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TYPE OF RECORD: ~~NON~~-PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF CONTRACTOR: GRAND VALLEY IRRIGATION COMPANY

SUBJECT/PROJECT: PUBLIC BRIDGE CROSSING IMPROVEMENTS FOR
WEXFORD SUBDIVISION WITHIN THE GVIC MESA
COUNTY CANAL ROW

CITY DEPARTMENT: PUBLIC WORKS AND PLANNING

YEAR: 2008

EXPIRATION DATE: ~~03/15/08~~

DESTRUCTION DATE: ~~01/15~~

**PUBLIC FACILITIES CROSSING, CONSTRUCTION
AND MAINTENANCE AGREEMENT**

THIS PUBLIC FACILITIES CROSSING, CONSTRUCTION AND MAINTENANCE AGREEMENT (Agreement) is made this 12th day of February, 2008, and is between the **GRAND VALLEY IRRIGATION COMPANY**, a Colorado nonprofit corporation (GVIC), whose address is 688 26 Road, Grand Junction, Colorado 81506, **TML ENTERPRISES, INC.**, a Colorado corporation (Developer), whose address is 2350 G Road, Grand Junction, Colorado 81505, and the **CITY OF GRAND JUNCTION**, a home rule municipality (City), whose address is 250 N. 5th Street, Grand Junction, Colorado 81501. Collectively the three shall be referred to as "Parties."

RECITALS

- A. GVIC is the owner and operator of a system of irrigation canals and related facilities located in Mesa County, Colorado (collectively referred to as the "Canal Facilities"). The Canal Facilities include the right-of-way for the Mesa County Canal, including the canal bed, banks, access roads and embankments, which collectively provide the structures for the delivery and containment of irrigation water.
- B. Developer owns real property in Mesa County, Colorado, that Developer is developing as Wexford Subdivision (Subdivision).
- C. Developer desires to construct and install a Public Bridge Crossing for Wexford Subdivision within the right-of-way of the GVIC Mesa County Canal (Improvements).
- D. Developer desires to obtain from GVIC the consent to install, repair and maintain the Improvements.
- E. Upon construction and final acceptance of the Improvements by the City, the City will assume the maintenance and repair of the Improvements.

NOW THEREFORE, in consideration of the Recitals above, and the mutual covenants and promises set forth below, GVIC, Developer and the City agree as follows:

1. Consent. Subject to the terms and conditions of this Agreement, GVIC consents to the Developer's installation, repair and maintenance of the Improvements, and the City's operation, repair and maintenance of the Improvements following the City's acceptance of the same, over, under and across the real property described on Exhibit A attached hereto and incorporated herein by this reference, which shall hereafter be referred to as the "Project Area." The Parties acknowledge and agree that GVIC is giving its consent without warranty, express or implied, as to the merchantability of GVIC's title to the Project Area, or the suitability of the Project Area for any use or purpose permitted under this Agreement
2. Use of the Project Area. The use of the Project Area shall be solely for the construction or installation and thereafter the repair and maintenance of the Improvements.

By entering into this Agreement, Developer is not waiving or relinquishing whatever rights, if any, Developer may have to use the Project Area in absence of this Agreement.

3. Construction of the Improvements.

a. Plans and Specifications.

- i. Definition. Developer has caused to be prepared certain plans and specifications, consisting of the designs, drawings, plans and specifications prepared by Souder Miller & Associates, identified as Project Number 8873330 dated January 24, 2008, which shall hereafter be referred to as the “Plans and Specifications.” The Plans and Specifications shall include any subsequently developed designs, drawings, plans or specifications, including change orders, approved by GVIC.
- ii. Developer’s Warranty of Plans and Specifications. Developer warrants the accuracy and suitability of the Plans and Specifications for the construction or installation of the Improvements and related facilities.
- iii. GVIC Review. GVIC acknowledges that it has reviewed the Plans and Specifications and given its consent to the construction of the Improvements in reliance on this review. GVIC’s review of the Plans and Specifications is solely for the use and benefit of GVIC and is not intended, nor shall it be construed to be or constitute a certification or acceptance thereof as accurate or sufficient or constitute a waiver, release or other limitation upon the Developer’s warranty set forth in paragraph 3.a.ii. above, or a waiver, release or other limitation on GVIC’s rights to assert claims against the Developer or the consultants or engineers preparing the Plans and Specifications because of errors, omissions or defects therein.

b. The Work. The “Work” shall be and constitute all labor, materials, equipment, supplies and permits or licenses, including the fees and costs of any subcontractors or suppliers, reasonable or necessary for the commencement and completion of the Improvements in accordance with the Plans and Specifications.

c. Commencement, Completion and Construction Schedule. Work shall commence following execution of this Agreement and be completed on or before March 15, 2008. The timing, sequence and staging of the Work shall be coordinated by Developer with GVIC, to assure that all Work does not interfere with GVIC’s use, operation and maintenance of the Canal Facilities, and that the Improvements shall be completed by the completion dates set forth herein. In the event Developer encounters any subsurface water or detects any leakage or any structural instability of the Project Area, then Developer shall immediately stop all work, notify GVIC and take all necessary emergency actions to protect and

preserve the Project Area and the Mesa County Canal facilities from leakage, instability or failure. Further, in such event, except for emergency actions as previously described, work shall not resume until authorized by GVIC, and GVIC may, in its discretion, require Developer to take remedial measures before work is resumed.

d. Conditions of Construction.

- i. All construction shall be strictly in conformance with the Plans and Specifications, shall be pursued with diligence and in a good and workmanlike manner, and shall 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 Developer immediately at its sole expense.
- ii. Developer shall pay all costs, expenses, fees, taxes or other disbursements which are reasonable or necessary for the performance of the Work in a timely manner.
- iii. Developer shall be solely responsible for all construction means, methods, techniques and sequences and procedures, subject to Developer's obligation to coordinate with GVIC, and to complete all Work in accordance with this Agreement. Developer 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 the Work, and shall be solely and absolutely obligated to pay any costs or expenses therefor.
- iv. Developer shall insure that all employees or subcontractors performing the Work shall at all times observe and conduct themselves in a disciplined and professional manner. Developer shall not employ any person or subcontractor, or suffer or permit the employment of any employee of any subcontractor that is unfit or not skilled for the task assigned to him/her. Developer shall furthermore 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 employees, subcontractors or members of the general public, or damage to the Canal Facilities or any property adjoining the Canal Facilities.
- v. Developer shall not cause or suffer any mechanic's lien or other encumbrance to be placed upon GVIC's interest in the Project Area, or any aspect of the Canal Facilities in connection with the performance of the Work or any operation, repair and maintenance of the Improvements

thereafter. In the event any mechanic's lien or other encumbrance is asserted or filed on the Project Area, Developer shall cause a removal thereof by bond under the Colorado Mechanic's Lien Act as soon as is practical.

- vi. At all times during performance of the Work, Developer shall keep the Improvements and Project Area free from the accumulation of waste materials or rubbish. Upon completion of the Improvements, Developer shall remove all waste material and rubbish from the Project Area and the Canal Facilities, as well as all tools, construction equipment, machinery and surplus machinery and, to the extent that the Developer disturbs any Canal Facilities adjacent to the Improvement, to restore the land adjacent to the Improvements to the condition existing prior to the commencement of construction.
- vii. Prior to commencement of the Work, Developer shall submit to GVIC a list of all subcontractors proposed for performance of the Work. Developer shall not employ any subcontractor to whom GVIC has made an objection.
- viii. Developer shall cause each subcontractor and sub-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. Prior to the commencement of the Work, Developer 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.
- ix. The Developer shall give GVIC timely notice of readiness for inspection of any aspects of the Improvements that require inspection by any governmental entity having authority over the same, or on which GVIC or its engineer requests inspection. For any aspect of the Work requiring inspection, the Developer shall furnish GVIC with any required certificates of inspection, testing or approval. The conduct of any inspections, tests or approvals by GVIC or its engineer shall not relieve the Developer from any obligation under this Agreement. If any aspect of the Work requiring inspection, testing or approval is covered up and the Developer fails to obtain documentation that the covered up Work has been inspected, tested and approved, then the Developer shall uncover such Work, at its expense and conduct such inspection, testing and approval and provide documentation of the same to GVIC.

4. Reimbursement of GVIC's Costs and Consulting Fees. The Developer agrees to reimburse GVIC for reasonable out-of-pocket or internal administrative costs it incurs to review the Plans and Specifications, to develop this Agreement and for ongoing observation,

inspection and consultation in connection with the construction of the Project. Such costs shall include fees charged to GVIC by its consulting engineer and legal counsel, and, in addition, the time for GVIC administrative staff. Compensation is agreed to be at the rate of \$50.00 per hour for GVIC administrative staff, legal services at \$200.00 per hour and GVIC's engineer at the prevailing rate of \$55.00 to \$72.00 per hour. The Developer 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. The Developer's obligation to reimburse GVIC hereunder shall not exceed \$5,000.00.

5. Developer's Obligation to Maintain and Repair. Developer shall, at its sole cost and expense, maintain and repair the Improvements, including all features, facilities and structural components thereof, so that they perform and function according to their intended uses and according to the Plans and Specifications, and in such a manner that they do not interfere with GVIC's use, operation, control and enjoyment of the Canal or the Canal Facilities, including any seasoning, testing and correction work related thereto. The Developer's obligation to keep, repair and maintain the Improvements shall continue until such time as the Improvements are accepted by the City and the City assumes the operation, maintenance and repair thereof. All repairs, maintenance, seasoning, testing and correction work performed by the Developer shall be coordinated with GVIC, shall be completed or undertaken during the non-irrigation season, and shall not interfere with GVIC's operation, maintenance, control or use of the Canal Facilities.

6. Indemnity, Insurance and Security.

- a. Indemnity. Developer shall indemnify and hold GVIC 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 construction, installation, seasoning, testing, maintenance or repair of the Improvements, including but not limited to, any loss or liability resulting from errors, omissions or defects in the Plans or Specifications. This indemnity shall include GVIC's reasonable attorneys' fees paid or incurred to investigate, negotiate, mediate, litigate or settle any claim, whether pending or threatened, indemnified hereunder. This indemnity shall further specifically include any claims brought by members of the general public or adjoining property owners.
- b. Insurance. Developer, or its contractor, shall purchase and maintain commercial general liability insurance against any loss, liability, property damage, bodily injury or death arising from or in connection with the Work, including claims for damages arising from the ownership, maintenance or use of a motor vehicle, in an amount not less than \$2,000,000.00, including products liability and completed property operations, and combined single limit automobile coverage in the amount of \$1,000,000.00 for each accident. Developer, or its contractor, shall also purchase and maintain insurance against any casualty loss to the Work. The insurance coverage provided herein shall not exclude or except claims for earth movement, subsidence, collapse or other event of a similar type. In addition, Developer, or its contractor, shall purchase and maintain insurance claims and

liabilities arising under the laws of the State of Colorado pertaining to workers' compensation, unemployment compensation and occupational diseases. The Developer or its contractor shall provide GVIC with a certificate of insurance for the coverage required hereunder, and further provide that such coverage will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to GVIC. The Certificate of Insurance shall name GVIC as an additional insured for all coverage required hereunder.

- c. Security. To secure the Developer's performance of all of its duties and obligations set forth in this Agreement, including but not limited to payment and performance obligations as set forth herein, Developer shall provide to GVIC an irrevocable line of credit, letter of credit or cash deposit available to GVIC to draw upon to pay or reimburse GVIC for any cost of expense or damages caused by or arising from the construction of the Improvements hereunder or to satisfy Developer's payment or performance obligations as set forth in this Agreement. The amount of security shall be in the sum of \$ 30,000.00, and be in a form approved by GVIC. The security shall continue until the City accepts the Improvements and undertakes the operation, maintenance and repair thereof.
- d. Personal Guarantee. Developer's representative, Thomas M. LaDuke, does hereby personally guarantee Developer's performance of all of the obligations of the Developer set forth in this Agreement, such guarantee to remain in force and effect until such time as the City accepts the Improvements and assumes the operation, repair and maintenance thereof.

7. Default and Remedies—Developer. Time is of the essence for the performance of Developer's obligations pursuant to this Agreement. A default shall be deemed to have occurred on the part of the Developer in the event the Developer shall fail or refuse to perform any obligation pursuant to this Agreement following seven (7) business days' written notice of such failure or refusal. Without limitation on any other remedy available to GVIC, in the event Developer shall fail or refuse to cure any nonperformance, noncompliance or other breach of this Agreement within seven (7) business days' notice thereof, then GVIC may, in its sole and absolute discretion, and without limitation on any other remedies available, to GVIC, undertake the following action:

- a. Terminate and/or suspend use of the Project Area under terms of this Agreement;
- b. Undertake such actions as GVIC determines reasonable and necessary to cure any nonperformance or noncompliance by the Developer, including but not limited to, taking physical possession of the Project Area and all material, equipment, tools and other things thereon to complete or remove any or all portions of the Improvements, including restoration of the Canal Facilities, or the undertaking of seasoning, testing and corrective work to the Improvements, or the undertaking of repairs and/or maintenance thereto, all of the foregoing to be exercised in whole or in part in GVIC's sole and absolute discretion; and/or

- c. To commence legal proceedings for the recovery of damages and/or for injunction or specific performance as is appropriate in the circumstances, resulting from Developer's breach of this Agreement, including but not limited to, any costs, expenses or other fees paid or incurred by GVIC in exercising its remedies hereunder, including GVIC's use of equipment, personnel and the administrative expenses for the same.

In the event GVIC or Developer seek to enforce any term or provision of this Agreement by legal proceedings, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs for the same.

8. City's Obligation to Operate, Maintain and Repair.

- a. Agreement to Operate, Maintain and Repair. Following the acceptance of the Improvements by the City, the City agrees to operate, maintain and repair the same at its sole cost and expense such that the Improvements function and perform according to their intended uses and according to the Plans and Specifications.
- b. No Unreasonable Interference. The City's operation, maintenance and repair of the Improvements shall not unreasonably interfere with GVIC's use of the Project Area or the operation, maintenance and repair of the Canal Facilities. In further explanation of this subparagraph, the Parties agree as follows:
 - i. Irrigation Season. 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 to be conducted below water level, or to affect the water flowing in the canals, or to involve the excavation or penetration of the Canal Facilities, in, under or upon the Project Area, or to block or obstruct or close the passage of equipment, personnel or vehicles upon the Canal Access Road for any period in excess of eight (8) hours per day or for more than one (1) day per week or to cause or threaten structural failure or instability of the Canal Facilities or the Improvements, except for emergency situations defined below.
 - ii. Non-irrigation Season. 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 so as to avoid any conflict in the respective activities of the City and GVIC in regard to the operation, repairs or maintenance of the Improvements or the Canal Facilities or the running of GVIC's domestic water right during the non-irrigation season. All repair or maintenance work performed in the non-irrigation season shall be completed on or before March 15 of such year.

- iii. Emergency Situations. An emergency situation shall be deemed to mean any event, including a break, leak or failure for any reason in the Improvements or the Canal Facilities 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 shall immediately undertake such action as is reasonable or necessary to commence repair of the Improvements or Canal Facilities 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.
 - iv. Disagreements. In the event there is a disagreement as to whether or not the City's operation, maintenance or repair of the Improvements is or is not an unreasonable interference with GVIC's use, operation and maintenance of the Canal Facilities, then either party may petition the Mesa County, Colorado District Court for a declarative determination of such issue.
- c. Indemnity. The City shall indemnify and hold GVIC harmless from any and all loss, liability, claim or damage arising from or in connection with the negligence of the City in the operation, repair or maintenance of the Improvements.
- d. Default and Remedies.
- i. Default. A default on the part of the City shall be deemed to have occurred in the event the City shall fail or refuse to perform the operation, maintenance and repair of the Improvements, or any other obligation of the City pursuant to this Agreement following GVIC's giving thirty (30) days' written notice of such failure or refusal, specifying with reasonable particularity the acts or omissions constituting such failure and refusal.
 - ii. Remedies. Without limitation of any other remedy available to GVIC, in the event the City shall fail or refuse to cure any nonperformance or noncompliance or other breach of this Agreement following thirty (30) days' written notice thereof, then GVIC may undertake the following remedies:
 - 1. Undertake such actions as GVIC determines reasonable and necessary to cure any nonperformance or noncompliance, including the undertaking of emergent or non-emergent repairs and/or maintenance to the Improvements;

- 2. Commence legal proceedings against the City for the recovery of all costs, expenses or other damages resulting from the City's breach of this Agreement, including but not limited to, any costs, expenses or other fees paid or incurred by GVIC in curing any nonperformance or noncompliance by the City, including the cost of GVIC's use of equipment, personnel and administrative expenses; and/or
- 3. Commence legal proceedings for injunction or specific performance as is appropriate in the circumstances.

iii. Attorneys' Fees. In the event the City or GVIC seeks to enforce any term or provision hereof by legal proceedings, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs for the same.

9. Miscellaneous.

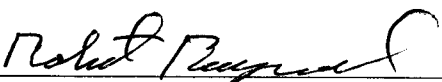
- a. Benefit. The terms of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors, legal representatives and assigns.
- b. Notice. Whenever required hereunder, notice shall be deemed sufficiently given if in writing, upon mailing, United States mail, postage prepaid, certified and return receipt requested, to the Parties addresses set forth below:

GVIC: 688 26 Road, Grand Junction, Colorado 81506
 Developer: 2350 G Road, Grand Junction, Colorado 81505
 City: 250 North 5th Street, Grand Junction, Colorado 81501.

- c. Integration. This Agreement is intended be the full, complete and integrated expression of the Parties' agreements in regard to 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,**
 a Colorado nonprofit corporation

By 
 Robert Raymond, President

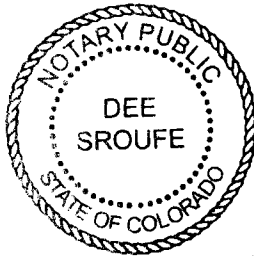
CITY OF GRAND JUNCTION,
 a home rule municipality

By 
 Laurie Kadrich, City Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 11th day of February, 2008, by Thomas M. LaDuke, individually, as guarantor and as President of TML Enterprises, Inc., a Colorado corporation.

Witness my hand and official seal.
My commission expires: 09/06/2009.



Dee Sroufe
Notary Public

My Commission Expires 09/06/2009