

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Grand Teton Canal Company

P.O. Box 1099

Driggs, Idaho 83422

(Space Above for Recorder's Use)

CANAL/DITCH MODIFICATION AGREEMENT

THIS CANAL/DITCH MODIFICATION AGREEMENT (this "Agreement"), which is entered into as of the last date denoted on the signature lines below, is hereby made by and between **Grand Teton Canal Company Limited**, an Idaho nonprofit corporation, of P.O. Box 1099, Driggs, Idaho, 83422 ("GTCC"), and **Teton County, Idaho**, a political subdivision of the State of Idaho, of 150 Courthouse Drive, Driggs, ID 83422 (hereinafter, "Developer"). GTCC and Developer may hereinafter be referred to individually as a "party" and collectively as the "parties."

RECITALS:

- A. GTCC is the owner of a certain [DITCH/PIPELINE] (the "Ditch") located along the west side of state highway 33 in the Driggs City Limits, in the SE Quarter of the NW Quarter, and the NE Quarter of the SW Quarter of Section 23, Township 5N, Range 45 E.
- B. The Ditch is part of a GTCC's larger delivery system which consists of various canals, ditches, and other infrastructure which delivers water diverted pursuant to its water rights to its stockholders (hereafter, "GTCC System").
- C. The GTCC System—including the Ditch—has existed on various properties for many years.
- D. GTCC also enjoys a secondary right of access for installation, repair, and maintenance of the Ditch with personnel and equipment that is commonly used or reasonably adapted to do such work as provided under Idaho Code §§ 42-1102 and 42-1207.
- E. Developer has permission to construct and maintain a multimodal asphalt pathway known as SH33 Multimodal Pathway (the "Development") via an issued encroachment permit from Idaho Transportation Department, which owns and controls the State Highway 33 right-of-way, and has received approval from other applicable governmental entities to construct the Development.
- F. In conjunction with the approval of the Development, and in order to satisfy certain requirements associated therewith, Developer proposes to install two concrete culvert

extensions (the “Alterations”), a map showing the location of the Ditch or portion thereof that is proposed to be altered by these Alterations is attached hereto as **Exhibit 1** and by this reference is made a part hereof.

- G. Developer must first have written permission from GTCC to modify an open-channel portion of the Ditch located on the property where the Development will be constructed according to applicable law.
- H. GTCC is willing to provide necessary written authorization regarding modification of the Ditch.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto, for themselves, their successors and assigns, do hereby agree as follows:

AGREEMENTS:

1. **Acknowledgement of Prescriptive Easement for the Ditch.** Developer hereby acknowledges the existence of the Ditch as a prescriptive easement for the benefit of GTCC where it is currently located within the property encompassed by the Development. Developer shall not challenge in a court of law, or elsewhere, the existence of such easement and shall respect all the rights and privileges held by GTCC as an easement owner under Idaho law. While not necessary as of the date of this Agreement, in the event it becomes necessary or desirable in the future, Developer shall execute an easement to be recorded for the location of the Ditch or portion thereof (as it may be modified with permission from GTCC from time to time) within thirty days of receiving a written request to do so from GTCC.
2. **Permission to Alter Ditch or Portion Thereof.** Pursuant to applicable Idaho law, including Idaho Code § 42-1207, and subject to the provisions of this Agreement, GTCC hereby grants written permission for Developer to complete the Alterations to the Ditch as shown in Exhibit 1.
3. **Construction Specifications and Procedures.** GTCC has reviewed the plans and specifications for the Alterations, as well as the proposed procedures and/or construction plans associated with the Alterations, and hereby approves of those plans, specifications, and procedures, subject to the following:
 - a. Developer’s construction activities shall be completed in a good and workmanlike manner, and shall meet recognized standards for public works construction in accordance with the approved plans and specifications;
 - b. If a pipeline is used as part of the Alterations, Developer shall (i) install the pipeline in a good and workmanlike manner consistent with Idaho Code § 42-1207, which requires that “the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by [Teton County]”;

(ii) install a trash gate or trash gates and other necessary items requested and/or required by GTCC at the intake to any piped portion of the Ditch; (iii) properly tie any piped portion of the Ditch into the unaltered portion of the Ditch; and (iv) allow for the inspection of the pipeline installation during the pipeline's installation/construction and upon completion of the pipeline, while during and after such inspections (up until work on any such pipeline is completed in accordance with this Agreement) Developer agrees to remedy any deficiency in the pipeline installation/construction identified by GTCC as soon as is practicable;

- c. Once the installation of any pipeline as part of the Alterations is complete, Developer shall provide notice to GTCC and GTCC shall inspect any such pipeline as installed/constructed and approve/accept or disapprove in writing within 10 business days of receiving such notice;
 - d. Developer's construction activities shall not block the original watercourse or GTCC's right to access the original watercourse, which GTCC may use until the Alterations to the Ditch are complete;
 - e. Developer's construction activities shall not violate any local, state, or federal laws, rules, or regulations, including those relating to water quality;
 - f. Developer must provide notice to GTCC when the Ditch Alterations (except for any pipeline, addressed separately above) are complete and available for inspection and approval, which GTCC shall inspect and approve or disapprove in writing within 10 business days of receiving such notice. In the event of disapproval for failure to comply with the approved plans, specifications, and procedures, Developer shall remedy any identified deficiencies as soon as practicable and make the Ditch alterations available for GTCC's re-inspection and approval once again as provided under this subparagraph.
 - g. Upon completion of the Alterations, Developer shall not unreasonably block or impede GTCC's easement or associated easement rights described herein.
4. **Lateral Ditches.** While not necessarily GTCC's responsibility, Developer agrees that as part of the Alterations, it will provide proper tie-ins from the pipeline to any lateral ditches that currently proceed off of the open-channel portion of the Ditch to be altered or replaced or shall make other arrangements or enter into other agreements for delivery of water through any such lateral ditches. Once the alterations are approved and/or accepted by GTCC, Developer will have no further obligation with respect to such tie-ins or lateral ditches.

5. **Miscellaneous.**

- a. **Attorney Fees.** If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in

addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

- b. **Merger.** This Agreement supersedes any and all other written or verbal agreements between the parties hereto. None of the parties shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- c. **Remedies Cumulative.** Upon any breach, any and all rights and remedies which either party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- d. **Further Documents.** The parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- e. **Enforceability.** The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- f. **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho.
- g. **Successors.** This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- h. **Recording.** This Agreement shall be recorded in the records of Teton County, Idaho, with Developer paying the cost of recording.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date(s) indicated below

Signatures on Following Pages

“GTCC”
GRAND TETON CANAL COMPANY

Dated: _____

By: _____

Its: _____

STATE OF IDAHO)
)ss.
County of TETON)

 This record was acknowledged before me on this _____ day of _____,
_____, by _____ in his/her capacity as the
_____ of the Grand Teton Canal Company.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

“Developer”

Teton County, Idaho

Dated: _____

By: _____

Its: _____

STATE OF IDAHO)
)ss.
County of TETON)

 This record was acknowledged before me on this _____ day of _____,
_____, by _____ as the
_____ of _____.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

EXHIBIT 1