CONSTRUCTION, MAINTENANCE, CROSSING AND EASEMENT AGREEMENT

CONSTRUCTION, THIS MAINTENANCE, CROSSING AND EASEMENT AGREEMENT ("Agreement") is made this <u>AGREEMENT</u> day March 2021, and is between **REDLANDS WATER AND POWER COMPANY**, a Colorado nonprofit corporation ("RWP"), whose address is 2216 South Broadway, Grand Junction, CO 81507, GRANITE FALLS GJ, LLC ("Developer"), whose address is 330 Grand Avenue, Suite B, P.O. Box 3669, Grand Junction, CO 81502, GRANITE FALLS HOMEOWNERS ASSOCIATION, INC. ("Association"), whose address is 330 Grand Avenue, Suite B, P. O. Box 3669, Grand Junction, CO 81502, and the CITY OF GRAND JUNCTION ("CITY"), whose address is 250 North 5th Street, Grand Junction, CO 81501. Collectively, RWP, Developer, Association and City may be referred to as the "Parties" and separately referred to as a "Party."

RECITALS:

- A. RWP is the owner and operator of a system of irrigation canals and related facilities located in the Redlands area of 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 Redlands Second Lift Canal ("Second Lift Canal") is part of the Canal Facilities. Whenever the term "Canal Facilities" is used herein it shall include the Second Lift Canal.
- B. Developer is the owner of real property in Mesa County, Colorado to be platted as Granite Falls Subdivision, Filing No. Four, also known as 413 South Camp Road, Grand Junction, CO 81507 ("Filing Four").
- C. Developer is in the process of developing Filing Four into residential lots. As part of the development of Filing Four, Developer seeks to cross the Second Lift Canal with a public street to be known as Granite Falls Way, hereafter referred to as the "Project." In connection therewith, the Developer will construct certain improvements in accordance with the Plans and Specifications (defined below) over and across the Second Lift Canal. Upon completion the Project will allow for the crossing of the Second Lift Canal by Granite Falls Way without hindering or obstructing RWP's use, operation, maintenance, and repair of the Second Lift Canal, and providing the City with public street ingress and egress and allowing for a water line utility connection to the development, collectively hereafter the "Improvements."

- D. The Association is a nonprofit corporation formed for the purpose of being the Association in any applicable restrictive covenants for Filing Four.
- E. Following construction, seasoning, and testing of the Improvements and acceptance of Granite Falls Way into the CITY's public street system, the CITY will perpetually maintain and repair the street and bridge features of the Improvements as shown on the Plans and Specifications.
- F. The Developer, Association and City seek RWP's approval of the Plans and Specifications for the Project and the grant of easements for a public street and a water line utility to construct, install and maintain and repair the Improvements as provided herein within that portion of the Second Lift Canal all as depicted and described in the Plans and Specifications, hereafter the "Easement Area."

NOW THEREFORE, in consideration of the recitals and the mutual covenants and promises below, the Parties agree as follows:

- <u>Plans and Specifications</u>. Developer has caused to be prepared certain Plans and Specifications for the Improvements for the review and approval of RWP identified as Sheet C 57 Granite Falls Subdivision – Filing 4 Canal Crossing and Profile prepared by River City Consultants, Project #0208-026 issued November 6, 2020, incorporated herein by this reference. The Developer agrees as follows as to the Plans and Specifications:
 - a. The Plans and Specifications are free from material errors, defects, or omissions, are suitable for the construction and installation of the Improvements and that once installed, the Improvements will not interfere with or hinder the operation, maintenance, and repair of the Second Lift Canal and the delivery of irrigation water to RWP's shareholders.
 - b. RWP's review and/or approval of the Plans and Specifications, including, but not limited to, the review of the same by any consultant engaged by RWP for such purpose, is solely and only for the use and benefit of RWP and is not intended and may not be construed as RWP'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 Improvements in the Easement Area. Developer waives any claim against RWP arising from, or related to, RWP's or its consultant's review and/or acceptance of the Plans and Specifications.

- c. Developer assumes all risks related to the accuracy and suitability of the Plans and Specifications for the Improvements.
- 2. Grant of Access and Use Easements.
 - a. RWP grants to Developer and the CITY easements to enter upon and use the Easement Area for the sole and only purpose of constructing the Improvements, extending Granite Falls Way to Filing Four and thereafter for the City to perpetually maintain and repair Granite Falls Way for public use and a water line utility so that the Improvements maintain the physical condition and function according to the Plans and Specifications.
 - b. The easements shall be granted without RWP's representation or warranty of any type, whether express or implied, as to RWP's legal interest in the Easement Area or the suitability of or any physical condition of the surface or subsurface of the Easement Area. The Developer and the CITY assume all risks regarding the physical condition of the Easement Area for the purposes authorized in this Agreement.
 - c. Developer, CITY and Association shall not grant, convey, transfer, assign or dedicate any right, title, or interest in or to the Project Area, the Improvements or the easements granted hereby at any time to any third party or to the public, including any utilities, except for the water line described in the Plans and Specifications, without RWP's express written consent. Excepted here from are persons or entities performing the construction, maintenance, and repair of the Improvements who are authorized to enter upon the easements for such purposes.
 - d. At all times, the easements granted hereby shall be subordinate and subject to RWP's dominant right to operate, maintain, and repair the Canal Facilities.
- 3. Construction of the Improvements.
 - a. <u>The Work</u>. The Developer shall perform, contract, engage, obtain, or otherwise provide for, all labor, materials, equipment, supplies, and permits, including permission of any landowners affected by the improvements, that are reasonable or necessary for the commencement and completion of the Improvements, hereafter collectively referred to as the "Work."

- b. <u>Construction Schedule</u>. Prior to the commencement of any Work, the Developer shall provide RWP with a construction schedule, including the anticipated times, dates or points of construction requiring inspection by any governmental entity having jurisdiction over the Work.
- c. <u>Commencement, Completion and Construction</u>. Work shall commence upon execution hereby by the parties, and all Work affecting the Easement 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, April 2, 2021. The timing, sequence and staging of the Work shall be coordinated with RWP. The Developer shall insure that all Work does not interfere with RWP's use, operation and maintenance of the Canal Facilities and that the Improvements will be completed by the construction dates set forth herein.
- d. Conditions of Construction.
 - i. The Work shall (A) be constructed strictly in conformance with the Plans and Specifications unless deviations are approved by RWP 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 Developer immediately at their sole expense.
 - ii. The Developer 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 Developer shall be solely responsible for all construction means, methods, techniques and sequences and procedures, subject to the Developer's obligation to coordinate with RWP, and to complete all Work in accordance with this Agreement and the Plans and Specifications. The Developer 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 Developer shall ensure that all employees or subcontractors performing the Work shall always observe and conduct

themselves in a disciplined and professional manner. The Developer 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 Developer shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the Work to prevent bodily injury, death or property damage to any person or property and damage to the Canal Facilities, the Easement Area or any property adjoining the Canal Facilities.

- v. The Developer 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 operation, maintenance, or repair of the Improvements. In the event any mechanic's lien or other encumbrance is asserted or filed on the Easement Area or any part of the Canal Facilities, the Developer shall immediately cause the removal thereof by payment of the lien or substituting a bond under the Colorado Mechanic's Lien Act.
- vi. At all times during performance of the Work, the Developer shall keep the Easement Area and any land immediately adjoining the Easement Area affected by construction of the Improvements free from the accumulation of waste materials or rubbish. Upon completion of the Work, the Developer shall remove all waste material and rubbish from the Easement Area, as well as all tools, construction equipment, machinery and surplus machinery and, to the extent that the Developer disturb any of the Canal Facilities or other property adjacent to the Improvements, to restore all the land and facilities 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 provided in the Plans and Specifications.
- e. <u>Subcontractors</u>. The Developer shall cause each contractor and subcontractor to maintain insurance complying with the laws of the State of Colorado for workers' compensation, unemployment compensation and occupational diseases. Prior to the commencement of the Work, the Developer shall provide to RWP 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 RWP.

- f. Notice of Inspection, Covering of the Work. The Developer shall give RWP 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 RWP or its consultant(s) request inspection. For any aspect of the Work requiring inspection, the Developer shall furnish RWP with all required certificates of inspection, testing or approval. The conduct of any inspections, tests, or approvals by RWP or its engineer shall not relieve the Developer from any warranty or obligation under this Agreement. The Developer 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 in the event the Developer fails to deliver any required documentation of inspection, testing or approval, then RWP or its consultant(s) may order the uncovering of such Work to conduct such observation, inspection, testing or approval at the Developer's expense.
- g. <u>Reimbursement of RWP's Costs and Consulting Fees</u>. The Developer agree to reimburse RWP's reasonable out-of-pocket expenses and internal administrative costs it incurs to review Plans and Specifications, to develop this Agreement, to oversee the Work and for the subsequent seasoning and testing of the Improvements. Such costs may include, but are not limited to, fees charged to RWP by its consulting engineer and regularly employed legal counsel according to their prevailing rates, and in addition, the time of RWP's management and administrative employees and staff to be reimbursed at the rate of \$55.00 per hour. The Developer shall reimburse RWP for such costs within thirty (30) days following RWP's submittal of an invoice for the same, attaching supporting invoices and documentation if requested, up to but not exceeding in the aggregate \$7,500.00.
- 4. <u>Maintenance, and Repair of Improvements</u>. Following the construction, seasoning and testing of the Improvements, the CITY shall undertake the perpetual maintenance and repair of the Improvements to function according to their intended purpose according to the Plans and Specifications. All maintenance and repairs performed by the CITY shall be coordinated with RWP and shall be undertaken and completed as follows:
 - a. <u>Seasonal Activities</u>. During the irrigation season (April 1 to October 31), the CITY's maintenance and repair of the Improvements shall not be conducted below water level, interfere with the water flowing in the Second Lift Canal, interfere with RWP's operation, maintenance and repair of the Canal Facilities or block, obstruct or

close the passage of RWP's equipment, personnel or vehicles over and across the Second Lift Canal. During the non-irrigation season (November 1 through March 31), RWP and the CITY shall coordinate their respective operations, maintenance, or repairs to the Improvements so as to avoid any conflict in the respective activities of the CITY and RWP in regard to the operation, maintenance, and repairs of the Improvements and/or the Canal Facilities. All of the CITY's repair or maintenance work performed in the non- irrigation season shall be completed on or before March 15 of such year.

- b. <u>Emergencies</u>. An emergency situation shall mean any event, including a break, leak, or failure for any reason in the Improvements of the Canal Facilities related thereto that creates a danger to persons, property and/or the environment as reasonably determined by the CITY, any governmental entity or agency having or asserting jurisdiction thereof, or RWP. In the event of an emergency situation, the CITY and/or RWP and/or other governmental entity or agency shall immediately undertake such action as is reasonable or necessary to commence repair of the Improvements or Canal Facilities related thereto as the case may be, and to diligently pursue repair efforts so as to eliminate, minimize and reduce the actual threat of loss or damage to persons, property and/or the environment.
- The Developer shall purchase and maintain general 5. Insurance. commercial liability insurance in an amount reasonably acceptable to RWP and name RWP 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, and testing of the Improvements. Insurance shall include claims based on the acts or omissions of the Developer and their agents and employees, and all persons or entities engaged by the Developer for any aspect of the Project or the Work, including the creation of the Plans and Specifications and any contractor, subcontractor or other person or entity engaged for the purpose of performing the Work or repairing, maintaining the Project/the Improvements. The CITY's immunity under the Governmental Immunity Act and any insurance maintained by the CITY shall not limit the CITY's contractual obligations to RWP under this Agreement in the event of a default by the CITY under this Agreement regarding the maintenance and repairs of Granite Falls Way/ the street and bridge features of the Improvements as shown on the Plans and Specifications: 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 RWP.

- 6. <u>Default and Remedies</u>. Time is of the essence for the performance of the obligations under this Agreement. A default shall be deemed to have occurred in the event a Party fails or refuses to perform any task, duty or other obligation provided in this Agreement following seven (7) days advance written notice of such failure or refusal. In the event of a default, RWP may, in its sole and absolute discretion, and without limitation on any other remedies available to RWP at law or in equity, undertake any one or all of the following remedies:
 - a. To seek a declaratory judgment to determine any question of fact or law applicable to this Agreement, including the interpretation of this Agreement, or the performance or nonperformance of any duty or obligation arising out of or under this Agreement.
 - b. To seek appropriate legal and/or equitable relief, including temporary restraining orders, preliminary or permanent injunctions, specific performance and/or compensatory damages.
 - c. To exercise self-help to cure a default including, but not limited to, the seasoning, testing and any corrective work to the Improvements; repairing, maintaining or restoring any aspect of the Improvements or Canal Facilities damaged or impaired by a default under this Agreement; or, the undertaking of repairs and/or maintenance to the Improvements, including the use of RWP's personnel or equipment or the engagement of independent parties or contractors to accomplish such purpose or objective.
 - d. To recover all costs and expenses that RWP reasonably pays or incurs or is advanced by RWP in the exercise of any remedy provided herein, including compensatory damages. Such costs and expenses may include the cost of any materials, labor, equipment or fees to correct or cure any 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 RWP in exercising its remedies hereunder, including RWP's use of its own equipment and personnel, RWP's internal administrative expenses and the fees and payments to any independent contractor or party engaged for the purposes and objectives described above.

7. Miscellaneous.

a. <u>Benefit</u>. 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 all the 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 as set forth in the first paragraph of this Agreement.
- d. Integration. This Agreement is intended to be the full, complete, and integrated expression of the Parties' agreements regarding the subject matter hereof, all prior agreements, negotiations and discussions being merged herein.

DATED the year and date first above written.

REDLANDS WATER AND POWER COMPANY

By:

Charles Mitisek, President

GRANITE FALLS GJ, LLC

By:

Dave Bagg, Authorized Member/Manaaer

GRANITE FALLS HOMEOWNERS ASSOCIATION, INC.

By:

By:

President

CITY OF GRAND JUNCTION

Smann Duke Wortmann, Mayor

STATE OF COLORADO)) ss. COUNTY OF MESA)

The foregoing instrument was acknowledged before me on ______, 2021, by Charles Mitisek, President of Redlands Water and Power Company.

Witness my hand and official seal. My commission expires:_____

Notary Public

STATE OF COLORADO

COUNTY OF MESA

SS.

The foregoing instrument was acknowledged before me on ______, 2021, by Dave Bagg as Authorized Member/Manager of Granite Falls GJ, LLC.

Witness my hand and official seal. My commission expires:_____

Notary Public

STATE OF COLORADO) SS.) SS.)

The foregoing instrument was acknowledged before me on ______, 2021, by ______as President of Granite Falls Homeowners Association, Inc.

Witness my hand and official seal. My commission expires:_____

Notary Public

- Modification. This Agreement may not be modified except in writing signed by all the Parties hereto. Verbal modifications shall have no force or effect.
- c. <u>Notice</u>. 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 as set forth in the first paragraph of this Agreement.
- d. <u>Integration</u>. This Agreement is intended to be the full, complete, and integrated expression of the Parties' agreements regarding the subject matter hereof, all prior agreements, negotiations and discussions being merged herein.

DATED the year and date first above written.

REDLANDS WATER AND POWER COMPANY By: Charles Mitisek. President

GRANITE FALLS GJ, LLC

By:

Dave Bagg, Authorized Member/Manager

GRANITE FALLS HOMEOWNERS ASSOCIATION, INC.

By:

President

CITY OF GRAND JUNCTION

By:

Duke Wortmann, Mayor

STATE OF COLORADO)) ss. COUNTY OF MESA)

The foregoing instrument was acknowledged before me on $March 12^{44}$, 2021, by Charles Mitisek, President of Redlands Water and Power Company.

CHRISTI Witness my hand and official seal. ID 201840 My commission expires: 8/3/2022 ary Public STATE OF COLORADO SS. COUNTY OF MESA before

The foregoing instrument was acknowledged before me on ______, 2021, by Dave Bagg as Authorized Member/Manager of Granite Falls GJ, LLC.

Witness my hand and official seal. My commission expires:_____

Notary Public

STATE OF COLORADO) SS. COUNTY OF MESA

The foregoing instrument was acknowledged before me on ______, 2021, by ______as President of Granite Falls Homeowners Association, Inc.

Witness my hand and official seal. My commission expires:_____

Notary Public

STATE OF COLORADO) SS. COUNTY OF MESA)

The foregoing instrument was acknowledged before me on March II, 2021, by Duke Wortmann, as Mayor of the City of Grand Junction.

Witness my hand and official seal. My commission expires: <u>Mary 25, 202</u>

JENNIFER L. CINQUINI NOTARY PUBLIC STATE OF COLORADO NOTARY ID #20084026733 My Commission Expires May 25, 2021

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RAH J

- b. Modification. This Agreement may not be modified except in writing signed by all the 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 as set forth in the first paragraph of this Agreement.
- d. Integration. This Agreement is intended to be the full, complete, and integrated expression of the Parties' agreements regarding the subject matter hereof, all prior agreements, negotiations and discussions being merged herein.

DATED the year and date first above written.

REDLANDS WATER AND POWER COMPANY

By:

Charles Mitisek, President

GRANITE FALLS GJ, LLC

By:

By:

Dave Bagg, Authorized Member/Manager

GRANITE FALLS HOMEOWNERS ASSOCIATION, INC.

President

CITY OF GRAND JUNCTION

By:

Duke Wortmann, Mayor

STATE OF COLORADO)) ss. COUNTY OF MESA)

The foregoing instrument was acknowledged before me on ______, 2021, by Charles Mitisek, President of Redlands Water and Power Company.

Witness my hand and official seal. My commission expires:

 Notary Public

 STATE OF COLORADO
 Ass.
 BECKY HELGESEN NOTARY PUBLIC STATE OF COLORADO NOTARY ID #20204004230 NOTARY ID #20204004230 My Commission Expires January 29, 2024

The foregoing instrument was acknowledged before me on <u>March 12</u>⁺⁺, 2021, by Dave Bagg as Authorized Member/Manager of Granite Falls GJ, LLC.

Witness my hand and official seal. My commission expires: <u>Jan 29, 7621</u>

Notary Public

STATE OF COLORADO

COUNTY OF MESA

V

SS. STATE OF COLORADO NOTARY ID #20204004230 My Commission Expires January 29, 2024

BECKY HELGESEN NOTARY PUBLIC

The foregoing instrument was acknowledged before me on <u>March 1944</u>, 2021, by <u>Device Bagg</u>as President of Granite Falls Homeowners Association, Inc.

Witness my hand and official seal. My commission expires: <u>Jon 29,2021</u> But Muth

55PROFECTS/0208 John Thomas Dave Bagg/026 GERESurvey/Deliverables/0208-026 FASEMENT XING.doc

EXHIBIT A

An easement for roadway and utility purposes across a parcel of land as recorded at Reception Number 2778608 and Book 965 Page 822 of the Mesa County Clerk and Recorder, situated in the south one-half of Section 26 Township 11 South, Range 101 West of the 6th Principal Meridian, City of Grand Junction, County of Mesa, State of Colorado, said easement being more particularly described as follows:

Considering the tangential portion of the west line of Lot 75 of said Granite Falls Filing Four to bear North 00°03'27" West with all bearings herein relative thereto;

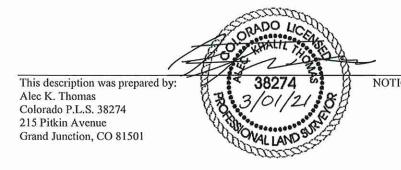
Beginning at the southwest corner of said Tract C of Granite Falls Filing Three as recorded at Reception Number 2842589;

thence South 69°26'50" East along the south line of said Tract C, a distance of 13.80 feet; thence South 20°33'03" West, a distance of 50.02 feet to the north line of Canyon View Phase VIII as recorded at Reception Number 1925236;

thence North 69°26'50" West along said north line, a distance of 72.00 feet; thence North 20°33'03" East, a distance of 50.02 feet to the south line of Granite Falls Filing Four;

thence South 69°26'50" East along said south line, a distance of 58.20 feet to the Point of Beginning,

said parcel containing 3,601 square feet or 0.08 acres more or less.



NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an original seal indicates this document is not the original.

