

## IRRIGATION LATERAL MAINTENANCE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the CITY OF CAÑON CITY, COLORADO, a home rule municipal corporation (the "City"), and, \_\_\_\_\_ (the "Owner") together referred to as the "Parties".

WHEREAS, the Owner is the owner of certain real property in the City more particularly described in **Exhibit A** (the "Property");

WHEREAS, on \_\_\_\_\_ the City approved an application for the replacement of a private irrigation lateral on the Property (the "Facilities") in accordance with the City's adopted irrigation lateral replacement program (the "Approval");

WHEREAS, the City requires the Facilities to be constructed in accordance with the Cañon City Municipal Code and the Approval; and

WHEREAS, the Approval is contingent on the Owner entering into this Agreement to ensure the facilities are properly and continuously maintained.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions necessary to ensure proper performance and maintenance of the Facilities by the Owner. All conditions contained herein are in addition to any applicable local, state, or federal law requirements including those contained in the Cañon City Municipal Code.
2. **Maintenance.** The Owner shall continuously maintain the Facilities to ensure that the Facilities remain in proper working condition in accordance with the Cañon City Municipal Code. Maintenance shall include routine landscaping, sediment and debris removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement.
3. **Inspections.** The City shall have the right to inspect the Facilities on a routine basis, as determined by the City, to ensure compliance with this Agreement. The Owner agrees to permit the City and its agents access to the Facilities to conduct such inspections.
4. **Easements.** In the event that no irrigation lateral easements exist or the existing easements are inadequate for proper maintenance of the Facilities, the Owner, hereby, grants, bargains and conveys to the City and its agents easements over the Property for access from public rights-of-way, abutting private roadway, and/or private driveway, to said Facilities for the sole purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Facilities to the extent that the Owner fails to do so and as necessary to ensure their proper working condition as provided herein.

5. **Deficiencies.** In the event the Owner fails to properly maintain the Facilities in a timely manner after written notice by the City of such deficiencies to the Owner, unless the Emergency provisions in Section 6 below apply, the City may enter Property and take whatever steps it deems necessary to maintain the Facilities. The City is under no obligation to maintain or repair the Facilities and in no event shall this Agreement be considered to impose any such obligation on the City.
6. **Emergencies.** In an event of emergency involving Facilities, the City or its agents may enter the Property without prior notice to take any action it deems necessary to address the emergency. The City shall notify the Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry.
7. **Compensation.** The City shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.
8. **Reimbursement.** In the event the City, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or construction of the Facilities including labor, equipment, supplies and materials, the Owner shall reimburse the City within ten (10) days after the City gives the Owner written notice of such expenditures.
9. **Lien.**
  - a. If the Owner or its successors or assigns fail to make timely payment as required herein, Owner hereby authorizes the City to file a mechanic's lien on the Property in the amount of unpaid work, foreclose on that lien and request and be awarded its costs and attorney fees.
  - b. Any amounts owed to the City and not paid within ten (10) days of the date of notification shall be the joint and several obligations of any owner of record of the Property or any portion thereof served by the Facilities, on the date the liability arose and all of the successors, heirs, or assigns of interest of such Owner(s). In addition, any fines or assessments levied against the City as a result of the Owners or its successors, heirs, or assigns failure to comply with the terms of this Agreement shall be the sole and absolute responsibility of the Owner or its successors or assigns.
10. **Indemnification.** The Owner, its successors and assigns shall indemnify and hold harmless the City, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City arising out of or resulting from the construction, presence, existence, maintenance or use of the Facility.
11. **Breach and Remedies.**
  - a. If Owner breaches this Agreement, the City may take such action as permitted or authorized by law, this Agreement or the Cañon City Municipal Code, as the City deems necessary to protect the public health, safety and welfare.

- b. Unless necessary to protect the immediate health, safety and welfare of the City, or to protect the interest of the City, the City shall provide Owner thirty (30) days' written notice of its intent to take any action under this Section, during which Owner may cure the breach and prevent further action by the City.
  - c. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies or the period in which such remedies may be asserted for work negligently or defectively performed.
  - d. Should this Agreement become the subject of litigation to resolve a claim of breach by Owner and a court of competent jurisdiction determines that Owner was in breach of this Agreement, Owner shall pay the attorney fees, expenses and court costs of the City.
12. **Binding Effect - Runs With Land.** This Agreement shall extend to and be binding upon the successors and assigns of the respective Parties hereto. The rights and responsibilities set forth in this Agreement are intended to be covenants upon the Property and are to run with the land.
13. **Severability.** If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.
14. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Fremont County, Colorado.
15. **Modification.** This Agreement shall not be modified, except by subsequent written agreement of the parties hereto.
16. **Recordation.** This Agreement shall be recorded in the real estate records of Fremont County and shall be a covenant running with the Property..

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

CITY OF CAÑON CITY

ATTEST:

By: \_\_\_\_\_  
Cindy Foster Owens, City Clerk

By: \_\_\_\_\_  
City Administrator

**OWNER**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_ for the \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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

[ S E A L ]

**EXHIBIT A**  
Property Legal Description