

AGREEMENT

THIS AGREEMENT (Agreement) is entered into this 4 day of February, 1998, and is between The Grand Valley Irrigation Company, a Colorado nonprofit corporation (Grantor) and the City of Grand Junction (Grantee).

RECITALS

A. Grantor is the owner and operator of a system of irrigation canals and related facilities (collectively "Canal Facilities") located in Mesa County, Colorado.

B. Grantee desires to obtain from Grantor an easement over and across that portion of the Grantor's Canal Facilities described on Exhibit A attached hereto and incorporated by this reference (Easement Property) for the construction, repair and maintenance of the improvements as shown and depicted on Exhibit A (hereafter "Improvements").

NOW, THEREFORE, in consideration of the recitals above and the provisions set forth below:

1. Grant of Easement. Grantor does hereby grant to the Grantee a non-exclusive easement over and across the Easement Property for the purposes of and subject to the terms and conditions of this Agreement. Grantee acknowledges and understands that the grant of easement hereunder is without warranty, express or implied, as to the nature, extent, merchantability or quality of the Grantor's right, title or interest in or to the Easement Property.

2. Use of the Easement Property. Grantee shall use the Easement Property for the construction and thereafter the perpetual maintenance and repair of the Improvements for the use thereof by Grantee and members of the general; provided, however, the easement granted hereby shall always be subordinate to the Grantor's use and occupancy of the Easement Property for the operation, maintenance and repair of the Canal Facilities, including the diversion and delivery of water decreed to the Grantor, and provided further that the Grantee shall not cause or suffer any damage, destruction or waste of the Easement Property or the Canal Facilities arising out of the Grantee's or the general public's use of the Easement Property or Improvements.

3. Construction of Improvements.

a. Prior to the construction of the Improvements, Grantee shall prepare complete drawings, plans and specifications for all aspects of the construction and submit them to the Grantor for approval, which approval shall be given or denied in the sole and

absolute discretion of the Grantor. The Improvements shall be designed and have specifications such that the construction and use thereof will not interfere with the Grantor's use, operation and maintenance of the Canal Facilities, as determined in the sole and absolute discretion of the Grantor. Once approved, the plans and specifications shall become a part of this Agreement.

b. The timing, sequence and staging of construction of the Improvements shall be coordinated by the Grantee with the Grantor so as to assure that all construction activities shall not interfere with the use, operation and maintenance of the Canal Facilities.

c. The Grantee shall be solely responsible for all construction means, methods, techniques and sequences and procedures, subject to its obligation to coordinate such with the Grantor. The Grantee shall further be solely responsible for obtaining or contracting for all labor, materials, equipment, tools, machinery, utilities, transportation and other services necessary for the proper execution and completion of construction, and shall be solely and absolutely obligated to pay any costs or expenses therefor.

d. All construction shall conform to the approved plans and specifications therefor. Any construction not conforming thereto shall be corrected by the Grantee at its sole expense.

e. During the course of construction, the Grantee shall ensure that those contractors or employees performing the construction shall at all times observe strict discipline and good order, and the Grantee shall not employ any person or contractor on the construction that is unfit or not skilled in the task assigned to him.

f. The Grantee shall be solely responsible to advance all sales, consumer, use and other taxes required by law and shall be solely responsible to require all fees, licenses and permits necessary for construction. Furthermore, the Grantee shall be solely responsible to comply with all laws, ordinances, rules, regulations and orders of any applicable governmental authority bearing on the performance of construction, including observing any applicable building or construction code.

g. At all times, the Grantee shall keep the Easement Property and the construction area free from the accumulation of waste materials or rubbish. At the completion of construction, the Grantee shall remove all waste materials and rubbish from the Easement Property, as well as all tools, construction equipment, machinery and

surplus machinery, and restore the land adjacent to the Easement Property to the condition existing prior to the commencement of construction.

h. At all times, the Grantee shall be responsible for initiating, maintaining and supervising reasonable safety precautions and programs in connection with construction to prevent damage, injury or loss to employees, contractors and members of the general public, or damage to the Easement Property, the Canal Facilities or any property adjoining the Easement Property.

i. The Grantee shall not cause or suffer any mechanics lien or encumbrance arising out of performance of construction to be placed upon the Easement Property or any portion of the Canal Facilities.

j. At all times during the period of construction, the Grantee shall maintain, and cause each contractor and subcontractor to maintain insurance against claims and liabilities arising under the laws of the State of Colorado pertaining to workers' compensation, unemployment compensation, and occupational diseases.

4. Maintenance and Repairs. The Grantee shall perpetually keep and maintain the Easement Property and the Improvements in a neat, clean and well maintained and repaired condition. All of such repairs, maintenance and reconstruction shall be coordinated with Grantor and shall not interfere with Grantor's operation or maintenance of the Canal Facilities. In the event the Grantee shall fail or refuse to keep and maintain the Easement Property or the Improvements in accordance with this paragraph, then the Grantor may, but without having an obligation to do so, after notice to the Grantee, undertake any repairs, maintenance or cleaning of the Easement Property, including repairs, maintenance and reconstruction of the Improvements. In the event the Grantor undertakes such cleaning, repairs or maintenance, then the Grantee shall be solely obligated to pay the Grantor for its costs and expenses incurred therefor, including, but not limited to, internal payroll costs, administrative overhead and use of equipment, and the costs of labor, materials and supplies purchased or contracted by the Grantor to accomplish such tasks.

5. Unauthorized Use of Canal Facilities. If requested by the Grantor, the Grantee, at its expense, shall construct and repair and maintain fences or other improvements acceptable to the Grantor at points along the Canal Facilities as located by the Grantor to limit, prevent or control the access of the general public to the Canal Facilities from the Easement Property or Improvements; provided, however, in the event the Grantee shall fail or refuse to construct, maintain or repair such fence or other improvements, the Grantor may, without having an obligation to do so, undertake construction, repair and maintenance of such fences or other

improvements and the Grantee shall reimburse the Grantor for all of its costs and expenses therefore, including internal payroll costs, administrative overhead and use of equipment.

6. Other Improvements. Grantee shall not alter or make any improvements to the Easement Property or Canal Facilities not specifically permitted under this Agreement, including the installation of any plantings or ornamental vegetation upon the same.

7. Indemnity. Grantee shall indemnify and hold the Grantor harmless against any and all loss, liability, claim or damage, including, but not limited to, claims for bodily injury, property damage or death arising out of or resulting from the construction, repair or maintenance of the Improvements and the Easement Property or the use or occupancy thereof by the Grantee or members of the general public, the indemnity hereunder to include Grantors reasonable attorneys fees paid or incurred to investigate, negotiate, mediate, litigate or settle any claim indemnified hereunder.

8. Eminent Domain. In further consideration of Grantor's grant of easement hereunder, Grantee agrees to not commence any proceeding in eminent domain against or affecting the Easement Property or the Improvements.

9. Assignment. The easement and rights granted to Grantee hereunder are based upon Grantee's status as a home rule municipality. Accordingly, Grantee agrees that it will not assign, transfer, grant, delegate or convey any right, title, interest, duty or obligation of the Grantee under this Agreement without the Grantor's prior written consent.

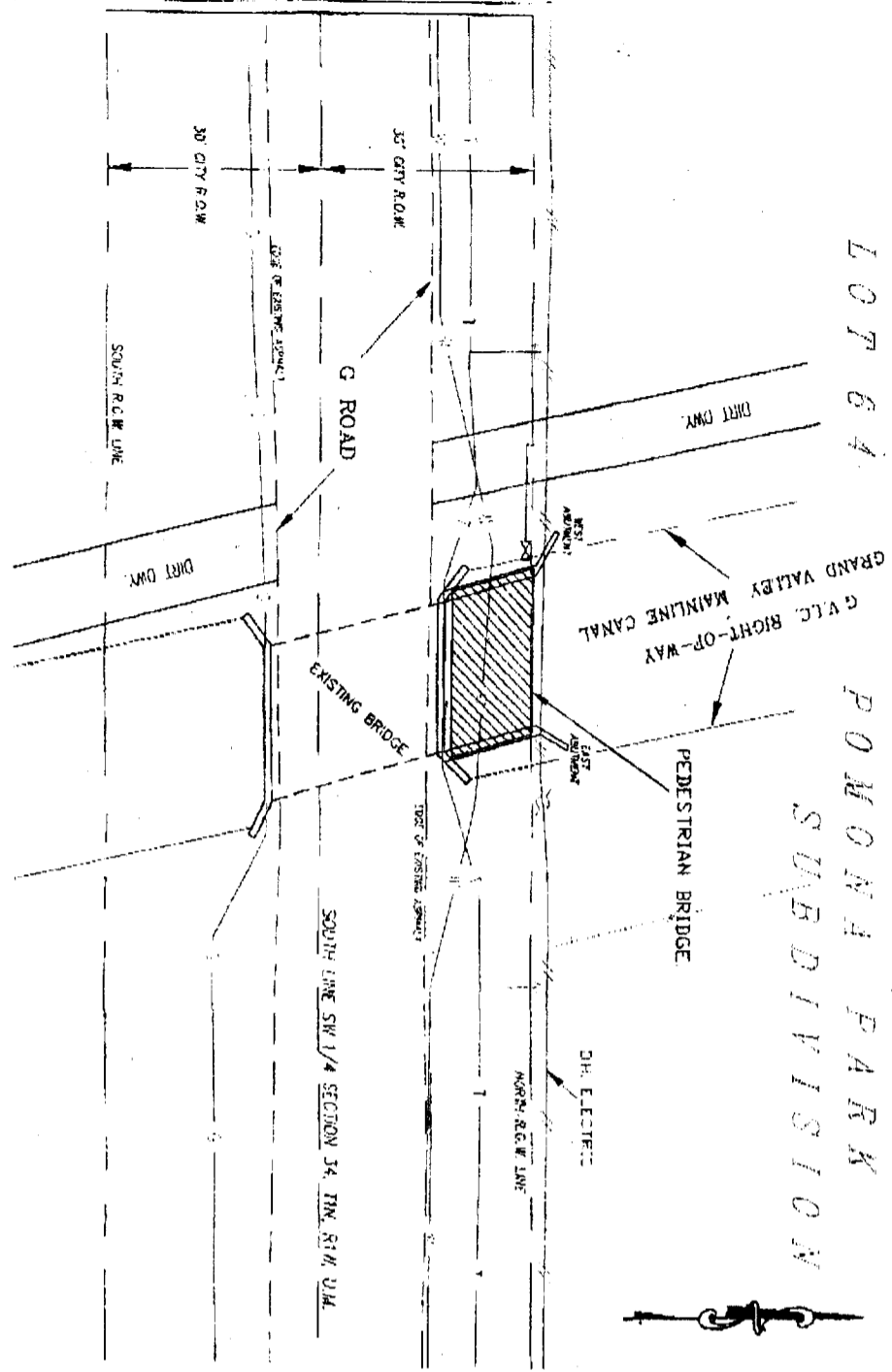
10. Termination. The Grantor may terminate this Agreement or suspend use of the Easement Property and/or the Improvements by the Grantee and members of the public in the event of the Grantee's material failure, nonperformance, noncompliance or other breach of this Agreement, provided, however, the Grantor shall first notify the Grantee sixty (60) days in advance and provide the Grantee with the opportunity to commence and diligently pursue the cure of any failure, nonperformance, noncompliance or other breach of this Agreement.

11. Miscellaneous Provisions.

a. The terms of this Agreement shall inure to the benefit of and be binding upon the parties, their successors, legal representatives and permitted assigns.

b. In the event that either party seeks to enforce any term or provision hereof by legal proceedings, the prevailing party in such legal proceedings shall be entitled to recover its reasonable attorneys' fees and costs for the same.

EXHIBIT "A"



DRAWN BY: SBC
 DATE: 12-01-98
 SCALE: N.T.S.
 APPR. BY: JW
 FILE NO: Gdrisqet.dwg

DESCRIPTION MAP
 PEDESTRIAN BRIDGE AT G ROAD & GRAND VALLEY CANAL

DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 CITY OF GRAND JUNCTION