Council Meeting of January 8, 2020

Agenda Item No. 50

# REQUEST FOR COUNCIL ACTION

SUBJECT:

Public Recreation Easement Agreement and Temporary Access

License between Rocky Mountain Power and the City of West

Jordan.

**SUMMARY:** 

Rocky Mountain Power owns property located at approximately 1101 West 7800 South in West Jordan. The City needs to purchase easements across a portion of this property in order to complete the Jordan River Trail connector project, and the attached documents accomplish this objective.

FISCAL AND/OR

ASSET IMPACT: 9,800.00.

STAFF RECOMMENDATION:

Staff recommends approval.

## **MOTION RECOMMENDED:**

"I move to adopt Resolution No. 20-0", authorizing the Mayor to execute the attached Public Recreation Easement Agreement and Temporary Access License between Rocky Mountain Power and the City of West Jordan, and authorizing the City's Real Property Administrator to sign all documents necessary to close the transaction."

Roll Call vote required

Prepared and to be Presented by:

Recommended by:

David Clemence

Real Property Administrator

Scott Langford

**Development Services Director** 

**Authorized for Council Consideration:** 

Reviewed for Legal Sufficiency:

City Attorney's Office

Korban Lee
Chief Administrative Officer
David R. Brickey
City Munegel

#### BACKGROUND DISCUSSION:

The City Council previously approved a public recreation trail project that allows construction of a trail from the Gardner Village Trax Station to the existing Jordan River Trail (the "Project"). In order to construct the Project, however, it is necessary for the City to acquire property interests from the UTA, A.M.I. Associates and Rocky Mountain Power. The City Council approved the UTA permit on May 22, 2019, under Resolution No. 19-105, and the A.M.I. Contract on August 27, 2019, under Resolution No. 19-162, so the attached Public Recreation Easement Agreement and Temporary Access License are the only remaining real estate documents that must be approved prior to advertising the Project for bid.

#### Attachments:

Resolution
Public Recreation Easement Agreement
Temporary Access License
Area Reference Map

# THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 20-02

# A RESOLUTION AUTHORIZING THE CITY TO PURCHASE EASEMENTS FROM ROCKY MOUNTAIN POWER

Whereas, the City Council of the City of West Jordan has reviewed the attached Public Recreation Easement Agreement and Temporary Access License between Rocky Mountain Power and the City of West Jordan (the "Easement Documents"); and

Whereas, the City Council desires that the attached Easement Documents be executed by the Mayor; and

Whereas, the Mayor is authorized to execute the attached Easement Documents pursuant to the Utah State Code.

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

- Section 1. The Mayor is authorized to execute the attached Easement Documents after they have been approved as to legal form by the City Attorney.
- Section 2. The City's Real Property Administrator is authorized to act on behalf of the City while closing the transaction, with the right and authority to sign all documents necessary as part of said closing.
  - Section 3. This Resolution shall take effect immediately.

Deputy City Clerk

Adopted by the City Council of West Jordan, Utah, this 8th day of January 2020.

CITY OF WEST JORDAN

ATTEST:	By:	
	DIRK BURTON	
	Mayor	
TANGEE SLOAN		

Voting by the City Council	"YES"	"NO"
Council Member Kelvin Green	3-4 F - 15 -	
Council Member Zach Jacob		
Council Member Chad Lamb		
Council Member Chris McConnehey		
Council Member David Pack		
Council Member Kayleen Whitelock		
Council Member Melissa Worthen		

#### WHEN RECORDED, RETURN TO:

Rocky Mountain Power
Property Management Dept
Attn: Lisa Louder
1407 West North Temple, Suite 110
Salt Lake City, Utah 84116
Parcel No. UTSL-0206
File No.
Tax ID No. 21-35-128-010

# PUBLIC RECREATION EASEMENT AGREEMENT

This Public Recreation Easement Agreement (the "Easement") is entered into this 12 day of December, 2019, by and between ROCKY MOUNTAIN POWER, an unincorporated division of PacifiCorp, successor in interest to Utah Power & Light Company, whose principal office is located at 1407 West North Temple, Suite 110, Salt Lake City, Utah 84116, ("Grantor"), and the City of West Jordan, UT, a municipal corporation and political subdivision of the State of Utah, whose principal address is 8000 South Redwood Road, West Jordan, Utah 84088 its successors-in-interest and assigns ("Grantee").

#### RECITALS

- A. Grantor owns a certain parcel of land located in Salt Lake County, State of Utah, used for the construction, maintenance and operation of high voltage electric transmission lines and other similar and incidental uses in connection with its electric utility operations. This parcel of land is referred to hereinafter as the "Transmission Line Corridor."
- B. Grantee desires to construct a public trail and related improvements (collectively referred to herein as the "Improvements") within the Transmission Line Corridor and desires an easement for the purposes of: (1) constructing the Improvements; and (2) allowing public access for recreational use.
- C. Grantor has agreed to convey an easement to Grantee subject to and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in exchange of the mutual promises herein contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1. Grant of Easement. Subject to the terms and conditions set forth herein, Grantor hereby grants to Grantee a non-exclusive, perpetual easement on and over the Transmission Line Corridor for Grantee's use as a public trail, to be improved, operated and maintained solely by Grantee, but only for those portions relating to the rights conveyed by this easement. The location and boundaries of the Easement conveyed to Grantee are more particularity described in Exhibit "A", attached hereto and by this reference made a part hereof.
  - 2. Limitation of Liability.
- 2.1. Limitation of Landowner's Liability. Grantee shall have the right to use, and shall allow the public to use without charge, the Transmission Line Corridor for recreational purposes and for no other use. To that end, Grantee shall take all reasonable and necessary steps to ensure reasonably safe use

within Grantor's Land. It shall be a condition of this grant that the Transmission Line Corridor is made available to the public for recreational purposes without charge in accordance with the provisions of the Limitation of Landowner Liability – Public Recreation laws as set forth in Chapter 14, Title 57, Utah Code Annotated, as may be amended from time to time, and is intended to limit Grantee's liability toward persons entering such land.

# 2.2 Release and Indemnification.

- (a) Grantee shall use the Transmission Line Corridor at its own risk and agrees to indemnify, defend, and hold harmless Grantor and Grantor's affiliated companies, officers, directors, shareholders, agents, employees, successors, and assigns, (the "Indemnified Parties") for, from, and against all liabilities, claims, damages, losses, suits, judgments, causes of action, liens, fines, penalties, costs, and expenses (including, but not limited to, court costs, attorneys' fees, and costs of investigation), of any nature, kind or description of any person or entity arising out of, caused by, or resulting from (i) the breach by Grantee of any provision of this agreement, (ii) Grantee's use and occupation of the Transmission Line Corridor, (iii) any act or occurrence on the Transmission Line Corridor, or (iv) any act or omission of Grantee, any independent contractor retained by Grantee, anyone directly or indirectly employed by them, or anyone authorized by Grantee to control or exercise control over (hereinafter collectively referred to as "claims"), except if such claims arise from or are attributed to the concurrent negligence or willful actions of any of the Indemnified Parties.
- (b) The Indemnified Parties shall never be liable in any manner to Grantee for any injury to or death of persons or for any loss of or damage to property of Grantor, its employees, agents, customers, invitees, or to others except for such loss or damage caused in whole or in part by the negligence or willful actions of any Indemnified Party. All personal property and fixtures, if allowed by Grantor, located within the Transmission Line Corridor shall be maintained and used at the risk of Grantee and the indemnified parties shall not be liable for any damage thereto or theft thereof, except if due in whole or in part to the negligence or willful actions of the Indemnified Parties.
- 2.3 Grantee has examined the Transmission Line Corridor and accepts it in its present condition, AS-IS and with all faults. Grantor makes no representations or warranties as to the present or future condition of the Transmission Line Corridor and shall not be required to perform, pay for, or be responsible for any work to ready the property or remedy any property conditions or perform any work, repair, or improvement whatsoever to the property or Grantor's facilities or structures to accommodate Grantee's use conveyed hereunder. Notwithstanding any provision to the contrary, Grantee shall have the right to maintain, repair, and replace any improvements that, in the Grantee's sole discretion, is unsafe for public recreational activities.

### Grantee's Use.

#### 3.1. Grantee may not:

- a. make any use of Grantor's Land that, in the sole opinion of Grantor, interferes with the operation, maintenance, or repair of Grantor's existing electric facilities and improvements or any facilities or improvements that may in the future be constructed, added to, modified, or altered:
- b. construct or place any building or structure of any kind or nature (i.e., pavilions, restrooms, etc.) or place or allow to be placed any equipment or material of any kind within Grantor's Land and below Grantor's transmission lines or transmission line structures without express written

consent of Grantor, which consent shall not be given for any such buildings, structures, streetlights or signs that exceed (10) feet in height;

- Store any flammable materials or allow any fires to be lit within Grantor's Land;
- d. Alter ground elevations without Grantor's prior consent. Such consent shall be based upon National Electric Safety Code clearance standards or more stringent standards as may be imposed by Grantor, drainage concerns, the protection of Grantor's existing and future facilities and improvements, and any other reason Grantor deems reasonably necessary for the efficient and safe operation of Grantor's transmission lines.
- 3.2 Prior to making any improvements to the land or placing any structure within Grantor's Land, Grantee shall submit detailed plans and specifications to Grantor at least sixty (60) days in advance. Grantor reserves the right to deny or require modifications to such plans to ensure the improvements will not impair Grantor's facilities or uses of its property. All improvements shall be made in a good and workmanlike manner consistent with applicable building codes or other applicable governmental requirements.
- 3.3 Grantee shall not plant any species of trees or other vegetation under or near Grantor's transmission lines that will grow to a height greater that twelve (12) feet and shall otherwise keep and maintain Grantor's Land clear of all brush, trees and timber that exceeds twelve (12) feet in height or any other vegetation that may endanger Grantor's facilities or improvements or that may impede Grantor's use and access of Grantor's Land for its utility operations.
- 3.4 Grantee shall bear any and all costs and expenses for developing Grantor's Land for recreational uses which improvements shall be made in accordance with federal, state, and local laws. To the extent Grantor requires access to its transmission lines from the Easement, Grantee shall ensure that any curb and gutter installed shall be high-back type and will contain a thirty (30) foot curb cut on both sides of the road located at places designated by Grantor, which curb cuts shall be sufficient to allow the passage of Grantor's equipment and vehicles used for the repair, maintenance, and reconstruction of its facilities and installations. Roadway construction will be sufficient to support Grantor's vehicles and equipment in excess of 100 tons. Grantee shall pay all costs associated with the design, construction and installation of climb resistant barriers on transmission structures located within the Transmission Line Corridor.
- 3.5 Grantee will not use or permit to be used within the Transmission Line Corridor, any cranes or other equipment that violate OSHA and Utah High Voltage Safety Clearance Standards. Grantee will not store materials within the easement area. Grantee will not excavate within fifty (50) feet of Grantor's transmission structures. Grantee shall use best faith efforts to monitor against any public activity that may result in bringing any object or thing within the minimum clearance distances provided in this paragraph. At no time shall Grantee place any equipment or materials of any kind that exceed fifteen (15) feet in height, or that creates a material risk of endangering Grantor's facilities, or that may pose a risk to human safety. Grantee's use of the easement area shall comply with OSHA and UTAH High Voltage Act Safety Clearance Standards.
- 3.6 Grantee shall comply with all applicable federal, state, and local laws and applicable codes and standards in connection with its use of the Easement.
  - Grantor's Use.

or

- 4.1 Grantor shall have the right to use Grantor's Land, without impairment or interference of any kind, for any use in connection with its electric utility operations. Moreover, Grantor may allow the Transmission Line Corridor to be used by others, without permission or notice to Grantee, for any purpose that does not unreasonably interfere with Grantee's use, including the installation and use for communication equipment, pipelines, and other similar utility-related uses. Notwithstanding any provision to the contrary, Grantor may not prohibit the public from using the trail for recreational purposes.
- 4.2 Grantor shall have the right to cross the Transmission Line Corridor, and adjacent park lands where access to the Transmission Line Corridor is reasonably necessary, with equipment, personal, overhead power lines or underground power lines and access roads, at any location or locations thereon at any time provided, however, that Grantor shall reasonably repair any damage it cause to Grantee's improvements.
- 4.3 Grantor shall use good faith efforts to notify Grantee in advance of any planned, significant construction activities that may interfere with Grantee's use of the Transmission Line Corridor.

#### Reversion.

- 5.1 In the event Grantee ceases to make available the Transmission Line Corridor for the public recreational purposes set forth in this Easement for a continuous period of one year, this conveyance, including all right, title, and interest granted herein, shall immediately terminate and revert to Grantor. This provision shall not apply until after Grantee has completed its public improvements, provided that such public improvements are completed within two years after date of the grant of this Easement.
- 5.2 If the enactment or adoption of any law, ordinance, regulation, order, condition, or other governmental requirement relating to Grantor's operations on the property makes further performance impractical or frustrates the purpose for which this Easement was granted, Grantor shall have the right to terminate this Easement by giving Grantee ninety (90) days prior written notice. In such event, Grantor shall have no obligation to compensate Grantee for any of its Improvements.
- 6. Prevailing Party. If any suit or action arising out of or related to this Easement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunications costs, and deposition costs, and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suite or action.
- 7. <u>Integration</u>. This Easement, including exhibits, represents the entire agreement between the parties and supersedes any and all prior understandings, representations, or agreements of the parties, whether written or otherwise, regarding the subject matter of this document.
- 8. <u>Authority</u>. Each individual executing this Easement Agreement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Easement Agreement in the capacity and for the entities set forth where he or she signs.

- 9. <u>Subject to Existing Rights</u>. This Easement is subject to all existing rights of way and encumbrances of record or in equity of law.
- 10. <u>Waiver of Jury Trial</u>. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

IN WITNESS WHEREOF, Grantor has caused its corporate name to be hereunto affixed by it duly authorized officer this /2 day of
GRANTOR
ROCKY MOUNTAIN POWER, an unincorporated division of PacifiCorp
By: JOSHUA JONES
Its:
GRANTEE
CITY OF WEST JORDAN
Ву:

ACKNOWLEDGEMENTS	
STATE OF UTAH )	
SS.	
COUNTY OF SALT LAKE )	
the within instrument on behalf of Roo	who being by me duly sworn, did say that he/she is the signer of cky Mountain Power, an unincorporated division of PacifiCorp, and decreation Easement Agreement was signed on behalf of PacifiCorp
by actual authority.	ecreation Easement Agreement was signed on behalf of Facilities p
Notary Public MAILIA LAUTO'O Commission 8987708 My Commission Expires February 17, 2020 State of Utah #687708	Notary Public  Residing at Salt Lake, Wash.
STATE OF UTAH )	
SS.	
COUNTY OF SALT LAKE )	
On this day of	, 2019, personally appeared before me Jim
CITY OF WEST JORDAN as MAYO	did say that he is the signer of the within instrument on behalf of OR, and that the within and foregoing Public Recreation Easement and municipal corporation and political subdivision of the State of
	Notary Public
	Residing at

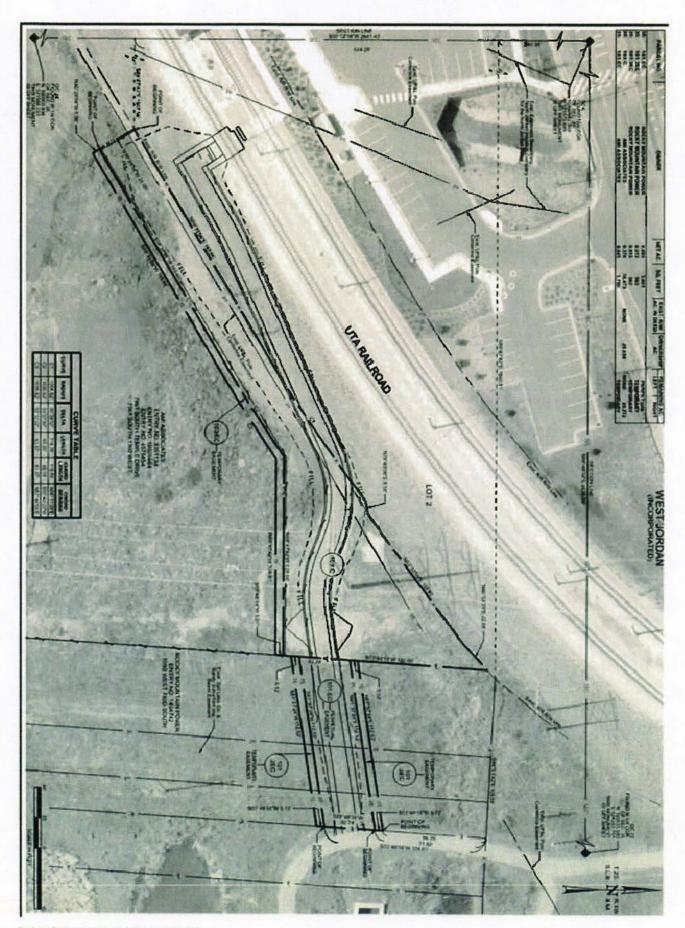
#### **EXHIBIT "A"**

# (Perpetual Recreation Easement)

A perpetual easement, upon part of an entire tract of property, in Lot 2 of Section 35, T.2S., R.1W., S.L.B. & M., in Salt Lake County, Utah, for the purpose of constructing, maintaining and repairing thereon a trail and appurtenant parts known as Project No. F-LC35(219). The boundaries of said easement are described as follows:

Beginning at a point in the easterly boundary line of said entire tract, which is 290.36 feet South along the section line and 1,860.51 feet East and 105.03 feet S.87°04'00"E. and 71.88 feet S.03°36'00"W. from the Northwest corner of said Section 35; and running thence S.03°36'00"W. 32.74 feet along said easterly boundary line; thence S.81°25'06"W. 112.52 feet to the westerly boundary line of said entire tract; thence N.03°36'00"E. 32.74 feet along said westerly boundary line; thence N.81°25'06"E. 112.52 feet to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation. The above described easement contains 3,601 square feet or 0.083 acre in area, more or less.

(Note: Rotate all bearings in the above description 00°12'18" clockwise to obtain project bearings.)



ROW/ Transactions REV 051315

# TEMPORARY ACCESS LICENSE Salt Lake County

For Ten Dollars (\$10.00) and other valuable consideration, PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power, the owner(s) of the above identified parcel or the designated representative thereof ("Grantor"), hereby grants to the City of West Jordan, a municipal corporation of the State of Utah ("Grantee"), its designated contractors and agents a temporary access license as may be reasonably necessary in connection with the construction of a public trial across, along and adjacent and upon the following described real property (the "Property") owned by Grantor located in Salt Lake County, State of Utah, to-wit:

A non-exclusive temporary access license shown being part of an entire tract situate in Lot 2 of Section 35, T.2S., R.1W., S.L.B.&M, U.S. Survey. The boundaries of said license are described as follows:

See attached Exhibits "A" (North Parcel), "B" (South Parcel) and "C" (Map)

This temporary access license is granted to Grantee subject to the following conditions:

- Grantee shall not make or allow to be made any use of the Property that is inconsistent
  with, or interferes in any manner with Grantor's operation, maintenance or repair of Grantor's existing
  installations or additional facilities or improvements constructed after the granting of this temporary
  access license, including electric transmission and distribution circuits that cross over or above the
  property as herein described.
- 2. Grantee shall not use or permit to be used on the Property, construction cranes or other equipment that violate NESC, OSHA or Utah High Voltage Act clearance standards. Grantee shall not store materials within the Property. Grantee shall not excavate within 50 feet of Grantor's transmission structures. The storage of hazardous materials or refueling of vehicle/equipment is prohibited within the Property. At no time shall Grantee place any equipment or materials of any kind that exceeds fifteen (15) feet in height, or that creates a material risk of endangering Grantor's facilities, or that pose a risk to human safety within the Property. Grantee's use of the Property area shall comply with NESC, OSHA and Utah High Voltage Act Safety clearance standards.

#### Release and Indemnification.

(a). Grantee shall use the Easement at its own risk. Grantee shall release, indemnify, defend, and hold harmless Grantor from and against all other liabilities, claims, damages, losses, suits, judgments, causes of action, liens, fines, penalties, costs, and expenses (including, but not limited to, court costs, attorneys' fees, and costs of investigation) directly or indirectly arising out of, caused by, or resulting from in whole or in part, (i) a breach by Grantee of any provision of this agreement, (ii) Grantee's use and occupation of the Easement, or (iii) any act or omission of Grantee, any independent contractor retained by Grantee, or anyone directly or indirectly employed by them, while working on and/or maintaining the Easement. Grantee shall not be obligated to indemnify, defend or hold Grantor

harmless to the extent any liability under this section 3.a. is caused by any negligent or willful act or failure to act of the Grantor. Grantee's obligations under this section 3.a. are subject to the limitations set forth in the Governmental Immunity Act of Utah.1

- Grantee and its designated contractors and agents shall ensure the current grade of the Property is unchanged.
- This temporary access license shall expire upon completion of the construction of the public trail, or two years after the date of execution of this instrument, whichever occurs first.
- This temporary access license shall be binding upon the grantor, their heirs, successors, or assigns, for the duration of the temporary access license as noted above.
- 7. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

GRANTOR: PacifiCorp, an Oregon corporation d/b/a Ro	ocky Mountain Power
Its:	
Dated this 20 day of Decc-ABER	2019
GRANTEE: City of West Jordan	
Its:	
Dated thisday of	2019

<sup>1</sup> Utah Code Ann. § 63G-7-101 et. seq.

# Exhibit "A" (North Parcel)

A temporary easement, upon part of an entire tract of property, in Lot 2 of Section 35, T.2S., R.1W., S.L.B.&M., in Salt Lake County, Utah, to facilitate the construction of a trail and appurtenant parts thereof known as Project No. F-LC35(219). This easement shall commence upon the beginning of actual construction on the property and shall continue only until project construction on the property is complete, or for three (3) years, whichever first occurs. The easement shall be non-exclusive such that the Grantor may use the property at any time in a manner which does not interfere with construction activities. The boundaries of said part of an entire tract of land are described as follows:

Beginning at a point in the easterly boundary line of said entire tract, which is 290,36 feet South along the section line and 1,860.51 feet East and 105.03 feet S.87°04'00"E. and 66.76 feet S.03°36'00"W. from the Northwest corner of said Section 35; and running thence S.03°36'00"W. 5.12 feet along said easterly boundary line; thence S.81°25'06"W. 112.52 feet to the westerly boundary line of said entire tract; thence N.03°36'00"E. 5.12 feet along said westerly boundary line; thence N.81°25'06"E. 112.52 feet to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation. The above described easement contains 563 square feet or 0.013 acre in area, more or less.

(Note: Rotate all bearings in the above description 00°12'18" clockwise to obtain project bearings.)

## Exhibit "B" (South Parcel)

A temporary easement, upon part of an entire tract of property, in Lot 2 of Section 35, T.2S., R.1W., S.L.B.&M., in Salt Lake County, Utah, to facilitate the construction of a trail and appurtenant parts thereof known as Project No. F-LC35(219). This easement shall commence upon the beginning of actual construction on the property and shall continue only until project construction on the property is complete, or for three (3) years, whichever first occurs. The easement shall be non-exclusive such that the Grantor may use the property at any time in a manner which does not interfere with construction activities. The boundaries of said part of an entire tract of land are described as follows:

Beginning at a point in the easterly boundary line of said entire tract, which is 290.36 feet South along the section line and 1,860.51 feet East and 105.03 feet S.87°04'00"E. and 104.61 feet S.03°36'00"W. from the Northwest corner of said Section 35; and running thence S.03°36'00"W. 5.12 feet along said easterly boundary line; thence S.81°25'06"W. 112.52 feet to the westerly boundary line of said entire tract; thence N.03°36'00"E. 5.12 feet along said westerly boundary line; thence N.81°25'06"E. 112.52 feet to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation. The above described easement contains 563 square feet or 0.013 acre in area, more or less.

(Note: Rotate all bearings in the above description 00°12'18" clockwise to obtain project bearings.)

