

## DISCHARGE AGREEMENT

THIS DISCHARGE AGREEMENT (Agreement) is dated the 26<sup>th</sup> day of March, 2010 and is between the Grand Valley Irrigation Company, a Colorado nonprofit corporation (GVIC) and the City of Grand Junction (City).

### RECITALS:

- A. The City owns the real property described in the Improvement Survey Plat prepared by the City and signed and sealed by Peter T. Krick, PLS on November 14, 2008 incorporated herein by this reference known as Crown Point Cemetery according to the Amended Plat of Crown Point Cemetery recorded in Plat Book 3, Page 1 of the Mesa County Clerk and Recorder's records (Property).
- B. The City desires to discharge irrigation and runoff surface water from the Property into the GVIC Canal situated to the south and west of the Property.
- C. City has designed and engineered structures, improvements and facilities to control and direct the discharge of surface water from the Property into the GVIC Canal, such designs being incorporated herein by this reference (Designs).
- D. The parties desire to enter into this Agreement to allow for surface discharge of water into the GVIC Canal.

NOW, THEREFORE, in consideration of the recitals above and the mutual promises, benefits, duties and obligations set forth below, the parties agree as follows:

- 1) Representations as to Authority. The City warrants and represents to GVIC that it is the owner of the Property, and it has full power and authority, to enter into this Agreement and undertake the duties and obligations set forth herein. The City warrants and represents to GVIC that the person executing this Agreement on behalf of the City has been duly authorized to do so and upon execution of this Agreement by such authorized representative, this Agreement shall be binding upon the City.
- 2) Agreement to Permit Discharge of Surface Water. Subject to the terms and conditions of this Agreement, GVIC agrees to allow the City to discharge surface water from the Property into the GVIC Canal at the point(s) of discharge as described in the Designs. No surface water shall be discharged from the Property at a point source into the GVIC Canal at any other location. At such time as other storm water drainage and collection facilities are reasonably available to the Property, City, at its sole cost, shall connect to and use such other facilities and this Agreement shall terminate. The City shall be solely

obligated to obtain and comply with any other required or applicable permits for the discharge of surface water.

- 3) Prohibited Material. The City shall not cause or permit the discharge into the GVIC Canal at the point of discharge or at any other point any material, which is prohibited under this Agreement. For the purposes of this Agreement, "prohibited material" shall mean any contaminant, hazardous waste, or other material regulated or controlled by federal, state or local statute or ordinance, in concentrations or quantities exceeding those permitted by applicable federal, state or local statute or ordinance, as such statutes and ordinances now exist or as hereafter amended, and in addition, any other material or substances which would materially interfere with GVIC's use, operation, or maintenance of the GVIC Canal. The City shall comply with all applicable federal, state and local statutes and ordinances, as they presently exist or as hereafter amended, pertaining to the discharge of any substance or material into the GVIC Canal.
- 4) Obligations Following Release of Prohibited Material. In the event that any prohibited material is discharged by the City from the Property into the GVIC Canal, the City shall immediately, upon becoming aware of such discharge, give written notice of such release to GVIC and all federal, state and local agencies that require such notice, including, but not limited to, the U.S. Environmental Protection Agency, the Colorado Department of Public Health and Environment and the Mesa County Health Department. In addition, the City shall take, or cause to be taken, at its sole cost and expense, any and all actions necessary or required by law to abate, control, eliminate and remediate such release in compliance with all federal, state and local laws, rules and regulations. GVIC is specifically empowered, but not obligated, by the terms of this Agreement to take any action and advance such sums as it deems reasonable or necessary, as determined in GVIC's sole and absolute discretion, to abate, control, eliminate or remediate any such release and to terminate and prevent further such releases or discharges or prohibited material into the GVIC Canal. Upon demand, City shall reimburse GVIC for all such reasonable costs and expenses incurred or sums advanced.
- 5) Indemnity. To the extent permitted by law, the City shall indemnify, defend and hold GVIC and its officers, employees and agents harmless from any and all loss, liability, claims or damages arising from or in any way related to the discharge of surface water pursuant to this Agreement and the discharge of any prohibited material from the Property into the GVIC Canal. Such indemnity shall include, but shall not be limited to all GVIC's losses, damages, costs, expenses, expert witness fees, and attorneys' fees paid, incurred or resulting from or arising out of the breach of this Agreement, including, but not limited to, all costs and expenses paid or incurred to control, abate and remediate the release of prohibited material. In addition, to the extent permitted by law the City shall indemnify and hold GVIC and its officers, employees and agents harmless from any and all loss, liability, claims, damages, fines or penalties asserted, assessed or imposed by any federal, state or local agency concerning the discharge of a prohibited material from the Property into the GVIC Canal. Such indemnity shall specifically include, but not be limited to, any and all response and/or remediation costs paid or incurred by any such federal, state or local agency.


- 6) Recording. This Agreement may be recorded with the Clerk and Recorder of Mesa County, Colorado. The covenants and agreements set forth herein are deemed to touch and concern the Property, shall run with the land, and shall be binding upon the successors in legal and equitable title to the Property.
  
- 7) Default and Remedy. A default shall be deemed to have occurred on the part of the City by its failure or refusal to comply with the terms and conditions of this Agreement or any other violation thereof, following thirty (30) days' written notice of such violation (or such longer period as may be necessary to comply, if compliance cannot be reasonably accomplished within such 30 day period so long as City commences compliance during the 30 day period and diligently proceeds to completion); provided, however, in the event of an emergent circumstance involving the discharge or a threatened discharge of a prohibited material from the Property into the GVIC Canal, GVIC may, without having the obligation to do so, act to abate, control, remediate or prevent such release of a prohibited material into the GVIC Canal, and any notice of default under such circumstances shall be deemed waived on the part of the City. In the event of a default, GVIC may, without limitation upon any other legal or equitable remedy available to it under this Agreement or otherwise, exercise any one or all of the following remedies:
  - a) Terminate this Agreement and prevent any further discharge of a prohibited material from the Property into the GVIC Canal;
  - b) With or without terminating this Agreement, bring suit against, subject to and in accordance with the Colorado Governmental Immunity Act, the City to recover GVIC's damages as a result of such default;
  - c) With or without termination of this Agreement, bring an action or actions for injunctive relief and/or specific performance or for any other equitable remedy allowed or provided by law; and,
  - d) For any action brought by either party to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover its legal costs and expenses therefor, including attorneys' and expert witness fees.
  
- 8) Severalty of Terms. It is understood and agreed by the parties thereto that if any part, term or provision of this Agreement which is not material to the essence of this Agreement is held by a court or courts of competent jurisdiction to be illegal or in conflict with any federal or state law, as applicable, the validity of the remaining portions or provisions shall not be effected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held illegal or invalid.
  
- 9) Construction of Drainage Collection and Conveyance Facilities. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement which is material to the essence of this Agreement is held by a court or courts of competent jurisdiction to be illegal or in conflict with any federal or state law, as applicable, or any

event occurs pursuant to this Agreement whereby City's right of discharge is terminated, ended or precluded, then City shall be required to construct appropriate, adequate and acceptable alternate surface water drainage collection and conveyance facilities for disposal of surface water without discharge into the GVIC Canal. The appropriateness, adequacy and acceptability of drainage collection and conveyance facilities shall be determined by GVIC in its sole and absolute discretion. Any and all costs associated with design and construction of such facilities shall be borne solely by City.


- 10) Merger and Modification. All prior agreements, whether written or oral, between City and GVIC are merged into this Agreement. No modification of this Agreement shall be made nor shall any be effective unless they refer to this Agreement and are in writing signed by all parties.
- 11) Notice. Whenever required hereunder, written notice shall be given to the parties at their addresses specified below their signatures, by United States certified mail, return receipt requested, and postage prepaid or by overnight delivery service. Any party may change the address to which notice is given by giving notice of a change of address in compliance with this paragraph.
- 12) Benefit. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and legal representative.

DATED the year and day first above written.

**City of Grand Junction**

By:   
Laurie Kadrich, City Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, CO. 81501

**Grand Valley Irrigation Company**

By:   
Phillip Betrand, Superintendent  
688 26 Road  
Grand Junction, CO. 81506

STATE OF COLORADO            )  
                                                  ) ss.  
COUNTY OF MESA                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of March, 2010 by Laurie Kadrach as City Manager of City of Grand Junction WITNESS my hand and official seal.

My Commission Expires: \_\_\_\_\_

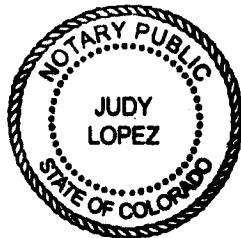
Notary Public \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 28 day of March 2010 by Phillip Bertrand as Superintendent of Grand Valley Irrigation Company WITNESS my hand and official seal.

My Commission Expires: 04/09/2011

Notary Public Judy Lopez



My Commission Expires 04/09/2011