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Recording: \$38.00, Doc Fee Exempt Tina Peters, Mesa County, CO. CLERK AND RECORDER

CONSTRUCTION, MAINTENANCE AND EASEMENT AGREEMENT

THIS CONSTRUCTION, MAINTENANCE AND EASEMENT AGREEMENT (Agreement) is made this 19th day of December, 2019, and is between the **GRAND VALLEY IRRIGATION COMPANY**, a Colorado nonprofit corporation (GVIC), whose address is 688 26 Road, Grand Junction, Colorado 81506, and the **CITY OF GRAND JUNCTION (CITY)**, whose address is 250 North 5th Street, Grand Junction, CO 81501. Collectively GVIC and the CITY shall be referred to as the "Parties" and separately referred to as a "Party."

RECITALS:

- A. GVIC is the owner and operator of a system of irrigation canals and related facilities located in Mesa County, Colorado for the delivery of irrigation water to its shareholders (Canal Facilities). The Canal Facilities include the canal beds, banks, embankments, erosion control, access roads, head gates, flumes, pipes, bridges and all other equipment, structures, improvements and facilities appurtenant thereto or used in connection therewith. The Independent Ranchmen's Ditch is part of the Canal Facilities. Whenever the term "Canal Facilities" is used herein it shall include the Independent Ranchmen's Ditch.
- B. The CITY proposes to design, construct and perpetually maintain, pursuant to the terms of this Agreement, a subsurface sanitary sewer trunk extension crossing beneath the Independent Ranchmen's Ditch on property owned by GVIC described as the 23 Road Trunk Extension Project # F092420 crossing (Project). The CITY seeks GVIC's approval of its plans and specifications for the Project and a temporary surface and permanent subsurface Easement to construct, install and perpetually maintain and repair the improvements comprising the Project ("Improvements") and a subsurface easement for the operation of the Improvements, collectively the "Easements".

NOW THEREFORE, in consideration of the recitals above, the mutual covenants and promises set forth below, GVIC and the CITY agree as follows:

1. Plans and Specifications. The CITY has prepared and GVIC has reviewed and approved certain plans and specifications for the Project dated December 4, 2019 and identified as 23 Road Trunk Extension Project #F092420 ("Plans and Specifications"), which are incorporated herein by this reference. The CITY represents, warrants and agrees as follows:
 - a. The CITY warrants and represents to GVIC that the Plans and Specifications have been created, developed and reviewed by a professional engineer(s), are free from material errors, defects or omissions, are suitable for the construction and installation of the Project and the Improvements and that once installed, the Improvements will not interfere or hinder the operation, maintenance and repair of the Canal Facilities.
 - b. The CITY acknowledges and agrees that any review and/or approval of the Plans and Specifications by GVIC, including, but not limited to, the review of the same by any consultant engaged by GVIC for such purpose, is solely and only for the use and benefit of GVIC and is not intended and may not be construed as GVIC's or its consultant's warranty, certification, or representation that the Plans and Specifications are accurate, free from material errors or defects or are suitable for construction of the Project.
 - c. The CITY waives any and all claims against GVIC and its consultant arising from or related to GVIC's review of the Plans and Specifications, or the approval of any portion thereof, including, but not limited to, any claim for negligence, comparative negligence, breach of contract or breach of warranty. The CITY assumes all risks related to the accuracy and suitability of the Plans and Specifications for the Project and the Improvements contemplated thereby.
2. Grant of Easement; Limitations.
 - a. GVIC grants to the CITY the non-exclusive Easements to enter upon and use the real property described in the Plans and Specifications (Easement Area) for the sole and only purpose of

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constructing the Improvements and thereafter perpetually maintaining, operating and repairing the Improvements to maintain their function and purpose according to the Plans and Specifications. The Easements shall be comprised of surface and subsurface Easements for the installation and maintenance and repair of the Improvements and for the purpose of operating the Improvements. The surface of the Easement shall only be used for the installation of the Improvements and thereafter for the maintenance and repair of the Improvements as necessary.

- b. The Easements are granted without GVIC's representation or warranty of any type, whether express or implied, as to GVIC's legal title to, suitability of or any physical condition of the surface or subsurface of the Easements and Easement Area. The CITY assumes all risks regarding the physical condition of the Easements and Easement Area.
 - c. The CITY shall not grant, convey, transfer, assign or dedicate any right, title or interest in or to the Easements or the Easement Area including, but not limited to, an easement, license, lease, sublease, concession, permit, right of use or any other interest of any type or character in or to the surface or subsurface of the Easements and Easement Area at any time to any third party or to the public without GVIC's express written consent. Excepted from this subparagraph are contracts to perform or conduct the operation, maintenance or repair of the Improvements in accordance herewith. GVIC may condition its approval of any assignment or transfer of this Agreement upon the transferee's written acceptance and agreement to be bound by and perform all terms and conditions of this Agreement without the release of the CITY'S obligations under this Agreement.
 - d. At all times, the Easement shall be subordinate and subject to GVIC's dominant right to operate, maintain and repair the Canal Facilities.
3. Utility Easements. The CITY agrees that it shall not construct or install and shall not grant any permit, permission or concession to any utility provider or any third party to construct or install any utility or other improvement in, under or upon the Easement Area and the Easements, except for the Improvements for the Project as identified in the Plans and Specifications without the express written consent of GVIC.
4. Construction of the Project.
- a. The Work. The CITY shall perform, contract, engage, obtain or otherwise provide for, all labor, materials, equipment, supplies, permits, rights-of-way or easements that are reasonable or necessary for the commencement and completion of the Project and all Improvements related thereto, hereafter the "Work."
 - b. Construction Schedule. Prior to the commencement of any Work, the CITY shall provide GVIC with a construction schedule, including the anticipated times, dates or points of construction requiring inspection by any governmental entity having jurisdiction over the Work, including the CITY.
 - c. Commencement, Completion and Construction. Work shall commence no later than January 31, 2020 and all Work affecting the Project Area and the Canal Facilities shall be conducted during the winter months so as to avoid interference with the operation of the Canal Facilities and completed on or before noon, March 15, 2020. The timing, sequence and staging of the Work shall be coordinated with GVIC and the City shall assure that all Work does not interfere with GVIC's use, operation and maintenance of the Canal Facilities and that the Project will be completed by the construction dates set forth above.
 - d. Conditions of Construction.
 - i. The Work shall (A) be constructed strictly in conformance with the Plans and Specifications unless deviations are approved by GVIC in writing, (B) be pursued with diligence and in a good and workmanlike manner, and (C) comply with all laws, ordinances, rules, regulations and orders of any applicable governmental authority bearing on the performance of the Work, including any applicable building or construction codes. Any Work not conforming thereto shall be corrected by the CITY immediately at its sole expense.

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- ii. The CITY shall pay all costs, expenses, fees, or other disbursements which are reasonable or necessary for the performance of the Work in a timely manner.
 - iii. The CITY shall be solely responsible for all construction means, methods, techniques and sequences and procedures, subject to the CITY's obligation to coordinate with GVIC, and to complete all Work in accordance with this Agreement. The CITY shall further be solely responsible for obtaining or contracting for all labor, materials, equipment, tools, machinery, utilities, transportation and other services or items necessary for the proper execution and completion of the Work, and shall be solely obligated to pay any costs or expenses therefore.
 - iv. The CITY shall ensure that all employees or subcontractors performing the Work shall at all times observe and conduct themselves in a disciplined and professional manner. The CITY shall not employ or engage any person, contractor or subcontractor, or suffer or permit the employment of any employee of any contractor or subcontractor that is unfit or not skilled in the task assigned to him or her. The CITY shall furthermore be responsible for initiating, maintaining and supervising reasonable safety precautions and programs in connection with the Work to prevent (A) bodily injury, death or property damage to the CITY, any of the CITY'S employees, contractors and subcontractors and any member of the public and (B) unrestored damage to the Canal Facilities or any property adjoining the Canal Facilities as provided in vi below. Conducting the Work/construction of the Project shall not be deemed to be damage.
 - v. The CITY shall not cause or suffer any mechanic's lien or other encumbrance to be placed upon the Easement Area, or any part of the Canal Facilities in connection with the performance of the Work or the construction, repair or maintenance of the Improvements. In the event any mechanic's lien or other encumbrance is asserted or filed on the Project Area or any part of the Canal Facilities, the CITY shall immediately cause a removal thereof by payment of the lien or bond under the Colorado Mechanic's Lien Act.
 - vi. At all times during performance of the Work, the CITY shall keep the Easement Area and any land immediately adjoining the Easement Area affected by construction, operation or maintenance of the Improvements free from the accumulation of waste materials or rubbish. Upon completion of the Work, the CITY shall remove all waste material and rubbish from the Project Area , as well as all tools, construction equipment, machinery and surplus machinery and, to the extent that the CITY disturbs any Canal Facilities or other property adjacent to the Improvements, to restore all the land affected by the Improvements including land adjacent to the Canal Facilities to the condition existing prior to the commencement of construction, except as is specifically provide in the Plans and Specifications.
- e. Subcontractors. The CITY shall cause each contractor and subcontractor to maintain insurance against claims and liabilities arising under the laws of the State of Colorado or as otherwise required by the City pertaining to workers' compensation, unemployment compensation and occupational diseases. Prior to the commencement of the Work, the CITY shall provide to GVIC certificates of insurance showing such coverage in effect and also providing that such insurance will not be canceled or modified except upon thirty (30) days' written notice to GVIC.
- f. Notice of Inspection; Covering of the Work. The CITY shall give GVIC timely notice of readiness for inspection of any aspects of the Work or any features thereof that require inspection by any governmental entity having authority over the same, or on which GVIC or its consultant(s) request inspection. For any aspect of the Work requiring inspection, the CITY shall furnish GVIC with all required certificates of inspection, testing or approval. The conduct of any inspections, tests or approvals by GVIC or its engineer shall not relieve the CITY from any warranty or other obligation under this Agreement. The CITY shall not cover up or backfill any aspect of the Work requiring inspection, testing or approval prior to such inspection. If any aspect of the Work is covered up or backfilled contrary to the provisions hereof, or before it has been inspected, tested or approved, or

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in the event the CITY fails to deliver any required documentation of inspection, testing or approval, then GVIC or its consultant(s) may order the uncovering of such Work in order to conduct such observation, inspection, testing or approval at the CITY's expense.

- g. Reimbursement of GVIC's Costs and Consulting Fees; Consideration for Grant of Easement. If requested by GVIC, the CITY agrees to reimburse GVIC's reasonable out-of-pocket expenses and internal administrative costs it incurs to review Plans and Specifications, to develop this Agreement and/or for the subsequent maintenance and repair of the Project and its Improvements. Such costs may include, but are not limited to, fees charged to GVIC by its consulting engineer and legal counsel according to their prevailing rate, and, in addition, the time of GVIC's administrative employees and staff to be reimbursed at the rate of \$55.00 per hour. The CITY shall reimburse GVIC for such costs within thirty (30) days following GVIC's submittal of an invoice for the same, attaching supporting invoices and documentation, up to but not exceeding in the aggregate \$7,500.00. The City has offered and GVIC has accepted the cash consideration of \$5000.00 for the conveyance of the Easement, which is in addition to, and not in lieu of, the reimbursement of expenses as provided herein.
5. CITY's Obligation to Maintain and Repair.
- a. Agreement to Maintain and Repair. Following completion of the Project, the CITY agrees at its sole cost and expense to perpetually maintain and repair the Improvements to function according to their intended purpose according to the Plans and Specifications including all features, facilities and structural components thereof and in such a manner that they do not interfere with GVIC's use, operation, control, repair or maintenance of the Canal Facilities or the delivery of irrigation water to GVIC's shareholders, including any seasoning, testing and correctional work related thereto. All repairs, maintenance, seasoning and correctional work performed by the CITY shall be coordinated with GVIC and shall be undertaken and completed during the non-irrigation season.
- b. Emergencies. In the event of an emergency threatening or causing a break, leak or failure of the Improvements, then the CITY and/or GVIC and/or other governmental entity or agency having jurisdiction over the same may undertake such action as is reasonable or necessary to commence repair of the Improvements or any aspect of the Canal Facilities affected thereby including remediation of contamination as the case may be, and to diligently pursue such efforts so as to eliminate, minimize and reduce the actual or threat of loss or damage to persons, property and/or the environment. Use of the Improvements may be suspended for a reasonable time to allow for repairs or remediation.
6. Insurance. The CITY shall name GVIC as an additional insured against any and all loss, liability, claim or damage, including, but not limited to, claims for bodily injury, property damage or death, arising from or caused by errors or omissions in the Plans and Specifications or the construction, installation, seasoning, testing, and maintenance or repair of the Improvements. Insurance with coverages customary to and determined by the City shall include claims based on the acts or omissions of the CITY and its agents and employees, and all persons or entities engaged by the CITY for any aspect of the Project or the Work, including the creation of the Plans and Specifications and any contractor, subcontractor of other person or entity engaged for the purpose of performing the Work or repairing, maintaining or operating the Improvements. The CITY'S immunity under the Governmental Immunity Act and any insurance policy coverage limits shall not limit the CITY'S contractual obligations to GVIC under this Agreement to pay compensatory damages to GVIC in the event of a default by the CITY under this Agreement; provided, however, nothing contained herein shall limit the CITY in asserting the defense of governmental immunity with respect to claims by third parties against the CITY or GVIC.
7. Default and Remedies. Time is of the essence for the performance of the CITY's obligations pursuant to this Agreement. A default shall be deemed to have occurred on the part of the CITY in the event the CITY, including its agents, employees, contractors and consultants, shall fail or refuse to perform any task, duty or other obligation provided in this Agreement following seven (7) business days' advance written notice of such failure or refusal. In the event of a default on the part of the CITY, including its agents, employees or contractors, GVIC may, in its sole and absolute discretion, and without limitation on any other remedies available to GVIC at law or in equity, undertake any one or all of the following remedies:

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- a. File an action for declaratory judgment, which action may seek a judicial determination of any question of the interpretation of this Agreement, the performance or nonperformance of any duty or obligation arising out of or under this Agreement.
- b. In the event the Improvements cause or threaten an imminent interruption of water deliveries to GVIC's shareholders or cause or threaten the imminent loss of life or property damage, whether due to a defect in design, or errors or omissions in installation, operation, repair or maintenance of the Improvements or the failure of the materials used for the Improvements, then no advance notice of default shall be required to establish a default hereunder and GVIC may seek legal and/or equitable remedies, including temporary restraining orders, preliminary or permanent injunctions and compensatory damages.
- c. Exercise self-help to cure a default under this Agreement including but not limited to, undertaking the seasoning, testing and any corrective work to the Improvements; repairing, maintaining or restoring any aspect of the Canal Facilities damaged or impaired by the default or the Improvements; or, the undertaking of repairs and/or maintenance to the Improvements any of the foregoing of which may entail the use of GVIC's personnel or equipment or the engagement of independent parties or contractor's to accomplish such purpose or objective.
- d. To recover from the CITY all sums paid, incurred or advanced by GVIC in the exercise of any remedy provided herein, including compensatory damages. The recovery of sums due shall include, but not limited to, the cost of any materials, labor equipment or fees to correct or cure and default, any damages paid or incurred to third parties caused by a default and any consulting fees, costs and any other fees paid or incurred by GVIC in exercising its remedies hereunder, including GVIC's use of its own equipment and personnel, GVIC's internal administrative expenses and the fees and payments to any independent contractor or party engaged for the purposes and objectives described above.

8. Miscellaneous.

- a. Benefit. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors, legal representatives and assigns.
- b. Modification. This Agreement may not be modified except in writing signed by both parties hereto. Verbal modifications shall have no force or effect.
- c. Notice. Whenever required hereunder notice shall be deemed sufficiently given if in writing, upon mailing, United States mail, postage prepaid, certified and return receipt requested, to the Parties addresses set forth below:

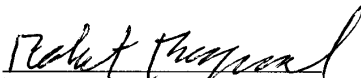
GVIC: 688 26 Road, Grand Junction, Colorado 81506
 CITY: 250 North 5th Street, Grand Junction, CO 81501

- d. Integration. This Agreement is intended to be the full, complete and integrated expression of the Parties' agreements in regard to the subject matter hereof, all prior agreements, negotiations and discussions being merged herein.

DATED the year and date first above written.

GRAND VALLEY IRRIGATION COMPANY

CITY OF GRAND JUNCTION

By: 
 Robert Raymond, President

By: 
 Rick Taggart, Mayor

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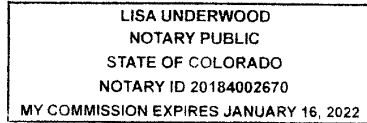
STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 19th day of December 2019 by Robert Raymond, President of Grand Valley Irrigation Company.

Witness my hand and official seal.

My commission expires: 1/16/2022

Lisa Underwood
Notary Public



STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12 day of December 2019 by Rick Taggart as Mayor of the City of Grand Junction

Witness my hand and official seal.

My commission expires: May 25, 2021

Jennifer L. Cinquini
Notary Public

