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ST. GEORGE WATER REUSE PROJECT AGREEMENT

1 **TABLE OF CONTENTS**

2	<u>SECTION</u>	<u>PAGE</u>
3	1.0 RECITALS	4
4	2.0 PARTIES	5
5	3.0 DEFINITIONS	5
6	4.0 WATER DELIVERIES BY ST. GEORGE TO THE SHIVWITS BAND	8
7	5.0 PROJECT CONSTRUCTION	8
8	6.0 PROJECT OPERATION AND MAINTENANCE	9
9	7.0 ST. GEORGE WATER REUSE PROJECT WATER RIGHTS	11
10	8.0 SHIVWITS REUSE WATER RIGHT	12
11	9.0 USE AND LEASING OF SHIVWITS REUSE WATER	12
12	10.0 ENFORCEABILITY DATE OF AGREEMENT	12
13	11.0 CONTINGENT UPON APPROPRIATION OF FUNDS	13
14	12.0 COUNTERPARTS	14
15	13.0 ENTIRE AGREEMENT	14
16	14.0 EVIDENTIARY EFFECT OF NEGOTIATIONS	14
17	15.0 FORCE MAJEURE	14
18	16.0 GOVERNING LAW AND RIGHTS AND REMEDIES	15
19	17.0 MODIFICATION OF AGREEMENT	15
20	18.0 NECESSARY ACTS AND COOPERATION	16
21	19.0 NO WAIVER	16
22	20.0 NOTICES	17
23	21.0 OFFICIALS NOT TO BENEFIT	17
24	22.0 PERSONS BOUND BY AGREEMENT	18
25	23.0 SIGNATURE AUTHORITY	19
26		

1
2
3
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EXHIBITS

EXHIBIT A - MAP OF THE SHIVWITS INDIAN RESERVATION

EXHIBIT B - ST. GEORGE WATER REUSE PROJECT DESCRIPTION

1
2 **ST. GEORGE WATER REUSE PROJECT AGREEMENT**

3 This Agreement is made and entered into on January 18, 2001, by and among the City of
4 St. George, Utah; the Shivwits Band of the Paiute Indian Tribe of Utah; the State of Utah; and the
5 United States of America.

6 1.0 RECITALS.

7 1.1 On July 21, 1980, the State of Utah, pursuant to Title 73, Chapter 4, Utah Code Ann.
8 as amended, initiated a statutory adjudication of water rights in the Fifth Judicial District Court of
9 the State of Utah in and for Washington County, Civil No. 800507596, which encompasses all of
10 the rights to the use of water, both surface and underground, within the drainage area of the
11 Virgin River and its tributaries in Utah ("Virgin River Adjudication"), including the Santa Clara
12 Drainage ("Santa Clara System").

13 1.2 The United States was joined as a party in the Virgin River Adjudication pursuant to
14 43 U.S.C. § 666. On February 17, 1987, the United States filed a Statement of Water Users
15 Claim asserting a water right based on state law and a federal reserved water right claim for the
16 benefit of the Shivwits Band of the Paiute Indian Tribe of Utah.

17 1.3 The Santa Clara System is subject to erratic flows and in most years does not supply
18 sufficient water to satisfy all existing water rights, and the annual flow of the Santa Clara System
19 is characterized by either low flows or extremely high flows with very few average water years.

20 1.4 To remove causes of present and future controversy over the waters of the Santa
21 Clara System without further litigation, the Parties hereto have conducted extensive negotiations
22 regarding the settlement of the water right claims of the Shivwits Band of the Paiute Indian Tribe
23 of Utah, and the United States acting for the benefit of the Shivwits Band of the Paiute Indian
24 Tribe of Utah.

1 **AGREEMENT**

2 NOW, THEREFORE, the Parties agree as follows:

3 2.0 **PARTIES.**

4 2.1 City of St. George (“St. George”) is a Utah municipal corporation.

5 2.2 Shivwits Band of the Paiute Indian Tribe of Utah (“Shivwits Band”) is one of five
6 constituent bands of the Paiute Indian Tribe of Utah.

7 2.3 State of Utah, acting by and through its Department of Natural Resources
8 (“Utah”).

9 2.4 United States of America (“United States”), acting by and through the Secretary
10 of the Interior.

11 3.0 **DEFINITIONS.**

12 3.1 “Alternative Water” means water, other than water from the St. George Water
13 Reuse Project, that St. George shall deliver to the Point of Delivery to meet the Delivery Schedule
14 for the Shivwits Reuse Water if the source, quality, terms, and conditions for the delivery of the
15 alternative water are set forth in a written agreement between St. George and the Shivwits Band
16 and approved by the United States acting in its capacity as trustee for the Shivwits Band;
17 provided, however, that the delivery and use of the Alternative Water is approved by the State
18 Engineer of Utah.

19 3.2 “Delivery Schedule” means the notice by the Shivwits Band to St. George for the
20 timing and delivery of Shivwits Reuse Water. The Shivwits Band may request, and St. George
21 shall deliver, up to 2.8 million gallons per day. St. George shall adjust the flow rate on a daily
22 basis upon verbal request by the Shivwits Band.

23 3.3 “Enforceability Date” means that date which is determined by Section 10 of this
24 Agreement.

25 3.4 “Point of Delivery” of the Shivwits Reuse Water means the eastern boundary of the
26 Shivwits Reservation north of Ivins Reservoir near where the Santa Clara Bench Canal exits the

1 Reservation, or such other point of delivery mutually agreed to in writing by the Shivwits Band
2 and St. George.

3 3.5 "Proposed Determination" means the Proposed Determination of Water Rights,
4 Santa Clara River-Beaver Dam Wash Division, Book No. 1, issued by the State Engineer of Utah
5 dated July 6, 1989, as amended.

6 3.6 "Reuse Water Delivery Year" means the period starting on January 1 and ending on
7 December 31 of each calendar year.

8 3.7 "Settlement Agreement" means the Shivwits Band of the Paiute Indian Tribe of
9 Utah Water Rights Settlement Agreement executed by the Bloomington Canal Company, Edward
10 Bowler (a shareholder in the Gunlock Irrigation Company), Ivins Irrigation Company, Lower
11 Gunlock Reservoir Corporation, the New Santa Clara Field Canal Company, the Shivwits Band,
12 St. George, the St. George Clara Field Canal Company, the Southgate Irrigation Company, Utah,
13 the United States, and the Washington County Water Conservancy District, and which is ratified
14 and confirmed by Congress in legislation to settle comprehensively the water rights claims of the
15 Shivwits Band in the Virgin River Adjudication.

16 3.8 "Shivwits Band Trust Fund" means the trust fund authorized by the Congress of
17 the United States, in legislation to ratify and confirm this Agreement, to be established in the
18 Treasury of the United States for the benefit of the Shivwits Band.

19 3.9 "Shivwits Capacity" means such capacity reserved in the St. George Water Reuse
20 Project treatment plant, distribution system, and pump stations to allow 2.8 million gallons of
21 water to be delivered to the Shivwits Band over any 24-hour period, when requested by the
22 Shivwits Band.

23 3.10 "Shivwits Reservation" means the federal reservation of land in Washington
24 County, Utah, that is held in trust by the United States for the benefit of the Shivwits Band, as
25 described in **Exhibit A**, attached and incorporated by reference herein, and shall include any
26 future trust acquisitions contiguous to the Shivwits Reservation.

1 3.11 “Shivwits Reuse Water” means a total of 2,000 acre-feet of water of Suitable
2 Quality measured at and delivered annually to the Point of Delivery by St. George pursuant to the
3 Delivery Schedule from the St. George Water Reuse Project, and shall be in addition to the water
4 the Shivwits Band is entitled to receive under Sections 5.0, 7.0, and 8.0 of the Settlement
5 Agreement.

6 3.12 “St. George Water Reuse Project” means the treatment facilities and a pipeline and
7 all associated pumping and delivery facilities owned and operated by St. George that collectively
8 are components of and will divert water from the Water Reclamation Facility and will transport
9 water from the Water Reclamation Facility for delivery to and use by St. George and the Shivwits
10 Band. St. George shall size the St. George Water Reuse Project to deliver up to a total of 2.8
11 millions gallons per day (“MGD”) of water, up to 2,000 acre-feet annually, for use by the
12 Shivwits Band. Such water shall be in addition to the water delivered to St. George for its use
13 from the St. George Water Reuse Project. A general description of the St. George Water Reuse
14 Project is attached as **Exhibit B**.

15 3.13 “Suitable Quality” means: (a) for Shivwits Reuse Water, the quality of water that
16 meets all applicable water quality standards promulgated under federal and State law, including
17 but not limited to all such standards for Type I use for reuse water under Utah Admin Code
18 R317-1-4, and all requirements of any applicable National Pollutant Discharge Elimination System
19 Permit promulgated under the Clean Water Act; and (b) for Alternative Water, the quality of
20 water that is set forth in a written agreement negotiated and approved by St. George, the United
21 States, and the Shivwits Band, pursuant to Subsection 3.1 of this Agreement.

22 3.14 “Virgin River Adjudication” means the statutory adjudication of water rights in the
23 Fifth Judicial District Court of the State of Utah in and for Washington County, Civil No.
24 800507596.

25 3.15 “Water Reclamation Facility” means that facility owned and operated by St.
26 George located at 3780 South 1550 West, St. George, Utah, for the treatment of municipal waste

1 water, or any successor facility.

2 4.0 WATER DELIVERIES BY ST. GEORGE TO THE SHIVWITS BAND.

3 St. George shall be capable of delivering, and shall begin to deliver upon request of the
4 Shivwits Band, the Shivwits Reuse Water no later than two (2) years after all state and federal
5 approvals, environmental clearances and permits for the construction of the St. George Water
6 Reuse Project are obtained, and shall continue such deliveries, or if the Parties so agree, deliveries
7 of Alternative Water, at Shivwits Capacity when required by the Delivery Schedule, in perpetuity
8 each Reuse Water Delivery Year thereafter.

9 5.0 PROJECT CONSTRUCTION.

10 5.1 St. George shall be solely responsible for the design, permitting, engineering and
11 construction of the St. George Water Reuse Project.

12 5.2 St. George shall cooperate with the Shivwits Band in constructing the St. George
13 Water Reuse Project in a manner that integrates the delivery pipeline with the Shivwits Band's
14 receiving structure; provided, however, that St. George shall have no obligation to deliver the
15 Shivwits Reuse Water at more than zero pressure head.

16 5.3 St. George and the Shivwits Band each shall pay for their proportionate share of the
17 design, permitting, engineering and construction costs of the St. George Water Reuse Project.
18 The present value of the Shivwits' proportionate share of the design, permitting, engineering and
19 construction costs of the St. George Water Reuse Project is \$5.5 million. Subject to the
20 occurrence of the actions identified in Section 10.0 of this Agreement, and subject to the
21 availability of funds appropriated by Congress and deposited into the Shivwits Band Trust Fund
22 for this purpose, the Shivwits Band and the United States shall pay the Shivwits Band's share of
23 these costs to St. George in advance of construction, but only after: (a) the project has been
24 designed and its construction has been bid; (b) St. George has demonstrated to the Shivwits Band
25 and the United States that the St. George Water Reuse Project as designed and bid contains
26 redundancy features consistent with industry standards; (c) St. George has satisfied all permit,

1 license, environmental compliance, and all other applicable federal, State, and local requirements
2 necessary to construct the St. George Water Reuse Project and deliver the Shivwits Reuse Water
3 to the Point of Delivery; and (d) St. George has issued its notice of intent to award the bid for the
4 Project's construction. Within 30 days from the date St. George provides written notice to the
5 Shivwits Band and the United States demonstrating that the terms of this subsection 5.3 have
6 been satisfied, the Shivwits Band and the United States shall deliver payment to St. George of the
7 \$5.5 million required for the Shivwits Band's proportionate share of the design, permitting,
8 engineering, and construction of the St. George Water Reuse Project.

9 5.4 Upon payment by the Shivwits Band and the United States to St. George of the
10 \$5.5 million for the purposes identified in Section 5.3 of this Agreement: (a) St. George shall be
11 obligated to deliver the Shivwits Reuse Water to the Band in accordance with this Agreement;
12 and (b) the Shivwits Band and the United States shall have no further obligation for the design,
13 permitting, engineering, and construction costs necessary for St. George to deliver the Shivwits
14 Reuse Water to the Shivwits Band in accordance with this Agreement.

15 5.5 At the Shivwits Band's request and expense, St. George shall add a maximum of
16 seven (7) active, metered service taps to allow for release of the Shivwits Reuse Water from the
17 St. George Water Reuse Project pipeline at such points as specified by the Shivwits Band before it
18 reaches the Point of Delivery.

19 **6.0 PROJECT OPERATION AND MAINTENANCE.**

20 6.1 St. George shall be solely responsible for the operation, maintenance, repair, and
21 replacement of the St. George Water Reuse Project.

22 6.2 St. George and the Shivwits Band each shall pay for their proportionate share of the
23 operation, maintenance, repair, and replacement costs of the St. George Water Reuse Project.

24 The present value of the Shivwits Band's proportionate share in perpetuity of the operation,
25 maintenance, repair, and replacement costs of the St. George Water Reuse Project is \$9.5 million.
26 Subject to the availability of funds appropriated by Congress and deposited in the Shivwits Band

1 Trust Fund for this purpose, the Shivwits Band and the United States shall pay the Shivwits
2 Band's share of these costs in full to St. George within 60 days from the date St. George has
3 provided the Shivwits Band and the United States with a copy of the Certificate of Substantial
4 Completion for the St. George Water Reuse Project and demonstrated to the Shivwits Band and
5 the United States that St. George is capable of delivering the full quantity of Shivwits Reuse
6 Water pursuant to this Agreement. The Certificate of Substantial Completion shall denote that
7 the engineer and owner of the St. George Water Reuse Project consider the Project ready to
8 deliver water for its intended use, and this shall be documented by the engineer delivering to the
9 owner of and contractor for the St. George Water Reuse Project a definitive Certificate of
10 Substantial Completion applying generally accepted engineering standards.

11 6.3 Upon payment by the Shivwits Band and the United States to St. George of the
12 \$9.5 million for the purposes identified in Section 6.2 of this Agreement, (a) St. George shall be
13 responsible for the operation, maintenance, repair, and replacement of the St. George Water
14 Reuse Project; and (b) the Shivwits Band and the United States shall have no further obligation
15 for the operation, maintenance, repair, and replacement costs necessary for St. George to deliver
16 Shivwits Reuse Water to the Shivwits Band in accordance with this Agreement.

17 6.4 St. George shall exercise reasonable diligence and care to avoid interruptions of
18 delivery of Shivwits Reuse Water. St. George shall consult with the Shivwits Band periodically,
19 but on no less than an annual basis, to schedule in a manner that will avoid or minimize harm to
20 the Shivwits Band, bonafide operational and maintenance activities that are likely to result in
21 interruptions of the delivery of Shivwits Reuse Water. St. George may interrupt delivery of
22 Shivwits Reuse Water for bonafide operational or maintenance reasons that it was not otherwise
23 able to schedule in advance with the Shivwits Band, but only for such reasonable time as may be
24 unavoidable. St. George shall provide reasonable advance notice of such interruptions if the
25 nature of the interruption permits such notice; provided, however, that if reasonable advance
26 notice cannot be given, St. George shall notify the Shivwits Band of the interruption as soon as

1 possible after the interruption occurs. If, in circumstances other than Force Majeure, St. George
2 is unable to deliver the Shivwits Reuse Water to the Shivwits Band as required by this Agreement
3 for five or more consecutive days, St. George shall deliver an interim water supply to the Shivwits
4 Band at the Point of Delivery; provided, however, that the water quality for the interim water
5 supply shall be equal to or better than the quality of the water St. George is then using for
6 irrigation on its own golf courses and parks in the Santa Clara System; and provided further that
7 St. George shall not deliver an interim water supply to the Shivwits Band for longer than it
8 reasonably takes St. George to resume delivery of the Shivwits Reuse Water. Nothing in this
9 Agreement shall excuse St. George from any water quality requirement under any applicable law.

10 6.5 St. George shall provide the Parties with copies of the Reuse Project Plan, including
11 the operations and maintenance plan and the contingency plan, submitted to the State of Utah
12 Department of Environmental Quality, Division of Water Quality, pursuant to Utah Admin. Code
13 R317-1-4, in regard to the St. George Water Reuse Project, for the Parties' review and comment
14 in advance of the State's approval of each such document. The operations and maintenance plan
15 and the contingency plan shall include a provision for revisions to the plan, subject to review and
16 comment by the Parties. The Parties shall have at least 60 days to review each of the above
17 documents after its receipt. St. George shall operate the St. George Water Reuse Project in
18 compliance with the Reuse Project Plan and all applicable federal, State, and local requirements,
19 including any applicable National Pollutant Discharge Elimination System Permits promulgated
20 under the Clean Water Act and the requirements of Utah Admin. Code R317-1-4.

21 **7.0. ST. GEORGE WATER REUSE PROJECT WATER RIGHTS.**

22 St. George shall file and seek the approval of the State Engineer of Utah on all change
23 applications required to satisfy St. George's obligations to deliver Shivwits Reuse Water in
24 accordance with this Agreement. The Shivwits Reuse Water delivered by St. George to the
25 Shivwits Band pursuant to this Agreement constitutes a contractual commitment and is a
26 compromise and settlement of certain water rights claims of the Parties to this Agreement in the

1 Virgin River Adjudication and thus does not constitute a lease or sale of St. George's water
2 rights, water supply or waterworks contrary to Article XI, Section 6 of the Utah Constitution.

3 8.0 SHIVWITS REUSE WATER RIGHT.

4 Beginning on the Enforceability Dates of this Agreement and the Settlement Agreement,
5 the Shivwits Band, and the United States for the benefit of the Shivwits Band, shall be entitled in
6 perpetuity to the Shivwits Reuse Water, in accordance with the terms of this Agreement, and
7 delivered to the Point of Delivery in accordance with the Delivery Schedule. The Shivwits Band
8 shall have the first priority to the reuse water provided from the St. George Water Reclamation
9 Facility.

10 9.0 USE AND LEASING OF SHIVWITS REUSE WATER.

11 9.1 The Shivwits Band may use and lease its right to the Shivwits Reuse Water:

12 (a) for any purpose permitted by Tribal or Federal law anywhere on the Shivwits
13 Reservation and such use shall not be subject to State or local law, regulation or jurisdiction; and

14 (b) for any beneficial use off the Shivwits Reservation in accordance with all
15 applicable federal and State laws.

16 9.2 In any evaluation of a change application filed on the Shivwits Reuse Water, the
17 State Engineer of Utah shall assume that there is total consumptive use of the Shivwits Reuse
18 Water on the Reservation. In the event that an agreement for Alternative Water is executed by
19 the Parties, St. George shall bear the risk of any depletion losses required by the State Engineer
20 that might occur if Alternative Water is used off the Shivwits Reservation.

21 9.3 The Shivwits Reuse Water shall not be subject to loss by abandonment, forfeiture or
22 non-use, whether used on or off the Shivwits Reservation.

23 10.0 ENFORCEABILITY DATE OF AGREEMENT.

24 This Agreement shall become effective and enforceable only on the Enforceability Date,
25 which is the date upon which all of the following have been accomplished:

26 10.1 Execution of this Agreement by the Parties hereto;

1 10.2 Execution of the Santa Clara Project Agreement by all parties thereto;

2 10.3 Execution of the Settlement Agreement, and the Waivers and Release of Claims
3 contained therein, by all parties thereto;

4 10.4 Ratification and confirmation of the Shivwits Water Right set forth in the
5 Settlement Agreement in legislation duly enacted by the United States Congress;

6 10.5 Authorization and appropriation by the United States Congress and deposit into
7 the Shivwits Band Trust Fund of: (a) fifteen million dollars (\$15,000,000.00) for the Shivwits
8 Band's share of the costs of the St. George Water Reuse Project as set forth in this Agreement;
9 (b) five million dollars (\$5,000,000.00) in consideration of the Shivwits Band's execution of a
10 waiver and release of claims against the United States, and (c) one million dollars (\$1,000,000.00)
11 for operation and maintenance costs associated with the Santa Clara Project Agreement;

12 10.6 Approval by the State Engineer of Utah of any and all applications necessary to
13 effectuate the terms of this Agreement, the Santa Clara Project Agreement, and the Settlement
14 Agreement, from which no further appeals may be taken;

15 10.7 Approval by the State of Utah, Department of Environmental Quality, of all
16 permits and actions necessary for St. George to construct the St. George Water Reuse Project;

17 10.8 Issuance of a judgment and decree in the Virgin River Adjudication, pursuant to
18 Utah Rule of Civil Procedure 54(b), that is final as to all parties to the Santa Clara Division of the
19 Virgin River Adjudication and from which no further appeals may be taken, which confirms the
20 Shivwits Water Right set forth in the Settlement Agreement; and

21 10.9 The Secretary of the Interior has published a notice in the Federal Register that all of
22 the actions identified in this Section 10 have been completed.

23 **11.0 CONTINGENT UPON APPROPRIATION OF FUNDS**

24 The expenditure or advance of any money or the performance of any obligation by the
25 United States under this Agreement shall be contingent upon appropriation of funds therefore.

26 No liability shall accrue to the United States or to any other Party in the event that funds are not

1 appropriated.

2 12.0 COUNTERPARTS.

3 This Agreement may be executed in counterparts, each of which shall be deemed an
4 original, but all of which together shall constitute one and the same Agreement.

5 13.0 ENTIRE AGREEMENT.

6 This Agreement supercedes any prior understanding, representation, or agreement of the
7 Parties regarding the subject matter hereof.

8 14.0 EVIDENTIARY EFFECT OF NEGOTIATIONS.

9 This Agreement has been arrived at in the process of good faith negotiations for the
10 purpose of resolving legal disputes, including pending litigation, and all Parties agree that no
11 offers and/or compromises made in the course thereof shall be construed as admissions against
12 interest or be used in any legal proceeding other than one for approval, confirmation,
13 interpretation, or enforcement of this Agreement.

14 15.0 FORCE MAJEURE.

15 15.1 St. George shall exercise reasonable diligence and care to avoid interruptions of
16 delivery of Shivwits Reuse Water, and shall not be liable for any damage or loss occasioned by
17 any failure or interruption caused by a state of Force Majeure. For purpose of this Agreement,
18 Force Majeure means acts of God, acts of public enemies, insurrection, riots, fires, explosions,
19 floods, earthquakes, strikes, emergency actions St. George may be compelled to take to prevent
20 serious injuries or death to persons, lawful orders or acts of civil or military authority, or other
21 causes of similar nature. St. George shall restore its delivery of Shivwits Reuse Water as soon as
22 is reasonably possible after such delivery is interrupted due to a state of Force Majeure.

23 15.2 In the event St. George believes a state of Force Majeure exists such that St.
24 George cannot meet its obligation to deliver Shivwits Reuse Water as required by this Agreement,
25 St. George shall provide written notification to the Shivwits Band as expeditiously as possible, but
26 no later than sixty (60) days, after the event that resulted in a state of Force Majeure. This

1 written notice shall describe the anticipated duration of St. George's inability to deliver Shivwits
2 Reuse Water, the cause or causes of the state of Force Majeure, a description of the measure(s) to
3 be taken by St. George to permit it to meet its obligation to deliver Shivwits Reuse Water, and an
4 estimated timetable for implementation of these measures. St. George shall take all reasonable
5 measures to resume delivery of Shivwits Reuse Water after a state of Force Majeure occurs and
6 written notification of same is provided by St. George.

7 16.0 GOVERNING LAW AND RIGHTS AND REMEDIES.

8 16.1 This Agreement shall be construed in accordance with the applicable law of the
9 State of Utah and applicable Federal law. Nothing contained herein waives the right of the United
10 States or the Shivwits Band to object to the jurisdiction of the courts of the State of Utah to
11 adjudicate any dispute arising under this Agreement, or waives the right of any Party to object to
12 the jurisdiction of any federal court to adjudicate any dispute arising under this Agreement.

13 16.2 The Parties shall have all rights and remedies provided under applicable federal or
14 state law for a breach or threatened breach of this Agreement; provided, however, that because
15 this Agreement is intended to supply water in perpetuity to the Shivwits Band in lieu of the water
16 rights claims filed by the United States for the benefit of the Shivwits Band in the Virgin River
17 Adjudication, termination of this Agreement for breach of this Agreement is not a permitted or
18 authorized right or remedy under this Agreement. These rights and remedies shall not be mutually
19 exclusive, and the exercise of one or more of these rights and remedies shall not preclude the
20 exercise of any other rights and remedies. Each Party confirms that damages at law may be an
21 inadequate remedy for a breach or threatened breach of any provision hereof and the respective
22 rights and obligations of the Parties hereunder shall be enforceable by specific performance,
23 injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the
24 sovereign immunity of the United States.

25 17.0 MODIFICATION OF AGREEMENT.

26 Any modification of this Agreement or additional obligation assumed by any Party in

1 connection with this Agreement shall be binding only if evidenced in writing and signed by each
2 Party or an authorized representative of each Party.

3 18.0 NECESSARY ACTS AND COOPERATION.

4 18.1 The Parties shall do any act or thing, and execute any and all instruments required
5 by this Agreement and which are necessary and proper to make effective the provisions of this
6 Agreement; provided, however, that the United States shall not be required to do any act or thing
7 that is not authorized by law and for which funds have not been appropriated by Congress; and
8 provided further, that Utah shall not be required to do any act or thing that is not authorized by
9 law and for which funds have not been appropriated by the Utah legislature.

10 18.2 The Parties shall not protest any applications filed with the State Engineer of Utah
11 in furtherance of or as needed to effectuate the provisions of this Agreement, the Santa Clara
12 Project Agreement, or the Settlement Agreement.

13 18.3 The Parties shall not file any objection or protest to an amended Proposed
14 Determination which may be issued by the State Engineer of Utah in furtherance of or as needed
15 to effectuate this Agreement, the Santa Clara Project Agreement, or the Settlement Agreement,
16 except to the extent that such amended Proposed Determination may be inconsistent with these
17 agreements.

18 18.4 The Parties shall not file any objection or protest to the Proposed Judgment and
19 Decree that is filed by stipulation of the Parties in the Virgin River Adjudication.

20 18.5 The Parties shall file in the Virgin River Adjudication those documents required
21 to obtain a decree, pursuant to Utah Rule of Civil Procedure 54(b), that is final as to all parties to
22 the Santa Clara Division of the Virgin River Adjudication and from which no further appeals may
23 be taken, which confirms the Shivwits Water Right as set forth in the Settlement Agreement.

24 19.0 NO WAIVER.

25 No delay or failure by any Party to exercise any right under this Agreement, and no partial
26 or single exercise of that right, shall constitute waiver of that or any other right, unless expressly

1 provided herein. No waiver by a Party under this Agreement shall affect or alter the remainder of
2 this Agreement, and each and every covenant, duty, and condition hereof shall continue in full
3 force and effect with respect to any other then existing or subsequently occurring breach.

4 20.0 NOTICES.

5 Any notice to be given hereunder shall have been properly given when hand delivered to
6 the officer or manager designated in this Section, or when deposited in the United States mail,
7 certified or registered, postage prepaid, addressed as follows:

8 Chairperson, Shivwits Band
9 P.O. Box 448
10 Santa Clara, UT 84765

11 Field Agent, Southern Paiute Field Station
12 Bureau of Indian Affairs
13 P.O. Box 720
14 St. George, UT 84771

15 Regional Director, Western Regional Office
16 Bureau of Indian Affairs
17 P.O. Box 10
18 Phoenix, AZ 85001

19 Executive Director
20 Utah Department of Natural Resources
21 P.O. Box 145610
22 Salt Lake City, UT 84114-5610

23 City Manager
24 City of St. George
25 175 East 200 North
26 St. George, UT 84770

21.0 OFFICIALS NOT TO BENEFIT.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any
share of this Agreement or to any benefit that may arise herefrom. This restriction shall not be
construed to extend to this Agreement if made with a corporation or company for its general
benefit.

1 22.0 PERSONS BOUND BY AGREEMENT.

2 22.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto
3 and their respective employees, representatives, successors, and assigns.

4 22.2 If St. George makes any conveyance of title, easement, or other interest in any of
5 the facilities related to the operation of the St. George Water Reuse Project, St. George shall
6 continue to meet all obligations under this Agreement.

7 22.3 In any action to enforce any term of this Agreement, St. George shall not raise as a
8 defense the failure by any of its officers, directors, agents, servants, employees, successors,
9 assigns, and contractors to take actions necessary to comply with the provisions of this
10 Agreement. St. George reserves its rights against any such person or entity whose acts cause or
11 permit St. George to violate the terms of this Agreement. St. George shall be responsible for the
12 acts of its officers, directors, agents, servants, employees, successors, assigns, and contractors,
13 who violate, cause or permit St. George to violate the terms of this Agreement.

1 24.0 SIGNATURE AUTHORITY.

2 The undersigned representative of each Party to this Agreement certifies that he or she is
3 fully authorized to enter into the terms and conditions of this Agreement, to execute it and to bind
4 the Party each person represents to this Agreement.

5
6 IN WITNESS WHEREOF, the Parties have executed this Agreement dated on the day
7 and year first above written.

8 **SHIVWITS BAND OF THE PAIUTE
9 INDIAN TRIBE OF UTAH**

CITY OF ST. GEORGE

10 By: *Allen Rogers*

By: *Daniel D. McArthur*

11 Its: *Band Chairman*

Its: *Mayor*

12 Date: *1-15-01*

Date: *JAN 15, 2001*

13 Approved: *Geneal Anderson*
14 Chair, Paiute Indian Tribe of Utah

15 **UNITED STATES OF AMERICA**

STATE OF UTAH

16 By: *[Signature]*

By: *[Signature]*

17 Its: _____

Its: *Ex Dir, Dept. of Natural Resources*

18 Date: *1/18/01*

Date: *16 Jan 01*

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EXHIBIT A

[Reference: section 3.10]

MAP OF THE SHIVWITS INDIAN RESERVATION

1 **EXHIBIT B**

2 [Reference: section 3.12]

3 **ST. GEORGE WATER REUSE PROJECT DESCRIPTION**

4 The St. George Water Reuse Project (the "Project") will serve current and future
5 nonresidential secondary water users in the St. George area, including but not limited to, golf
6 courses, parks and schools. The Project will treat effluent water discharged at the St. George
7 Water Reclamation Facility and transport it along approximately 15 miles of pipeline to areas of
8 public and private uses within the City of St. George and to the eastern boundary of the Shivwits
9 Reservation north of Ivins Reservoir near where the Santa Clara Bench Canal exits the
10 Reservation, or such other point of delivery in Washington County mutually agreed to in writing
11 by the United States, the Shivwits Band, and St. George. The Project will have a design capacity
12 of 10.5 million gallons per day (mgd).

13 Effluent discharged from the Water Reclamation Facility must receive additional treatment
14 prior to delivery as Shivwits Reuse Water. The Water Reclamation Facility currently achieves
15 disinfection using ultraviolet light (UV) which does not produce a disinfection residual in the
16 delivery system as required by state regulation. The Project will meet all federal, state and city
17 requirements. The Project will include the following features: final filters, chemical building,
18 chlorination facilities (liquid or gas), flow equalization/chlorine contact basin, site work, yard
19 piping, pump stations, transmission pipeline system, planning, engineering, administrative, legal
20 and fiscal services, right-of-way acquisition, permitting, operation, maintenance, replacement and
21 other appurtenances necessary to provide a functioning treatment and delivery system.
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