

**MAINTENANCE, REPAIR, AND
EASEMENT AGREEMENT**

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Tina Peters, Mesa County, CO.
CLERK AND RECORDER

THIS MAINTENANCE, REPAIR, AND EASEMENT AGREEMENT (Agreement) is made this 1st day of July, 2021, 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 Mainline Canal is part of the Canal Facilities. GVIC operates and maintains Lateral ML 260. Whenever the term “Canal Facilities” is used herein it shall include the Mainline Canal and Lateral ML 260.
- B. The CITY has constructed two projects affecting Lateral ML 260. The first project is the relocation of an existing manhole on the west side of North 1st Street to allow for improvements to Lorey Drive, known as Project #1108-006 (Lorey Drive Project) according to the project plans and specifications issued February 27, 2020, by River City Consultants (Lorey Drive Plans and Specifications). The second project is the construction of a walkway over and across a portion of Lateral ML 260 as part of the CITY’s 2020 Safe Routes to School known as Project F2004 (Safe Routes Project) according to the plan and profile therefore (Safe Routes Plan and Profile) prepared by the CITY’S Public Works Division. The CITY completed construction of the two projects with GVIC’s consent and the CITY’S agreement to season, test, and maintain the improvements after installation.
- C. Collectively, the Lorey Drive Project and the 2020 Safe Routes to School Projects will be referred to as the “Projects.” The improvements comprising the Projects will be referred to as the “Improvements.” Collectively, the Lorey Drive Plans and Specifications and the Safe Routes Plan and Profile shall be referred to as the “Plans.”

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

- 1. Plans. To the best of the CITY’S knowledge, information, and belief, the Plans have been created, developed, and reviewed by a professional engineer(s) employed by the CITY or by a professional engineer(s) performing professional services for the CITY, are free from material errors, defects, or omissions, are suitable for the construction and installation of the Projects and the Improvements and that once installed, the Improvements will not interfere with or hinder the operation, maintenance, and repair, of the Canal Facilities. The CITY assumes all risks related to the accuracy and suitability of the Plans.

2. GVIC's Review of Plans. The review and/or approval of the Plans 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 are accurate, free from material errors or defects or are suitable for construction of the Improvements in the Project areas.
3. Easements.
 - a. GVIC grants to the CITY permanent surface and subsurface easements for the Improvements to season and test and perpetually maintain and repair the Improvements so that the Improvements maintain their function and purpose according to the Projects' designs and Plans.
 - b. The easements are granted without GVIC's representation or warranty of any type, whether express or implied, as to GVIC's legal interest in the Project areas or the suitability of or any physical condition of the surface or subsurface of the Project areas. The CITY assumes all risks regarding the physical condition of the Project areas for the purposes authorized in this Agreement.
 - c. The CITY shall not grant, convey, transfer, assign, or dedicate any right, title, or interest in or to the Project areas or the easements granted hereby at any time to any third-party without GVIC's express written consent with the exception that any CITY employee, contractor, subcontractor, materialman, or supplier performing or conducting the seasoning and testing or maintenance, or repair of the Improvements in accordance with this Agreement are authorized to enter upon the easements for such purposes.
 - d. The easements granted hereby are subject to GVIC's operation, maintenance, and repair of the Canal Facilities.
4. Utility Easements. The CITY shall not construct or install and shall not grant any permit, permission, license, or concession to any utility provider or any third-party to construct or install any utility or other structure or improvement in, under, or upon the Project areas, except for the Improvements for the Project as identified in the Plans without GVIC's express written consent.
5. Seasoning, Testing and Maintenance and Repair of Improvements. The CITY shall, at its sole cost and expense, season and test and perpetually maintain, and repair the Improvements to function according to their intended purpose according to the Plans 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 seasoning and testing and maintenance and repairs performed by the CITY shall be coordinated with GVIC and shall be undertaken and completed as follows:
 - a. Seasonal Activities. During the irrigation season (April 1 to October 31), the Parties agree that it shall be an unreasonable interference for the CITY's seasoning and testing and maintenance and repairs of the Improvements to be conducted within the Improvements or Lateral ML 260 or to affect the water flowing in that part of the Project areas affecting the flow of water to GVIC's shareholders, or to involve the excavation or penetration of the Improvements or the Canal Facilities related thereto, in, under, or upon the Project areas, or to block or obstruct or close the passage of GVIC's equipment, personnel or vehicles over and across the Canal Facilities and

maintenance roads. During the non-irrigation season (November 1 through March 31), GVIC and the CITY shall coordinate their respective operations, maintenance, or repairs to the Improvements and the Canal Facilities related thereto so as to avoid any conflict in the respective activities of the CITY and GVIC in regard to the operation, repair, or maintenance of the Improvements or the Canal Facilities related thereto. All repair or maintenance work performed in the non-irrigation season shall be completed on or before March 15 of such year.

- b. Emergencies. An emergency situation shall mean any event, including a break, leak, or failure for any reason in the Improvements or 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 GVIC. In the event of an emergency situation, the CITY and/or GVIC and/or other governmental entity or agency having jurisdiction or authorization to do so, 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 or threat of loss or damage to persons, property, and/or the environment.
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 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, including the creation of the Plans and any contractor, subcontractor, or other person or entity engaged for the purpose of performing repairs or maintenance or operation of 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) 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:
 - a. Seek a such legal or equitable remedies as are appropriate under the circumstances including an injunction, specific performance, compensatory damages, or declaratory judgment.
 - b. Exercise self-help to cure a default under this Agreement including, but not limited to, 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 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.

- c. The recovery of damages may include recovery of all sums paid, incurred, or advanced by GVIC in the exercise of any remedy provided herein, including 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
Attention: Superintendent

CITY: 250 North 5th Street, Grand Junction, CO 81501
Attention City Attorney


- 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.

GRAND VALLEY IRRIGATION COMPANY

By: 
Robert Raymond, President

CITY OF GRAND JUNCTION

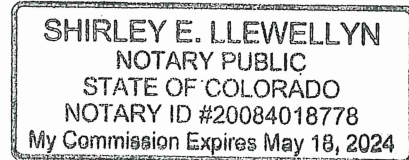
By: 
C.B. McDaniel, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 1st day of July, 2021 by Robert Raymond, President of Grand Valley Irrigation Company.

Witness my hand and official seal.
My commission expires: 5-18-2024

Shirley E. Llewellyn
Notary Public



STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 25th day of June, 2021 by C.B. McDaniel, as Mayor of the City of Grand Junction.

Witness my hand and official seal.
My commission expires: May 25, 2025

Jennifer L. Cinquini
Notary Public

