Conservation Easement Deed
City of Ivins

This Conservation Easement Deed ("Deed"), made this _____ day of _____, 2014, by the City of **Ivins**, a municipal corporation and political subdivision of the State of Utah, having an address at 55 N. Main, Ivins, UT 84738 (hereinafter "City"), and its assigns in favor of **Washington County**, Utah, having an address at 197 E. Tabernacle Str., St. George, UT 84770, and its assigns (hereinafter "Grantee"). The City and the Grantee are collectively referred to as the "Parties".

EXHIBITS

A. City of Ivins Property Legal Description
B. Baseline Inventory Report
C. U. S. Fish and Wildlife Service Desert Tortoise Exclusionary Fence Design

I. Recitals and Conservation Purposes

A. City is the sole owner in fee simple of certain real property ("Conservation Easement Property" or "Property") located in Washington County, Utah, and legally described in Exhibit A attached hereto and made part of the this Deed.

B. The creosote scrub desert upland, open space, wildlife habitat, Mojave Desert tortoise habitat and other natural characteristics of the Conservation Easement Property (also referred to herein as "conservation values") as well as its state of improvement, are described in a Baseline Inventory Report ("Report") prepared by the City in cooperation with the Utah Division of Wildlife Resources ("Division") and attached hereto as Exhibit B. The Report describes the condition of the Conservation Easement Property as of the date of this Deed. The Report may be used by Grantee to identify any future changes in the use of the Conservation Easement Property.

C. City intends the creosote scrub desert upland, open space, wildlife habitat, Mojave Desert tortoise habitat and other natural characteristics of the Conservation Easement Property be preserved and maintained. The City intends to convey to Grantee, the right to restore and conserve creosote scrub desert upland, open space, wildlife habitat, Mojave Desert tortoise habitat and other natural characteristics of the Conservation Easement Property.

D. This Easement acquisition is authorized by Utah Code Annotated § 57-18-1 et seq.

NOW THEREFORE, in consideration of the sum of TEN DOLLARS ($10) AND OTHER GOOD AND VALUABLE CONSIDERATION paid to the City, City hereby grants and conveys, to Grantee and its assigns a conservation easement ("Easement") in the Conservation Easement Property, including development rights and access to the Conservation Easement Property, as defined herein. It is the intent of City to convey and relinquish all development rights to Grantee for the purpose of protecting the conservation values identified herein. This

Deed shall constitute a servitude upon the Conservation Easement Property so encumbered, shall run with the land and shall bind City, assigns, lessees, and any other person claiming under them.

The Easement shall be subject, however, to any valid rights of record, as well as the City's continued use and maintenance of the existing flood control structures to meet intended purposes and dam safety requirements.

The term of the Easement is perpetual except that, in the event Grantee discontinues the use of the Conservation Easement Property for the purposes described herein, City in its sole discretion may terminate the Easement granted herein. Such termination shall be effective upon City's giving written notice to Grantee. Upon receipt of such notice, Grantee shall immediately surrender possession of the Conservation Easement Property to City and all improvements on the Conservation Easement Property shall, at City's discretion, be forfeited and become the property of City. In addition, the parties may exercise any other right or remedy they may have at law or equity.

II. Purposes

It is the primary purpose of this Deed to retain the Conservation Easement Property in creosote scrub and Mojave Desert tortoise habitat, as documented in the Report, for the protection of Mojave Desert tortoise habitat, wildlife habitat, open space, biodiversity, and other conservation values consistent with the management and purposes of the Red Cliffs Desert Reserve ("Reserve") referenced in this Deed (collectively referred to as "Mojave Desert tortoise habitat and other conservation values").

III. Permitted, Prohibited, Restricted and Reserved Activities

A. Permitted Uses of the Conservation Easement Property. City is permitted to use and maintain the existing flood control structures to meet the intended purposes of the structures and dam safety requirements. City is permitted to construct appropriate fencing to include the Conservation Easement Property in the Red Cliffs Desert Reserve and remove any existing fencing that separates the Property from the Reserve. Any activities initiated after the Conservation Easement Property has been fenced into the Reserve shall be coordinated with Washington County's Habitat Conservation Plan Administration to ensure Mojave Desert tortoises will not be harmed or harassed during activities.

B. Prohibited Acts. City shall not perform, nor knowingly allow others to perform any act expressly prohibited or restricted herein or that otherwise significantly impairs the conservation values identified and protected in this Deed.

C. Crop Cultivation. Except for restoration activities as specifically permitted and required in this Deed, the cultivation or production of crops, non-perennial forages for human or domestic animal consumption, or seed production is prohibited.

D. Non-Mojave Desert Tortoise Habitat Land Uses. The establishment of tree or shrub nurseries, fruit or nut producing trees, vineyards, tree farms, or plantations, aquaculture ponds, or any activity that breaks the surface of the soil, except as specifically permitted in this Deed, is prohibited.

E. Topography. Altering the existing topography of the Conservation Easement Property by digging, plowing, disking, or otherwise disturbing the surface is prohibited, except as specifically permitted in this Deed or when the Grantee determines such actions are necessary to restore and maintain the viability of the Mojave Desert tortoise habitat, wildlife habitat, open space, biodiversity, and/or other conservation values.
This provision is not meant to preclude the City from use and maintenance of the flood control structures included on the property as identified in A, above.

F. Waste. Dumping, collecting, recycling, or storing of trash, refuse, waste, sewage, or other debris is prohibited.

G. Mining. The exploration, development, mining, or extraction of soil, sand, gravel, mineral, oil, gas, or any other hydrocarbon substance from the surface or subsurface of the Conservation Easement Property is prohibited. This condition does not preclude activities covered in item A, above.

H. Construction of Buildings or Other Structures. Except as specifically permitted by this Deed or by written agreement signed by the Grantee and the City, construction of any new structures on the Conservation Easement Property is prohibited.

I. Watering Facilities. Construction of any type of water feature is prohibited.

J. Fences. The City will fence the Conservation Easement Property into the Reserve with a permanent fence along the flood control structures and may remove the existing fence that separates the Property from the Reserve. Other existing fences may be repaired or replaced on the Conservation Easement Property for the purpose of conserving the property for Mojave Desert tortoise conservation and recovery. The Parties may agree to install additional fencing or barriers necessary for the protection of Mojave Desert tortoise habitat, wildlife habitat, open space, biodiversity, and/or other conservation values consistent with the management and purposes of the Reserve. All fencing around the perimeter of the Conservation Easement Property will be built consistent with the most recent U. S. Fish and Wildlife Service Desert Tortoise Exclusionary Fence design and attached hereto as Exhibit D and must be pre-approved by Grantee.

K. Roads and Impervious Surfaces. No portion of the Conservation Easement Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, nor shall any road for access or other purposes be constructed. This does not preclude temporary road access when needed to use and maintain the existing flood control structures, and drain facilities associated with those structures.

L. Recreational Uses. Recreational uses, such as hiking, are only permitted if a trail is determined by the Grantee to not conflict with Mojave Desert tortoise behavior or habitat conservation qualities of the Conservation Easement Property. Recreational use must occur on officially designated trails.

M. Motorized Off-Road Vehicle Use. Off-road motorized vehicle use on the Conservation Easement Property is prohibited, except the use of motorized vehicles that comply with HCP Utility Development Protocols.

N. Development Rights. The Conservation Easement Property shall not be developed except as expressly permitted by this Deed. Subject to valid existing rights of record, all development rights associated with the Conservation Easement Property are vested in Grantee.

O. Signs. Red Cliffs Desert Reserve signs, access signs, signs pertinent to Mojave Desert tortoise, wildlife or natural resources, and signs identifying the owner of the Conservation Easement Property are permitted. All other signs, advertisements, and billboards of any nature are prohibited. The permitted sign may not exceed 5 square feet in size. The City agrees that the Grantee has the right to erect and maintain signs on the Conservation Easement Property for the purpose of identifying this Easement.

P. Exotic Species. The introduction, cultivation, or use of non-native plant or animal species is prohibited on the Conservation Easement Property without prior written approval of Grantee and subject to terms and conditions necessary to ensure the protection of the Mojave Desert tortoise habitat and other conservation values referenced in this Deed.

Q. Subdivision. Subdividing or otherwise partitioning the Conservation Easement Property is prohibited.

R. Utilities. The installation or relocation of new public or private utilities and/or the maintenance of existing utilities, including gas, water, electric, telephone, or other communication services over or across the Conservation Easement Property is prohibited without prior written approval of Grantee.

S. Water Rights. There are no water rights being transferred with the Conservation Easement.

T. Restoration. In furthering the conservation purposes of this Deed, the City will restore any areas disturbed by use and maintenance of the flood control structures by removing any temporary structures or fencing, and reseeding the disturbed area pursuant to a schedule agreed to by the City and the Grantee. Normal use associated with routine inspections, drain cleaning etc, will not normally require reseeding and will be determined per the agreed schedule noted.

IV. Affirmative Duties: Planning Requirements

A. Conservation Plan. The City agrees that good resource management and land stewardship is important for present and future generations, for the protection and enhancement of Mojave Desert tortoise habitat on the Conservation Easement Property and in furtherance of its

conservation values. The City agrees that the Conservation Easement Property will be managed following the same conservation and management guidelines by which the Reserve lowlands desert tortoise habitat is managed, and in furtherance of the conservation and recovery of Mojave Desert tortoises. The management of the Conservation Easement Property shall be consistent with the purposes of this Deed.

B. Pest and Weed Control. Grantee and the City are jointly responsible for control of noxious weeds and pests according to Federal, State, and local laws.

V. Enforcement and Transfer

A. Enforcement.

1. The parties have the right to prevent, correct, or require correction of violations of the terms of this Deed. Grantee may enter the Conservation Easement Property at reasonable times and in a reasonable manner to ensure compliance with this deed. Upon discovery of a violation of the Deed, the non-violating party shall notify the other party in writing of the violation. Upon the other party's receipt of a notice of violation, the parties shall give their best efforts to resolve any disputes regarding alleged violations.

2. If the parties are unable to resolve a dispute regarding an alleged violation within thirty (30) days from the alleged violating party's receipt of notice, the non-violating party may at its discretion file suit in law or equity in a Utah State Court of appropriate jurisdiction to enforce the terms of this Deed, to enjoin the violation, and/or to require restoration of the Conservation Easement Property to the condition that existed prior to any such injury. The parties shall bear their own costs, including attorney's fees, in any action brought with respect to this easement.

3. Any delay by the non-violating party in exercising its rights under this Deed in the event of any violation of its terms by the other party shall not be deemed a waiver by the non-violating party of such rights with respect to that violation. Moreover, any failure by the non-violating party to discover a violation of this Deed, or forbearance by the non-violating party in exercising its rights under this Deed in the event of any violation of its terms by the other party shall not be deemed a waiver by the non-violating party of such rights with respect to any subsequent violation.

B. Transfer of Easement Ownership. Upon prior written consent from the City, Grantee may transfer this Deed to an Easement Holder, subject to the terms set forth below.

1. The Easement Holder must be a State or Federal Agency, or private conservation or land trust organization which, at the time of the transfer, is a qualified tax exempt organization under Section 501(c)(3) of the Internal Revenue Code.

2. Should this Easement be transferred pursuant to this provision, all warranties and indemnifications provided to Washington County in this Deed shall continue to apply to Washington County as well as its successors and assigns. Subsequent to the transfer of

this Easement, the Easement Holder shall be responsible for conservation planning and implementation and will adhere to the Desert Tortoise Recovery Office and the Mojave Desert Tortoise Recovery Plan for maintaining the viability of the Mojave Desert tortoise habitat, wildlife habitat, open space, biodiversity, and other conservation values.

VI. General Terms

A. Access. No public access is conveyed by this Deed. City maintains the right to prevent trespass and control access by the public pursuant to Federal and State law, provided that Grantee has the right of ingress and egress to the Conservation Easement Property over City's property, whether or not City's property is adjacent to or appurtenant to the Conservation Easement Property, for the exercise of Grantee's rights under this Deed. The authorized representatives of Grantee may utilize vehicles and other reasonable modes of transportation for access purposes.

B. Responsibilities of City and Grantee Not Affected. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way affect any existing obligations of City as the owner of the Conservation Easement Property. For example:

1. Taxes. City shall continue to be solely responsible for payment of all taxes and assessments levied against the Conservation Easement Property.

2. Upkeep and Maintenance. City shall continue to be solely responsible for the upkeep and maintenance of the Conservation Easement Property except as provided in this Deed.

C. Subsequent Conveyances of Conservation Easement Property.

1. City agrees to notify Grantee in writing of the names and addresses of any party to whom the Conservation Easement Property is to be transferred prior to the time the transfer is consummated. City and its successors and assigns shall specifically refer to this Deed in any subsequent lease, deed, or other instrument by which any interest in the Conservation Easement Property is conveyed.

2. Washington County shall have a right-of-first refusal on the Conservation Easement Property. Washington County shall have ninety (90) days to exercise and consummate this right-of-first refusal, said period to begin on the date that Washington County receives notice from City or City's successors and assigns of a bona fide offer on the Conservation Easement Property. Said right-of-first refusal shall remain vested with Washington County irrespective of any subsequent conveyance of this Easement to another Easement Holder.

D. Subsequent Liens. No provisions of this Deed shall be construed as impairing the ability of City to use this Conservation Easement Property as collateral for a loan, provided that any mortgage or lien associated with the loan is subject to or subordinated to this Deed.

E. Severability. If any provision of this Deed is found to be invalid, the remainder of its provisions shall remain in force.

F. Rules of Construction. This Deed shall be interpreted under the laws of the State of Utah. Any ambiguities in this Deed and questions as to the validity of any of its specific provisions shall be resolved in favor of Grantee so as to preserve the conservation values of the Conservation Easement Property and to give maximum effect to the purposes of this Deed.

G. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, or solution of substance which may pose a present or potential hazard to human health or the environment.

City warrants that with regard to the Conservation Easement Property they are in compliance with, and shall remain in compliance with all applicable Environmental Laws. City warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Conservation Easement Property. City further warrants that they have no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Moreover, City hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the presence, release or threatened release of any Hazardous Materials on, at, beneath, or from the Conservation Easement Property, which arises from or is connected with a violation of any Environmental Laws by City of the Conservation Easement Property. City's indemnification obligation shall not be affected by any authorizations provided by Grantee to City with respect to the Conservation Easement Property or any restoration activities carried out by Grantee at the Conservation Easement Property; provided, however, that Grantee shall be responsible for any Hazardous Material Grantee contributes after this date to the Conservation Easement Property.

H. General Indemnification. City shall indemnify and hold harmless Grantee, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable

in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or which Grantee may incur relating to the Conservation Easement Property, which may arise from City's negligent acts or omissions or City's breach of any representation, warranty, covenant, or agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

Grantee shall indemnify and hold harmless City, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which City may be subject or which City may incur relating to the Conservation Easement Property, which may arise from Grantee's negligent acts or omissions or Grantee's breach of any representation, warranty, covenant, or agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

I. Notices. Any notices required by this Deed shall be in writing and personally delivered or sent by certified mail, return receipt requested, to City and Grantee.

J. No Merger. If Grantee at some future time acquires the underlying fee title in the Conservation Easement Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

K. Acceptance. The signature below of Grantee's authorized representative constitutes acceptance of the rights and responsibilities conveyed by this Deed to Grantee.

L. Captions. The captions used in this Deed have been inserted solely for convenience of reference. They are not part of this Deed and shall have no effect upon its interpretation.

M. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement, provided however, that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 57-18-1, et seq. of the Utah Code Annotated. Any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration. Any such amendment shall be in writing and recorded in the official records of Washington County, Utah.

N. Rights of Obligations. All provisions of this Deed apply to City, Grantee and their respective agents, heirs, executors, administrators, assigns, and any other successors.

TO HAVE AND TO HOLD, this Conservation Easement Deed is granted to Washington County, Utah, and its assigns. City covenants that it is vested with good title to its respective Ivins City Property and shall warrant and defend the same on behalf of Washington County and its assigns against all claims and demands. City covenants to comply with the terms and conditions enumerated in this Deed governing use of the Conservation Easement Property, and

adjacent lands owned by City used for access to the Conservation Easement Property, and to refrain from any activity that is restricted, prohibited, or inconsistent with the purposes of this Conservation Easement Deed.

IN WITNESS WHEREOF, the Parties have executed this Agreement and Conservation Easement Deed, effective on the date when all parties below have signed this document.

IVINS CITY

By:_____
Chris Hart, Ivins City Mayor

Date:_____

Attest: _____
Kari Jimenez, City Recorder, Ivins City Recorder

Date:_____

APPROVED AS TO FORM

_____
Dale Coulam, Ivins City Attorney

Date:_____

WASHINGTON COUNTY

By:_____
James J. Eardley, Chair
Washington County Commission

Date:_____

Attest::_____
Kim M. Hafen, Washington County
Clerk/Auditor

Date:_____

APPROVED AS TO FORM

_____
Brock R. Belnap, Washington County
Attorney

Date:_____

State of Utah)
)SS.
County of Washington)

The foregoing instrument was acknowledged before me this _____day of _____, 2014, by _____.

_____
Notary Public for the State of Utah

Residing at _____

My commission expires_____

State of Utah)
)SS.
County of Washington)

The foregoing instrument was acknowledged before me this _____day of _____, 2014, by _____.

_____
Notary Public for the State of Utah

Residing at _____

My commission expires_____

ALPHA ENGINEERING COMPANY
43 South 100 East, Suite 100, St. George, Utah 84770-3442; Tel: (435) 628-6500 Fax: (435) 628-6553

EXHIBIT "A"

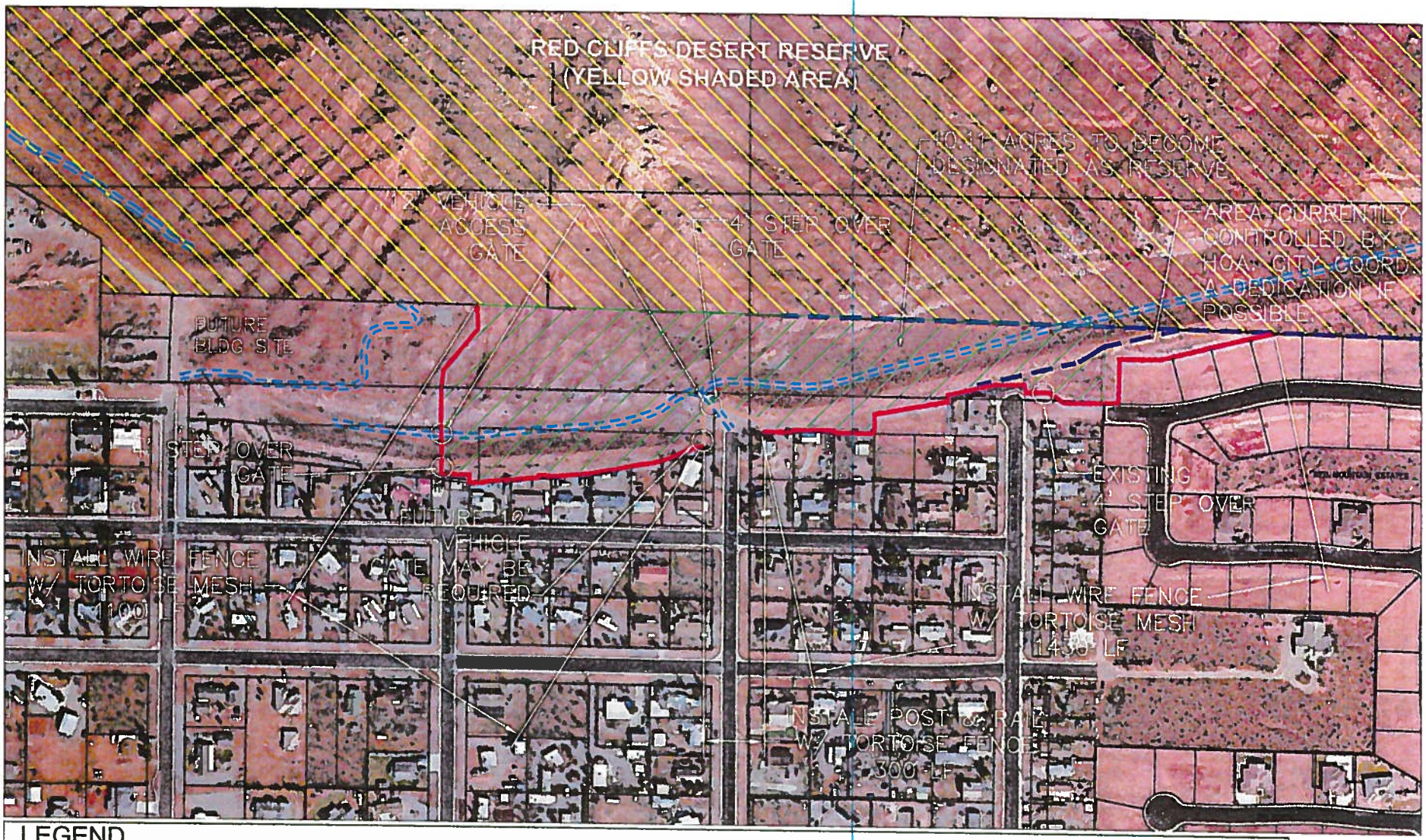
IVINS CITY/HCP BOUNDARY PARCEL
(November 1, 2012)

Beginning at the West ¼ Corner of Section 32, Township 41 South, Range 16 West, Salt Lake Base and Meridian; Thence South 88°45'23" East, along the Center Section line, a distance of 1,321.75 feet; Thence South 01°14'27" West, a distance of 190.22 feet; Thence North 88°58'15" West, a distance of 92.00 feet; Thence North 59°17'30" West, a distance of 39.89 feet; Thence South 86°57'44" West, a distance of 46.18 feet; Thence North 76°57'13" West, a distance of 10.31 feet; Thence North 04°56'48" West, a distance of 30.59 feet; Thence South 82°38'14" West, a distance of 84.68 feet; Thence South 76°18'40" West, a distance of 100.40 feet; Thence South 04°06'18" East, a distance of 15.71 feet; Thence South 79°45'03" West, a distance of 178.27 feet; Thence South 00°34'03" West, a distance of 45.00 feet; Thence North 89°30'52" West, a distance of 272.46 feet; Thence North 04°15'15" West, a distance of 26.22 feet; Thence North 71°53'41" West, a distance of 44.75 feet; Thence North 63°57'41" West, a distance of 58.20 feet; Thence South 41°07'39" West, a distance of 36.18 feet; Thence South 13°01'53" West, a distance of 43.62 feet; Thence South 00°04'27" West, a distance of 34.64 feet; Thence South 79°50'16" West, a distance of 58.67 feet; Thence South 56°26'34" West, a distance of 18.74 feet; Thence South 06°52'25" West, a distance of 11.88 feet; Thence South 79°26'03" West, a distance of 196.87 feet; Thence South 84°33'16" West, a distance of 95.32 feet; Thence North 88°40'17" West, a distance of 26.31 feet; Thence South 03°25'32" East, a distance of 3.11 feet; Thence South 84°33'16" West, a distance of 169.53 feet; Thence North 00°32'53" East, a distance of 21.49 feet; Thence North 89°32'06" West, a distance of 65.61 feet; Thence North 00°21'02" West, a distance of 208.41 feet; Thence North 06°57'48" East, a distance of 40.53 feet; Thence North 39°17'20" East, a distance of 130.19 feet; Thence North 00°58'37" West, a distance of 58.45 feet, to a point on the East-West Center Section line of Section 31, Township 41 South, Range 16 West, Salt Lake Base and Meridian; Thence South 88°43'53" East, along said line, a distance of 165.39 feet to the Point of Beginning.

Containing: 10.15 acres, more or less.

PROFESSIONAL LAND SURVEYOR
No. 174919
SCOTT P. WOOLSEY
STATE OF UTAH

11/2/12



LEGEND

- RED CLIFFS DESERT RESERVE
- 10.11 ACRE PROPERTY OFFERED BY IVINS CITY FOR INCORPORATION INTO RESERVE
- PROPOSED POST & RAIL WITH TORTOISE FENCING
- EXISTING TORTOISE FENCING
- PROPOSED WIRE TORTOISE FENCING
- EXISTING ROADS TO BE IDENTIFIED BY RESERVE FOR UTILITY ACCESS

IVINS CITY
55 N. Main Street
Ivins, Utah 84738
435-634-0689
435-674-5486 (fax)

IVINS CITY
TUACAHN WASH DETNETION PROJECT
EXHIBIT B: TORTOISE HABITAT MITIGATION MAP

DATE: 8-8-2013
DRAWN BY: CRG
CHECKED BY: CRG

EXHIBIT
B

TOTAL SHEETS: 1