

**CONSTRUCTION, OPERATION, MAINTENANCE AND  
EASEMENT AGREEMENT**

THIS CONSTRUCTION, OPERATION, MAINTENANCE AND EASEMENT AGREEMENT (Agreement) is made this 29<sup>th</sup> 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 5<sup>th</sup> 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 Grand Valley Canal is part of the Canal Facilities. Whenever the term "Canal Facilities" is used herein it shall include the Grand Valley Canal.
- B. GVIC is also the owner of property in the vicinity of 24 Road and G Road, Grand Junction, Colorado.
- C. The CITY proposes to design, construct, and perpetually operate and maintain a roundabout and related structures and improvements known as the G Road Replacement Project depicted in the plans and specifications (as defined below), hereafter the "Project." The CITY seeks GVIC's approval of the Plans and Specifications for the Project, a temporary surface and permanent subsurface easements to construct, install, and perpetually operate, maintain and repair the improvements comprising the Project (hereafter the "Improvements") within that portion of the real property depicted in the Plans and Specifications, hereafter the "Project Area."

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

- 1. Plans and Specifications. The CITY has prepared the plans and specifications comprising the Project identified as the G Road Replacement Project number 207-F-1903L dated April 14, 2021 ("Plans and Specifications"), which are incorporated herein by this reference. The CITY represents, warrants, and agrees as follows:
  - a. The Plans and Specifications have been created, developed, and reviewed by a professional engineer(s) employed by and performing professional services for the CITY, 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 with or hinder the operation, maintenance, and repair, of the Canal Facilities.
  - b. The CITY, for the Project, 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 Improvements in the Project Area.

- c. 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. Permission to Construct, Operate, Maintain, and Repair the Improvements.

- a. GVIC grants to the CITY a temporary surface and permanent surface and subsurface easements (Easements) to enter upon the Project Area for the sole and only purpose of constructing the Improvements and thereafter perpetually operating, maintaining, and repairing the Improvements so that the Improvements maintain their function and purpose according to the Plans and Specifications.
- 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 Area or the suitability of or any physical condition of the surface or subsurface of the Project Area. The CITY assumes all risks regarding the physical condition of the Project Area 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 Area or the Easements granted hereby at any time to any third-party without GVIC's express written consent with the exception that the CITY's employees, contractors, subcontractors, materialmen, or suppliers performing or conducting the construction of the Improvements or the perpetual operation, maintenance, or repair of the Improvements in accordance with this Agreement are authorized to enter upon and occupy the Easements for such purposes.
- d. At all times, the permission given hereby shall be subject to GVIC's operation, maintenance, and repair of the Canal Facilities and the Project Area.

3. 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 Area, except for the Improvements for the Project as identified in the Plans and Specifications.

4. Construction of the Project.

- a. The Work. The CITY 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 Project and all Improvements related thereto, hereafter collectively referred to as the "Work."
- b. Construction Schedule. Prior to the commencement of any Work, the CITY will 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 promptly following the execution of this Agreement and be diligently pursued until completion. Any Work affecting the Canal Facilities shall be conducted in a manner to avoid

interference with the operation of the Canal Facilities. The timing, sequence and staging of the Work shall be coordinated with GVIC and the CITY shall insure that all Work does not interfere with GVIC's use, operation, and maintenance of the Canal Facilities and that the Improvements will be completed as soon as is reasonably practical by the exercise of due diligence.

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.
- 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 and the Plans and Specifications. 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 for the Work.
- iv. The CITY shall ensure that all employees or subcontractors performing the Work shall always 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 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 Project Area or any property adjoining the Canal Facilities.
- v. The CITY shall not cause or suffer any mechanic's lien or other encumbrance to be placed upon the Project 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 Project Area or any part of the Canal Facilities, the CITY 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 CITY shall keep the Project Area and any land immediately adjoining the Project 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 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. Subcontractors. The CITY shall cause each contractor and each 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 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 consultants shall not relieve the CITY from any warranty or 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 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 to conduct such observation, inspection, testing, or approval at the CITY's expense.
  - g. Reimbursement of GVIC's Costs and Consulting Fees. 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, to oversee the Work and for the subsequent operation, maintenance, and repair of the Improvements. Such costs may include, but are not limited to, fees charged to GVIC by its consulting engineer and regularly employed legal counsel according to their prevailing rates, and, in addition, the time of GVIC's management and 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 if requested, up to but not exceeding in the aggregate \$7,500.00.
5. Operation, Maintenance, and Repair of Improvements. The CITY shall, at its sole cost and expense, perpetually operate, 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 to the Improvement. All repairs, maintenance, seasoning, and correctional work 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 operation, maintenance, and repair of the Improvements affecting the Canal Facilities to be conducted below canal surface water level, or to affect the water flowing in that part of

the Project Area 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 Area, 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. The CITY shall coordinate with and notify GVIC in advance of any Work affecting the Canal Facilities.

- 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 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, or 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) 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 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. Seek legal and/or equitable remedies, including temporary restraining orders, preliminary or permanent injunctions, specific performance, and/or compensatory damages.
- c. 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.
- d. To commence legal action against 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  
                           Attention: Superintendent

CITY:                250 North 5<sup>th</sup> 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 of the Board

CITY OF GRAND JUNCTION

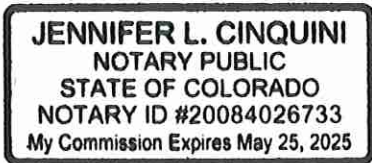
By: C.B. McDaniel  
C.B. McDaniel  
President of the City Council

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 28 day of July 2021 by Robert Raymond, President of the Grand Valley Irrigation Company Board.

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

Jennifer L. Cinquini  
Notary Public

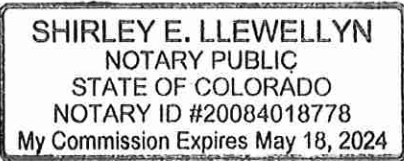


STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of July 2021 by C.B. McDaniel, President of the Grand Junction City Council.

Witness my hand and official seal.  
My commission expires: May 18, 2024

Shirley E. Llewellyn  
Notary Public



AFFIDAVIT OF CORRECTION OF NOTARIAL CERTIFICATE

The undersigned Affiant, being first duly sworn, hereby swears or affirms that on July 28, 2021, I, Colorado Notary Public Jennifer L. Cinquini (Notary ID #20084026733) witnessed and acknowledged the signature of C.B. McDaniel, President of the City Council on the *Construction, Operation, Maintenance and Easement Agreement (Agreement)* by and between the City of Grand Junction, Colorado and Grand Valley Irrigation Company.

The undersigned Affiant, being first duly sworn, hereby swears or affirms that on July 29, 2021, I, Colorado Notary Public Shirley E. Llewellyn (Notary ID #20084018778) witnessed and acknowledged the signature of Robert Raymond, President of the Board of Grand Valley Irrigation Company on the *Construction, Operation, Maintenance and Easement Agreement (Agreement)* by and between the City of Grand Junction, Colorado and Grand Valley Irrigation Company.

The Agreement is recorded in the Mesa County, Colorado land title records at Reception number 2992654.

The Notarial Certificates contained in the Agreement are in error because each Notary mistakenly signed the incorrect certificate.

The Affiants as the notaries that performed the notarial acts and inadvertently completed the notarial certificates in error on the above-referenced original Agreement make this Affidavit for the purpose of correcting the notarial certificates contained in the Agreement. Corrected notarial certificates to be appended to the Agreement are provide below. Affiants, further sayeth naught.

STATE OF COLORADO )

) ss.

COUNTY OF MESA )

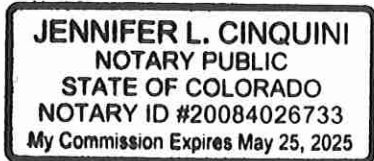
The Construction, Operation, Maintenance and Easement Agreement (Agreement as referenced in this AFFIDAVIT OF CORRECTION OF NOTARIAL CERTIFICATE) was acknowledged before me the 28th day of July 2021 by C.B. McDaniel, President of the Grand Junction City Council.

Witness my hand and official seal.

My commission expires: *May 25, 2025*

*Jennifer L. Cinquini*  
Jennifer L Cinquini

Notary Public





STATE OF COLORADO )

) ss.

COUNTY OF MESA )

The Construction, Operation, Maintenance and Easement Agreement (Agreement as referenced in this AFFIDAVIT OF CORRECTION OF NOTARIAL CERTIFICATE) was acknowledged before me on the 29<sup>th</sup> day of July 2021 by Robert Raymond, President of the Grand Valley Irrigation Company Board.

Witness my hand and official seal.

My commission expires: *may 18, 2024*

*Shirley E. Llewellyn*

Shirley E. Llewellyn  
Notary Public

