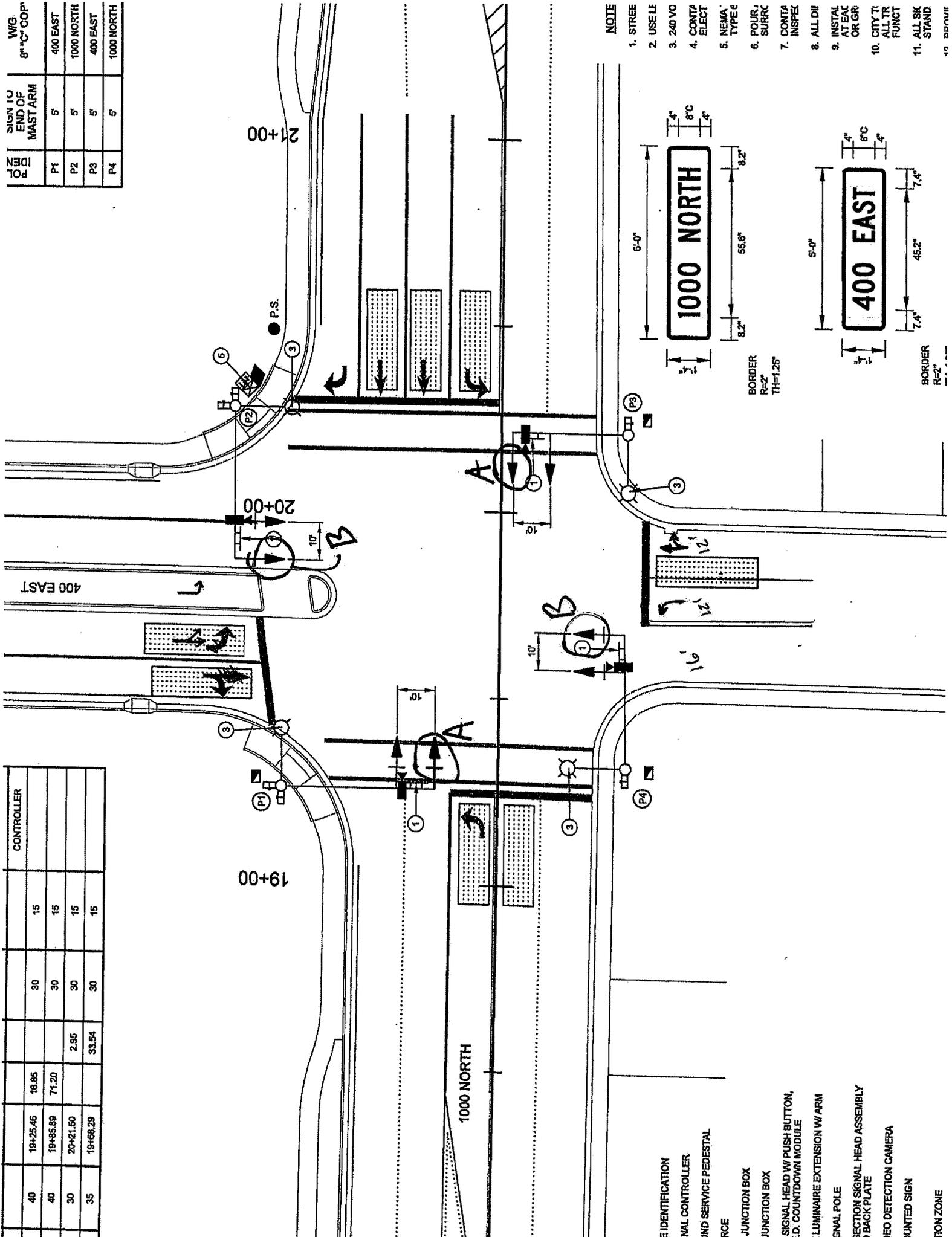
**NOTES:**

1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. INSTALL CABLES FOR PEDESTRIAN CIRCUIT AND SIGNAL CIRCUIT IN SAME CONDUIT.
3. MINIMUM COVER REQUIREMENTS:
  - A. 36" FOR DIRECTIONAL BORINGS.
  - B. 24" FOR TRENCHES ACROSS ROADWAYS.
  - C. 18" FOR TRENCHES OFF ROADWAYS WITHOUT CONCRETE ENCASUREMENT OR CAPPING.
  - D. 12" FOR TRENCHES OFF ROADWAYS WITH CONCRETE ENCASUREMENT OR CAPPING.
4. INSTALL A MINIMUM OF 6 CONDUITS FOR EACH LEG CROSSING.
5. SIGNAL CONDUIT FROM CONTROLLER TO FIRST JUNCTION BOX TO BE 3" PVC.



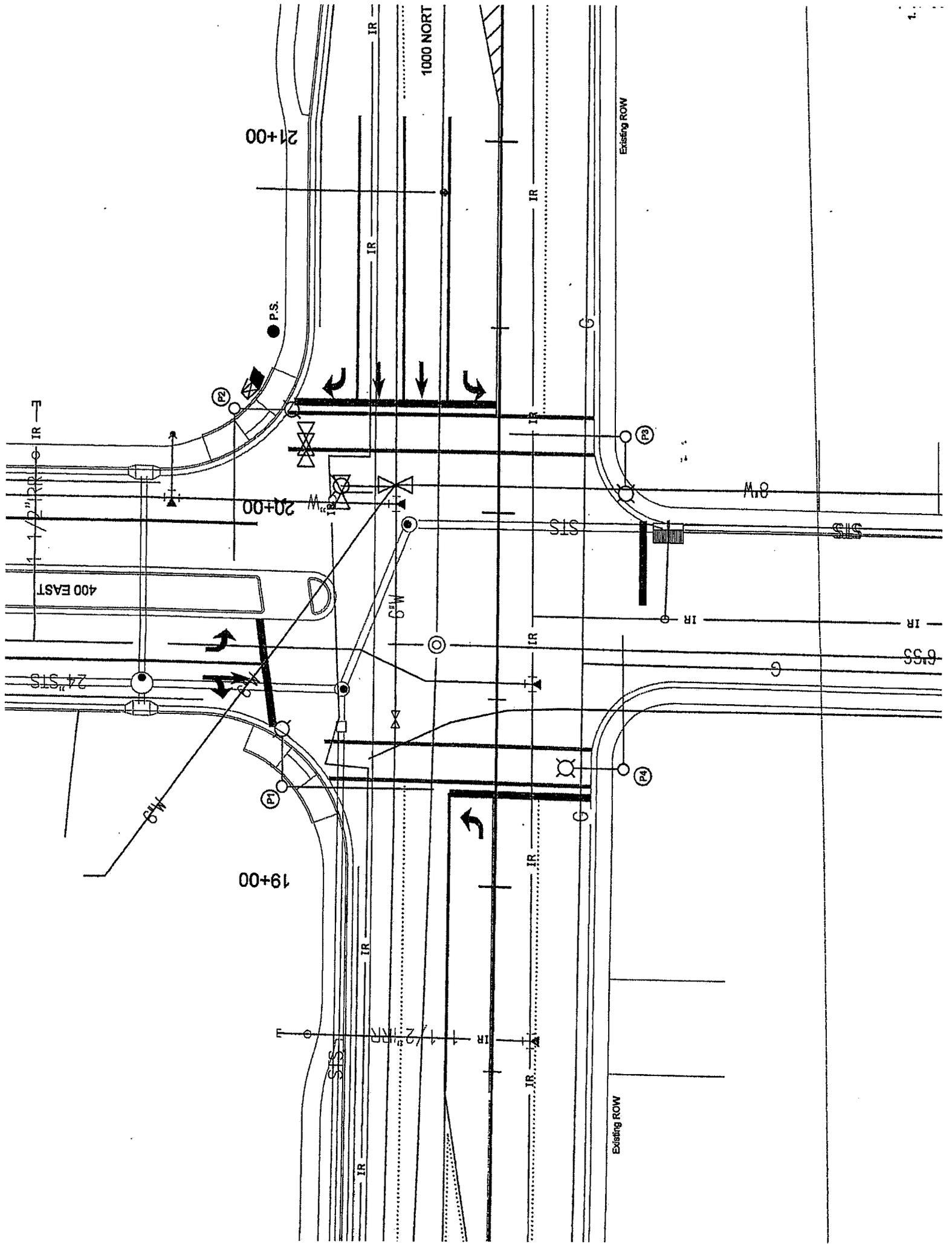
NO	PLAN	W/G	8" "C" COP
P1	5'	400 EAST	
P2	5'	1000 NORTH	
P3	5'	400 EAST	
P4	5'	1000 NORTH	

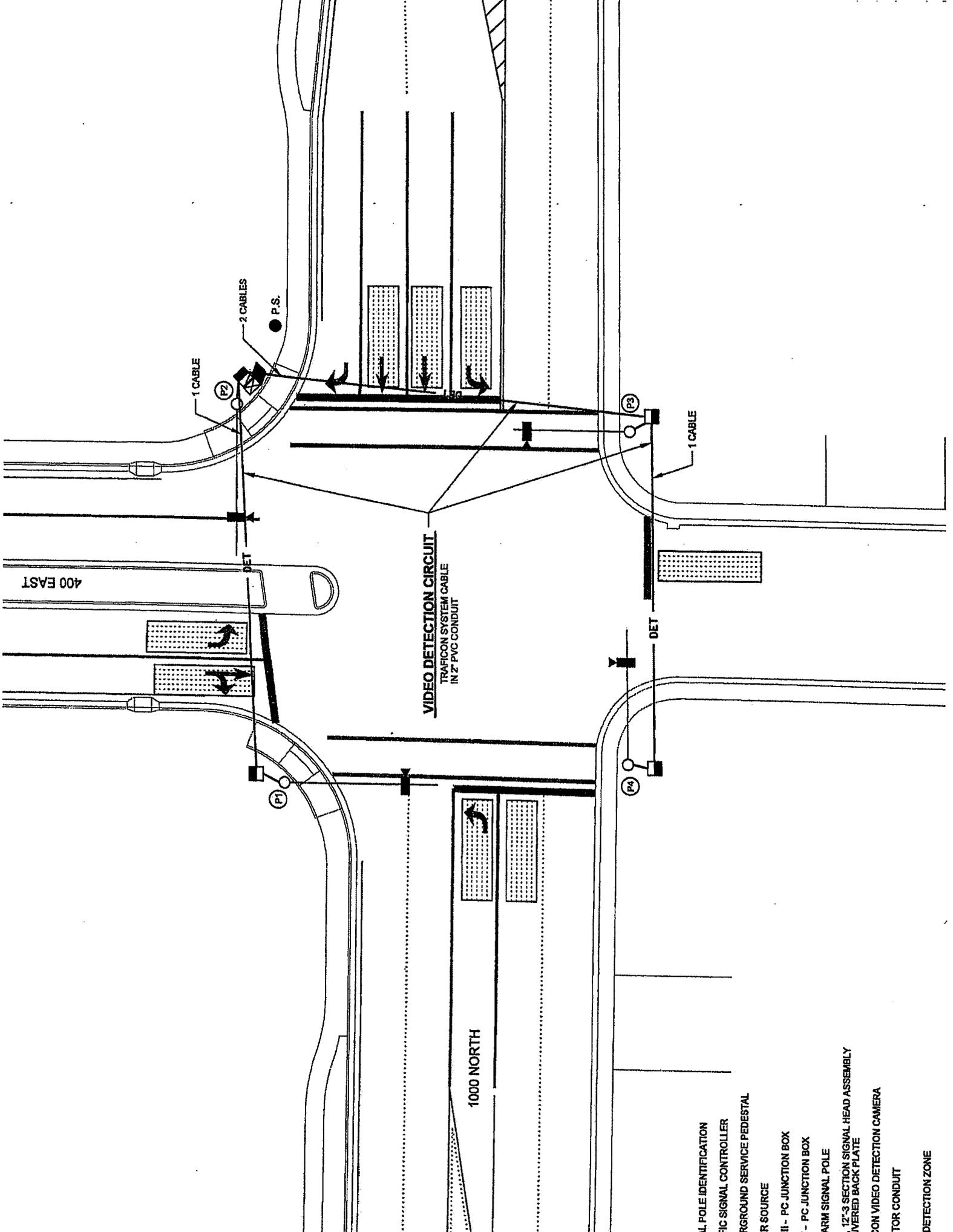
NO	PLAN	W/G	8" "C" COP
40	19+25.46	16.85	15
40	19+65.89	71.20	15
30	20+21.50	2.95	15
35	19+68.29	33.54	15



- NOTE**
1. STREET
  2. USE L
  3. 240 VO
  4. CONTA ELECT
  5. NEMA
  6. POUR SURRC
  7. CONTA INSPE
  8. ALL DI
  9. INSTAL AT EAC OR GR
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  11. ALL SK STAND

- 1. IDENTIFICATION
- 2. SIGNAL CONTROLLER
- 3. SIGNAL SERVICE PEDESTAL
- 4. JUNCTION BOX
- 5. JUNCTION BOX
- 6. SIGNAL HEAD W/ PUSH BUTTON, E.D. COUNTDOWN MODULE
- 7. LUMINAIRE EXTENSION W/ ARM
- 8. SIGNAL POLE
- 9. SECTION SIGNAL HEAD ASSEMBLY
- 10. DETECTION CAMERA
- 11. MOUNTED SIGN
- 12. DETECTION ZONE



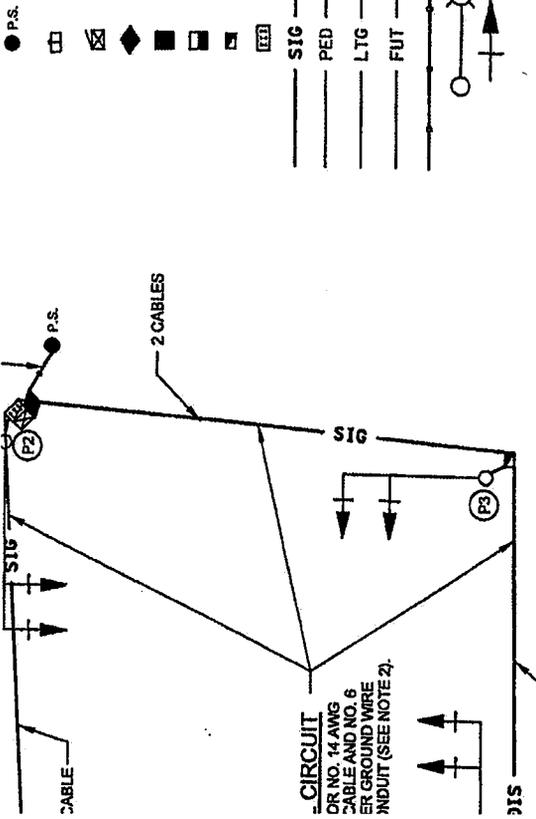


**VIDEO DETECTION CIRCUIT**  
 TRAFICON SYSTEM CABLE  
 IN 2" PVC CONDUIT

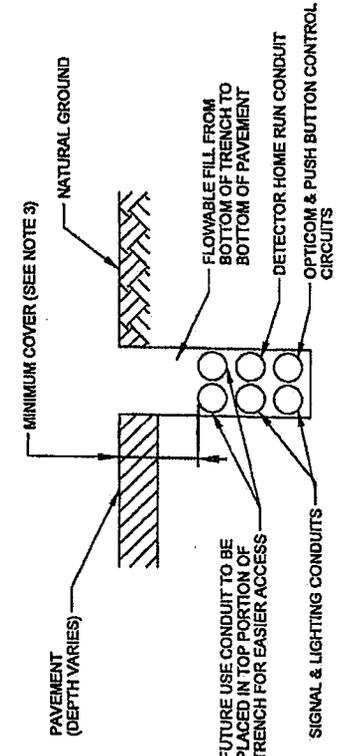
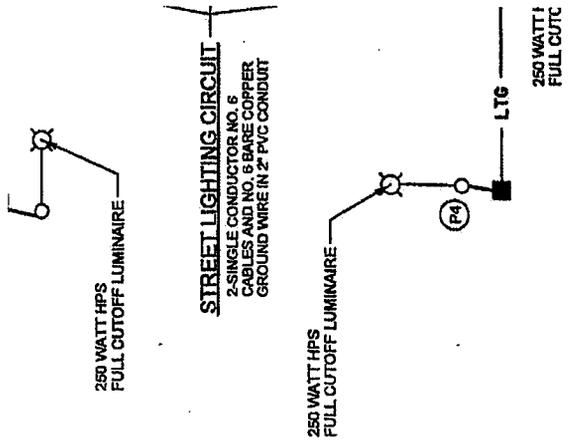
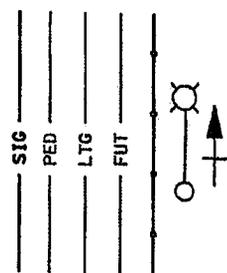
400 EAST

1000 NORTH

- I - DETECTION ZONE
- I - VIDEO DETECTION CAMERA
- I - CONDUIT
- I - COVERED BACK PLATE
- I - 12" SECTION SIGNAL HEAD ASSEMBLY
- I - ARM SIGNAL POLE
- I - PC JUNCTION BOX
- I - PC JUNCTION BOX
- I - ER SOURCE
- I - ER GROUND SERVICE PEDESTAL
- I - TRAFICON SIGNAL CONTROLLER
- I - SIGNAL IDENTIFICATION

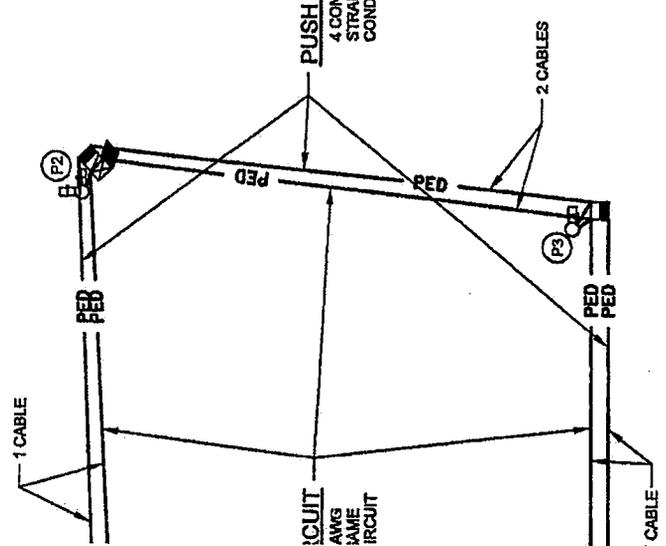


- POWER SOURCE
- PEDESTRIAN SIGNAL HEAD W/PUSH BUTTON, SIGN & LED COUNTDOWN MODULE
- TRAFFIC SIGNAL CONTROLLER
- UNDERGROUND SERVICE PEDESTAL W/FOUNDATION
- TYPE I - PC JUNCTION BOX (FOR STREET LIGHTING CIRCUIT)
- TYPE I - PC JUNCTION BOX
- TYPE II - PC JUNCTION BOX
- TYPE III - PC JUNCTION BOX
- SIGNAL CONDUIT
- PEDESTRIAN/PUSH BUTTON CIRCUIT
- STREET LIGHTING CIRCUIT
- FUTURE USE CONDUITS
- POWER SOURCE CIRCUIT
- SIGNAL POLE LUMINAIRE EXTENSION W/ARM
- TYPE I, 12'-3" SECTION SIGNAL HEAD ASSEMBLY W/LOUVERED BACK PLATE.



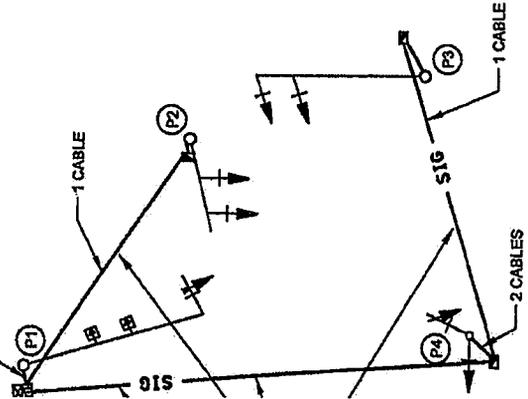
**DETAIL A**

**PUSH BUTTON CIRCUIT**  
 4 CONDUCTOR NO. 14 AWG STRANDED CABLE IN 2" PVC CONDUIT



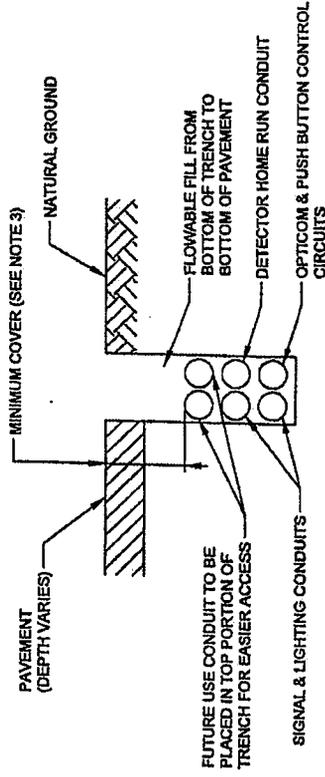
**FUTURE USE CONDUITS**  
 IN ADDITION TO THE CONDUITS INSTALLED AS PER EACH CIRCUIT, INSTALL THESE ABOVE THE OTHER CONDUITS (2 EACH, 2" PVC).

- NOTES:**
- ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
  - INSTALL CABLES FOR PEDESTRIAN CIRCUIT AND SIGNAL CIRCUIT IN SAME CONDUIT.
  - MINIMUM COVER REQUIREMENTS:
    - A. 36" FOR DIRECTIONAL BORINGS.
    - B. 24" FOR TRENCHES ACROSS ROADWAYS.
    - C. 18" FOR TRENCHES OFF ROADWAYS WITHOUT CONCRETE ENCASMENT OR CAPPING.
    - D. 12" FOR TRENCHES OFF ROADWAYS WITH CONCRETE ENCASMENT OR CAPPING.
  - INSTALL A MINIMUM OF 6 CONDUITS FOR EACH LEG CROSSING.
  - INSTALL 8 FT x 5/8" COPPER-CLAD STEEL U/L LISTED GROUND ROD AT EACH JUNCTION BOX THAT CONTAINS CABLES WITH



- TRAFFIC SIGNAL POLE
- PEDESTRIAN SIGNAL HEAD W/PUSH BUTTON, SIGN & LED COUNTDOWN MODULE
- TRAFFIC SIGNAL CONTROLLER
- UNDERGROUND SERVICE PEDESTAL W/FOUNDATION
- TYPE I - PC JUNCTION BOX (FOR STREET LIGHTING CIRCUIT)
- TYPE I - PC JUNCTION BOX
- TYPE II - PC JUNCTION BOX
- TYPE III - PC JUNCTION BOX
- SIGNAL CONDUIT
- PEDESTRIAN/PUSH BUTTON CIRCUIT
- STREET LIGHTING CIRCUIT
- FUTURE USE CONDUITS
- POWER SOURCE CIRCUIT
- SIGNAL POLE LUMINAIRE EXTENSION W/WARM
- SINGLE SECTION SIGNAL HEAD W/ LOUVERED BACK PLATE AND GREEN UP ARROW
- TYPE I, 12"-3 SECTION SIGNAL HEAD ASSEMBLY W/ LOUVERED BACK PLATE
- TYPE I, 12"-3 SECTION SIGNAL HEAD ASSEMBLY W/ LOUVERED BACK PLATE AND ANGLED GREEN ARROW
- TYPE II, 12"-3 SECTION OPTICALLY PROGRAMMED SIGNAL HEAD ASSEMBLY W/ LOUVERED BACK PLATE

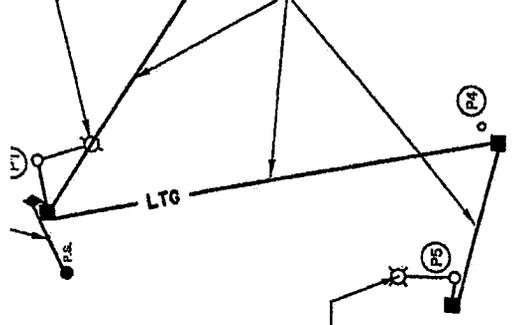
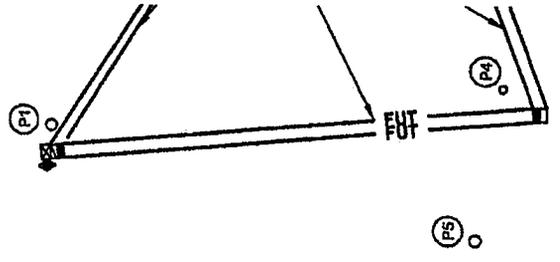
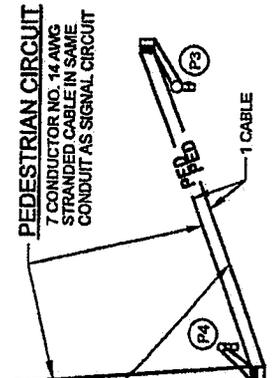
250 WATT HPS  
FULL CUTOFF LUMINAIRE



**DETAIL A**

**NOTES:**

1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. INSTALL CABLES FOR PEDESTRIAN CIRCUIT AND SIGNAL CIRCUIT IN SAME CONDUIT.
3. MINIMUM COVER REQUIREMENTS:
  - A. 36" FOR DIRECTIONAL BORINGS
  - B. 24" FOR TRENCHES ACROSS ROADWAYS
  - C. 18" FOR TRENCHES OFF ROADWAYS WITHOUT CONCRETE ENCASEMENT OR CAPPING
  - D. 12" FOR TRENCHES OFF ROADWAYS WITH CONCRETE ENCASEMENT OR CAPPING.
4. INSTALL A MINIMUM OF 6 CONDUITS FOR EACH LEG CROSSING.
5. INSTALL SCHEDULE 40 PVC UL LISTED ELECTRICAL CONDUIT FOR UNDERGROUND CONDUITS





# Memo

To: Mayor and City Council  
From: Chris Thompson, Public Works Director/City Engineer  
Date: September 27, 2012  
Re: Questar Agreements for Natural Gas to the North Park Pavilion

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## Staff Report

At the time that the indoor pavilion at North Park was constructed it was very expensive to run natural gas to it. We plumbed the site for the gas but decided to wait until construction occurred at the Costco site until we paid to have it at North Park. Now that natural gas has been brought quite a bit closer to the park by Costco we feel it is now appropriate to finish this part of the North Park project.

We recommend that the city council approve these two agreements to run gas lines to North Park for the total amount of \$18,433.87.

Attached: agreements





MAIN EXTENSION AGREEMENT

Table with 3 columns: CENTER CD (SPV), JOB ID (MJ0002002575), MAIN EXTENSION ID (ML0001024518)

NATURAL GAS APPLIANCES TO BE CONNECTED

CUSTOMER: SPANISH FORK CITY
APPROXIMATE MAIN LOCATION: 1100 N 400 E
SUBDIVISION: NORTH PARK PAVILION
LOT RANGE: 1
CITY OR COUNTY: SPANISH FORK
STATE:
ZIP CODE:
MAILING ADDRESS: 40 S MAIN ST SPANISH FORK, UT 84660-
OWNER:

Table with 2 columns: TYPE, QUANTITY

Table with 2 columns: MAIN EXTENSION COSTS, JOB TYPE
Contracted length of main: 700
Installation charges: \$13,171.80
Federal Tax (14.3%): \$1,883.57
Allowance: \$1,097.00
Default amount: \$1,097.00
Tariff amount:
Default amount:

Table with 2 columns: JOB TYPE, SPECIAL CONDITIONS
JOB TYPE: NEW MAIN INSTALL
TOTAL CUSTOMER COST NOW DUE: \$13,801.50
SPECIAL CONDITIONS:

Please submit payment to Questar Gas, ATTN Remittance DNR 107, PO Box 45360, Salt Lake City, Utah 84145-0360

TERMS AND CONDITIONS

- 1. DEFINITIONS. Construction Costs: costs related to the installation of the main extension including, but not limited to, costs for obtaining rights-of-way and permits, difficult or weather-related construction conditions, Customer-specific requests, or Customer-caused delays. Allowance: an amount allowed Customer to offset the cost of the main extension.
2. COST OF MAIN EXTENSION. Questar Gas Company (Company) agrees to extend its natural gas main system to provide service to the above location. In consideration of the main extension, Customer agrees to pay, prior to installation, the above Construction Costs. Customer also agrees to pay any additional Construction Costs that may arise during installation.
3. DEFAULT AMOUNT. Within two years following the completion of the main extension, Customer agrees to earn the Allowance by using natural gas appliances as set forth in the applicable tariff.
4. INTEREST. Interest accrues at 13.26 % per annum on any amount due from the date of completion of the main extension until the amount due is paid in full.
5. RIGHT-OF-WAY. Customer grants to Company, its agents and employees, the right to enter Customer's property, at all reasonable times and in event of any emergency, for all purposes related to the construction of the main extension, service lines and natural gas service.
6. REFUNDS. Amounts contributed by Customer may be partially refunded if new gas service, not including temporary gas service, is connected to the main extension within five years after completion.
7. CONTAMINATION. If Company encounters any contaminated soil or groundwater during the installation of the main extension that requires remediation or disposal, or poses a hazard, Company may suspend the installation until the contamination is remediated at Customer's sole cost, and to Company's satisfaction.
8. CANCELLATION. If installation of the main extension does not begin within six months of the date of this Agreement, Company may, at its option, cancel this Agreement and charge Customer for the engineering and Construction Costs incurred to the date of cancellation.
9. FORCE MAJEURE. Except for payment of amounts due, neither party shall be liable for any failure to perform, when the failure is due to any cause not reasonably within the control of the affected party.
10. COMPANY'S FACILITIES. The main extension and all other facilities constructed to render gas service to Customer shall be the sole property of Company.
11. FROST: At the time of installation, if frost is present in the ground six inches or deeper, Customer will be contacted regarding excess construction costs.
12. INDEMNIFICATION. Customer will indemnify, hold harmless, and defend Company from all claims, for damages to property or injury to persons, directly or indirectly connected with the acts or omissions of Customer.
13. GRADE AND CURBING. Customer will ensure that the grade is within six inches of finished grade, and no parallel utilities will be within three feet of this main extension.
14. SEVERABILITY. The provisions of this Agreement are severable.
15. APPLICABLE LAW. This Agreement is governed by the law of the state where the work is performed, and all tariffs, rules and regulations on file with the applicable Public Service Commission, as may be amended from time to time.
16. AUTHORIZATION. If Customer is a corporation, partnership, limited liability company or other entity, the signing of this Agreement certifies the signer's authority to bind the named entity.

I acknowledge that I have read this entire agreement and agree to the terms and conditions.

QUESTAR GAS COMPANY

SPANISH FORK CITY

CUSTOMER

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE

DATE

TITLE

DATE

Prepared by: Mattinson,Brad

CENTER CD <b>SPV</b>	JOB ID <b>SJ0001420297</b>	SERVICE LINE ID <b>SL0009892244</b>
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CUSTOMER <b>SPANISH FORK CITY</b>		PAVILION		APPLIANCES TO BE CONNECTED		METER PAD	
SERVICE ADDRESS <b>1188 N 400 E</b>		SUBDIVISION <b>NORTH PARK</b>		LOT NO.		<input checked="" type="radio"/> Not Required <input type="radio"/> By Customer <input type="radio"/> By QGC	
CITY OR COUNTY <b>SPANISH FORK</b>		STATE <b>UT</b>		ZIP CODE <b>84660</b>		METER PRESSURE <b>4 oz</b>	
MAILING ADDRESS <b>40 S MAIN ST SPANISH FORK, UT 84660-</b>		SERVICE LINE COSTS		RISER LOCATION <b>Special - 10 ft south of ne cor (verify at installation)</b>		METER PROTECT <input checked="" type="radio"/> Not Required <input type="radio"/> By Customer <input type="radio"/> By QGC	
Installation Charges		4,052.82		JOB TYPE <b>NEW INSTALL (SERVICE)</b>		SPECIAL CONDITIONS	
Sub total		4,052.82		PIPE SIZE <b>3/4"</b>		TOTAL CUSTOMER COST NOW DUE <b>\$4,632.37</b>	
Federal Tax (14.3%)		579.55					

Please submit payment to Questar Gas, ATTN Remittance DNR 107, PO Box 45360, Salt Lake City, Utah 84145-0360

### TERMS AND CONDITIONS

- Definitions. **Construction Costs:** costs related to the installation of the service line including, but not limited to, costs for obtaining rights-of-way and permits, difficult or weather-related construction conditions, Customer-specific requests or Customer-caused delays. Allowance: an amount allowed Customer to offset the cost of the service line.
- Questar Gas Company (Company) agrees to install a service line from its natural gas main system to the above service address. In consideration of the service line, Customer agrees to pay, prior to installation, any Construction Costs. Customer will also pay any additional Construction Costs that may arise during installation. Company will notify Customer of additional Construction Costs before they are incurred.
- If Company encounters any contaminated soil or groundwater during the installation of the service line that requires remediation or disposal, or poses a hazard, Company may suspend the installation until the contamination is remediated, at Customer's sole cost and to Company's satisfaction. If Company elects to remediate the contamination, Customer will pay all remediation costs as Construction Costs.
- Within two years from the date of installation of the service line, Customer agrees to initiate natural gas service from Company at the listed service address for the appliances described above. If the described appliances are not installed within the two years, Customer will pay Company a default amount equal to the Allowance, for a total of \$ 0.00, plus interest.
- Interest accrues at the rate of 13.26 % per annum on any amount due from the date of installation of the service line until the amount due is paid in full. Customer will pay all costs and attorney's fees incurred in the collection of any amount.
- This Agreement is governed by the law of the state where the work is performed, and all tariffs, rules and regulations on file with the applicable Public Service Commission, as may be amended from time to time. Gas service will be provided subject to terms and conditions of Company's tariff.
- Customer grants to Company, its agents and employees, the right to enter Customer's property, at all reasonable times, for all purposes related to the installation, maintenance and use of the service line, including without limitation, to inspect, protect, service and repair the service line and to provide any other work as needed. Customer will not permit anything to be done to the meter or service line which may cause damage or an unsafe condition, including but not limited to building any improvements over the line. If any of the foregoing are done, Company may refuse or terminate service until the conditions are corrected at Customer's expense.
- Customer agrees to provide Company with any necessary rights-of-way. Company is not obligated to perform unless rights-of-way have been granted.
- All facilities constructed to provide service to Customer are the sole property of Company.
- Customer will indemnify, hold harmless, and defend Company from all claims, demands, costs or expenses for loss, damage to property or injury to persons directly or indirectly connected with the acts or omissions of Customer.
- FROST:** At the time of installation, if frost is present in the ground six inches or deeper, Customer will be contacted regarding excess construction costs. These excess costs are limited to the footage affected by the frost.
- Prior to installation of the service line, Customer will ensure that:
  - No parallel utilities are within 3 feet of the service line location.
  - The riser location is at least 3 feet horizontally from electrical panels or meters, air intakes, permanent openings or roof valleys.
  - Grade lines are marked on the building foundation with a horizontal line.
  - Grade is within 6 inches of finished grade from curb to structure.
  - Building materials are cleared from the line locations.
- Prior to contacting Company to request a gas meter set, Customer will ensure that:
  - The fuel line is run from the gas appliances to the meter location area.
  - Meter protection and pad, if required, is in place.
  - An appliance installation permit, where required, is obtained from the city and/or county governing agency.
- If Customer is a corporation, partnership, limited liability company, or other entity, the signing of this Agreement certifies the signer's authority to bind the named entity.

I acknowledge that I have read this entire agreement and agree to the terms and conditions.

SPANISH FORK CITY  
CUSTOMER

QUESTAR GAS COMPANY

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE

DATE

TITLE

DATE



Agenda Date: October 2, 2012  
To: Mayor & City Council Members  
From: Tyler Jacobson  
Reviewed By: Junior Baker  
Subject: Xpress Bill Pay Contract Revision

Junior Baker has requested that this updated contract with Xpress Bill Pay be established so that we can clearly set forth the responsibilities of both parties in regards to negligence and Indemnification.

# Xpress Bill Pay™

## Gateway and Administrative Service Agreement

This Gateway and Administrative Service Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between Xpress Solutions Inc. ("Xpress") and Spanish Fork City ("Customer") upon such terms and conditions as are set forth below.

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

- 1.0 Initial Term: The Initial Term of this Agreement shall be thirty six (36) months from the date of this Agreement.
- 2.0 Renewals: This Agreement shall be automatically renewable for an additional twelve (12) months at the end of the Initial Term or any subsequent renewal term by the Customer upon the receipt by Xpress of the applicable Fees and under the same terms and conditions set forth herein, so long as the Customer is not and has not been in default in any term of this Agreement. If Customer is a political subdivision, the Parties agree that an automatic renewal cannot occur if Customer's governing board does not budget for payment of the Fees set forth in Section 3.0 in any given fiscal year of Customer.
- 3.0 Fees: Customer shall pay to Xpress a one-time set-up Fee, monthly maintenance, support, and hosting Fees, and various transaction Fees as set forth in Exhibit A (collectively the "Fees"). Xpress reserves the right to change Fees at any time so long as Customer is provided no less than 30 days advance notice of a change.
- 4.0 Payment of Fees: Customer authorizes Xpress to initiate an electronic ACH debit entry from Customer's bank account provided in Exhibit B on or about the 5th of each month for the amount of all Fees that accrued during the prior month for any service, support, or maintenance Fee that is due as described in Exhibit A. If there are insufficient funds in Customer's account to cover the debit, or if the debit is rejected for any reason, Xpress will contact customer for resolution which will include resubmission up to 3 times. Customer agrees to pay any returned item fees assessed by Xpress' bank for any such returns. Any outstanding Fees that are not paid when due shall bear interest at the rate of 18% per annum until the outstanding balance and all accrued interest are paid in full.
- 5.0 Services Provided: Xpress will provide Customer with an Electronic and Internet Payment System. Xpress has developed a web interface that can be used for payment of accounts using credit cards, or electronic funds transfers (EFT). Xpress has also developed an application to receive and repair all data errors from customer initiated online banking payments, and delivers them to Customer in an electronic format. Xpress acts as a Payment Gateway and Third Party Processor for Customer's account holders (the "End Users") to make payments. Xpress will facilitate the acquisition of the necessary Merchant Service accounts for credit card. Xpress will provide the EFT services directly using their established banking relationships. Only Merchant Service accounts and electronic funds transfer accounts that are certified by Xpress may be used.
- 6.0 Support Services and Service Levels: Xpress will provide technical support services, including telephone, email (seven days a week), or other technology support implemented by Xpress, from 6:00 am to 5:00 pm (MST or MDT) for customers within the continental United States. The maximum response time for service shall not exceed 5:00 pm (Customer local time) of the next business day following the request for service by Customer. This support will be limited to the actual use of the Xpress Internet Payment System.

- 7.0 Software or Hardware: Customer will not receive any hardware or software from Xpress under this Agreement except as specified in Exhibit A. Customer will use its own computers and agrees to have Internet services through an Internet Service Provider. Customer agrees that the computers it uses will have sufficient memory and capacity to run at least Internet Explorer 7 or Mozilla Fire Fox 10.0.
- 8.0 Billing Information. Customer warrants that it will provide Xpress with relevant Billing Information for End Users. Customer agrees to indemnify and hold Xpress harmless from any claim or liability relating to any inaccuracy in Billing Information provided to Xpress.
- 9.0 Record Keeping. Customer agrees to keep full and accurate records of its utilization of Xpress services and of the transactions giving rise to Billing Information for at least three (3) years after the date of the relevant transaction. Customer understands that Xpress will be required to participate in certain audits in connection with the credit card and electronic funds transfer services provided by Xpress. Customer agrees to cooperate with Xpress in the performance of such audits, including providing information required in the course of such audits.
- 10.0 Compliance. Customer warrants that all products and services offered, sold, or provided by Customer are offered, sold, or provided in compliance with all applicable laws and regulations. Xpress will meet or exceed all applicable compliance requirements as required by current and future Payment Card Industry (PCI) rules of operation as well as the Operating Rules of the National Automated Clearing House Association (NACHA).
- 11.0 Termination. This agreement may be terminated by either party upon not less than 30 days written notice to the other party specifying the effective date thereof. In the event this Agreement is terminated by Customer through no fault of Xpress, Xpress shall be paid for all services performed up to the date of termination.
- 12.0 Litigation/Attorney Fees: The parties agree that any dispute between them requiring litigation—whether or not arising under this Agreement—shall only be commenced and determined within the State of Utah. Each party will be responsible for their own costs incurred for any litigation.
- 13.0 General Provisions. This Agreement and the exhibits hereto constitute the entire understanding and agreement among the parties with respect to the subject matter hereof, and there are no other agreements or understandings among the parties other than those contained herein. In the event any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect the validity of the remainder of this Agreement.
- 14.0 Indemnification. Xpress agrees to indemnify and hold the Customer, its officers, employees, representatives and agents harmless from any loss, claims, causes of action or demands, including attorneys' fees and costs of defense arising out of negligent or improper performance by Xpress of its obligations or work pursuant to this Agreement. Customer agrees to indemnify and hold Xpress, its officers, employees, representatives and agents harmless from any loss, claims, causes of action or demands, including attorneys' fees and costs of defense arising out of negligent or improper performance by Customer of its obligations or work pursuant to this Agreement.
- 15.0 Immigration Laws. Xpress shall comply with applicable federal and state immigration laws that relate to its employees. A breach of this paragraph shall be deemed a material breach of this Agreement that shall entitle Customer to terminate this Agreement, Customer may inspect Xpress's records to ensure compliance with this paragraph.

By signing below, Customer and Xpress shall be legally bound and agree to the terms of this Agreement and all of its Attachments.

**Accepted by:**

Xpress Solutions Inc.

**Accepted by:**

Spanish Fork City

BY: \_\_\_\_\_  
(Authorized Signature)

BY: \_\_\_\_\_  
(Authorized Signature)

Keith Jenkins  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

TITLE: President

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A**  
**FEES**

1. Initial Setup Configuration and Development (Non-Recurring) Online Payment Module Auto Pay module Card Swipe Module	Included in Caselle Quote
2. Support, Maintenance, Hosting (Monthly Recurring) (\$0.015 per billing statement hosted. Minimum \$75)	\$75.00 minimum
3. Monthly Statement Fee (Waived if you keep a \$25,000.00 minimum balance in your Xpress Deposit Account)	\$19.00
4. Gateway Fees:	
Credit Card Processing (per transaction)	\$0.22
EFT Online Payments (per transaction)	\$0.40
EFT Returned item	
(Invalid account number or unable to locate account)	\$ 5.00
(NSF or Closed Account)	\$10.00
(Customer Stop Payment)	\$25.00
XBP Deposit Account Withdrawals (6 free per month then \$3.25)	
Bank Bill Pay (per transaction)	\$0.20
5. Training	Included in Caselle Quote + Travel Expenses
6. Credit Card Swipes (if needed)	\$75.00 per unit

**EXHIBIT B**  
**CUSTOMER ACCOUNT INFORMATION**

Please provide the following information regarding Customer's bank account to which the debit entries will be directed for the payment of the Fees:

Name on Account: Spanish Fork City - General

Account Number: 031126782

Routing Number: 124000054

Account Type: CHECKING

Bank Name: ZIONS

On September 4th, Spanish Fork and Springville City Councils approved the Grant Offer 3-49-0034-20 from the FAA which includes building cul-de-sacs and turn radius improvements essential for the 800 West closure and earth work for the runway shift. Goran Inc. was the low bidder on this work. I am requesting that the Council authorize the Mayor to approve the attached documents which include the Notice of Award to Goran Inc., The Construction Contract with Goran Inc. and the Notice to proceed to Goran Inc. The FAA Grant Offer was issued based on the Goran Inc. bid and the 5% Sponsor Match is included in the Airport Capital Improvement Plan and Budget.

--

Cris Child  
Airport Manager  
(801) 420-8888

**NOTICE OF AWARD  
FOR  
A.I.P. PROJECT NO. 3-49-0034-19/20  
SPANISH FORK - SPRINGVILLE AIRPORT**

TO: Goran, LLC  
505 North 1500 West  
Orem, UT 84057

The OWNER has considered the Bid submitted by you for the above described Work in response to its Invitation for Bids and Instructions to Bidders.

You are hereby notified that your Bid has been accepted in the amount of Nine Hundred Sixty Six Thousand Sixty Five Dollars and Forty Two cents (\$966,065.42).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Contractor's Performance, Payment and Maintenance Bonds and Proofs of Insurance within fifteen (15) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds and Proofs of Insurance within fifteen (15) days from the date of this Notice, said Owner will be entitled to consider your Bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITIES OF SPANISH FORK AND SPRINGVILLE, UTAH  
(Owners)

By \_\_\_\_\_, Mayor, Spanish Fork, Utah

By \_\_\_\_\_, Mayor, Springville, Utah

Address: 40 South Main Street  
Spanish Fork, Utah 84660  
Telephone: (801) 804-4500

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged by:

Goran, LLC, Contractor

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

Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

## **AGREEMENT**

This Agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITIES OF SPANISH FORK AND SPRINGVILLE, UTAH, party of the first part, hereinafter in the Contract Documents referred to as the "Sponsor," and GORAN, LLC hereinafter in the Contract Documents called the "Contractor," party of the second part.

WITNESSETH, that the Sponsor advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the Spanish Fork - Springville Airport Improvements.

WHEREAS, A.I.P. Project No. 3-49-0034-19/20 has been awarded to the above-named Contractor by the Sponsor and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

### **ARTICLE 1**

#### **Contract Documents**

It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Agreement and all of said instruments, drawings and documents taken together as a whole constitute the Agreement between the parties hereto and they are as fully a part of this Agreement as if they were set out verbatim and in full herein:

- Invitation for Bids
- Instructions to Bidders
- Proposal
- Bid Bond
- Notice of Award
- Agreement
- Performance, Payment and Maintenance Bonds
- Certificate of Inclusion of Labor & EEO Requirements in Subcontracts
- Notice to Proceed
- Change Orders
- Applications for Payment
- Wage Rates
- General Provisions
- Technical Specifications
- Special Provisions
- Construction Safety and Phasing Plan
- Construction Management Plan
- Plans and Drawings
- Addenda (If any)

## **ARTICLE 2**

### **Statement of Work**

The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all of the work described, drawn, set forth, shown and included in said Contract Documents.

## **ARTICLE 3**

### **Contract Time**

The Contractor agrees to undertake the performance of the Work under the Agreement on the date stated on the Notice to Proceed and agrees to fully complete said Work within ninety (90) consecutive calendar days unless an extension of time is granted by the Sponsor in accordance with the provisions of Section 80, paragraph 7, General Provisions.

## **ARTICLE 4**

### **Liquidated Damages**

It is understood and agreed by and between the Sponsor and the Contractor that should the completion of the entire project be delayed beyond the stipulated day herein specified, the Sponsor will suffer substantial damages, which damages it would be difficult to accurately determine. The parties hereto have considered the possible limit of damages and have agreed that a delay in completion of this project will cost the Sponsor not less than One Thousand Seven Hundred Fifty Dollars (\$1,750) for each calendar day. In view of these facts and in accordance with the General and Special Provisions, the Contractor agrees to pay the Sponsor as liquidated damages and not as a penalty, the sum of One Thousand Seven Hundred Fifty Dollars (\$1,750) for each calendar day, if any, which exceeds the total project time limit stated in Article 3 above with allowances for any extensions of time which the Sponsor may properly grant. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefore, the Surety on the Performance Bond shall pay such damages. Also, the Sponsor may hold all or part of such liquidated damages from payments due the Contractor.

## **ARTICLE 5**

### **Terms of Payment**

The Contractor agrees to accept as his full and only compensation for the performance of all the work required under this Agreement, the sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's Proposal, attached hereto and made a part hereof for the total estimated cost thereof to be One Million Two Hundred Eighty Four Thousand Seven Hundred Ninety Seven Dollars and twelve cents. (\$1,284,797.12). Partial payments will be made for Work completed during the previous month as well as for materials (invoice cost only) delivered to the Project site and suitably stored.

Application for partial payments for stored materials must be accompanied by certified invoices showing all pertinent data that may be required by the Engineer to verify the accuracy of the invoices and their relation to the stored materials. Failure to provide certified invoices will disqualify the materials in question from consideration for partial payment. Partial payments for Work completed during the previous month will be made based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

The Sponsor will retain, from partial payments, ten percent (10%) of the total amount due the Contractor based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

Nothing contained herein shall be construed as relieving the Contractor and the Sureties on the Contractor's Bond from any claim or claims for work or labor done or materials or supplies furnished in the execution of the Agreement.

It is the intent of Sponsor, to make payment for partial payments in a timely manner as follows:

- A. The Contractor shall submit to the Engineer his Application for Payment not later than the next to last Friday of the month.
- B. The Engineer will, within 7 days after receipt, submit the Application for Payment to the Sponsor for payment along with his Recommendation of Payment, noting any changes. The Sponsor will make payment to the Contractor when funds are received from the FAA and/or State of Utah.

## **ARTICLE 6**

### **Bonds and Insurance**

The party of the second part furnishes concurrently herewith the bonds and insurance required by the Contract Documents, said bonds and insurance having been approved by the Sponsor and attached hereto. The Performance Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the completion of the project in accordance with the Contract Documents, without additional cost to the Sponsor. The Payment Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the payment of all project costs in accordance with the Contract Documents, without additional cost to the Sponsor. The Maintenance Bond will be so conditioned as to provide for the correction or replacement of any portion of the Work that proves defective in materials or workmanship for a period of one year following final acceptance of the project and shall cover not only the material but also the costs of removal, correction, re-construction and any other costs incurred in the repair of defective portions of the Work.

## **ARTICLE 7**

### **Civil Rights Act of 1964, Title VI – 49 CFR Part 21 - Contractual Requirements**

(Version 1, 1/5/90)

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

**1. Compliance with Regulations.**

The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "D.O.T.") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

**2. Nondiscrimination.**

The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of

Subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.**  
In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 4. Information and Reports.**  
The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Sponsor or the FAA, as appropriate and shall set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance.**  
In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Sponsor shall impose such Contract Sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

  - A. Withholding of payments to the Contractor under the Contract until the Contractor complies and/or
  - B. Cancellation, termination, or suspension of the Contract, in whole or in part.
- 6. Incorporation of Provisions.**  
The Contractor shall include the provisions of paragraphs 1 through 5 in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontract or procurement as the Sponsor or the FAA may direct as a means of enforcing such provisions including Sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Sponsor to enter into such litigation to protect the interests of the Sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 8**

### **Airport And Airway Improvement Act of 1982, Section 520 General Civil Rights Provisions** (Version 1, 1/5/90)

The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or

benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the Airport Sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the Airport Sponsor or any transferee retains ownership or possession of the property. In the case of Contractors, this provision binds the Contractors from the Bid Solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

## **ARTICLE 9**

### **Inspection Of Records – 49 CFR Part 18**

(Version 1, 1/5/90)

The Contractor shall maintain an acceptable cost accounting system. The Sponsor, the FAA, the Comptroller General of the United States shall have access to any books, documents, paper and records of the Contractor which are directly pertinent to the specific Contract for the purposes of making an audit, examination, excerpts and transcriptions. The Contractor shall maintain all required records for three years after the Sponsor makes final payment and all other pending matters are closed.

## **ARTICLE 10**

### **Rights To Inventions – 49 CFR Part 18**

(Version 1, 1/5/90)

All rights to inventions and materials generated under this Contract are subject to Regulations issued by the FAA and the Sponsor of the Federal grant under which this Contract is executed. Information regarding these rights is available from the FAA and the Sponsor.

## **ARTICLE 11**

### **Breach Of Contract Terms, Sanctions – 49 CFR Part 18**

(Version 1, 1/5/90)

Any Violation or breach of the terms of this Contract on the part of the Contractor or Subcontractor may result in the suspension or termination of this Contract or such other action which may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **ARTICLE 12**

### **DBE Required Statements – 49 CFR Part 26**

(11/19/01)

#### **1. Policy.**

It is the policy of the Department of Transportation (D.O.T.) that Disadvantaged Business Enterprises (DBE's) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contracts financed in whole or in part with Federal funds

under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26, apply to this Agreement.

**2. DBE Obligation.**

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of D.O.T.-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in result in the termination of this Contract or such other remedy, as the Sponsor deems appropriate.

**3. Prompt Payment.**

The Prime Contractor agrees to pay each Subcontractor under this Prime Contract for satisfactory performance of its Contract no later than ten (10) days from the receipt of each payment the Prime Contractor receives from the Sponsor. The Prime Contractor agrees further to return retainage payments to each Subcontractor within thirty (30) days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE Subcontractor.

**ARTICLE 13**

**Trade Restriction Clause – 49 CFR Part 30**

(Version 1, 1/5/90)

The Contractor or Subcontractor, by submission of an offer and/or execution of a Contract, certifies that it:

- A. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. Has not knowingly entered into any Contract or Subcontract for this Project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens of nationals of a foreign country on said list;
- C. Has not procured any product or subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no Contract shall be awarded to a Contractor or Subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the Project, the Federal Aviation Administration may direct through the Sponsor cancellation of the Contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a Contract resulting from this solicitation, it will incorporate this provision for certification without modification in each Contract and in all Lower Tier Subcontracts. The Contractor may rely on the certification of a prospective Subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the Sponsor if the Contractor learns that its certification or that of a Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the Award. If it is later determined that the Contractor or Subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the Contract or Subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **ARTICLE 14**

##### **Airport and Airway Improvement Act Of 1982, Section 515 Veteran's Preference**

(Version 1, 1/5/90)

In the employment of labor (except in executive, administrative and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in Section 515 (c) (1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the Work to which the employment relates.

#### **ARTICLE 15**

##### **Termination Of Contract – 49 CFR Part 18**

(Version 1, 1/5/90)

1. The Sponsor may, by written notice, terminate this Contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the Contract Price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the

convenience of the Sponsor. In such event, adjustment in the Contract Price shall be made as provided in paragraph 2 of this clause.

5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 16**

##### **Clean Air and Water Pollution Control Requirements**

(Version 1, 1/5/90)

Contractors and Subcontractors agree:

1. That any facility to be used in the performance of the Contract or Subcontract or to benefit from the Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities.
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively and all other regulations and guidelines issued thereunder;
3. That, as a condition for the Award of this Contract, the Contractor or Subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Contract is under consideration to be listed on the EPA list of Violating Facilities;
4. To include or cause to be included in any Construction Contract or Subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

#### **ARTICLE 17**

##### **Davis Bacon Requirements - 29 CFR Part 5**

(Version 1, Updated 2/14/2012)

###### **(1) Minimum Wages**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly)

under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

- (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(2) Withholding.**

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to David-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) Payrolls and basic records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which

show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid

the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (ii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the Sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and Trainees.**

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on

the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**(5) Compliance With Copeland Act Requirements.**

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**(6) Subcontracts.**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**(7) Contract Termination: Debarment.**

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance With Davis-Bacon and Related Act Requirements.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes Concerning Labor Standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of Eligibility.**

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## ARTICLE 18

### Contract Work Hours And Safety Standards Act Requirements – 29 CFR Part 5

(Version 1, 1/5/90)

**(1) Overtime Requirements.**

No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph 1 above, the Contractor or any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor or Subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1. above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

**(3) Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an Authorized Representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Work performed by the Contractor or Subcontractor under any such Contract or any other Federal Contract with the same Prime Contractor, or any other Federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

**(4) Subcontractors.**

The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the Subcontractor to include these clauses in any Lower Tier Contracts. The Prime Contractor shall be responsible for compliance by any Subcontractor or Lower Tier Subcontractor with the clauses set forth in paragraphs 1 through 4.

**(5) Working Conditions.**

No Contractor or Subcontractor may require any laborer or mechanic employed in the performance of any Contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under Construction Safety and Health Standards (29 CFR Part 1926) issued by the Department of Labor.

## ARTICLE 19

### Equal Employment Opportunity – 41 CFR Part 60-1.4(b)

(Version 1, 1/5/90)

During the performance of this contract, the contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally-assisted Construction Contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions

will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any Subcontract or Purchase Order as the administering agency may direct as a means of enforcing such provision, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 20**

### **Notices To Be Posted Per Paragraphs (1) And (3) Of The EEO CLAUSE – 41 CFR Part 60-1.4(b) (Version 1, 1/5/90)**

Equal Employment Opportunity is the Law – Discrimination is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246 Title VII of the Civil Rights Act of 1964 – Administered by:

The Equal Employment Opportunity Commission

Prohibits discrimination because of race, color, religion, sex, or national origin by Employers with 25 or more employees, by Labor Organizations with a hiring hall of 25 or more members, by Employment Agencies and by Joint Labor-Management Committees for Apprenticeship or Training.

Any person who believes he or she has been discriminated against should contact:

The Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
Washington, D.C. 20210

## **ARTICLE 21**

### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (41 CFR 60-4.3) (Version 1, 1/5/90)**

#### **1. As used in these specifications:**

- A. “Covered area” means the geographical area described in the solicitation from which this Contract resulted;
- B. “Director” means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- C. “Employer Identification Number” means the Federal social security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- D. “Minority”
  - 1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

- 2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
  - 3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - 4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, Subcontracts a portion of the Work involving any Construction Trade, it shall physically include in each Subcontract in excess of \$10,000 the provisions of these Specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
  3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
  4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these Specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in a geographical area where they do not have a Federal or Federally-assisted Construction Contract shall apply the minority and female goals established for the geographical area where the Work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
  5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these Specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - A. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites and in all facilities at which the Contractor's employees are assigned to Work. The Contractor, where possible, will assign two or more women to each Construction Project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses.
  - C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if the referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.
  - D. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement was not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor

in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

- G. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site Supervisory Personnel such as superintendents, general foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and company activities are nonsegregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

- O. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female Construction Contractors and Suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - P. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
  9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and nonminority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally,) the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
  10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
  12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
  13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with these requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the Work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## **ARTICLE 22**

### **Buy American Steel And Manufactured Products For Construction Contracts (Jan 1991)**

- A. The Contractor agrees that only domestic steel and manufactured products will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, as defined in (b) below.
- B. The following terms apply to this clause:
  1. **Steel and manufactured products.**  
As used in this clause, steel and manufactured products include (1) those produced in the United States or (2) a manufactured product produced in the United States, if the cost of its components mined, produced or manufactured in the United States exceeds 60 percent of the cost of all its components and final assembly has taken place in the United States.
  2. **Components.**  
As used in this clause, components means those articles, materials and supplies incorporated directly into steel and manufactured products.
  3. **Cost of components.**  
This means the costs for production of the components, exclusive of final assembly labor costs.

## **ARTICLE 23**

### **Energy Conservation Requirements**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and conservation Act (Public Law 94-163).

## ARTICLE 24

### Lobbying And Influencing Federal Employees

1. No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the Amendment or modification of any Federal grant.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

## ARTICLE 25

### Bonding Clauses for Construction Contracts and Subcontracts.

1. The Contractor agrees to furnish a performance bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract.
2. The Contractor agrees to furnish a Payment Bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to assure payment of all monies owing by the Contractor under the Agreement and other Contract Documents.

## ARTICLE 26

### General and Labor Clauses for all Construction Contracts and Subcontracts.

1. **A.I.P. Project**  
The work in this contract is included in A.I.P. Project No. 3-49-0034-19/20, which is being undertaken and accomplished by the Cities of Spanish Fork and Springville, Utah in accordance with the Terms and Conditions of a Grant Agreement between the Cities of Spanish Fork and Springville, Utah and the United States, under the Airport and Airway Improvement Act of 1982 and FAR Part 152 (14 CFR Part 152), pursuant to which the United States has agreed to pay a certain percentage of the costs of the Project that are determined to be allowable Project Costs under that Act. The United States is not a party to this Contract and no reference in this Contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States by the Contract, makes the United States a party to this Contract.
2. **Consent to Assignment**  
The Contractor shall obtain the prior written consent of the Sponsor to any proposed assignment of any interest in or part of this Contract.
3. **Convict Labor**  
No convict labor may be employed under this Contract.

## **ARTICLE 27**

### **Hold Harmless**

All Contractors or Subcontractors performing work under this Agreement agree to hold harmless, indemnify and defend, the Cities of Spanish Fork and Springville, Utah and the Engineer, their consultants and each of their officers, agents and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the Work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the Cities of Spanish Fork and Springville, Utah, the Engineer, their consultants or their officers, agents and employees.

**ARTICLE 28**

**Agreement Binding**

The Sponsor and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Sponsor and the Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Sponsor nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and specifically, the Contractor shall not assign any moneys due or to become due without the prior written consent of the Sponsor.

IN WITNESS WHEREOF, the Cities of Spanish Fork and Springville, Utah has caused this Agreement to be subscribed by its Mayor and sealed and attested by its Clerk in its behalf; and the Contractor, Second Party, has signed this Contract the day and the year first mentioned herein.

This Agreement is executed in five counterparts, each deemed to be an original.

SPONSOR, First Party

City of Spanish Fork, Utah

ATTEST:

\_\_\_\_\_, Mayor

By \_\_\_\_\_, City Clerk

SPONSOR, First Party

City of Springville, Utah

\_\_\_\_\_, Mayor

By \_\_\_\_\_, City Clerk

CONTRACTOR, Second Party

Goran, LLC

By \_\_\_\_\_, \_\_\_\_\_  
(Title)

WITNESS:

\_\_\_\_\_, \_\_\_\_\_  
(Title)

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**CONSTRUCTION PERFORMANCE & MAINTENANCE BOND**

**Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.**

CONTRACTOR (Name and Address):  
Goran, LLC  
505 North 1500 West  
Orem, UT 84057

SURETY (Name and Principal Place of Business)

OWNER (Name and Address):  
Spanish Fork and Springville, Utah  
P.O. Box 297  
Spanish Fork, Utah 84660

**CONSTRUCTION CONTRACT**

Date:

Amount: \$1,284,797.12

Description (Name and Location):

Spanish Fork - Springville Airport  
Spanish Fork, Utah / Springville, Utah  
A.I.P. Project No. 3-49-0034-19/20

**BOND**

Date (Not earlier than Construction Contract Date):

Amount: \$1,284,797.12

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company: Goran, LLC  
(Corp. Seal)

SURETY  
Company:  
(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, including all related Construction Documents and modifications thereto, which is incorporated herein by reference.
2. If the Contractor completes the Contract and corrects all defects that appear within one year after final acceptance of all the work required under the Contract Documents, the Surety and the Contractor shall have no obligation under this bond, except to participate in conferences as provided in Subparagraph 3.1.
3. The Surety's obligations under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract, or for correcting defects in workmanship or material that have appeared within one year after final acceptance of the work. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, or to correct said defects in workmanship or material, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract or to correct said defects. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a contractor selected to perform the Contract, or to correct said defects in accordance with the terms of the Contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner to perform and complete the Contract, or to correct said defects in workmanship or material; or
  - 4.2 Undertake to perform and complete the Contract, or to correct said defects in workmanship or material itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract to (a) perform and complete the Contract or correct said defects in workmanship or materials; (b) arrange for a Contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract and (c) pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
  - 4.4 Waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and the Owner shall be entitled to enforce any remedy available to the Owner if the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Contract, or to correct said defects in workmanship or materials and if the Surety elects to act under Subparagraphs 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract and related Construction Documents and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract and Construction Documents. To the limit of the amount of this Bond, but subject to commitment by the Owner to pay the Balance of the Contract Price to mitigation of costs and damages of the Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for completion of the Contract and correction of any defects that appear within one year following final acceptance of all the work required under the Construction Contract and related Documents;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, or resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time and changes in the work required under the Contract or related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Owner became aware, or reasonably should have become aware of Contractor Default or within two years after the Surety refuses or fails to perform its obligations under this Bond; whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period for limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted hereon and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions:
  - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
  - 12.2 Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
  - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**CONSTRUCTION PAYMENT BOND**

**Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.**

CONTRACTOR (Name and Address):  
Goran, LLC  
505 North 1500 West  
Orem, UT 84057

SURETY (Name and Principal Place of Business)

OWNER (Name and Address):  
Spanish Fork and Springville, Utah  
P.O. Box 297  
Spanish Fork, Utah 84660

**CONSTRUCTION CONTRACT**

Date:

Amount: \$1,284,797.12

Description (Name and Location):

Spanish Fork - Springville Airport  
Spanish Fork, Utah / Springville, Utah  
A.I.P. Project No. 3-49-0034-19/20

**BOND**

Date (Not earlier than Construction Contract Date):

Amount: \$1,284,797.12

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company: Goran, LLC  
(Corp. Seal)

SURETY  
Company:  
(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants and
  - 2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety and provided there is no Owner Default.
3. With respect to Claimant's this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2. Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2. Pay or arrange for payment any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (3) , or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
  - 15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
  - 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes hereto.
  - 15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**CERTIFICATION OF INCLUSION OF LABOR  
& EEO REQUIREMENTS IN SUBCONTRACTS**

A.I.P. PROJECT NO. 3-49-0034-19/20 AIRPORT: Spanish Fork - Springville Airport  
The Prime Contractor whose signature appears below certifies that a Subcontract was awarded on \_\_\_\_\_ to \_\_\_\_\_ to perform the following Work: \_\_\_\_\_

In the amount of \$ \_\_\_\_\_

All of the required clauses and certifications are incorporated into the Subcontract for this Work.

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_, 2012 \_\_\_\_\_  
(Name and Title)

**Applicable to subcontracts over \$2,000 and as noted:**

The Subcontractor whose signature appears below certifies that the following provisions of the Prime Contractor of the above A.I.P. project are incorporated into and made a part of its Subcontract:

- |   |   |
|---|---|
| (1) Standard Equal Employment Opportunity Clauses and Specifications (if over \$10,000) | (8) Subcontracts  |
| (2) Davis Bacon Act   | (9) Contract Termination-Debarment  |
| (3) Contract Work Hours and Safety Standards Act - Overtime Requirements                | (10) Working Conditions   |
| (4) Apprentices and Trainees  | (11) Minimum Wages and Wage Rates   |
| (5) Payrolls and Records  | (12) Violations; Liability for Unpaid Wages; Liquidated Damages   |
| (6) Compliance with Copeland Regulations  | (13) Goals and Timetables for Minority and Female Participation (if over \$10,000)  |
| (7) Withholding of Funds for Unpaid Wages and Liquidated Damages                        | (14) Standard Assurance Provision required by 14 CFR Part 152, Subpart E, "Non-discrimination in Airport Aid Program (all contract and subcontracts). |

The Subcontract should also contain Certificate of Nonsegregated Facilities as a part of said Subcontract.

The Subcontractor whose signature appears below also acknowledges his responsibility under the Subcontract for including these clauses in any Lower Tier Subcontract.

\_\_\_\_\_, 2012 By: \_\_\_\_\_  
(Date) (Signature)

SOURCES OF LABOR RECEIVING STANDARD FORM 36 "NOTICE OF NONDISCRIMINATION IN EMPLOYMENT" \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**APPLICATION FOR PAYMENT NO. \_\_\_\_\_**

To the Cities of Spanish Fork and Springville, Utah (OWNER). Contract for the Spanish Fork - Springville Airport Improvements dated \_\_\_\_\_. OWNER'S A.I.P. Project No. 3-49-0034-19/20. ENGINEER'S Project No. 116058. For Work accomplished through the date of \_\_\_\_\_.

**ATTACH ITEMIZED LIST**

Accompanying Documentation:	GROSS AMOUNT DUE	\$
_____	LESS 10% RETAINAGE	\$
_____	AMOUNT DUE TO DATE	\$
_____	LESS PREVIOUS PAYMENTS	\$
_____	AMOUNT DUE THIS APPLICATION	\$

**CONTRACTOR'S Certification:**

The undersigned CONTRACTOR certifies that (1) all previous Progress Payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_\_ inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of final acceptance of Project free and clear of all liens, claims, security interests and encumbrances.

Dated \_\_\_\_\_, 2012                      Goran, LLC  
CONTRACTOR  
  
By \_\_\_\_\_

**ENGINEER'S Recommendation:**

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated \_\_\_\_\_, 2012                      Armstrong Consultants, Inc.  
ENGINEER  
  
By \_\_\_\_\_

**OWNER'S Approval:**

This Application is approved.  
Dated \_\_\_\_\_, 2012                      Spanish Fork and Springville, Utah  
SPONSOR  
  
By \_\_\_\_\_

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**APPLICATION FOR PAYMENT NO. \_\_\_\_\_**

To the Cities of Spanish Fork and Springville, Utah (OWNER). Contract for the Spanish Fork - Springville Airport Improvements dated \_\_\_\_\_. OWNER'S A.I.P. Project No. 3-49-0034-19/20. ENGINEER'S Project No. 116058. For Work accomplished through the date of \_\_\_\_\_.

**ATTACH ITEMIZED LIST**

Accompanying Documentation:	GROSS AMOUNT DUE	\$
_____	LESS 0% RETAINAGE	\$
_____	AMOUNT DUE TO DATE	\$
_____	LESS PREVIOUS PAYMENTS	\$
_____	AMOUNT DUE THIS APPLICATION	\$

**CONTRACTOR'S Certification:**

The undersigned CONTRACTOR certifies that (1) all previous Progress Payments received from OWNER on account of Work done under the Contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through \_\_\_\_ inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of final acceptance of Project free and clear of all liens, claims, security interests and encumbrances.

Dated \_\_\_\_\_, 2012                      Goran, LLC  
CONTRACTOR  
  
By \_\_\_\_\_

**ENGINEER'S Recommendation:**

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated \_\_\_\_\_, 2012                      Armstrong Consultants, Inc.  
ENGINEER  
  
By \_\_\_\_\_

**OWNER'S Approval:**

This Application is approved.  
Dated \_\_\_\_\_, 2012                      Spanish Fork and Springville, Utah  
SPONSOR  
  
By \_\_\_\_\_

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**NOTICE TO PROCEED**

TO: Goran, LLC  
505 North 1500 West  
Orem, UT 84057

DATE:

A.I.P. PROJECT No. 3-49-0034-19/20

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_  
\_\_\_\_\_. By that date, you are to start performing your obligations under the  
Contract Documents and you are to complete the Work within ninety (90) consecutive calendar  
days thereafter. The date of completion of all Work is therefore \_\_\_\_\_  
\_\_\_\_\_, 2012.

SPANISH FORK AND SPRINGVILLE, UTAH

By \_\_\_\_\_, Airport Manager

2050 North 300 West  
Spanish Fork, Utah 84660  
(801) 420-8888

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

\_\_\_\_\_, Contractor

this the \_\_\_\_\_ day of \_\_\_\_\_, 2012

By \_\_\_\_\_, \_\_\_\_\_  
(Title)

City Council Consent Agenda Item:

Staker Parsons Inc. Airport Apron Rehab Project.

September 28, 2012

This contract with Staker Parsons Inc. is for Phase 1 of the Apron Rehab included in our Capital Improvement plan for the Airport. This is being funded 90 percent by a State grant which was recently approved by the Council and is within the amount budgeted in that grant. The matching funds for 10 percent of this project are included in the Airport Budget and is currently being held in the airports Capital Improvements Fund.

Cris Child  
Airport Manager

## **AGREEMENT**

This Agreement made and entered into this 31st day of August, 2012, by and between the CITIES OF SPANISH FORK AND SPRINGVILLE, UTAH, party of the first part, hereinafter in the Contract Documents referred to as the "Sponsor," and Staker & Parson Companies hereinafter in the Contract Documents called the "Contractor," party of the second part.

WITNESSETH, that the Sponsor advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the Spanish Fork - Springville Airport Improvements.

WHEREAS, U.D.A. No. 000000 has been awarded to the above-named Contractor by the Sponsor and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

### **ARTICLE 1**

#### **Contract Documents**

It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Agreement and all of said instruments, drawings and documents taken together as a whole constitute the Agreement between the parties hereto and they are as fully a part of this Agreement as if they were set out verbatim and in full herein:

- Invitation for Bids
- Instructions to Bidders
- Proposal
- Bid Bond
- Notice of Award
- Agreement
- Performance, Payment and Maintenance Bonds
- Certificate of Inclusion of Labor in Subcontracts
- Notice to Proceed
- Change Orders
- Applications for Payment
- General Provisions
- Special Provisions
- Construction Safety and Phasing Plan
- Technical Specifications
- Plans and Drawings
- Addenda 1, 2, and 3

### **ARTICLE 2**

## **Statement of Work**

The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all of the work described, drawn, set forth, shown and included in said Contract Documents.

## **ARTICLE 3**

### **Contract Time**

The Contractor agrees to undertake the performance of the Work under the Agreement on the date stated on the Notice to Proceed and agrees to fully complete said Work within thirty (30) consecutive calendar days unless an extension of time is granted by the Sponsor in accordance with the provisions of Section 80, paragraph 7, General Provisions.

## **ARTICLE 4**

### **Liquidated Damages**

It is understood and agreed by and between the Sponsor and the Contractor that should the completion of the entire project be delayed beyond the stipulated day herein specified, the Sponsor will suffer substantial damages, which damages it would be difficult to accurately determine. The parties hereto have considered the possible limit of damages and have agreed that a delay in completion of this project will cost the Sponsor not less than One Thousand Dollars (\$1,000) for each calendar day. In view of these facts and in accordance with the General and Special Provisions, the Contractor agrees to pay the Sponsor as liquidated damages and not as a penalty, the sum of One Thousand Dollars (\$1,000) for each calendar day, if any, which exceeds the total project time limit stated in Article 3 above with allowances for any extensions of time which the Sponsor may properly grant. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefore, the Surety on the Performance Bond shall pay such damages. Also, the Sponsor may hold all or part of such liquidated damages from payments due the Contractor.

## **ARTICLE 5**

### **Terms of Payment**

The Contractor agrees to accept as his full and only compensation for the performance of all the work required under this Agreement, the sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's Proposal, attached hereto and made a part hereof for the total estimated cost thereof to be Three Hundred Forty Two Thousand Four Hundred Sixty Six and 20/100 Dollars (\$342,466.20). Partial payments will be made for Work completed during the previous month as well as for materials (invoice cost only) delivered to the Project site and suitably stored.

Application for partial payments for stored materials must be accompanied by certified invoices showing all pertinent data that may be required by the Engineer to verify the accuracy of the invoices and their relation to the stored materials. Failure to provide certified invoices will disqualify the materials in question from consideration for partial payment. Partial payments for Work completed during the previous month will be made based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

The Sponsor will retain, from partial payments, ten percent (10%) of the total amount due the Contractor based on the Contractor's Application for Payment and the Engineer's Recommendation of Payment.

Nothing contained herein shall be construed as relieving the Contractor and the Sureties on the Contractor's Bond from any claim or claims for work or labor done or materials or supplies

furnished in the execution of the Agreement.

It is the intent of Sponsor, to make payment for partial payments in a timely manner as follows:

- A. The Contractor shall submit to the Engineer his Application for Payment not later than the next to last Friday of the month.
- B. The Engineer will, within 7 days after receipt, submit the Application for Payment to the Sponsor for payment along with his Recommendation of Payment, noting any changes. The Sponsor will make payment to the Contractor when funds are received from the FAA and/or State of Utah.

## **ARTICLE 6**

### **Bonds and Insurance**

The party of the second part furnishes concurrently herewith the bonds and insurance required by the Contract Documents, said bonds and insurance having been approved by the Sponsor and attached hereto. The Performance Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the completion of the project in accordance with the Contract Documents, without additional cost to the Sponsor. The Payment Bond will be in an amount not less than one hundred percent (100%) of the Contract Price but, in any event, shall provide for the payment of all project costs in accordance with the Contract Documents, without additional cost to the Sponsor. The Maintenance Bond will be so conditioned as to provide for the correction or replacement of any portion of the Work that proves defective in materials or workmanship for a period of one year following final acceptance of the project and shall cover not only the material but also the costs of removal, correction, re-construction and any other costs incurred in the repair of defective portions of the Work.

## **ARTICLE 7**

### **Breach Of Contract Terms, Sanctions**

Any Violation or breach of the terms of this Contract on the part of the Contractor or Subcontractor may result in the suspension or termination of this Contract or such other action which may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **ARTICLE 8**

### **Termination Of Contract**

1. The Sponsor may, by written notice, terminate this Contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the Contract Price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

3. If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the Contract Price shall be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 9**

#### **Bonding Clauses for Construction Contracts and Subcontracts in Excess of \$100,000.**

1. The Contractor agrees to furnish a performance bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to secure fulfillment of all the Contractor's obligations under such Contract.
2. The Contractor agrees to furnish a Payment Bond for 100 percent of the Contract Price. This Bond is one that is executed in connection with a Contract to assure payment of all monies owing by the Contractor under the Agreement and other Contract Documents.

#### **ARTICLE 10**

#### **Hold Harmless**

All Contractors or Subcontractors performing work under this Agreement agree to hold harmless, indemnify and defend, the Cities of Spanish Fork and Springville, Utah and the Engineer, their consultants and each of their officers, agents and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the Work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the Cities of Spanish Fork and Springville, Utah, the Engineer, their consultants or their officers, agents and employees.

**ARTICLE 11**

**Agreement Binding**

The Sponsor and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contract Documents constitute the entire agreement between the Sponsor and the Contractor and may only be altered, amended or repealed by a duly executed written instrument. Neither the Sponsor nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and specifically, the Contractor shall not assign any moneys due or to become due without the prior written consent of the Sponsor.

IN WITNESS WHEREOF, the Cities of Spanish Fork and Springville, Utah has caused this Agreement to be subscribed by its Mayor and sealed and attested by its Clerk in its behalf; and the Contractor, Second Party, has signed this Contract the day and the year first mentioned herein.

This Agreement is executed in five counterparts, each deemed to be an original.

SPONSOR, First Party

City of Spanish Fork, Utah

ATTEST:

\_\_\_\_\_, Mayor

By \_\_\_\_\_, City Clerk

SPONSOR, First Party

City of Springville, Utah

\_\_\_\_\_, Mayor

By \_\_\_\_\_, City Clerk

CONTRACTOR, Second Party

By \_\_\_\_\_, \_\_\_\_\_  
(Title)

WITNESS:

\_\_\_\_\_, \_\_\_\_\_  
(Title)

# ORDINANCE NO. 13-12

ROLL CALL

VOTING	YES	NO
<b>G. WAYNE ANDERSEN</b> <i>Mayor (votes only in case of tie)</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>ROD DART</b> <i>Council member</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>RICHARD M. DAVIS</b> <i>Council member</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BRANDON B. GORDON</b> <i>Council member</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>STEVE LEIFSON</b> <i>Council member</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>KEIR A. SCUBES</b> <i>Council member</i>	<input type="checkbox"/>	<input type="checkbox"/>

I MOVE this ordinance be adopted: Councilmember \_\_\_\_\_  
 I SECOND the foregoing motion: Councilmember \_\_\_\_\_

## ORDINANCE No. 13-12

### ORDINANCE ABANDONING A PUBLIC ACCESS EASEMENT ON LOT 20, CANYON VIEW SUBDIVISION PLAT B

WHEREAS, Canyon View Subdivision, Plat B was approved by Spanish Fork City and recorded with the Utah County Recorder in September, 2002; and

WHEREAS, the plat dedicated to Spanish Fork City contains a ten foot wide public access easement through Lot 20 to provide access to Canyon View Elementary School; and

WHEREAS, the Nebo School District does not use the public access easement, and actually closes it during the school year; and

WHEREAS, the owner of Lot 20 is willing to accept abandonment of the easement

and to maintain it; and

WHEREAS, it is in the best interests of both the City and its residents to abandon this public access easement; and

WHEREAS, notice of the intent to abandon the easement was posted on the property and on the State of Utah Notice Website; and

WHEREAS, notice of a public hearing was published in the Provo Daily Herald, a newspaper of general circulation within Spanish Fork City, on Wednesday, the 19<sup>th</sup> day of September, 2012; and

WHEREAS, a public hearing was held before the City Council on Tuesday, the 2nd day of October, 2012, where public comment was received; and

WHEREAS, the council finds that it is in the best interest of the public to abandon the public access easement identified herein;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

I.

The property dedicated as a ten foot public access easement through Lot 20 in Canyon View Subdivision, Plat B, as recorded in the office of the Utah County Recorder on the 10th day of September, 2002 as entry number 105834:2002, Map Filing Number 9684 is hereby abandoned to David L. Bourne and Karie Bourne, the underlying owners of the property. The easement is more particularly described as follows:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 20, PLAT "B", CANYON VIEW SUBDIVISION WHICH IS LOCATED S89°17'34"W ALONG THE SECTION

LINE 1162.29 FEET AND SOUTH 3182.37 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S89°06'47"W ALONG THE SOUTH PROPERTY LINE OF LOT 20 121.00 FEET TO THE EAST RIGHT OF WAY LINE OF 1400 EAST; THENCE N00°42'09"W ALONG THE EAST RIGHT OF WAY LINE OF 1400 EAST 10.00 FEET; THENCE N89°06'47"E 121.00 FEET; THENCE S00°42'09"E 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 0.028 ACRES

II.

This ordinance is effective upon recordation with the Utah County Recorder.

ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH,  
this 2nd day of October, 2012.

---

G. WAYNE ANDERSEN, Mayor

Attest:

---

KENT R. CLARK, City Recorder

**SPANISH FORK CITY  
STAFF REPORT TO CITY COUNCIL**



<b>Agenda Date:</b>	October 2, 2012
<b>Staff Contacts:</b>	Seth Perrins, Assistant City Manager; Tyler Aitken, Management Intern
<b>Reviewed By:</b>	Dave Oyler, Ad-Hoc Communications Tool Committee
<b>Subject:</b>	Mass Communication Tool

**Background Discussion**

For several years, the city has been using a mass communications tool called CityWatch to notify its residents in the case of an emergency. Access to this tool was given to the City by a grant the County received. We have used this tool to make other mass calls about recreation matters, utility repairs, street maintenance, or delinquent utility accounts. However, the system has never been fully utilized due to the amount of time it takes to actually make the emergency calls (hours in most cases) and the difficult user interface made it hard for employees to use.

A few months ago an RFP was sent out to look for a more effective solution. We received several responses but decided to hear presentations from two providers. After the presentations it became clear that Parlant Technology was the superior tool giving us the ability to call every home in the City in about ten minutes as well as send notifications via text message and email. Parlant's headquarters are also located in Provo giving them the edge when it comes to customer service and support. Other cities in Utah Valley have also had very positive experiences with Parlant and have recommended their services to other municipalities in the area.

Parlant will not only be a much faster solution for reaching our citizens, but it will also allow us to have a more accurate contact database. The typical communication tool relies on public data and on residents responding to an invitation to update/input their information if they want to be contacted. Parlant will give us this as well as the ability to update data every day from our in-house databases, such as Caselle and PARR (Parks & Recreation database), and it will also be able to provide us with the contact information from the Nebo School District database. The combined information in these databases will help ensure we are in the better contact with our citizens. Likewise, we can share our contact information with the district, giving them a more complete database.

The Parlant Technology communication tool has the potential to be very versatile. We anticipate using the tool to reach households prior to having utilities shutoff, to recruit volunteers for coaching positions, reminder calls, important employee announcements, notification of road closures for road or utility maintenance, public notices for specific areas, and any manner of emergency situation that may arise. Parlant's tool will allow us to contact very specific geographical areas or up to the entire city if needed; no matter the scenario, all the calls can be made in a matter of minutes.

An additional angle we are currently pursuing is to change the contract the County has for its mass communication tool to see if that funding source can be applied to the costs with Parlant. The next

section of this report will detail the costs of this contract, however, in negotiating the contract, we recognize that there are greater uses for this tool than just in Spanish Fork. Parlant has already committed to make the Utah Valley Dispatch an additional user on our account, giving the police and dispatch the ability to use this tool for emergencies in Spanish Fork. There are 4 other communities in the dispatch district that are currently or soon-to-be contracted with Parlant. They will have a similar ability with dispatch in their cities. We are hopeful that our costs will come down if we are able to use this tool county-wide. Parlant has committed to work with us to renegotiate the price if the dispatch or the other communities begin to use the tool, or we may find that some funds are available from the County that may be available to pay a portion of our costs. We will report more on this as it develops.

### **Budget Impact**

Parlant Technology has offered a five year contract at \$1.50 per year for each household in the City and \$0.75 per year for each business in the City. Our most recent count of residential households, based on our electric utility connections is 9,795. Our most recent count of businesses in the city, based again off of electric utility connections is 1,082. Based on their formula, our annual bill will be \$15,504 with an additional \$500 the first year for the initial set up.

We could eliminate the businesses from this package and save about \$800 a year, however, we recommend including the businesses because of a need to contact businesses during emergencies or during utility or street work. We were successful in negotiating the lower rate for the businesses as they will be contacted less frequently and many business owners in town are also home owners or residents.

We budgeted \$15,500 for such a tool in the 2013 budget. The cost of the tool would be split among ten budgets: 3 general fund accounts for a total of \$4,651 and 7 enterprise fund accounts for a total of \$11,353. Each account has budgeted \$1,500 for the year with the exception of the electric fund which budgeted \$2,000. Due to the addition of the businesses, the contract would exceed the budgeted amount by \$504 which will need to be adjusted with the next budget revision.

### **Alternatives**

A total of 6 companies responded to our RFP and their total prices range from \$8,500 to \$19,000 a year. Each package met the basic requirements, but each varied in several ways. Most said they could make calls quickly and were unique only in their interface. Some mentioned they could import data from our utility-billing database and others said that with extra programming costs they interface regularly with the Caselle data. Only Parlant demonstrated an actual track record of connecting to Caselle daily and only Parlant can interface with the Nebo School District's communication tool database. Without these extra databases, the communications tools are limited with access only to public numbers (numbers found in a phone book) and resident updated information.

### **Recommendation**

It is the recommendation of the ad-hoc committee and of the City Manager that the Council enter into a 5-year, no obligation contract, with Parlant Technology to provide mass communication services. The committee feels strongly that regularly missing cell-phone-only homes would make this tool less effective. Combining databases with public numbers, Caselle, PARR, and the Nebo School District will give us access to many more homes, making it more likely that our message will reach as many of our residents as possible.

## **Contract**

A version of the proposed contract with Parlant is attached for your consideration. Please note the difference in the annual price and in the number of utility accounts. Staff's description above is accurate, but a corrected version of the contract was not available by the deadline for the agenda. A correct and updated contract will be available by Council meeting and any other changes will be addressed with the Council.



## MASS COMMUNICATION SERVICE LICENSE AGREEMENT

This Parlant ASP License Agreement ("Agreement") is made as of September 20, 2012 ("Effective Date") by and between Spanish Fork City ("City/Township"), and Parlant Technology, Inc. ("PARLANT"), (collectively the "Parties" and each individually the "Party"), whereby City/Township wishes to subscribe to PARLANT's Mass Communication Service (the "Service") in accordance with the following terms and conditions:

1. **License.** Subject to and in accordance with the terms and conditions of this Agreement, PARLANT grants to City/Township, a non-exclusive, revocable, non-transferable license to utilize the Service, provided, however, that the Service usage must be limited to City/Township use. PARLANT frequently updates and otherwise seeks to improve the Service, and reserves the right to change any aspect or feature of the Service, provided that, PARLANT shall not change any feature used by City/Township without making reasonable efforts to provide similar or enhanced functionality.

2. **License Term** (the "Term") – Check the appropriate box and verify the date that service shall begin.

**A one-year term for the period commencing on October 1, 2012.**

**A three-year term** for the period commencing on October 1, 2012. City/Township may terminate the contract at the end of any complete year by providing PARLANT no less than thirty (30) days written notice to terminate. Such termination shall not relieve the City/Township of the obligation to pay PARLANT for services rendered by PARLANT to City/Township up and to the date of termination.

**A five-year term** for the period commencing on October 1, 2012. City/Township may terminate the contract at the end of any complete year by providing PARLANT no less than thirty (30) days written notice to terminate. Such termination shall not relieve the City/Township of the obligation to pay PARLANT for services rendered by PARLANT to City/Township up and to the date of termination.

Notwithstanding whether this is a one-year, three-year, or five-year agreement, City/Township acknowledges that the terms and conditions of the Agreement shall govern any usage of the Service by City/Township as of the Effective Date.

3. **License Fee.** In return for the provision of the Service, City/Township will pay to PARLANT an Annual Message Fee, a Set-Up Fee and a FCC Surcharge (collectively the "License Fee"). (Note: Support is included in the Annual Message Fee.)

a. **Set-up Fee:** A one-time fee in the amount of \$500.00 ("Set-up Fee"), which fee covers implementation and configuration work, initial goals and strategy planning, training, all infrastructure maintenance, data storage, and security during the Term: AND

b. **Annual Message Fee:**

i. **For One-Year Contract:** An annual messaging fee in the amount of \$1.50 ("Per Household Price") during the Term ("Annual Message Fee"). As of the Effective Date, the total household count is 10,829 and accordingly, an Annual Message Fee of \$16,243.50 will be payable for the Term.

ii. **For Three-Year Contract:** An annual messaging Fee in the amount of \$1.50 ("Per Household Price") per household per year ("Annual Message Fee"). Calculation of the Annual Message Fee will be based on the number of households in the City/Township for each year (as reflected by the City/Township's database), multiplied by \$1.50. Accordingly, the Annual Message Fee payable to PARLANT will be adjusted to reflect a change in the household count ("Adjusted Annual Message Fee") each year.

iii. **For Five-Year Contract:** An annual messaging fee in the amount of \$1.50 ("Per Household Price") per household per year ("Annual Message Fee"). Calculation of the Annual Message Fee will be based on the number of households in the City/Township for each year (as reflected by

the City/Township's database), multiplied by \$1.50. Accordingly, the Annual Message Fee payable to PARLANT will be adjusted to reflect a change in the change in the household count ("Adjusted Annual Message Fee").

- c. **FCC Surcharge:** The Federal Communications Commission ("FCC") assesses a surcharge on interstate calls ("Surcharge") to support the Universal Service Fund. In accordance with FCC Guidelines set forth in Order No. 157, PARLANT passes through these Universal Service Fund costs to all customers. The City/Township agrees to pay PARLANT its portion of the Surcharge, which is proportionate to the number of interstate calls that PARLANT makes on behalf of City/Township, and PARLANT agrees to pay the City/Township's portion of the Surcharge to the FCC. PARLANT will calculate the surcharge based on the FCC annual true up rate.
  - d. **Payment Terms:** Payment is due within (30) days of invoicing.
4. **Privacy and Terms of Use.** City/Township agrees to comply with the current Terms of Use and Privacy Policy stated on the PARLANT Website at <http://www.parlant.com/>, as amended from time to time, and acknowledges its responsibility to periodically review the Terms of Use and Privacy Policy.
  5. **Renewal; Termination.** City/Township may renew this Agreement by written notice to PARLANT at least thirty (30) days prior to the end of Term for subsequent renewal terms of one year each ("Renewal Term"). The terms of any renewal agreement shall be in accordance with the then-existing PARLANT standard terms, rates and charges. Either Party may terminate this Agreement in the event of a material breach by the other Party, which breach remains uncured for thirty (30) days following written notice to the breaching party. Any termination of this Agreement will not affect any rights or liabilities of either Party that accrued prior to such termination. Sections 6 and 7 shall survive any termination of this Agreement.
  6. **Limitation of Warranty, Liability and Indemnities.** PARLANT makes the Service available to City/Township through requisite access protocols, but makes no representations that City/Township will be able to access the Service at any particular time or location. The Service is provided "AS IS" with no guarantee that it is error free, and PARLANT expressly disclaims all representations and warranties relating to the Service, to the maximum extent permitted by law, either expressly or impliedly, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Neither PARLANT nor its officers, employees, agents, affiliates, partners, sponsors, or service providers, will be liable for any damages or injury caused by, and including, but not limited to, any failure of performance, error, omission, interruption, defect, delay in operation of transmission, computer virus, or line failure, with respect to the performance of the Service. In no event shall the liability of PARLANT under this Agreement, regardless of the form of action, exceed the total compensation paid by City/Township under this Agreement. IN NO EVENT SHALL PARLANT BE LIABLE TO CITY/TOWNSHIP OR ANY THIRD PARTY FOR ANY INJURY, LOSS, CLAIM, DAMAGES OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS, LOSS OF SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, DOWNTIME, COVER AND THE LIKE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, EVEN IF PARLANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SHOULD HAVE FORESEEN SUCH DAMAGES. In no event will the total liability of PARLANT for any damages incurred by City/Township exceed the most recent Annual Message Fee paid under this agreement, regardless of the form of action, whether based in contract, tort, warranty, negligence, strict liability, products liability or otherwise. The existence of multiple claims will not enlarge this limit. The Parties acknowledge and agree that this Section 6 is an essential element of the Agreement and that in its absence, the economic terms of this Agreement would be substantially different.
  7. **Entire Agreement Clause.** This Agreement forms a written contract that constitutes the entirety of the agreement between the Parties. Neither Party is relying on any statement which is not set out in this agreement. The Parties agree that the only remedies available will be those set out in this agreement or a claim in damages for breach of agreement.

8. **Miscellaneous.** The laws of the State of Utah shall govern all disputes relating to this Agreement. Neither PARLANT nor City/Township shall be liable for damages for any delay or failure of delivery arising out of causes beyond its reasonable control, including, but not limited, acts of civil or military authority, fires, floods, earthquakes, storms, hurricanes or other natural disaster), hostilities, strikes, government sanctions, acts of terrorism, riots, wars, interruption or failure of electricity or telecommunication service, or acts of God. Any notice must be given in writing and sent by certified or registered mail. This Agreement constitutes the entire understanding of the parties with respect to the subject matter herein, and may be amended only by mutual written agreement. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

<b>For: Parlant Technology, Inc.</b>
<b>Signed:</b>
<b>Print Name:</b> John Graff
<b>Title:</b> President
<b>Date:</b>
<b>Parlant Technology, Inc.</b> 180 N. University Ave., Suite 500 Provo, UT 84601

<b>For: Spanish Fork City</b>
<b>Signed:</b>
<b>Print Name:</b>
<b>Title:</b>
<b>Date:</b>
<b>Spanish Fork City</b> 40 South Main Street Spanish Fork, UT 84660