

# HEADGATE AGREEMENT

Headgate No. HL 194-AA

THIS HEADGATE AGREEMENT (Agreement) is entered into this 28<sup>th</sup> day March, 2010 by and between Grand Valley Irrigation Company, a Colorado non-profit mutual ditch corporation organized under the laws of the state of Colorado (GVIC), and the City of Grand Junction, a municipality (Shareholder).

## RECITALS:

- A. Shareholder is the owner of real property in Mesa County, Colorado known as Crown Point Cemetery as shown on the plat/map attached hereto as Exhibit 1 incorporated herein by reference and hereafter referred to as the "Property."
- B. Shareholder desires to have a headgate installed for the delivery of irrigation water to the Property subject to this Agreement.

GVIC and Shareholder agree as follows:

1. Installation of Headgate. GVIC shall provide all labor and material that is reasonable or necessary to install a headgate (Headgate) for the delivery of the Shareholder's GVIC shares of water to the Property. The costs of material for the Headgate shall be paid by the Shareholder within ten (10) days of GVIC's presentation of an invoice for such materials. The Headgate shall be designated as Headgate No. HL 194-AA. GVIC shall be solely responsible for all designs and means, methods and sequence of installation of the Headgate.
2. Use of Headgate. The Headgate shall be used in a nonexclusive manner between the Shareholder and such other persons as GVIC may designate for the shared use of the Headgate from time to time. Shareholder agrees that the Headgate shall be the only point of delivery of irrigation water to the Property notwithstanding any subdivision, sale or other change in the use, configuration or ownership of the Property including conflicts with other property owners or users of the Headgate.
3. Number of Shares. The Headgate is assigned a minimum delivery of 17 AB shares. Each and every year hereafter, such shares must be paid for and ordered out of the Headgate, unless otherwise approved in writing by GVIC. If for three consecutive years, Shareholder fail to pay for and order out the specified minimum numbers of shares set forth above, or such other number of shares approved in writing by GVIC, GVIC, at its sole discretion, may remove the headgate installation without notice to the Shareholder or liability for the removal of the same.
4. Ownership, Control and Jurisdiction. Shareholder acknowledges and agrees that GVIC is the sole and exclusive owner of the Headgate with the sole and exclusive control and jurisdiction over the same. GVIC shall have the exclusive right and authority over the installation, administration, and management of the Headgate as a part of the GVIC water delivery system including, but not limited to, the operation, maintenance and repair of the Headgate and the adoption, amendment

or repeal of bylaws, rules, regulations and policies for the administration and management of the same. Shareholder agrees that this Agreement shall be subject to and construed in accordance with GVIC's present and future bylaws, rules, regulations and policies.

5. Use of Water. Shareholder agrees to use the water delivered to the Headgate in accordance with the laws of the state of Colorado in order to prevent injury or damage to their property or adjoining properties, including GVIC's right-of-way and canals. Shareholder shall not cause or permit any additional outlet structure of any type to be installed or maintained in the GVIC water delivery system serving the Property without GVIC's express written consent.
  
6. Indemnification. To the extent permitted by law Shareholder agrees to indemnify and hold harmless GVIC from any claim, loss, or liability threatened or asserted against GVIC arising from or in connection with, or caused by, Shareholder's use of the Headgate, including claims for bodily injury, death, property damage or mechanics' liens. Such indemnity shall include costs and attorneys' fees reasonably incurred for the purpose of investigating, negotiating, settling, comprising or litigating any such claim.
  
7. General Provisions.
  - a. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement, and shall supersede all prior understandings and agreements of the parties, whether written or oral, regarding the subject matter of this Agreement.
  
  - b. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties and their heirs, successors, assigns, legal representatives, agents, employees, guests and invitees.
  
  - c. One share of GVIC water equals 4.48 gallons per minute. Colorado water law applies to the water delivered to and from the Property.

GRAND VALLEY IRRIGATION COMPANY

By: Phil Bertrand  
Phil Bertrand, Superintendent

CITY OF GRAND JUNCTION

By: Laurie Kadrach  
Laurie Kadrach, City Manager