

COOPERATIVE USE AGREEMENT

THIS AGREEMENT is entered into this 1st day of JULY, 2019, between the Grand Valley Audubon Society, Inc., a Colorado nonprofit corporation ("GVAS"), 2454 Hwy 6 & 50, #116, P.O. Box 1211, Grand Junction, CO 81502-1211 and the City of Grand Junction, a home rule municipality, ("City") 250 North 5th Street, Grand Junction, Colorado 81501 ("City").

Recitals

WHEREAS, the City is the owner of a 50 c.f.s. water right known as the Grand Junction-Redlands Tailrace Water Right ("Water Right") of which 18 c.f.s. was made absolute in Case No. 94CW215 for municipal purposes and the remaining 32 c.f.s. are conditional water rights for municipal purposes. The source of the water is the tailrace of the Redlands Power Plant. The water originates in the Gunnison River and is tributary to the Colorado River through the Redlands Water and Power Company Canal. The date of appropriation was June 1, 1977; and

WHEREAS, GVAS is the owner of two ponds, Osprey and Traylor ("Ponds") located within the boundaries of the Audubon Nature Preserve. The ponds are located in the alluvium of the Colorado River. The water quality in the ponds and the maintenance of optimum water levels would be enhanced by the addition of a surface water supply; and

WHEREAS, both GVAS and the City will benefit from the use of the City's Water Right for municipal use, which includes but not limited to, use for irrigation, aesthetic, recreation, and piscatorial purposes in the Ponds; and

WHEREAS, the delivery of up to 10 c.f.s. of water to the ponds should contribute significantly toward improving water quality, maintaining optimum water levels in the ponds for wetland habitat purposes; and

WHEREAS, the City agrees to allow GVAS to use, on a cooperative basis, up to 10 c.f.s. of the Water Right for municipal purposes in Osprey and Traylor Ponds in the Audubon Nature Preserve; and

WHEREAS, all approvals required for the execution of this Cooperative Use Agreement, including approval by the Grand Valley Audubon Society Board of Directors and the City Council of the City of Grand Junction, have been obtained.

Terms and Conditions

In consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GVAS and the City agree as follows:

1. General. The City hereby agrees to allow GVAS to use on a cooperative basis and at no cost up to 10 c.f.s. of the Water Right for irrigation, recreation, piscatorial purposes, and other agreed upon municipal purposes in Osprey and Traylor Ponds located within the Grand Valley Audubon Society Nature Preserve as long as the City has the Water Right. The City has contracted with the Colorado Division of Parks and Outdoor Recreation ("Parks") for use of the 18 c.f.s. made absolute in Case No. 94CW215 and so Parks has first rights to use of the 18 c.f.s. To date Parks has not used all of the 18 c.f.s. The City shall continue to file for due diligence on the remaining 32 c.f.s. as determined appropriate by the City. The point of delivery ("Delivery") for GVAS shall be at the Traylor Pond Pumphouse, which is located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 17, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado ("Point of Delivery").

2. Term. This Cooperative Use Agreement shall commence on the date that it has been executed by both GVAS and the City and shall be in effect for a period of 25 years from that date. Upon mutual agreement of the parties, this Agreement may be renewed after the expiration of the 25-year period.

3. Deliveries. The parties understand and agree that up to 10 c.f.s. of the Water Right shall be available for use by GVAS at the Point of Delivery as long as the City has enough c.f.s. available under the Water Right to fill or raise the level of the Ponds. GVAS will provide reasonable notice to the City of GVAS' need for the City to curtail its use of up to 10 c.f.s. of the Water Right. Upon said notice, the City will curtail its use of the Water Right so that it will flow in the Redlands Tailrace Canal and, if available, may be taken by GVAS at the Point of Delivery. GVAS shall measure the amount of water taken at the Point of Delivery using a measuring device approved by the Division Engineer. GVAS may provide notice of its need for water during all months of the year.

4. Operation and Maintenance of Measuring Devices. GVAS shall install, operate, and maintain all measuring and recording devices that are necessary to measure the delivery and use of the Water Right as required by the Division Engineer or the City of Grand Junction.

5. Record keeping and Reporting. GVAS shall provide the City with records of actual deliveries and amounts used for various purposes such as filling of the Ponds or irrigation of GVAS' lands. These records shall be made available to the City upon its request. GVAS shall file such reports as are required by the Division Engineer.

6. Liability Exposure. GVAS understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, officials, employees, and agents is controlled and limited by the provisions of section 24-10-101, *et seq.*, C.R.S., as

amended. Any provisions of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the City to the above-cited laws.

7. Availability of Water. The City agrees to completely curtail its use of the Water Right, if it is available in the Tailrace, only when GVAS needs up to 10 c.f.s. to fill the Ponds or raise the level of these Ponds because the Ponds have been drained and/or to offset evaporative depletions. Otherwise, GVAS shall only be entitled to the flow rates necessary for use in maintaining the levels of the ponds and providing a fresh supply of water thereto.

8. Beneficial Use of Water. GVAS shall use its best efforts to ensure that the water delivered to the Traylor Pond Pumphouse is beneficially used for municipal purposes including but not limited to aesthetic, irrigation, recreation, and piscatorial purposes in Osprey and Traylor Pond at the Audubon Nature Preserve, and will keep and supply records of amounts used to the City.

9. Termination. This Agreement may be terminated as follows:

- a. By Mutual written agreement of the City and GVAS; or
- b. By the City, upon GVAS's failure to perform any covenant contained herein and to correct such failure within thirty (30) days after mailing of the written notice of the City's intent to terminate the Agreement; or
- c. By the City if the City no longer has at least conditional rights to meet the 10 c.f.s. or less request.

10. Failure to Perform Due to Conditions Beyond Control of Other Party. In the event that either party fails to perform under this Agreement and such failure is the result of conditions occurrences beyond its control, the other party shall be relieved from all of its obligations under this Agreement.

11. Enforceability. The terms of this Agreement shall be enforceable by either party in an action for specific performance in a court of competent jurisdiction located in Mesa County, Colorado. This Agreement shall not create any third-party beneficiaries and shall not be enforced by anyone other than GVAS and the City.

12. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction located in Mesa County, Colorado, such portion shall be deemed severable and its invalidity or unenforceability shall not cause the entire Agreement to be terminated.

13. Notices. All notices that are required to be given by the parties shall be in writing and shall be sent by certified mail, postage prepaid, as follows:

To GVAS: President of the Board
Grand Valley Audubon Society
PO Box 1211
Grand Junction, CO 81502

To the City: City Manager
250 North 5th Street
Grand Junction, CO 81501

14. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Colorado.

15. Binding Effect. This Agreement shall be binding on the parties and their respective successors and assigns.

CITY OF GRAND JUNCTION

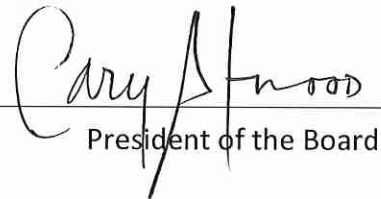
GRAND VALLEY AUDUBON SOCIETY, INC.

BY:



City Manager

BY:



President of the Board

ATTEST

ATTEST

BY:



City Clerk

BY:



Secretary

