Easement Acquisition Agreement and Access Road Construction for Near Ivins Bench Diversions Dam No. 2

This agreement is made and entered into effective this _____ day of _____, 2019, by and between Steve Williams and R.T. Marten, joint property owners of subject parcel ("Seller") Kayenta Development, Inc., a Utah Corporation ("Third Party Beneficiary or Beneficiary"), and Ivins City, a Utah Municipality, ("Ivins").

Whereas:

1. Seller owns certain real property located by Washington County, Utah;
2. Third Party Beneficiary has interest in the enforcement of the terms of this agreement.
3. On November 22, 1976, the owner of the subject parcel deeded an easement for Dams 2 and 3 to the "Town of Ivins" (subsequently known as Ivins City). The easement was described as:

> An easement which will more particularly described as that area ultimately occupied by that part of the physical project known as the Ivins Bench Diversion of the Warner Draw Watershed which will be ultimate constructed on the aforedescribed property, with an additional fifteen (15) feet surrounding said actual physical structure, for the purposes of continuing maintenance.

4. The City has plans and is starting construction of a rehabilitation of the Ivins Bench Diversion Dams and has redesigned the spillways to redirect potential spillway flows away from subdivision constructed by Kayenta. There is need to acquire an easement for the spillway and to enhance access between the two basins.
5. The Seller has plans to develop property to the east of Dam No. 2 and 3 and wishes to preserve access for any of these future plans.

Now, therefore, in consideration of the mutual agreements herein contained and for the sum of $1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree for themselves and their heirs, successors and assigns as follows:

1. Transfer of Real Property: The Seller agrees to deed, transfer and convey to Ivins City, an easement of 0.358 acres of property described and shown in the attached Exhibit A, Legal Description and Exhibit B, Map for the installation, maintenance, repair, renovation, rehabilitation, replacement or any required upgrade, and any resulting drainage for an open channel spillway on Ivins Bench Diversion Dam No. 2 in accordance with the plan drawings shown in Exhibit C.
2. Access Reserved: Seller reserves and retains ownership of the underlying property for a future roadway to provide access to the Sellers property east of the easement and any other use that does not interfere with the City's operation, maintenance, and future rehabilitations of the existing dam structure and its emergency spillways.
3. Proposed Access Road for Future Development: The City acknowledges the Seller/Beneficiary plans to develop the access road shown in Exhibit D and to allow the Seller/Beneficiary to start grading of said roadway any time following the execution of this agreement upon staff approval of construction plans and meeting all regulations and requirements to obtain a City construction permit. The roadway shall be aligned horizontally and vertically as shown in the exhibit. The resulting cut and fill slopes are acceptable to the City. The City accepts the responsibility to reconstruct the future roadway if the spillway to Dam No. 2 activates and causes damage. Any

damage to the roadway due to any other flooding and drainage other than spillway activation is the responsibility of the Seller.

4. Suitability for Development: The acknowledgement of the plans to develop the roadway does not imply that the City considers the property east of Dam Nos. 2 and 3 to be suitable for development. There are known risks to the property associated with rockfall and any development or subdivision of the property would not be approved by the City unless the risks are first satisfactorily addressed.
5. Access to New Spillway on Dam No 2: The Seller agrees to allow the City to access the new spillway on Dam No. 2 from the new easement if the City will agree to (a) grade the access roadway to a width of 29-feet wide at the grades provided by the Seller, (b) strip top soil prior to any grading and replace the top soil on the new fill slopes, (c) no disturbance is allowed outside of the area to be graded shown on Exhibit D.

Any reference to Ivins City, Seller or Beneficiary shall extend to future successors or assigns.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the day and year first above written.

IVINS CITY:

Attest:

By:_____
Chris Hart, Mayor

By:_____
Kari Jimenez, Ivins City Recorder

STATE OF UTAH
County of Washington

On this ___ day of _____, 2017, before me personally appeared Chris Hart and Kari Jimenez whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of Ivins City, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

_____
Notary Public

SELLER:

By:_____
R T Marten

STATE OF UTAH
County of Washington

On this ___ day of _____, 2017, before me personally appeared R T Marten whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

By:_____
Steve Williams

STATE OF UTAH
County of Washington

On this ___ day of _____, 2017, before me personally appeared Steve Williams whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

THIRD PARTY BENEFICIARY:

By:_____
Lance B Anderson, President, Kayenta Development, Inc.

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared Lance B Anderson whose identity is personally known to or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

_____
Notary Public

Exhibit A Legal Description

EASEMENT

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 41 SOUTH, RANGE 16 WEST BEING DESCRIBED AS FOLLOWS:

BEGINNING AT POINT BEING SOUTH 88°31'07" EAST 749.06 FEET ALONG THE SECTION LINE AND SOUTH 00° 00' 00"EAST 1040.16 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 31 AND RUNNING THENCE SOUTH 69°19'40" EAST 37.60 FEET; THENCE SOUTH 56°58'43" EAST 75.31 FEET; THENCE SOUTH 82°54'38" EAST 29.00 FEET; THENCE NORTH 78°45'04" EAST 47.52 FEET; THENCE SOUTH 09°23'27" WEST 20.15 FEET; THENCE SOUTH 15°54'57" EAST 37.77 FEET; THENCE SOUTH 15°54'15" WEST 19.33 FEET; THENCE SOUTH 51°46'15" WEST 61.45 FEET; THENCE SOUTH 65°45'48" WEST 40.86 FEET; THENCE NORTH 23°13'05" WEST 91.78 FEET; THENCE NORTH 44°33'06" WEST 61.03 FEET; THENCE NORTH 70°21'41" WEST 30.75 FEET; THENCE NORTH 24°13'13" EAST 43.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 15,598 SQUARE FEET OR 0.358 ACRES.

Exhibit B: Map of Easement

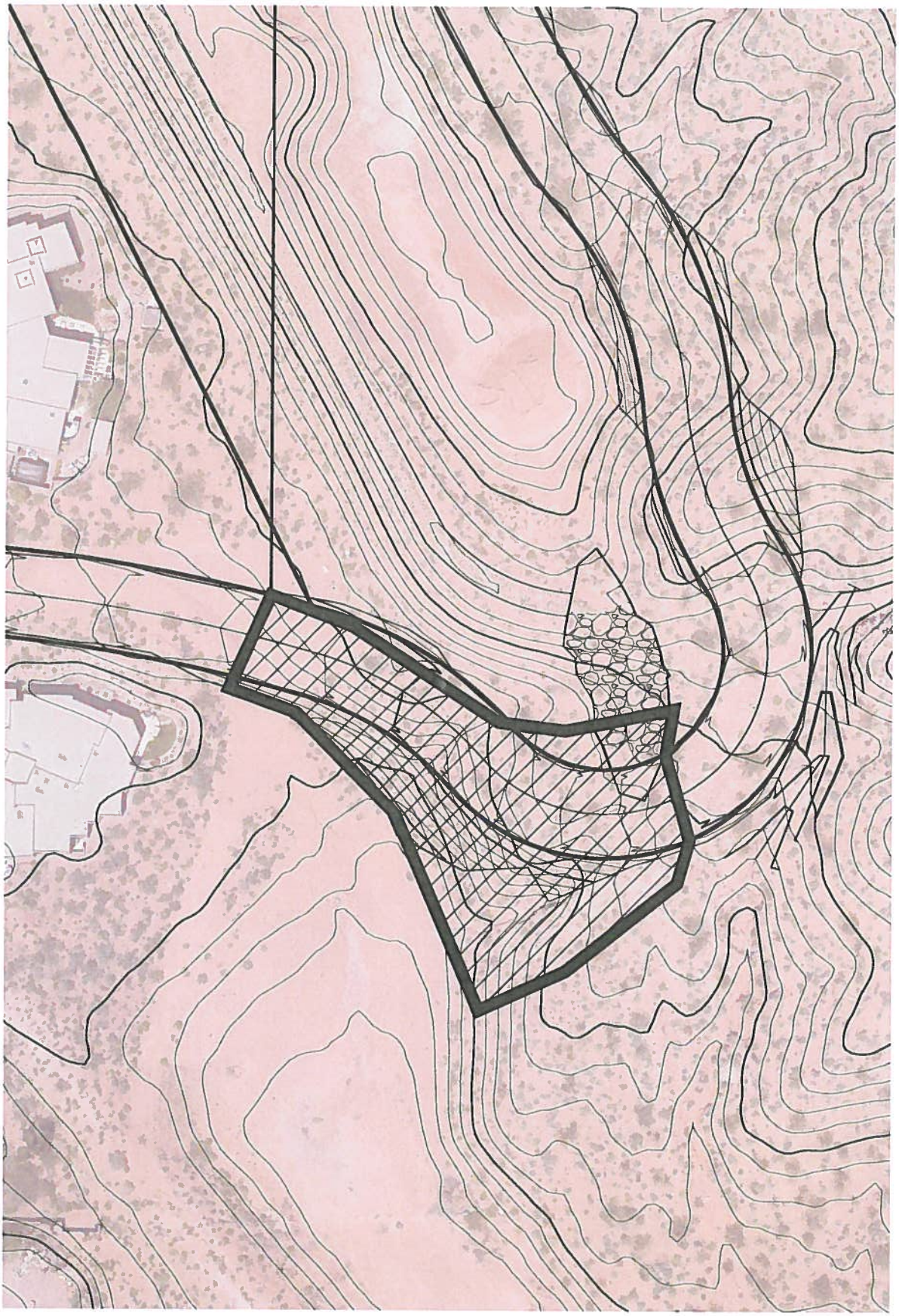
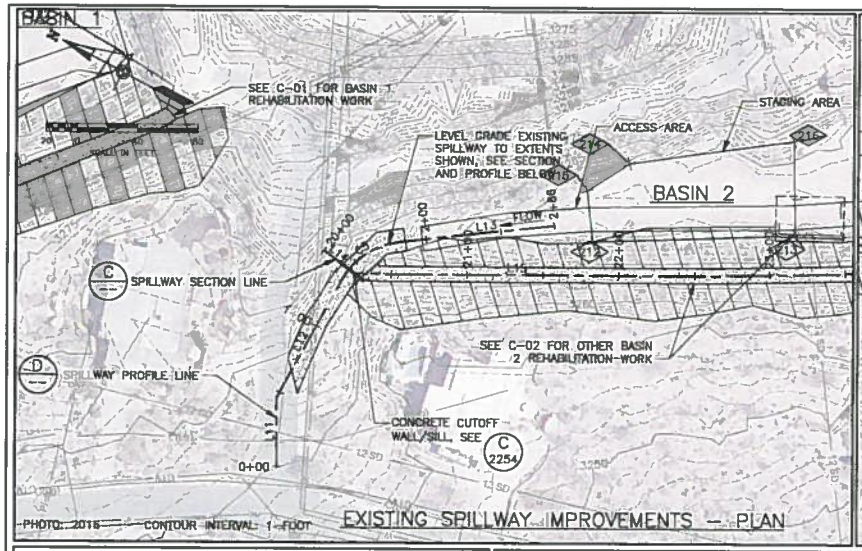
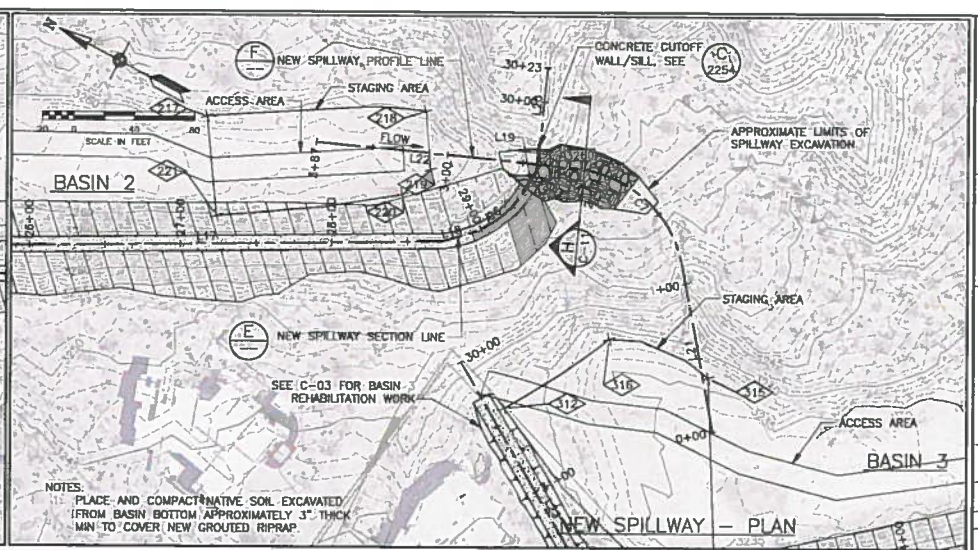
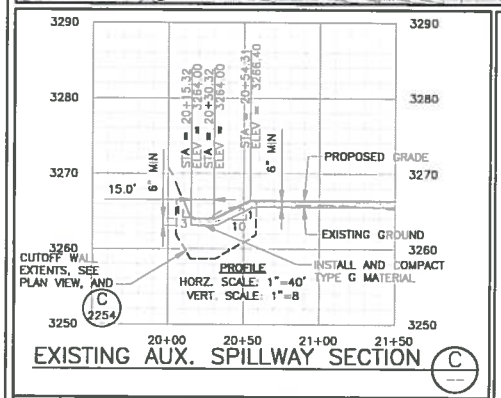


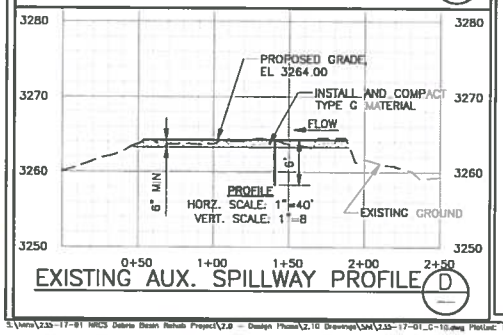
EXHIBIT C

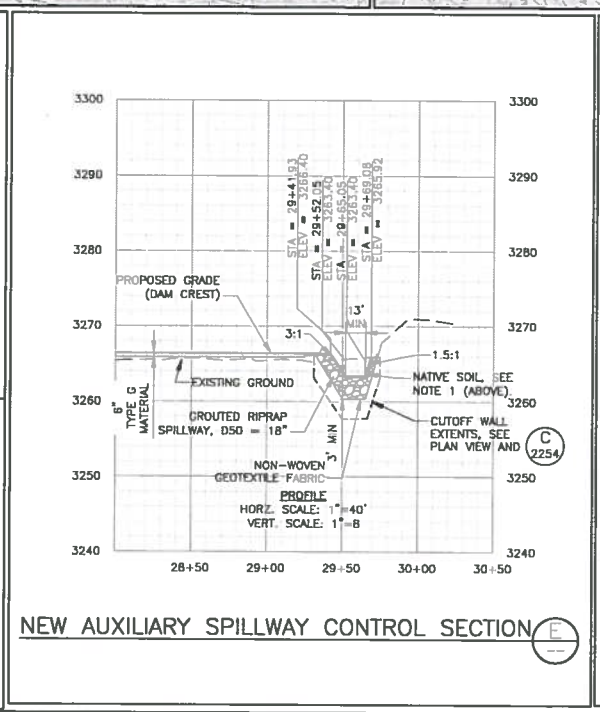
DAM NO. 2 SPILLWAY PLANS

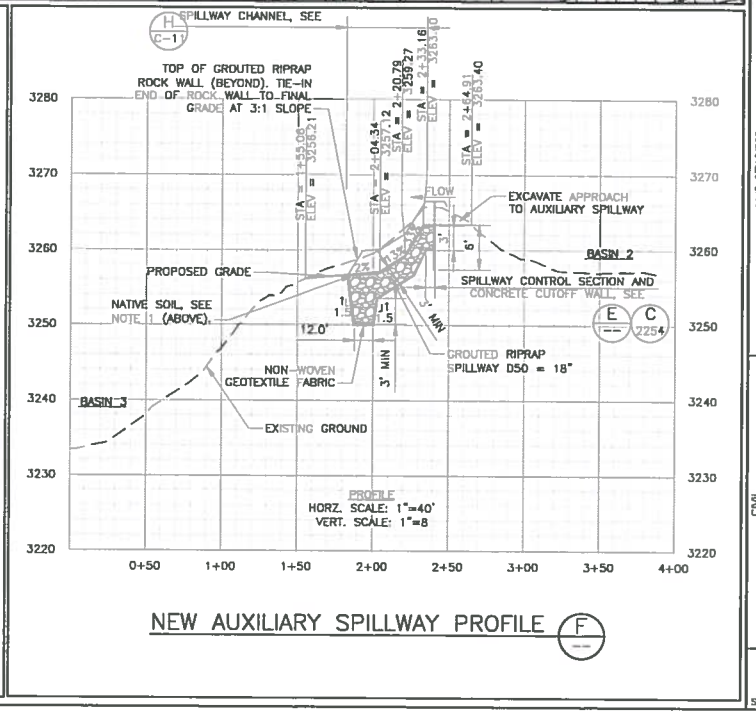












BOWEN COLLINS & ASSOCIATES

REVISIONS

NO.	DATE	BY	DESCRIPTION

VERIFY SCALE
BAR IS ONE INCH ON ORIGINAL DRAWING

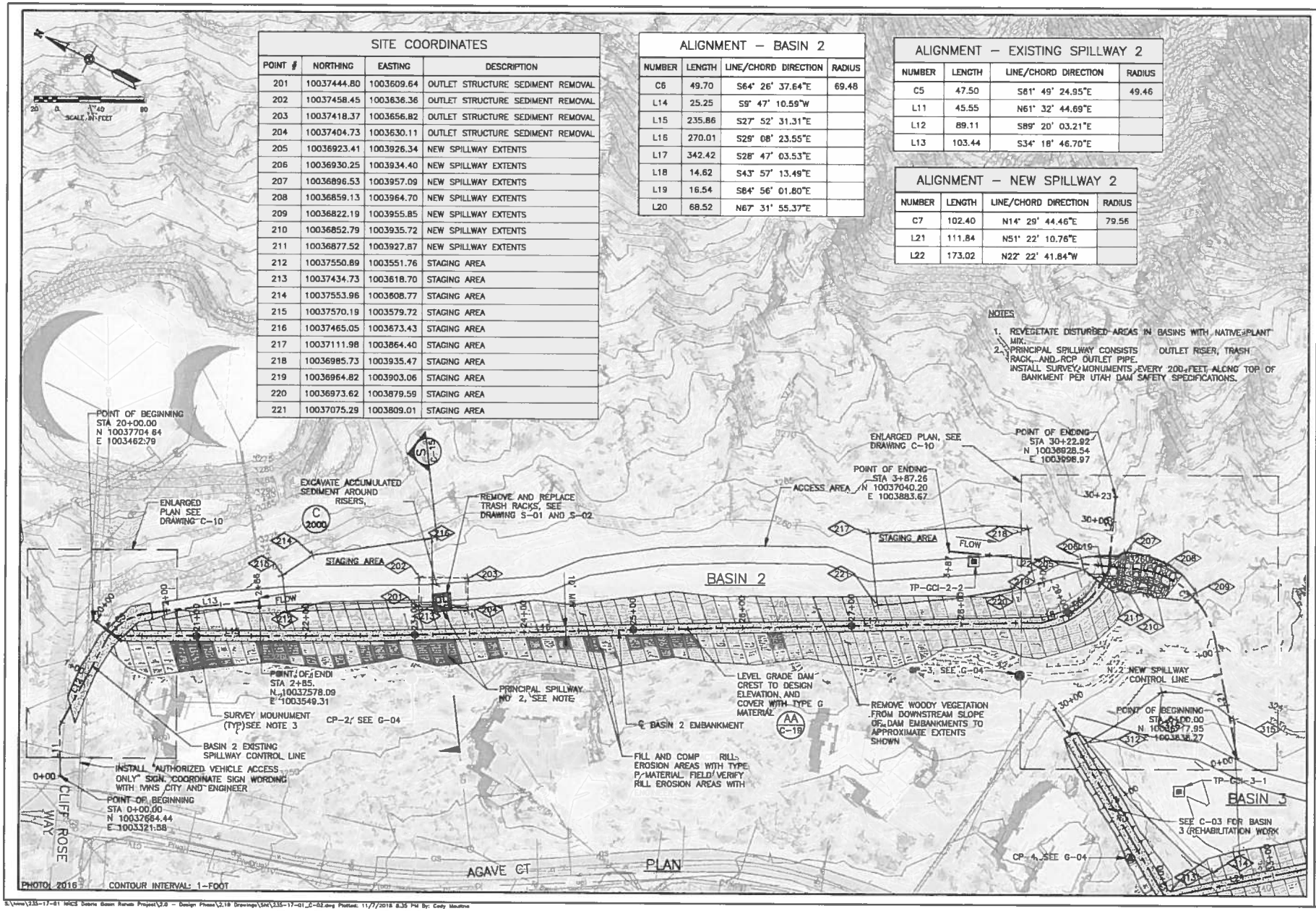
NRCS DEBRIS BASIN REHABILITATION
MINE CITY/NRCS
MINE, UT

DESIGN: C. MOULTRIE
REVIEW: C. BAGLEY
DRAWN: C. NIELSON
APPROVED: T. OLSEN

CIVIL
DEBRIS BASIN NO. 2
AUXILIARY SPILLWAYS
PLANS & SECTIONS

DATE: NOVEMBER 2016
PROJECT NUMBER: 235-17-01

DRAWING NO. C-10
SHEET 20 OF 44



SITE COORDINATES

POINT #	NORTHING	EASTING	DESCRIPTION
201	10037444.80	1003609.64	OUTLET STRUCTURE SEDIMENT REMOVAL
202	10037458.45	1003636.36	OUTLET STRUCTURE SEDIMENT REMOVAL
203	10037418.37	1003656.82	OUTLET STRUCTURE SEDIMENT REMOVAL
204	10037404.73	1003630.11	OUTLET STRUCTURE SEDIMENT REMOVAL
205	10036923.41	1003926.34	NEW SPILLWAY EXTENTS
206	10036930.25	1003934.40	NEW SPILLWAY EXTENTS
207	10036896.53	1003957.09	NEW SPILLWAY EXTENTS
208	10036859.13	1003964.70	NEW SPILLWAY EXTENTS
209	10036822.19	1003955.85	NEW SPILLWAY EXTENTS
210	10036852.79	1003935.72	NEW SPILLWAY EXTENTS
211	10036877.52	1003927.87	NEW SPILLWAY EXTENTS
212	10037550.89	1003551.76	STAGING AREA
213	10037434.73	1003618.70	STAGING AREA
214	10037553.96	1003608.77	STAGING AREA
215	10037570.19	1003579.72	STAGING AREA
216	10037465.05	1003673.43	STAGING AREA
217	10037111.98	1003864.40	STAGING AREA
218	10036985.73	1003935.47	STAGING AREA
219	10036964.82	1003903.06	STAGING AREA
220	10036973.62	1003879.59	STAGING AREA
221	10037075.29	1003809.01	STAGING AREA

ALIGNMENT – BASIN 2

NUMBER	LENGTH	LINE/CHORD DIRECTION	RADIUS
C6	49.70	S64° 26' 37.64"E	69.48
L14	25.25	S9° 47' 10.59"W	
L15	235.86	S27° 52' 31.31"E	
L16	270.01	S29° 08' 23.55"E	
L17	342.42	S28° 47' 03.53"E	
L18	14.62	S43° 57' 13.49"E	
L19	16.54	S84° 56' 01.80"E	
L20	68.52	N67° 31' 55.37"E	

ALIGNMENT – EXISTING SPILLWAY 2

NUMBER	LENGTH	LINE/CHORD DIRECTION	RADIUS
C5	47.50	S61° 49' 24.95"E	49.46
L11	45.55	N61° 32' 44.69"E	
L12	89.11	S89° 20' 03.21"E	
L13	103.44	S34° 18' 46.70"E	

ALIGNMENT – NEW SPILLWAY 2

NUMBER	LENGTH	LINE/CHORD DIRECTION	RADIUS
C7	102.40	N14° 29' 44.46"E	79.56
L21	111.84	N51° 22' 10.76"E	
L22	173.02	N22° 22' 41.84"W	

NOTES

1. REVEGETATE DISTURBED AREAS IN BASINS WITH NATIVE PLANT MIX.
2. PRINCIPAL SPILLWAY CONSISTS OUTLET RISER, TRASH RACK, AND RCP OUTLET PIPE.
3. INSTALL SURVEY MONUMENTS EVERY 200 FEET ALONG TOP OF BANKMENT PER UTAH DAM SAFETY SPECIFICATIONS.

BOWEN COLLINS & ASSOCIATES

REVISIONS

DESCRIPTION	REV. BY	DATE

VERIFY SCALE
BAR ONE INCH ON ORIGINAL DRAWING

IVINS CITY/NRCS
NRCS DEBRIS BASIN REHABILITATION
IVINS, UT

D. IGN
C. MOULTRIE
C. ELSON

REVIEW
CHECKED C. BAGLEY
APPROVED T. OLSEN

CMIL
DEBRIS BASIN NO. 2
SITE PLAN

DATE: NOVEMBER 2018
PROJECT NUMBER 235-17

DRAWING NO.
C-02
SHEET 12 OF 44

S:\www\235-17-01 NRCS Debris Basin Rehab Project\2.0 - Design Phase\2.10 Drawings\Sht\235-17-01_C-02.dwg Plotted: 11/7/2018 8:35 PM By: Cody Moultrie

Exhibit D: Proposed Access Road for Future Development

