

**WEBER COUNTY AGREEMENT FOR
PRIVATE CONSTRUCTION OF A PUBLIC DRAINAGE SYSTEM**

This Agreement for Private Construction of a Public Drainage System (Agreement), is entered into and effective on the dates below by and between Weber County, a body corporate and politic of the State of Utah (County), and Western Basin Land and Livestock, LLC, a Utah corporation located at 1896 N 3450 W, Ogden, UT 84404 (Owner), hereinafter collectively referred to as "Parties".

RECITALS

WHEREAS, Owner has requested permission to construct, under private contract, a storm water drainage system in western Weber County (Drainage) and to connect the Drainage to the County's existing storm water drainage system; and

WHEREAS, The County is willing to grant permission for Owner to privately construct the Drainage; and

WHEREAS, Owner has designated Contractors to construct the Drainage; and

WHEREAS, The County has approved Project Plans that will govern the construction of the Drainage; and

WHEREAS, The Parties intend the Drainage to be used only for and as a storm water drainage system; and

WHEREAS, Construction of the Drainage will mutually benefit the Parties by relieving existing drainage systems from storm water overflow and reducing the risk of flooding in the surrounding area.

NOW THEREFORE, in consideration for the terms herein, Owner shall privately construct the Drainage to the satisfaction of the County, and, upon completion, the County shall assume maintenance rights and responsibilities over the Drainage, pursuant to the following terms:

**ARTICLE 1
Definitions**

"Agreement" means this Agreement for Private Construction of a Public Drainage System between the County and Owner effective as of the date of execution.

"Contractors" means Randy Marriott Construction, a Utah corporation, located at 5238 W 2150 N, Ogden, UT 84404, and any other contractor Owner has designated, or will designate, to construct the Drainage.

"County" means Weber County, a body corporate and politic of the State of Utah.

“County Representative” means a person designated under Section 4.7 of the Agreement to assist the County in the administration of the Agreement.

“Owner” means Western Basin Land and Livestock, LLC.

“Drainage” means the storm water drainage system that will be constructed by Owner in western Weber County pursuant to the Agreement.

“Force Majeure” means any unforeseeable event beyond the control of either party that renders either party unable to timely perform under the Agreement, including but not limited to, acts of God, local or national or international security crisis, epidemic or pandemic, acts of terrorism, large union strikes, organized criminal activity, destruction of roads, impairment of air travel, etc.

“Indemnified Party” means the party entitled to indemnification.

“Indemnifying Party” means the party providing the indemnification.

“Inspection Agent” means an agent designated by the County to fulfill the Inspection Services.

“Inspection Services” means the services provided by the County to Owner in accordance with Section 2.2 of the Agreement.

“Project Plans” means the plans approved by the County, attached to this Agreement as Exhibit A, by which the Drainage shall be constructed.

ARTICLE 2

Drainage Construction and Transfer

2.1. Owner’s General Obligations. Owner shall, at its sole responsibility and expense:

- a) Construct the Drainage and connect it to the County’s existing storm water drainage system;
- b) Obtain all necessary permits prior to commencing construction of the Drainage; and
- c) Construct the Drainage in compliance with:
 1. The Project Plans approved by the County, which are attached as Exhibit A; and
 2. All other applicable laws, rules, and regulations.

Such Project Plans, laws, rules, and regulations are made part of the Agreement by reference.

If Owner fails to follow the requirements of this Section 2.1, the County may deny the completed Drainage and may deny or revoke a stormwater construction activity permit.

2.2. Inspection Services: the County shall provide Inspection Services during the construction of the Drainage and in the following manner:

- a) The County shall assign an Inspection Agent to coordinate inspections and act as a liaison between Owner and the County for inspection-related matters.
- b) The Inspection Agent shall inspect the Drainage to confirm whether it is being constructed in accordance with Section 2.1 of the Agreement. If the Inspection Agent finds that Owner or its Contractors have not complied with Section 2.1 of the Agreement, the Inspection Agent shall promptly notify the Owner of such finding.
- c) The Inspection Agent shall perform an inspection at least once during the construction of the Drainage. The Inspection Agent may perform additional inspections at the County's discretion.
- d) Owner shall notify the Inspection Agent at least 72 hours before the commencement of construction of the Drainage.
- e) Any person working on or having control of the construction of the Drainage shall cooperate fully with the Inspection Agent and shall have available on site a copy of the Project Plans and specifications used to obtain the construction permit.
- f) Inspection Services are informative only and do not include construction engineering or construction stake out. Owner shall be solely responsible for the performance of construction engineering, stake out, and all construction work.

2.3. Excavation of County Roads or Rights-of-way. If Owner excavates a County-owned road or right-of-way in order to construct and install the Drainage, Owner shall, at its sole expense:

- a) Follow all applicable county excavation ordinances;
- b) Backfill such excavations with granular material as directed by the County; and
- c) Restore the excavated public road or right-of-way as nearly as reasonably possible to its original state as it was prior to the excavation.

2.4. Term of Agreement. The term of the Agreement shall be one (1) year from the effective date. Owner shall complete construction of the Drainage before the term expires. If Owner fails to satisfactorily complete construction of the Drainage before the term expires, the County may complete the construction on Owner's behalf and bill Owner for reasonable costs related thereto. Upon Owner's request, the County may extend the term to accommodate reasonable delays.

2.5 Warranty of Construction. Owner warrants that the work performed under this Agreement conforms to the terms of the Agreement and is free of any defect in equipment, material, or design furnished, or workmanship performed by Owner or its Contractors. Owner's warranty is subject to the following terms.

- a) The warranty shall continue for a period of three (3) years from the date of final acceptance of the Drainage.
- b) Owner shall remedy at Owner's expense any failure to conform to the Agreement or any defect that arises during the warranty period. In addition, Owner shall remedy any damage to County-owned or controlled real or personal property, when that damage is

the result of Owner's failure to conform to the Agreement or any defect of equipment, material, design, or workmanship.

- c) The County shall notify Owner, in writing, of any failure, defect, or damage within a reasonable time after the discovery of such.
- d) If Owner fails to remedy any failure, defect, or damage within a reasonable time after receipt of such notice, the County may replace, repair, or otherwise remedy the failure, defect, or damage at Owner's expense.

2.6. Obligations upon Completion of the Drainage. Upon completion of the Drainage, Owner shall furnish to the County a completion affidavit in a form prescribed by the County.

Upon receipt of the completion affidavit, the County may perform a final inspection with Owner to ensure the Drainage complies with the Agreement and applicable laws, rules, and regulations. Owner is responsible for resolving any defects found by the County during the final inspection.

If the County is satisfied with the Drainage, the County shall issue a written acceptance notification signed by the County Representative. Issuance of the acceptance notification shall constitute final acceptance.

Upon final acceptance, the Drainage shall become a part of the County's public storm water drainage system with a recorded maintenance easement to the County from Owner, and shall thereafter be maintained by the County, to the same extent and in the same manner as though the Drainage had been originally constructed by the County under a public improvement contract.

The maintenance easement granted under this Section 2.6 does not relieve Owner of any post-acceptance liability established by the Agreement or otherwise afforded by law.

ARTICLE 3 Indemnification and Insurance

3.1. Indemnification by Owner. Owner shall indemnify and hold harmless the County, its elected and appointed officers, employees, servants, and agents, from any and all costs, including attorney's fees, associated with claims arising from the acts or omissions of Owner, its employees, agents, representatives, or Contractors. Owner's obligation to indemnify the County is not limited or waived in any way by compliance or non-compliance with the insurance requirements of the Agreement. Owner shall be obligated to indemnify the County to the fullest extent allowed by law whether or not Owner has secured insurance to finance such indemnification obligations.

3.2. Indemnification by the County. The County shall indemnify and hold harmless Owner, its officers, employees, servants, and agents, from any and all costs, including attorney's fees, resulting from the sole negligence of the County, its elected or appointed officers, employees, servants, or agents, in relation to the County's performance under the Agreement. Nothing herein shall be construed as a waiver of the County's rights with regard to governmental immunity.

3.3. Indemnification Procedures. Whenever any claim shall arise for indemnification, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. The Indemnified Party may, but shall not be obligated to, defend against such action in such manner as it may deem appropriate, including, but not limited to, settling such action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate. No action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any costs resulting therefrom. The Indemnifying Party shall not settle any action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

These Indemnification sections (Sections 3.1-3.3) shall survive termination and shall not be subject to the statute of limitations underlying the alleged act or omission if the putative plaintiff is not subject to such statute. This section inures only to the Parties and their officers, agents, and employees and does not create a third-party beneficiary agreement and may not be asserted by anyone other than the Parties.

3.4. Insurance. Owner, at its own cost shall secure and maintain during the term of the Agreement, including all renewal and extension terms, the following minimum insurance coverage:

- a) Commercial General Liability (CGL) insurance with contractual liability coverage to cover the Owner's obligations under the Indemnification section of the Agreement, in the minimum amount of \$1,000,000 per occurrence with a \$1,000,000 general policy aggregate and \$1,000,000 Products and Completed Operations policy aggregate. The policy(ies) shall protect the Owner, the Contractors, and the County under the contractual liability coverage from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Owner's operations under the Agreement, whether performed by the Owner itself, any Contractor, or anyone directly or indirectly employed or engaged by either of them. The policy(ies) shall be primary and noncontributory to any other policy(ies) or coverage available to the County whether such coverage be primary, contributing or excess. If the COL coverage is provided on a claims-made basis, the Owner shall maintain such policy(ies) of insurance for no less than four years after termination of this Agreement.
- b) If not included in Commercial General Liability insurance required under the Agreement, Products and Completed Operations Liability insurance during the full term of the Agreement (and for four years after the termination of this Agreement if written on a Claims Made basis) in the minimum amount of \$1,000,000 per occurrence with a \$1,000,000 general aggregate.
- c) Owners and Contractors Protective Liability insurance during the full term of the Agreement (and for four years after the termination of this Agreement if written on a Claims Made basis) in the minimum amount of \$1,000,000 per occurrence with a \$1,000,000 general aggregate.

Liability limits for all required coverage may be secured and maintained utilizing a single policy or multiple policies of primary and excess or umbrella coverage. Owner shall provide to the County prior

to commencement of any activities under the Agreement Certificates of Insurance verifying policies meeting the minimum coverage and limits required.

ARTICLE 4 Miscellaneous

4.1. Governing Law. The Agreement shall be governed by and interpreted according to the laws of the state of Utah, and jurisdiction and venue shall be in Utah.

4.2. Integration. The Agreement, with referenced documents, constitutes the entire agreement by and between the parties and no other statement, whether written or oral, shall be deemed a part of the Agreement unless specifically incorporated herein by reference. The Agreement supersedes any and all other prior agreements, negotiations, or understandings between the parties.

4.3. Amendments. The Agreement may be amended in whole or in part at any time by the Parties by a written amendment approved and signed by all Parties in the manner provided by law.

4.4. Captions and Headings. The captions and headings herein are for convenience of reference only and in no way define, limit, or describe the scope or intent of any sections or provisions of the Agreement.

4.5. Severability. In the event that any provision of the Agreement shall be held invalid or unenforceable, such ruling shall not affect in any respect whatsoever the validity or enforceability of the remainder of the Agreement.

4.6. Force Majeure: In the event of Force Majeure, neither party may declare or find the other party in breach or default of the Agreement as a result of the other party's failure to timely perform any duty required under the Agreement if said untimely performance was substantially caused (whether directly or indirectly) by Force Majeure. If Force Majeure impedes a party from timely performing, the impeded party's performance deadline shall be extended quid pro quo, or in other words, the deadline shall be extended by a number of days equal to the effect the Force Majeure had upon said party's impeded performance.

4.7. County Representative. The County hereby appoints Joe Hadley or his/her designee as County Representative to assist in the administration of the Agreement. The County Representative, in coordination with the Inspection Agent, shall ensure performance of the Agreement by Owner and assist Owner in obtaining information and access to the County or other government offices, if necessary, for Owner's performance of the Agreement. Additionally, the County Representative shall monitor and evaluate the performance of this Agreement by Owner.

4.8. Documents on File. Executed copies of this Agreement shall be placed on file in the office of the keeper of the records of each of the Parties and shall remain on file for public inspection during the term of the Agreement.

4.9. Waiver. Failure to enforce any provision of this Agreement on account of any breach thereof, shall not be considered as a waiver of any right to enforce provisions of the Agreement concerning any subsequent or continuing breach.

4.10. Default. In the event of default by either Party in the performance of any of the terms and conditions of the Agreement, the non-defaulting Party may give written notice of such default to the defaulting party. If the default is not resolved within 10 days of receipt of notice, this Agreement may be terminated immediately by the non-defaulting party, and the non-defaulting party may pursue any remedies afforded by this Agreement, law, and equity.

4.11. Dispute Resolution. If a dispute arises regarding the Agreement, the Parties shall first attempt informal negotiations to resolve the dispute before taking legal action. If informal negotiations fail, then the Parties may pursue other means of alternative dispute resolution before taking legal action. In any legal dispute, each Party shall be responsible for paying its own costs, including attorneys' fees, regardless of the outcome of the dispute.

4.12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one of the same instrument.

4.13. Authorization. The individuals signing the Agreement are duly authorized representatives of their respective Party and are lawfully enabled to sign this Agreement on behalf of such Party.

4.14. Mailing of Notices. Any written notice required to be given or served upon any Party in connection with the Agreement shall be mailed through the United States Postal Service to the following addresses by Certificate of Mailing:

For Owner:

Western Basin Land and Livestock, LLC
C/O Randy Marriott
1896 N 3450 W
Ogden, UT 84404

For the County:

Weber County
C/O Joe Hadley
2380 Washington Blvd., Ste. #250
Ogden, UT 84401

Execution on next page.

EXECUTION

DATED this _____ day of _____, 2021.

Board of County Commissioners
of Weber County

By _____
James H. "Jim" Harvey, Chair

Commissioner Froerer voted _____
Commissioner Harvey voted _____
Commissioner Jenkins voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

Western Basin Land and Livestock, LLC.

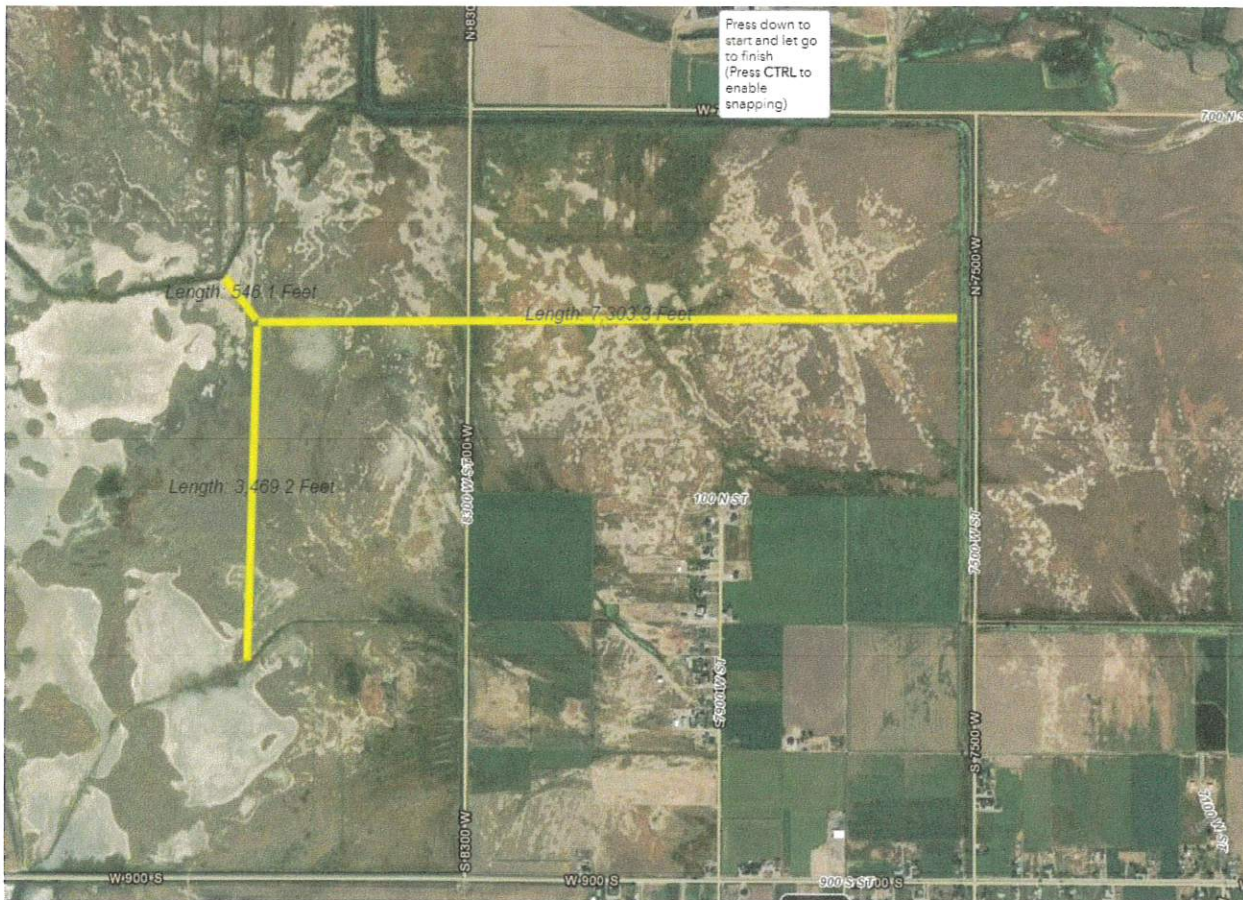
By Randy Marriott
Randy Marriott
President

EXHIBIT A Project Plans

Description:

1. The Drainage must be dug to a depth of 4209' on the east end near 7500 West and flow westward towards 8300 West.
2. At 8300 West, the flow line will be 4208'.
3. The new pipe constructed under 8300 West must be at least 30" Reinforced Concrete Pipe with gaskets.
4. From 8300 West, the Drainage will flow approximately 2,000 feet west, then branch northward and southward. Each branch must respectively connect to the County's existing northern and southern storm drains.
5. The entire Drainage must have smooth tapered banks to prevent sloughing.
6. Water must flow freely from east to west with no obstruction.

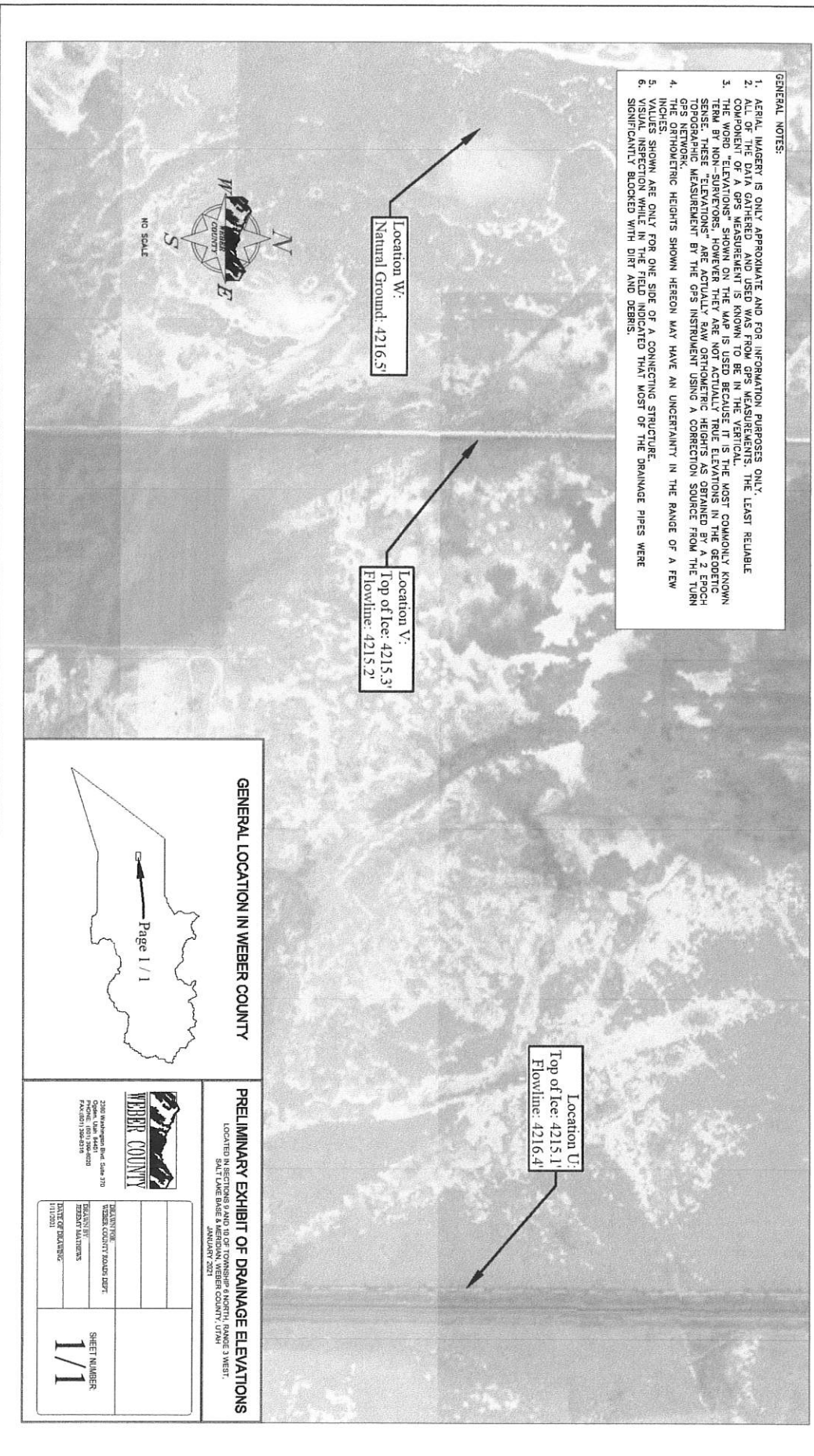
Depictions:



The image above depicts the expected location and path of the Drainage.

PRELIMINARY EXHIBIT OF DRAINAGE ELEVATIONS

LOCATED IN SECTIONS 9 AND 10 OF TOWNSHIP 6 NORTH, RANGE 3 WEST, SALT LAKE BASE & MERIDIAN, WEBER COUNTY, UTAH
JANUARY 2021



The image above depicts the Drainage elevations at the connection point next to 7500 West (Location U), the intersection point at the eastern side of 8300 West (Location V), and the approximate point where the Drainage will branch northward and southward (Location W).
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