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DOC # 20140025084

Agreement Page 1 of 15
Russell Shirts Washington County Recorder
08/18/2014 03:28:58 PM Fee \$ 0.00
By WASHINGTON COUNTY COMMISSION

Received

AUG 17 2014

Spencer J. Cox
Lieutenant Governor

August 7, 2014

Lt. Governor Spencer J. Cox
Utah State Capitol Complex, Ste. 220
P.O. Box 142325
Salt Lake City, UT 84114-2325

Re: Notice of the impending boundary action and certification of legal requirements regarding the establishment of the Washington County Flood Control Authority

Dear Lt. Governor Cox:

Pursuant to Utah Code Sections 11-13-203, 11-13-204, and 67-1a-6.5, notice is hereby filed that the political subdivisions listed in the signature block below have executed a Flood Control Authority Interlocal Cooperation Agreement in order to create an interlocal entity named the Washington County Flood Control Authority ("Flood Control Authority"). Enclosed you will find a copy of the Agreement, and final local entity plat that has been prepared and certified by a licensed surveyor and approved by the Washington County Surveyor, and a letter from Utah State Retirement Office addressed to the Washington County Commission describing the Flood Control Authority's obligations under the Utah Retirement and Insurance Benefit Act.

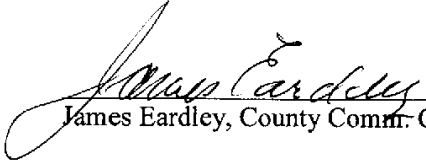
The below signatories hereby certify that all requirements for the establishment of an interlocal entity have been met. We respectfully request that you authorize a certificate of creation for the Washington County Flood Control Authority and that you submit the certificate, the original copy of this Notice, and the approved final local entity plat to Russell Shirts, Washington County Recorder, 87 North 200 East, Ste. 101, St. George, Utah 84770.

Please contact Deputy Washington County Attorney Eric Clarke at (435) 986-2605 if you have any questions or concerns regarding this matter.

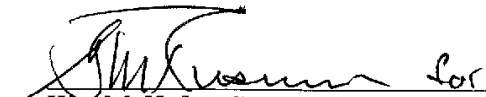
(Signature block on following pages.)

Sincerely,

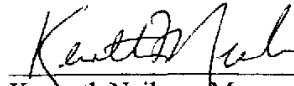
WASHINGTON COUNTY


James Eardley, County Comm. Chair

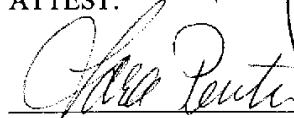
ATTEST:


Kim M. Hafen, County Clerk-Auditor

WASHINGTON CITY


Kenneth Neilson, Mayor

ATTEST:


Dancee Bulloch, City Recorder
Tara Pentz, Deputy Recorder



CITY OF ST. GEORGE

Jon Pike, Mayor

ATTEST:

Christina Fernandez, City Recorder

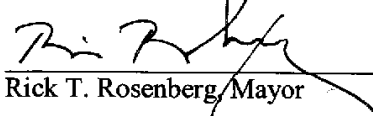
~~**IVINS CITY**~~

~~_____
Chris Hart, Mayor~~

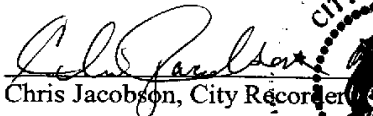
~~ATTEST:~~

~~_____
Kari Jimenez, City Recorder~~

CITY OF SANTA CLARA


Rick T. Rosenberg, Mayor

ATTEST:


Chris Jacobson, City Recorder



~~**CITY OF HURRICANE**~~

~~_____
John Bramall, Mayor~~

~~ATTEST:~~

~~_____
Kaden DeMille, City Recorder~~

Enclosures

Sincerely,

WASHINGTON COUNTY

WASHINGTON CITY

James Eardley, County Comm. Chair

Kenneth Neilson, Mayor

ATTEST:

ATTEST:

Kim M. Hafen, County Clerk-Auditor

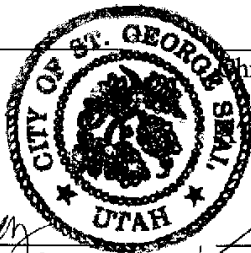
Danice Bulloch, City Recorder

CITY OF ST. GEORGE

IVINS CITY

Jon Pike

Jon Pike, Mayor



~~_____
Chris Hart, Mayor~~

ATTEST:

~~ATTEST:~~

Christina Fernandez

Christina Fernandez, City Recorder

~~_____
Kari Jimenez, City Recorder~~

CITY OF SANTA CLARA

CITY OF HURRICANE

Rick T. Rosenberg, Mayor

~~_____
John Bramall, Mayor~~

ATTEST:

~~ATTEST:~~

Chris Jacobson, City Recorder

~~_____
Kaden DeMille, City Recorder~~

Enclosures

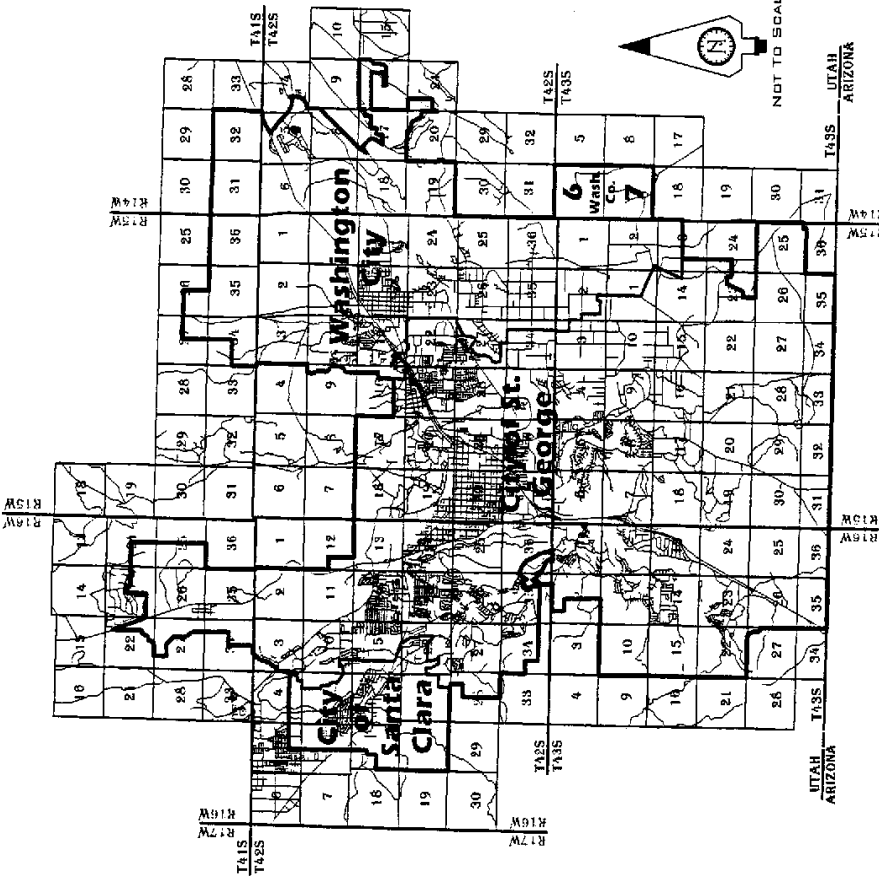
SURVEYOR'S CERTIFICATE:
 I, Todd E. Jacobsen, Professional Land Surveyor License Number 4938728, hold a License in the State of Utah and have prepared this map according to the provisions of the Utah Professional Land Surveyor Act and have prepared this map according to the provisions of the Utah Professional Land Surveyor Act and have prepared this map according to the provisions of the Utah Professional Land Surveyor Act.

WASHINGTON COUNTY
 FLOOD CONTROL AUTHORITY BOUNDARY



BOUNDARY DESCRIPTION:
 All of the City of St. George, UT, Incorporated City limits together with the City of Santa Clara, UT, Incorporated City limits together with the City of Washington, UT, Incorporated City limits. All of Section 8 and all of Section 7 of Township 43 South, Range 14 West, Salt Lake Base & Meridian, located in Washington County, UT.

NARRATIVE:
 This map was prepared for the purpose of showing the boundary to the Washington County Flood Control Authority, an individual entity for the purposes listed herein.



WASHINGTON COUNTY FLOOD CONTROL AUTHORITY BOUNDARY

LOCATED IN FOLLOWING... T41S, R14W & T42S, R14W & T43S, R14W & T41S, R15W & T42S, R15W & T43S, R15W & T41S, R16W & T42S, R16W & T43S, R16W, 5LB&M WASHINGTON COUNTY, UTAH

<p>Approved by the City of St. George, UT, on this 11th day of August, 2014.</p> <p>Todd E. Jacobsen Professional Land Surveyor License No. 4938728</p>	<p>Approved and Accepted by the City of St. George, UT, on this 11th day of August, 2014.</p> <p>City of St. George City Clerk</p>	<p>Approved and Accepted by the City of St. George, UT, on this 11th day of August, 2014.</p> <p>City of St. George City Clerk</p>	<p>Approved and Accepted by the City of St. George, UT, on this 11th day of August, 2014.</p> <p>City of St. George City Clerk</p>
<p>City of St. George City Clerk</p>	<p>City of St. George City Clerk</p>	<p>City of St. George City Clerk</p>	<p>City of St. George City Clerk</p>

818

**FLOOD CONTROL AUTHORITY
INTERLOCAL COOPERATION AGREEMENT**

original

This Agreement is made and entered into effective on the date set forth below, by and between the City of St. George ("St. George"), Washington City ("Washington"), Santa Clara City ("Santa Clara"), Ivins City ("Ivins"), Hurricane City ("Hurricane"), collectively the "Cities," and Washington County (the "County"), all political subdivisions of the state of Utah.

RECITALS

WHEREAS, the parties are authorized to enter into an agreement for joint and cooperative action pursuant to the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-1 *et seq.* (the "Act"); and

WHEREAS, the drainages in Washington County experience recurring flood events that cause damage to property in and around the boundaries of the Cities and affect the interests of all parties to this Agreement; and

WHEREAS, certain flood control structures are now owned by the St. George and Washington Canal Company, these structures are now considered high hazard structures because of urban development and are in need of ongoing maintenance and repair and the Canal Company is unwilling or unable to conduct the requisite maintenance and repair; and

WHEREAS, the County has authority over flood control projects pursuant to Utah Code Ann. §§ 17-8-1 *et seq.*; and

WHEREAS, the Cities have an interest in appropriate management of flood control; and

WHEREAS, the parties have determined that it will be mutually beneficial and in the best interests of their residents to enter into this Agreement to share the costs for construction, operation, inspection, repair, maintenance, land, and all other related activities necessary for flood control and administration of these activities.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

SPECIFIC TERMS

1. Independent Legal Entity. There is hereby created the Washington County Flood Control Authority ("Flood Control Authority") as a separate and independent governmental entity pursuant to the provisions of this Agreement. The Flood Control Authority shall have all powers, authority and duties set forth in the Act unless expressly prohibited by this Agreement. No organizational change of any party hereto is contemplated by this Agreement. The Flood Control Authority shall have no authority to require alterations of duly adopted plans or decisions of any party.

2. Purposes. The purposes of the Flood Control Authority shall be to administer, acquire, construct, operate, inspect, repair and maintain flood control facilities and to perform all other related activities necessary for regional flood control. Flood control refers to the management and conveyance of flows above baseline conditions.

3. Action Area. The area included within the action of the Flood Control Authority is shown on Exhibit A, attached hereto and incorporated herein by this reference.

4. Authority of the Parties. The City of St. George, Washington City, Santa Clara City and Washington County shall be "Primary Members" with full rights and responsibilities under this Agreement. The cities of Ivins and Hurricane shall be "Cooperating Members" with no rights or responsibilities under this Agreement, except the right to provide input and to coordinate in the planning process.

5. Flood Control Board. The actions authorized by this Agreement shall be performed by a Flood Control Board (the "Board") which shall be made up of elected officials of the Primary Members. Each Primary Member shall appoint the following number of representatives to the Board: Washington County, one; Santa Clara, one; Washington City, two; and City of St. George, three. Each designated representative shall serve a four (4) year term, unless earlier replaced by the appointing body (however, the initial term of three of the Board members shall be for two years as determined by drawing lots). The Board shall establish bylaws for operation of the Flood Control Authority. Each Board member shall have one vote. All actions shall be deemed approved when approved by 5 out of 7 Board members. Members of the Board shall serve without compensation and shall have their expenses paid by their appointing agency.

6. Technical Advisory Council. A Technical Advisory Council (the "TAC") made up of the public works director of each Primary Member, or his designee, shall provide support, planning and technical advice to the Board. Members of the TAC shall serve without compensation and shall have their expenses paid by their appointing agency.

7. Status of Parties' Employees. When the members of the Board and the TAC and the employees and agents of the Flood Control Authority are acting on behalf of the Flood Control Authority within the scope of their authority, they shall be considered to be acting on behalf of their respective public agency employer within the meaning of the Governmental Immunity Act, Utah Code. Ann. § 63G-7-101 *et seq.*, as amended, so long as they meet the applicable requirements.

8. Administrative Staff. The Board shall hire support staff on such terms and conditions as the Board deems appropriate as necessary for the proper administration of the Flood Control Authority. The Primary Members intend that labor and equipment shall be provided by the Primary Members as "in-kind" contributions to the greatest extent possible.

9. Property. Property or interests in property, real or personal, acquired pursuant to this Agreement shall be owned by the Flood Control Authority

10. Capital Projects. A plan to identify projects for repair, upgrade or new construction of flood control facilities shall be developed ("Capital Facilities Plan"). The initial Capital Facilities Plan shall be based upon the list attached hereto in Exhibit "B". Flood Control Authority funds shall not be expended until the Capital Facilities Plan is approved by the Board. Projects in the Capital Facilities Plan shall be regional in nature (i.e., benefit more than one Primary Member). A scope of work and cost for each project shall be included.

11. Work Assignments. Each Primary Member will accept work assignments annually to perform maintenance on flood control facilities. The amount and nature of work for each Primary Member shall be within the resources available and be roughly proportional to the benefit received by each Primary Member.

12. Financing. Each Primary Member hereto shall pay monthly an amount based upon the number of water connections as set by the Board. In addition, the Flood Control Authority shall seek funding by grants, stipends, contract and otherwise from and with federal, state and local funding sources and may issue bonds in accordance with the Act.

13. Effective Date. This Agreement shall become effective and shall enter into full force and effect up completion of the following:

- a. Submission of this Agreement to and the approval and execution of this Agreement by resolution of the governing bodies of each Primary Member and Cooperating Member.
- b. Compliance with the requirements of the Act.
- c. Duration and Termination. The term of this Agreement shall be fifty years, commencing on the effective date set forth above. The term shall be automatically extended by successive fifty (50) year terms unless terminated as set forth below.

14. Withdrawal. Any party hereto may withdraw from the Flood Control Authority with cause, in advance of the specified termination date, upon ninety (90) days written notice being given to the other parties whereupon the party giving notice shall be deemed withdrawn and shall have no further benefits of this Agreement. The withdrawal of any party from this Agreement shall not adversely affect this Agreement or such party's contractual relationship with any other party to this Agreement nor shall it relieve the withdrawing party of its obligation to pay its share of obligations, indebtedness and liabilities incurred prior to withdrawal. The fact that a party has withdrawn from this Agreement shall not prohibit the

agency from rejoining the Flood Control Authority in accordance with the terms of this Agreement for new entities.

15. Dissolution. So long as there is any outstanding indebtedness of the Flood Control Authority, the Flood control Authority shall remain a separate legal entity with all of the powers and duties set forth in this Agreement and all of the obligations and covenants set forth in the documents of indebtedness. If there is no outstanding indebtedness in excess of current funds, the Flood Control Authority may be dissolved by a seventy-five percent (75%) vote of the Board, whereupon the Board shall wind up and dissolve the business affairs of the Flood Control Authority. Upon dissolution and after payment of all outstanding indebtedness and obligations, the Board shall equitably disburse the net assets of the Flood Control Authority to the then-current members.

16. Addition of Parties. Other public agencies may become Primary Members or Cooperating Members to this Agreement (or Cooperating Members may become Primary Members) by executing an addendum approved in advance by the governing body of the agency in the same manner as the original parties, subject to approval by a majority of existing Primary Members at a regularly scheduled Board meeting after notice of the request of the new party to join.

17. Requirements. All actions of the parties and the Flood Control Authority conducted pursuant to this Agreement shall comply in all material elements to the requirements of the Act.

18. Amendments. This Agreement may not be amended except by approval by the governing body of each Primary Member and conformance with the requirements of the Act.

GENERAL TERMS

1. Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

2. Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

3. Number and Gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

4. Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be

signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

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

6. Utah Law to Govern. This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning, intention and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. In any dispute jurisdiction and venue shall be in Utah.

7. Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty, or agreement other than those herein expressed.

8. Integration. All agreements heretofore made in the negotiation and preparation of this Agreement between the parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.

9. Time is of the Essence. Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.

10. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

11. Partial validity. If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this Agreement shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

12. Ambiguities. This Agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that 'ambiguities shall be construed against the draftsman' shall have no application to this Agreement.

13. No Third Party Beneficiaries. This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any right of subrogation or cause of action against any party for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the parties' right to modify or renew this Agreement at any time or in any manner. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

14. Laws and Regulations. Any and all actions performed pursuant to this Agreement will comply fully with all applicable Federal and State laws and regulations.

15. Equal Opportunity Clause. The parties agree to abide by provisions of state and federal law, including executive orders, which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, national origin, sex; age or disabilities. Also the parties agree to abide by any law or executive order that prohibits sexual harassment in the work place.

16. Binding on successors in interest. This Agreement shall bind the parties hereto and their successors, heirs, assigns and representatives, and the obligations of the parties shall survive closing and shall not merge with any document of title.

17. Assignment. No rights or obligations of any party under this Agreement shall be assigned without the prior written consent of all Primary Members. This Agreement is voidable and subject to immediate cancellation upon the parties becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

18. Indemnity Clause. The Flood Control Authority shall defend, indemnify, save harmless and exempt the parties, their officers, agents and employees from and against any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, liability, and expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney's fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description incident to any willful or negligent acts or omissions of the Flood Control Authority, its officers, agents or employees. The Board shall, prior to the commencement of construction of any project undertaken by the Flood Control Authority, provide for risk and liability coverage and payment and performance bonds as necessary to insure against risks arising from undertaking the project.

19. Notice. Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the respective primary member or cooperating member or Washington County Flood Control Authority, as the case may be, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

City of St. George 175 East 200 North St. George, UT 84770	Washington City 111 North 100 East Washington, UT 84780	Santa Clara City 2603 Santa Clara Dr. Santa Clara, UT 84765
Ivins City 55 North Main Ivins, UT 84738	Hurricane City 147 North 870 West Hurricane, UT 84737	Washington County 197 East Tabernacle St. George, UT 84770
Washington Co. Flood Control Authority 197 East Tabernacle St. George, UT 84770		

20. Default. Except as specifically provided for herein, a default by any party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Agreement.

21. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving party.

22. Attorney's fees. Should either party default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this Agreement or in pursuing any remedy provided under this Agreement or by applicable law, whether such remedy is pursued by filing suit or otherwise.

23. Rights and Remedies. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

24. Covenants to run with the land. The parties intend, declare and covenant that the terms, conditions, agreements and covenants set forth in this Agreement shall run with the land and shall bind, and the benefits and burdens shall inure to, the parties and their respective successors and assigns.

25. Exhibits. The following exhibits attached hereto are incorporated herein by this reference.

Exhibit A: area included within the action of the Flood Control Authority.

Exhibit B: list of projects to be included in the Capital Facilities Plan.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the date first above written.

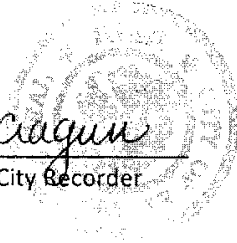
SIGNATURES ON FOLLOWING PAGES

CITY OF ST. GEORGE

By: Daniel D. McArthur
Daniel D. McArthur, Mayor

ATTEST

By: Gay A. Cragun
Gay A. Cragun, City Recorder



APPROVED AS TO FORM

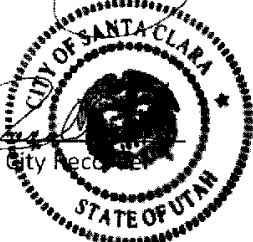
By: Paula Houston
Paula Houston, Deputy City Attorney

CITY OF SANTA CLARA

By: Rick T. Rosenberg
Rick T. Rosenberg, Mayor

ATTEST

By: Chris Jacobson
Chris Jacobson, City Recorder



APPROVED AS TO FORM

By: Russell Gallian
Russell Gallian, City Attorney

WASHINGTON CITY

By: Kenneth Neilson
Kenneth Neilson, Mayor

ATTEST

By: Danice Bulloch
Danice Bulloch, City Recorder



APPROVED AS TO FORM

By: Jeff Starkey
Jeff Starkey, City Attorney

IVINS CITY

By: Chris Hart
Chris Hart, Mayor
01/05/2012

ATTEST

By: Kari Jimenez
Kari Jimenez, City Recorder



APPROVED AS TO FORM

By: Dale Coulam
Dale Coulam, City Attorney

CITY OF HURRICANE

By: Thomas B. Hirschi
Thomas B. Hirschi, Mayor

ATTEST

By: Kaden DeMille
Kaden DeMille, City Recorder

APPROVED AS TO FORM

By: Fay Reber
Fay Reber, City Attorney

WASHINGTON COUNTY

By: Denny Drake
Denny Drake, Chairman

ATTEST

By: Russell B. Shirts
~~Russell B. Shirts, Co. Recorder~~
Kara M. Heston, County Clerk
APPROVED AS TO FORM

By: Brock Belnap
Brock Belnap, County Attorney

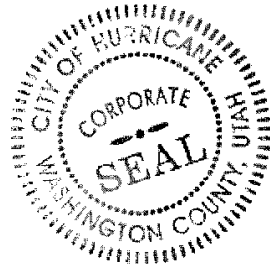
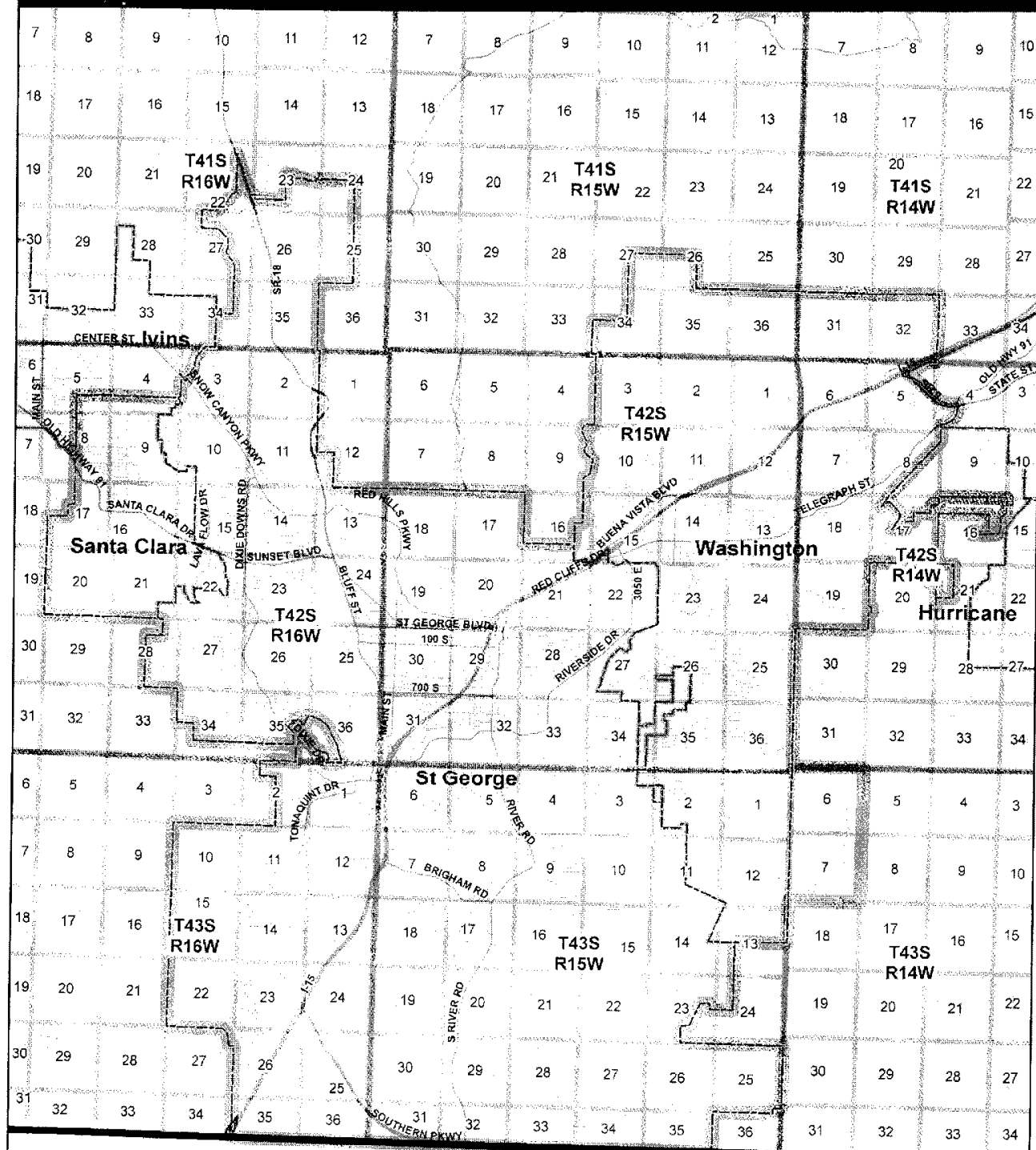




Exhibit 'A', Flood Control Authority Boundary

1 in = 10,000 feet



Flood Control Boundary Municipalities County Boundary Townships Sections

Exhibit "B"

Capital Facilities Plan

Project	Entity	Scope of Work	Conceptual Cost Estimate
Stucki Debris Basin	St. George/Washington		
Gypsum Wash Debris Basin	St. George/Washington		
Warner Valley Debris Basin	St. George/Washington		
Werner Valley Debris Basin Disposal System	St. George/Washington		
Early Warning/Detection System	Santa Clara/St. George/Washington		
Airport (North)/South Mountain Drainage System	St. George/Washington		
Rock Berm Maintenance and Repair Virgin River	St. George/Washington		
Rock Berm Maintenance and Repair Santa Clara River	Santa Clara/St. George		
Washington Fields Regional Pipeline	St. George/Washington		
Major River ways Masterplan Adherence and Policies	Santa Clara/St. George/Washington		
Tuachan Wash/Laub Detention Basin Improvements	Ivins/Santa Clara		
Sand Hollow Wash Improvements	Santa Clara/St. George		
Graveyard Wash Improvements	Ivins/Santa Clara		
Northern Dikes	Ivins/Santa Clara		
Culvert Upsize Highway 91	Ivins/Santa Clara		