Ivins City Staff Report
City Council Meeting 12/15/2016

Agenda Item: Discuss and consider approval of expenditure for the acquisition of property for the Cliffrose Tank Site

Submitted by: Charles R. Gillette, P.E., Public Works Director/City Engineer

Recommended City Council Action:
Approve the purchase agreement and expenditure of $100,000 for the acquisition of real property and new easements for the Cliffrose Tank Site.

BACKGROUND:
As the Council is aware, the City has started construction on the Cliffrose tank site. This site is currently an easement, and the City received authorization from Terry Marten to start the construction while at the same time negotiating expanding the tank easement to improve access to the tank. These negotiations expanded when Terry Marten indicated that he would be willing to the sell the site if it included deed restrictions at a very reasonable price of $10,000 per acre. Terry Marten has identified 10 acres as shown in the exhibits for the purchase agreement that he will sell to the City that includes the tank site at the above mentioned price. Terry Marten also agrees to provide Ivins City an option to purchase additional property at the same price or trade, if requested.

FINDINGS AND ANALYSIS:
The purchase of this property will improve the City's ownership of the tank the site from an easement to actual property ownership. The price of $10,000 / acre seems very reasonable considering that raw land is currently running at $90,000 / acre. It was deemed by staff that no appraisal is necessary to confirm this pricing.

SUPPORT MATERIALS:
- Purchase agreement including exhibits

FINANCIAL IMPACT:
This expense will be drawn from the tank construction budget, which is impact fee eligible.
GL 51-42-877: $100,000

Respectfully Submitted:

Charles R. Gillette, P.E., Public Works Director/City Engineer

Content Review:

Dale Coulam, City Manager

Purchase Agreement for
Cliffrose Water Tank Site

This agreement is made and entered into effective this _____ day of _____, 2016, by and between William Carma & Associates, Inc., a Utah Corporation ("Seller"), and Ivins City, a Utah Municipality, ("Ivins").

Whereas:

1. Seller owns certain real property located by Washington County, Utah;
2. On July 7, 2004, Ivins City was granted an easement from the Seller for the existing 1 million gallon and 2 million gallon tanks granting the rights to "a tank site easement, together with the right to erect, construct, install, and thereafter use, operate, inspect, repair, maintain, replace, and remove where required over, across and through the land."
3. Ivins City now desires to replace the 1 million gallon tank with a 2 million gallon tank along with other certain appurtenant improvements and needs additional property.

Now, therefore, in consideration of the mutual agreements herein contained and for the sum of $10.00 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: In exchange for $100,000.00, the Seller agrees to deed, transfer and convey to Ivins City, by warranty deed 10 acres of property identified as "Property to be Transferred" in the attached Exhibit A, Legal Description and Exhibit B, Map.
2. Easement Abandonment: Upon the transfer of the real property per the previous item, Ivins City shall execute an abandonment the existing water tank easement attached as Exhibit C.
3. Access Reserved: Seller reserves and retains ownership of a 38-foot wide "reserved access" as described in Exhibit A and depicted in Exhibit B.
4. Public Utility Easement: The "reserved access" property, as per the previous item, shall also be granted to Ivins as a perpetual public utility easement for the installation, maintenance, repair, inspection, protection, removal of public utilities for all current and possible future public utility needs and also for maintenance of trees, landscaping, and irrigation.
5. Option for Future Public Utility Easement: Ivins City shall provide an option to Seller to set up a 20-foot wide public utility easement on City owned property as shown in Exhibit B for development of adjacent property.
6. Deed Restrictions: The Seller shall attach the deed restrictions to 10-acres transferred by warranty deed as provided in Exhibit D. Ivins agrees to abide by these restrictions and obligations.
7. Option to Acquire Additional Property: Upon transfer of the 10-acres, the Seller shall also provide to Ivins City the option to acquire additional real property by warranty deed in a 5,227 square foot area identified as "Optioned Property" in Exhibit B.
    a. Ivins City shall exercise this option only in the event that the property is needed to add property to the Red Cliffs Desert Reserve for possible tortoise habitat mitigation.
    b. The Seller agrees to deed this property for the price of $2,300.
    c. Ivins may also, in lieu of a cash payment, trade property in the same vicinity of similar geographical features at a ratio of one to one.
8. Option to Delay during Entitlement Period: The Seller may delay the execution of the terms of this agreement by no more than one year from the date of this agreement to pursue improving the access of the Seller's adjacent parcel (Parcel No. I-6-1-30-234) by making application to the City and requesting entitlement to plat an extension of the cul-de-sac access road Shinob Kai Way.
    a. The application shall be processed in accordance with all normal City and State laws, standards and requirements.

b. The Seller authorizes Ivins City to continue without delay the construction, operations, and maintenance of the 2 million gallon water tank and shall not impede the progress of such in accordance with current improvement plans.
c. If the Seller does not obtain the expected entitlement, the Seller and Ivins City shall promptly renegotiate the boundary of the 10 acres property to be transferred, and the boundary of the reserved access area (based on earlier proposals of this negotiation). All other provisions of this agreement shall remain in effect.

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 _____, 20__, 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, President, William Carma & Associates, Inc.

STATE OF UTAH
County of Washington

On this ___ day of _____, 20__, before me personally appeared R Terry 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

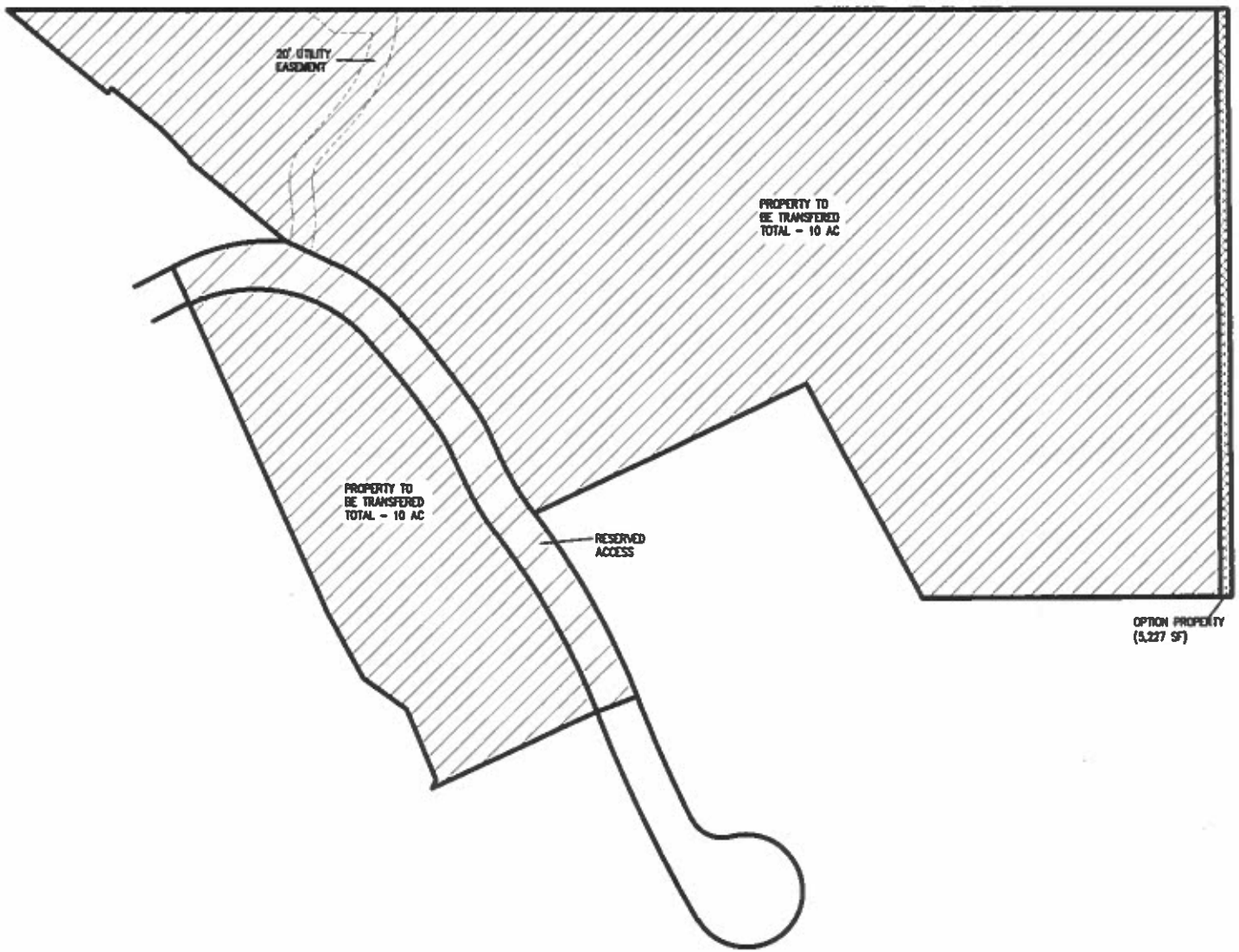
EXHIBIT A

LEGAL DESCRIPTION

↳ Currently being prepared

EXHIBIT B

MAP


20' UTILITY EASEMENT
PROPERTY TO BE TRANSFERED TOTAL - 10 AC
PROPERTY TO BE TRANSFERED TOTAL - 10 AC
RESERVED ACCESS
OPTION PROPERTY (5,227 SF)

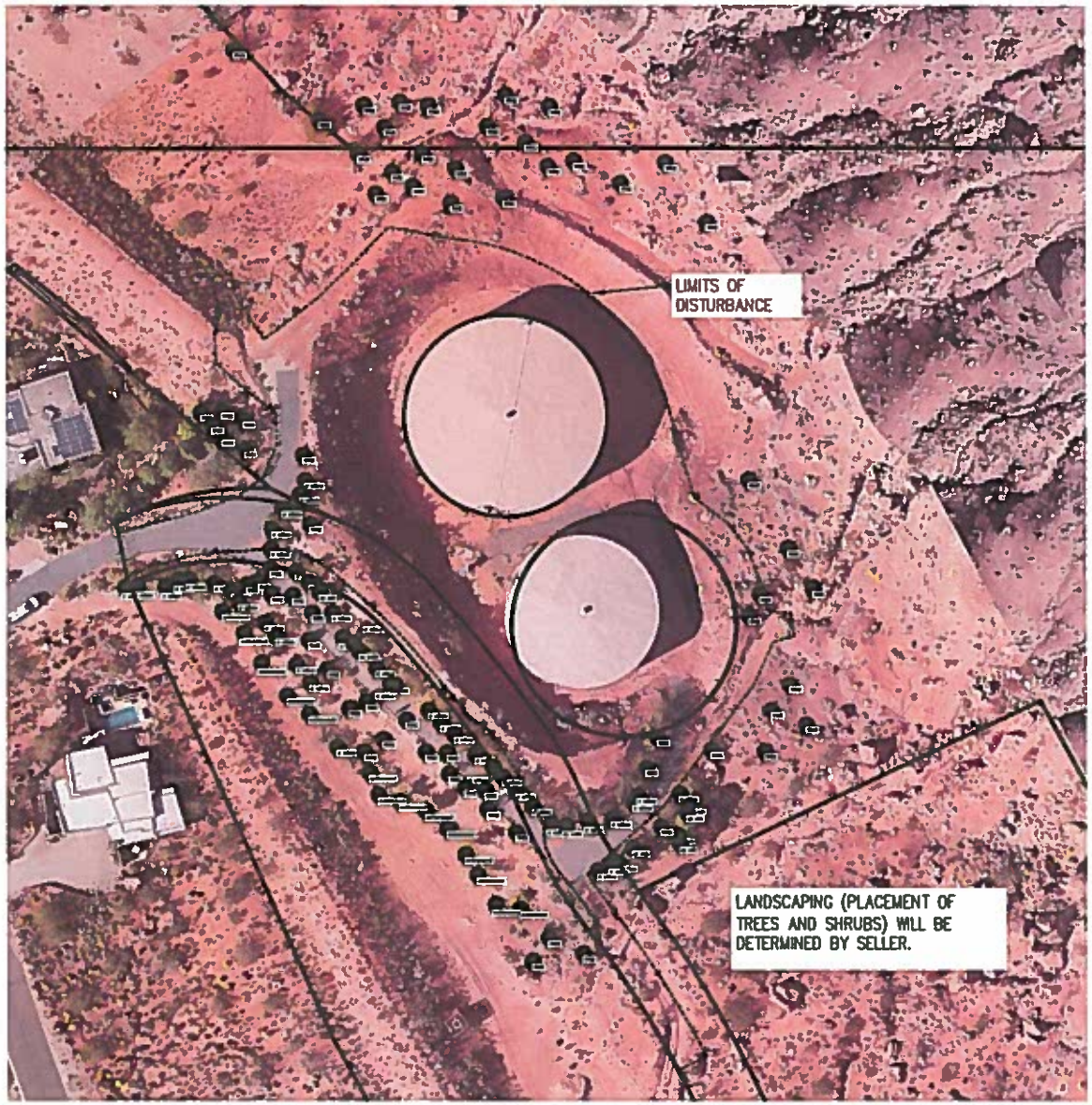

LIMITS OF DISTURBANCE
LANDSCAPING (PLACEMENT OF TREES AND SHRUBS) WILL BE DETERMINED BY SELLER.

EXHIBIT C
EXISTING TANK EASEMENT

00890603 Bk 1655 Pg 1652
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2004 JUL 19 13:56 PM FEE $.00 BY AMH
FOR: IVINS CITY

When recorded, return to:

_____

_____

_____

COPY

EASEMENT AGREEMENT
(Water Tank)

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into effective this ____ day of March 15 2002, by and between **William Carma & Associates, Inc.**, a Utah Corporation ("Grantor"), and **Ivins City**, a Utah Municipality, ("Ivins").

WHEREAS, Grantor owns certain real property located in Washington County, Utah;

WHEREAS, Ivins is making certain improvements, namely installation of a water storage tank and related improvements, (hereinafter the "Improvements"), on real property owned by Grantor that is more particularly described on Exhibit A (hereinafter "Easement Property") attached hereto and incorporated herein and as generally depicted on Exhibit B attached hereto and incorporated herein;

WHEREAS, Ivins desires a perpetual easement for the purpose of installing and maintaining the Improvements;

NOW, THEREFORE, in consideration of the mutual agreements herein contained herein and for 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. Easement to Ivins. Subject to the provisions of this Agreement, Grantor does hereby grant, convey, transfer and assign to Ivins, its successors and assigns, and warrants to Ivins against claims by others, a perpetual easement for the purpose of installing, operating, inspecting, repairing, replacing, removing, protecting and maintaining the Improvements.

2. Duration. This Easement and each covenant and restriction set forth in this Agreement shall be perpetual.

3. Use of Easement-Reservation of Access Rights to Grantor. Grantor reserves the right to cross the Easement Property for access to adjacent real property and nothing herein, other than the physical placement of the Improvements themselves, shall act to limit Grantor's rights existing as of the date of this Easement Agreement for such access.

4. Improvements. Ivins agrees to install the Improvements as follows:

a. The height of the water storage tank, at the rim, shall be no more than six (6) inches higher than the rim of the existing 500,000 gallon water tank;

b. Slope of the roof of the water storage tank shall be approximately two percent (2%);

c. Access road on Easement Property shall be paved and approximately twelve (12) feet in width;

d. The water storage tank shall be painted "Kayenta Brown" as that color is understood between the parties;

e. A three (3) foot pipe shall be installed on the Easement Property for storm drainage purposes, with a bulkhead on inlet end and reasonable rip rap on outlet end, with the outlet located on property south of the access to the Easement Property as determined by Ivins' engineer or as depicted on Exhibit B hereto;

f. Ivins shall install an earthen berm to maintain the existing visual buffer on the south east area, including, if necessary, retaining or other stabilization to be determined on site; and

g. Ivins shall require the contractor of the Improvements not to unreasonably interfere with the normal activities of the Taviawk subdivision neighborhoods during construction of the Improvements, including: Reasonable efforts to prevent unreasonable amounts of dust, mud or other debris from being deposited in the Taviawk subdivision neighborhoods; clean up of any mud or debris within the Taviawk subdivision neighborhoods resulting from installation of the Improvements; require legal weight loads of constructions vehicles; repair of damage to any streets within the Taviawk subdivision neighborhoods resulting from installation of the Improvements.

5. Maintenance. Ivins shall comply with the requirements of the immediately preceding Subparagraph 4.g. after completion of installation of the Improvements, for the duration of the Easement.

6. Water for Landscaping. Ivins shall provide free water to Grantor sufficient to maintain landscaping which Grantor may install on the earthen berm surrounding the existing 500,000 gallon water tank and the tank to be installed as part of the Improvements. The composition of said landscaping must be desert-type landscaping, which requires minimal amounts of water, as such landscaping and water use is reasonably understood between the parties. The design and plan for such landscaping must be approved by the City prior to installation, which approval will not be unreasonably denied.

7. Restoration. Ivins shall restore all real estate surface damage resulting from the installation of the Improvements in a workmanlike manner.

8. Indemnification. Ivins agrees to defend, indemnify and hold Grantor harmless from and against all liability, loss or costs incurred, including without limitation reasonable attorney's fees, arising out of, related to or caused by Ivins' acts or omissions to act, use of, or occupancy of the Easement Property, including, but not limited to, any mechanic's liens or other claims associated with the installation of the Improvements.

9. Covenants Run With Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Grantor property or the Easement Property to the extent that such portion is affected or bound by the easement, covenant or restriction in question, or to the extent that such easement, covenant or restriction is to be performed on such portion; and (c) shall benefit and be binding upon any person whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

10. Limit on Benefit. The grant of the easement to Ivins is limited in use for the benefit solely of the Ivins and cannot be used by, or transferred for the benefit of, any other property. Nothing contained in the Easement Agreement shall be deemed a gift or dedication of any portion of the Easement Property to the general public.

11. Miscellaneous.

a. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

b. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

c. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

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

IVINS CITY,
A Utah Municipality,

By: R. Daren Barney
R. Daren Barney, Mayor

Attest: Terri A. Smith
Terri A. Smith, Ivins City Recorder

GAIL S. LARSEN
NOTARY PUBLIC - STATE of UTAH
55 NORTH MAIN
IVINS, UT 84738
COMM. EXP. 6-13-2005

WILLIAM CARMA & ASSOCIATES, INC.,
A Utah Corporation,

By:
Its: AGENT/OWNER

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On the 10 day of September 2002, personally appeared before me R. Daren Barney, who being by me duly sworn did say that he is the mayor of Ivins City and did duly acknowledge to me the foregoing instrument was entered into on behalf of Ivins City for the purposes stated therein.

Gail S. Larsen
Notary Public
Residing at: Ivins UT 84738

STATE OF UTAH)
ss.
COUNTY OF WASHINGTON)

On the 15 day of MARCH 2002, personally appeared before me TERRY MARTEN who being by me duly sworn did say that he is the AGENT/OWNER of William Carma & Associates, Inc., and did duly acknowledge to me that the foregoing instrument was entered into on behalf of such entity for the purposes stated therein.

Terri A. Smith
Notary Public
Residing at: IVINS

TERRI A. SMITH
NOTARY PUBLIC - STATE of UTAH
55 NORTH MAIN
IVINS, UTAH 84738
COMM. EXP. 1-19-2004

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EXHIBIT A

Location of Existing Easement

[see attached]

EXHIBIT D
DEED RESTRICTIONS

Exhibit D
Deed Restrictions

1. Communication Tower restrictions – All communication equipment shall be limited to that which is necessary and minimal for the operation of the water system. No communication tower shall exceed the height of 5 feet above the top of the roof of the water tanks.
2. Water Tank upsizing – All future upsizing shall be restricted to the area identified in Map Exhibit. No future tanks shall exceed the height of the existing tanks.
3. Water tank operations and maintenance – Ivins City shall have the right to maintain, improve, repair, inspect, protect, install, remove, and replace the water tank and all appurtenant facilities.
4. Drainage and Erosion controls – Ivins City shall be responsible to control the erosion and drainage from the site by installing drains and similar facilities to direct drainage to the existing debris basins to the extent reasonably practical. Ivins shall have the ability to pipe, ditch and divert drainage in an effort to improve the maintainability of the drainage of the site. Any work in a natural area must be done with hand operated equipment.
5. Landscaping design and maintenance – Ivins City shall take over maintenance of the landscaping of the site and shall in good faith maintain existing trees. Trees shall not be pruned unless it is necessary for operations and maintenance of the site as described it item 3. City shall maintain existing concept of vegetative screening of the berm and tanks by use of trees. Tree exhibit identifies the existing conditions and the final proposed conditions of the site given as a reference for the standard of this provision.
6. Storage of Equipment and Materials – Ivins City shall not store equipment or materials onsite unrelated to Item 3.
7. Screening – The facility shall be reasonably screened by berms that are vegetated as per Item 5. If necessary, rock walls shall be allowed in locations berms are not practicable to maintain minimum stabilized slopes.
8. Natural Landscape Disturbance – Ivins City shall not disturb outside of the restricted area identified in map exhibit except if necessary to improve drainage conditions per Item 4.
9. Trails and public access prohibited – Ivins City shall restrict public access of the site.