# Ivins City Staff Report
# City Council Meeting 5/7/2015

Agenda Item: Discuss and consider approval of Trail and Utility Easement Agreements for Trail Connection to Veterans Home

Submitted by: Charles R. Gillette, P.E., City Engineer

**Recommended City Council Action:**
**Approve Trail and Utility Easement Agreements for Trail Connection to Veterans Home**

**BACKGROUND:**
This easement is required for the trail connection that is being made between Center Street and the Veterans Home on 200 East Street.

**FINDINGS AND ANALYSIS:**
This is the same easement agreement that was approved by Council with the Freesh property for when Center Street was widened and the trail was extended. Mr. Freesh has already granted a right of entry for the work to be started. He is granting the easement at no cost to Ivins City.

**SUPPORT MATERIALS:**
- Easement Agreements

**FINANCIAL IMPACT:**
None

Respectfully Submitted:

Charles R. Gillette, P.E., City Engineer

Content Review:

Dale Coulam, City Manager

WHEN RECORDED, MAIL TO:

Kari Jimenez
Ivins City
55 N Main St
Ivins, UT 84738

APN: I-SB-16-A-1-A

**TRAIL AND UTILITY EASEMENT AGREEMENT**

**(Permanent Easement Extending Five (5) Feet East of Property Line and Temporary Construction Easement extending an additional 10 feet)**

**THIS TRAIL AND UTILITY EASEMENT AGREEMENT**, ("Agreement") is made as of the 14 day of April, 2015, by and between **SR Freesh-Metro L.P.**, a California limited partnership ("Grantor"), whose address is 578 More Avenue, Los Gatos, California 95032 and **IVINS CITY** ("Grantee"), whose address is 55 North Main, Ivins, UT 84738.

**RECITALS:**

A. Grantor is the fee owner of certain real property owned by Grantor and located in Washington County, State of Utah, more particularly described in attached Exhibit A and depicted in Exhibit B (the "Easement Property"), which is located immediately adjacent to and north of Center Street in Ivins, Utah.

B. Grantee desires to acquire a permanent easement and a temporary construction easement for the construction, use, repair and maintenance of a public trail and subsurface public and private utilities within the Easement Property and has agreed to install certain trail, utility and right-of-way improvements within or adjacent to the Easement Property in connection with the initial construction of trail improvements within the Easement Property.

C. Grantor desires and intends to donate to Grantee an easement over the Easement Property to allow for the construction, operation, repair and maintenance of a paved public trail limited for public use by pedestrians, bicyclists and other non-motorized vehicles, subject to certain retained rights of Grantor, including without limitation the right to modify and relocate any trail and utility improvements installed by Grantee, and subject to the other terms and conditions more fully described herein.

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Permanent Easement.** Grantor hereby grants to Grantee a permanent, nonexclusive easement across the Easement Property for (i) the construction, operation, repair and maintenance of a paved public trail limited for public use by pedestrians, bicyclists and other non-motorized vehicles (the "Benefitted Users"), and (ii) the installation, operation, repair and maintenance of subsurface public or private utility lines and related improvements (the "Easement"). In addition, the Grantor hereby grants to Grantee a permanent and non-exclusive easement for access across the Easement Property for the purposes set forth above. The exercise of the foregoing rights shall be subject to the limitations and other terms set forth in the balance of this Instrument.

2. **Grant of Temporary Construction Easement.** Grantor hereby grants to Grantee a temporary, nonexclusive construction easement that is inclusive of the permanent easement and extends an additional ten (10) feet beyond the permanent easement into the real property owned by the Grantor as described and depicted in the attached exhibits. The purpose of the temporary construction easement is for the convenience of the construction and no permanent utilities or structures shall be left in the portion of the construction easement that is not within the permanent easement. Any disturbance within the construction easement shall be restored to a condition such that risk of soil erosion is reduced to the maximum extent practical. The City's contractor shall only disturb areas within the construction easement where it is necessary for the construction based on a practical need. The temporary construction easement shall expire one year after the completion of the trail improvements but not later than December 31, 2016.

3. **Construction of Improvements.** The Easement Property may be improved only with gravel, asphalt or concrete (including an underlying, subsurface base) for one trail of generally of ten (10) feet in width, landscaping, natural vegetation or other erosion control improvements, associated surface utilities associated with the watering of any vegetation, and subsurface utilities, related other subsurface materials or other improvements required in connections with the installation of subsurface utility lines, and limited above-surface utility-related improvements that are required for access to or the operation of subsurface utilities (together, the "Easement Improvements").

Plans for the initial construction or significant modification of any Improvements shall be subject to Grantor's prior approval, which shall not unreasonably be withheld. No other improvements shall be constructed or installed by Grantee without the express written consent of the Grantor. All Improvements shall be constructed by Grantee in accordance with the requirements of Ivins City. Neither Grantor nor Grantor's successors and assigns in the ownership of the Easement Property shall have any obligation to construct or reconstruct any of the Improvements except to the extent such Improvements are disturbed by Grantor or its successors in the exercise of the Retained Rights (defined below).

4. **Maintenance and Repair of Easement Property.** Grantee shall be obligated to maintain the Easement Property and maintain, repair, and replace the Improvements located within or installed in connection with the use of the Easement Property. Grantee shall repair at the Grantee's expense any damage done to, or suffered by, any improvements, landscaping, or natural vegetation within or adjacent to the Easement Property or any portion thereof, as such improvements, landscaping or natural vegetation may exist from time to time. Grantor shall have no obligation to repair or maintain any of the Improvements. In the future, Grantor or its

successors and assigns may be required to install, additional roadway, driveways, lighting, and landscape improvements within the Easement Property as a requirement of a future development. Installation and maintenance of these improvements shall be subject to the rules, agreements, ordinances, standards and other city requirements that are in place at the time of application for development and not subject to the terms of this easement agreement.

5. **Limitations on the Exercise of Easement Rights.** All construction, operation, repair, and maintenance activities within the Easement Property by Grantee shall be conducted in such manner as to (a) comply with all applicable laws, ordinances and governmental regulations and orders, (b) not create any nuisance or waste, (c) not block or unreasonably restrict access to or the use of the Easement Property or any adjacent property by Grantor or its successors in the ownership of such adjacent real property, and (d) not unreasonably interfere with or restrict the Retained Rights (defined below) of Grantor herein; provided, however that the provisions of (c) and (d) shall not apply in the case of an emergency or for the period of initial construction of Improvements within the Easement Property. All use and enjoyment of the Easement by the Benefitted Users shall be conducted in such manner as to (a) comply with all applicable laws, ordinances and governmental regulations and orders, (b) to not create any nuisance or waste, (c) not block or unreasonably restrict access to or the use of the Easement Property or any adjacent property by Grantor or its successors in the ownership of such adjacent real property, and (d) not unreasonably interfere with or restrict the Retained Rights (defined below) of Grantor herein. Grantee shall provide written notice to Grantor or Grantor's successors and assigns, of the commencement of any significant construction, repair, or non-routine maintenance activities within the Easement Property not less than ten (10) days before the commencement of any such activities (a "Notice of Commencement"), provided, however that in the case of an emergency, a Notice of Commencement may be provided verbally and shall be provided at the earliest practicable time in advance of any proposed activities within the Easement Property. In addition, after the development and use of any portion of the real property adjacent to the Easement Property has commenced and except where prevented by reasons of any emergency, Grantee shall use reasonable efforts to schedule and conduct such activities within the Easement Property at such times and in such a manner so as to minimize and mitigate any interference with the use, occupancy or access of the adjacent developed property. Further, after the development and use of the adjacent real property has commenced and except in the case of an emergency, Grantee shall provide any such mitigation plans to Grantor for Grantor's reasonable approval at the time of the delivery of a Notice of Commencement for such work.

6. **Indemnity.** Grantee hereby waives all claims and demands against and agrees to indemnify, protect, defend (with attorneys acceptable to Grantor in the case of indemnified claims asserted against Grantor) and hold harmless Grantor and its affiliates and the members, shareholders, officers, directors and partners of each of them, and any successors or assigns to any of them (the "Indemnitees"), from and against any and all claims, obligations, expenses, liabilities and costs, including but not limited to attorneys' fees, for property damage and bodily injury, sickness, disability, disease or death of any person or persons, arising directly or indirectly from the construction, operation, use, maintenance, repair, or replacement of the Improvements, any other activities affecting the Easement Property or the use of the Easement, including any attorneys fees incurred in connection with any such matter, except, with respect to

any particular Indemnitee, to the extent such claim, obligation, expense, liability or cost arises out of the willful or grossly negligent act or omission of such Indemnitee.

7. **Insurance.** Grantee shall, at Grantee's sole cost and expense, procure, pay for and keep in full force and effect general liability insurance with respect to Easement Property, and the use and enjoyment of the Easement by the Benefitted Users or others, specifically including personal injury, blanket contractual, owner's protective, broad form property damage liability coverage for not less than Two Million Dollars ($2,000,000) as to combined single limit per occurrence for bodily injury, death and property damage liability. Grantor shall be an additional named insured on, and a certificate holder of, such policy and coverage.

8. **Retained Rights of Grantor and Modification of Improvements**. Grantor and Grantor's successors and assigns shall retain and may exercise the rights set forth in the paragraph (together, the "Retained Rights"). Grantor may use or improve any part of the Easement Property for any lawful purpose consistent with the preservation of the Easement Improvements. Without limiting the generality of the foregoing, the Easement Property may be included in any development proposal with adjacent land, may be accounted for as any required setback or buffer in any development plans and may include such access points, paved surfaces for vehicular and pedestrian access, modifications of the trail constructed as a part of the Improvements to create at-grade trail crossings of such paved surfaces created for vehicular and pedestrian access, walls, fences, entrance features, lighting, signage, landscaping and other improvements as may be included and approved in such development plans. Further, in connection with the development and improvement of the real property adjacent to the Easement Property, the Easement Property may be improved and landscaped in accordance with any improvement and landscaping plans, and any of the Improvements may be relocated and/or modified in connection with such improvement and landscaping activities of Grantor; provided, however that the relocation and/or modification of any Improvements shall be accomplished so as to maintain the intended functionality of such Improvements after the completion of such improvement activities by Grantor. In the event Grantor desires to relocate and/or modify any of the Improvements, (i) Grantor shall have provided not less than sixty (60) days prior written notice to Grantee; (ii) Grantor shall construct, at own expense, all modified or relocated Improvements to the same general level of functionality and condition as existed prior to the relocation and/or modification of the Improvements.

9. **Notices.** All notices required or permitted by this Agreement shall be in writing and may be delivered in person to either party or may be sent by registered or certified mail, with postage prepaid, return receipt requested, or delivered by Express Mail or Federal Express, or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by email or facsimile transmission and addressed as follows:

If to Grantor:

SR Freesh-Metro L.P.
578 More Avenue
Los Gatos, CA 95032

If to Grantee: Ivins City
55 North Main
Ivins, UT 84738
Attn. City Engineer

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given at 5:00 p.m. on the next business day after the date of delivery of the same, charges prepaid, to the U. S. Postal Service or private courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. Any party may change its address for purposes of this Paragraph by giving notice to the other party as herein provided and by recording a notice of the changed address, which notice shall refer to this Agreement.

**10. Attorneys Fees.** In the event any action shall be instituted between any party in connection with the enforcement or interpretation of this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including reasonable attorneys' fees as fixed by the court therein.

**11. Captions.** All captions used herein are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Agreement.

**12. Waivers.** No action taken pursuant to this Agreement by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of the complete compliance with representations, warranties, covenants or agreements contained herein. No waiver, modification or change shall be binding unless in writing and signed by the party making the waiver. A waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**13. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah applicable to contracts made and to be performed in that state.

**14. Severability.** If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby. Each and every term of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**15. Easement and Covenants to Run with the Land.** The easement and other rights granted hereby and the covenants contained herein shall run with and be for the benefit of the respective properties described herein, and shall bind and inure to the benefit of the owners of the respective properties, and their respective successors and assigns.

16. **Requirement at the Time of Transfer of the Benefitted Property**. The owner of the Benefitted Property shall provide written notice to Grantor of the change in ownership of the Benefitted Property and shall provide to Grantor a written agreement of the new owner to the terms and conditions of this Agreement. The failure of the owner of the Benefitted Property to comply with the foregoing requirement in connection with a transfer of the Benefitted Property shall be the basis for Grantor to deny access to the Easement Property.

17. **Amendments.** Any amendment to this Agreement must in writing and signed by all of the parties benefitted hereby.

18. **No Third Party Beneficiaries**. Nothing in this Agreement is intended to create an enforceable right, claim or cause of action by any third party against any party to this Agreement.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first above written.

**[Signature pages follow]**

**GRANTOR:**

SR Freesh-Metro L.P.,
a California Limited Partnership

By: _____
Name: Lance Freesh
Title: President, Cataldi Management Company – general and managing partner

STATE OF CALIFORNIA )
:ss
COUNTY OF SANTA CLARA )

On the 14 day of APRIL, ~~2014~~ 2015, this instrument was acknowledged before me by Lance Freesh, President of Cataldi Management Company, General and Managing Partner of SR Freesh-Metro L.P., a California Limited Partnership.

_____
Notary Signature and Seal

DAVID MACINTYRE MARSHALL
Commission # 2081723
Notary Public - California
Santa Clara County
My Comm. Expires Sep 15, 2018

**GRANTEE:**

IVINS CITY,
a Utah municipal corporation

By:_____
Name:
Title:

STATE OF UTAH )
:ss
COUNTY OF _____ )

On the _____ day of _____, 2014, this instrument was acknowledged before me by _____, the _____ of IVINS CITY, a Utah municipal corporation.

_____
Notary Signature and Seal

# Exhibit A

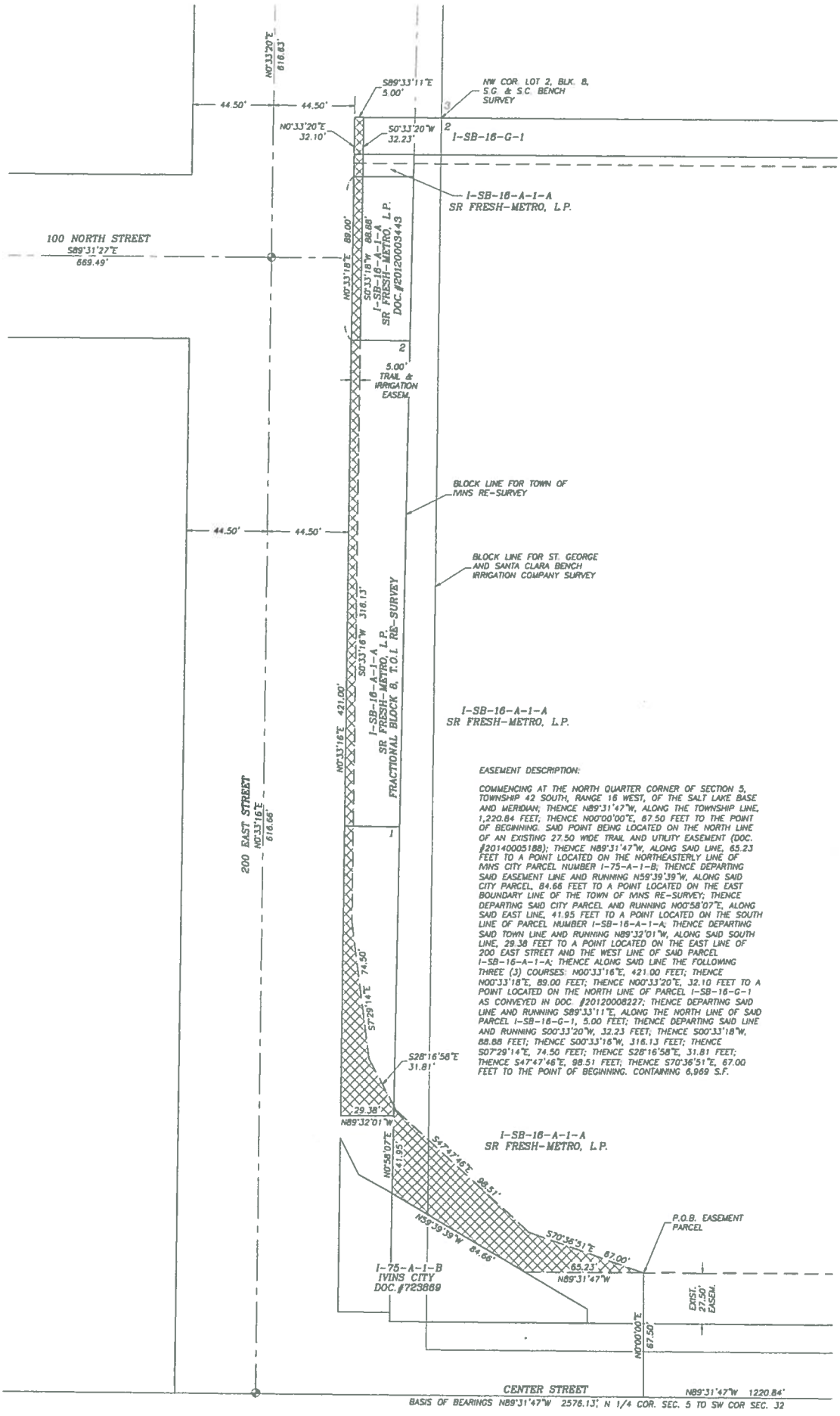
## Legal Description
## for Trail and Utility Easement Agreement
## on east side of 200 East near Center Street

APN: I-SB-16-A-1-A

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE N89°31'47"W, ALONG THE TOWNSHIP LINE, 1,220.84 FEET; THENCE N00°00'00"E, 67.50 FEET TO THE POINT OF BEGINNING. SAID POINT BEING LOCATED ON THE NORTH LINE OF AN EXISTING 27.50 WIDE TRAIL AND UTILITY EASEMENT (D0C. #20140005188); THENCE N89°31'47"W, ALONG SAID LINE, 65.23 FEET TO A POINT LOCATED ON THE NORTHEASTERLY LINE OF IVINS CITY PARCEL NUMBER I-75-A-1-B; THENCE DEPARTING SAID EASEMENT LINE AND RUNNING N59°39'39"W, ALONG SAID CITY PARCEL, 84.66 FEET TO A POINT LOCATED ON THE EAST BOUNDARY LINE OF THE TOWN OF IVINS RE-SURVEY; THENCE DEPARTING SAID CITY PARCEL AND RUNNING N00°58'07"E, ALONG SAID EAST LINE, 41.95 FEET TO A POINT LOCATED ON THE SOUTH LINE OF PARCEL NUMBER I-SB-16-A-1-A; THENCE DEPARTING SAID TOWN LINE AND RUNNING N89°32'01"W, ALONG SAID SOUTH LINE, 29.38 FEET TO A POINT LOCATED ON THE EAST LINE OF 200 EAST STREET AND THE WEST LINE OF SAID PARCEL I-SB-16-A-1-A; THENCE ALONG SAID LINE THE FOLLOWING THREE (3) COURSES: N00°33'16"E, 421.00 FEET; THENCE N00°33'18"E, 89.00 FEET; THENCE N00°33'20"E, 32.10 FEET TO A POINT LOCATED ON THE NORTH LINE OF PARCEL I-SB-16-G-1 AS CONVEYED IN DOC. #20120008227; THENCE DEPARTING SAID LINE AND RUNNING S89°33'11"E, ALONG THE NORTH LINE OF SAID PARCEL I-SB-16-G-1, 5.00 FEET; THENCE DEPARTING SAID LINE AND RUNNING S00°33'20"W, 32.23 FEET; THENCE S00°33'18"W, 88.88 FEET; THENCE S00°33'16"W, 316.13 FEET; THENCE S07°29'14"E, 74.50 FEET; THENCE S28°16'58"E, 31.81 FEET; THENCE S47°47'46"E, 98.51 FEET; THENCE S70°36'51"E, 67.00 FEET TO THE POINT OF BEGINNING. CONTAINING 6,969 S.F.

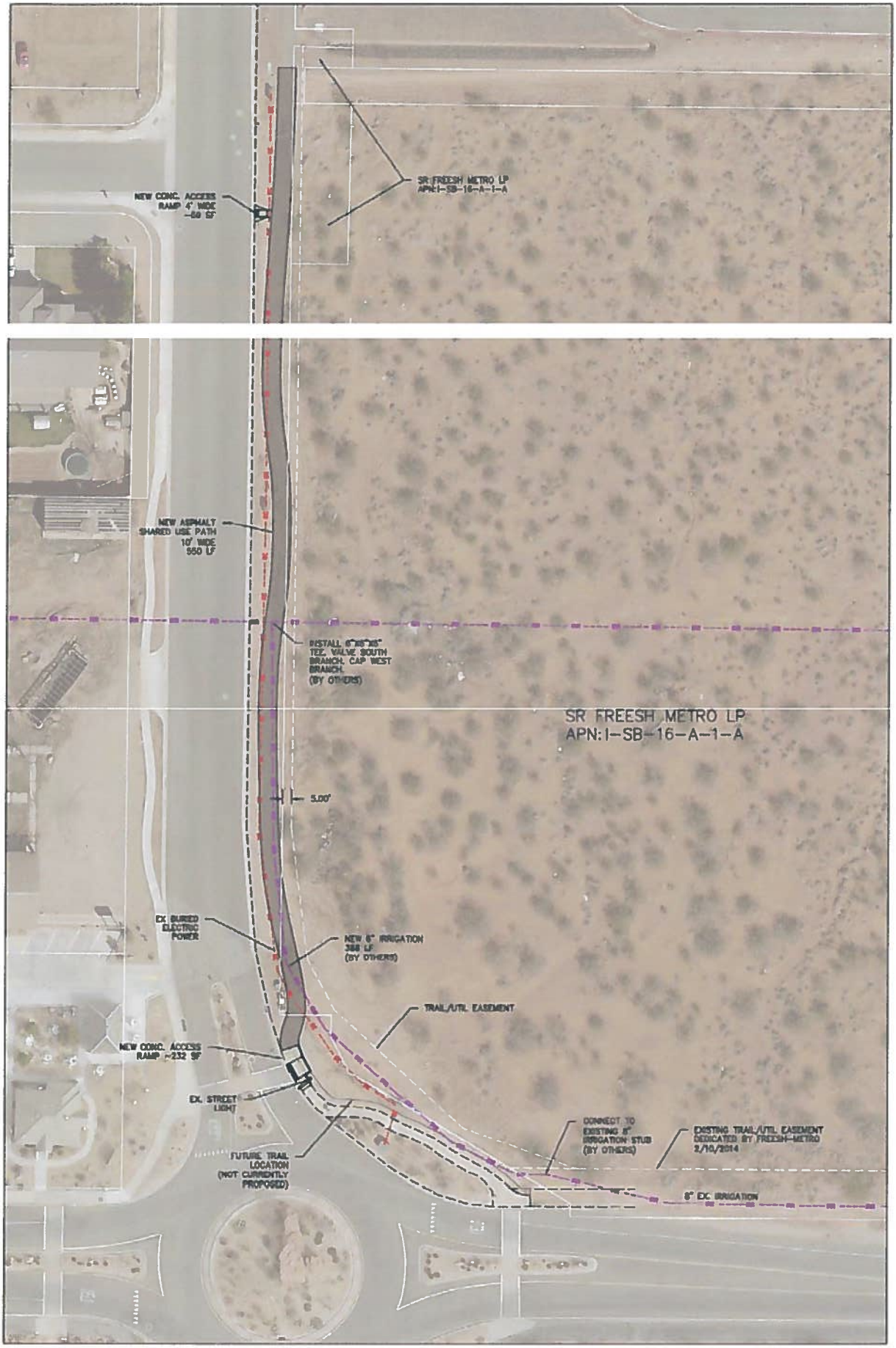
**EXHIBIT B**

Maps




EASEMENT DESCRIPTION:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE N89°31'47"W, ALONG THE TOWNSHIP LINE, 1,220.84 FEET; THENCE N00°00'00"E, 67.50 FEET TO THE POINT OF BEGINNING, SAID POINT BEING LOCATED ON THE NORTH LINE OF AN EXISTING 27.50 WIDE TRAIL AND UTILITY EASEMENT (DOC. #20140005188); THENCE N89°31'47"W, ALONG SAID LINE, 65.23 FEET TO A POINT LOCATED ON THE NORTHEASTERLY LINE OF IVINS CITY PARCEL NUMBER I-75-A-1-B; THENCE DEPARTING SAID EASEMENT LINE AND RUNNING N59°39'39"W, ALONG SAID CITY PARCEL, 84.66 FEET TO A POINT LOCATED ON THE EAST BOUNDARY LINE OF THE TOWN OF IVINS RE-SURVEY; THENCE DEPARTING SAID CITY PARCEL AND RUNNING N00°58'07"E, ALONG SAID EAST LINE, 41.95 FEET TO A POINT LOCATED ON THE SOUTH LINE OF PARCEL NUMBER I-SB-16-A-1-A; THENCE DEPARTING SAID TOWN LINE AND RUNNING N89°32'01"W, ALONG SAID SOUTH LINE, 29.38 FEET TO A POINT LOCATED ON THE EAST LINE OF 200 EAST STREET AND THE WEST LINE OF SAID PARCEL I-SB-16-A-1-A; THENCE ALONG SAID LINE THE FOLLOWING THREE (3) COURSES: N00°33'16"E, 421.00 FEET; THENCE N00°33'18"E, 89.00 FEET; THENCE N00°33'20"E, 32.10 FEET TO A POINT LOCATED ON THE NORTH LINE OF PARCEL I-SB-16-G-1 AS CONVEYED IN DOC. #20120008227; THENCE DEPARTING SAID LINE AND RUNNING S89°33'11"E, ALONG THE NORTH LINE OF SAID PARCEL I-SB-16-G-1, 5.00 FEET; THENCE DEPARTING SAID LINE AND RUNNING S00°33'20"W, 32.23 FEET; THENCE S00°33'18"W, 88.88 FEET; THENCE S00°33'16"W, 316.13 FEET; THENCE S07°29'14"E, 74.50 FEET; THENCE S28°16'58"E, 31.81 FEET; THENCE S47°47'46"E, 98.51 FEET; THENCE S70°36'51"E, 67.00 FEET TO THE POINT OF BEGINNING. CONTAINING 6,969 S.F.




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|---|---|---|---|---|---|
| SHEET NO. 5 TOTAL SHEETS 9 | DATE 3/2016 CONTRACT NO. C-CSHQ0-F-006 | | CONTRACT 15-05: 2015 STREET IMPROVEMENTS<br>200 EAST VA TRAIL CONNECTION<br>PLAN VIEW | SCALE 1" = 20' Drawing Units: US Survey Feet | RMS CITY SEN. Hart Street Mesa, AZ 85201 480-644-6000 480-644-4498 (fax) |