

DRG39LAW

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: DENVER AND RIO GRANDE WESTERN RAILROAD CO., A  
DELAWARE CORPORATION, BY WILSON MCCARTHY AND HENRY SWAN, TRUSTEES

STREET ADDRESS/PARCEL NAME/SUBDIVISION: FOR USE OF LAWRENCE AVENUE FOR 25  
YEARS FOR STREET PURPOSES

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1939

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE



THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.

WILSON MCCARTHY AND HENRY SWAN, TRUSTEES

Grand Junction, Colorado  
October 23, 1939

City of Grand Junction  
Grand Junction  
Colorado

Gentlemen:

Herewith for your file, executed copy  
of our Chief Engineer's Agreement No. 6022, covering  
use of certain D&RGW premises at Grand Junction, Colo.,  
for street purposes, extending for a period of 25 years  
from and after September 1, 1939.

Yours truly,

Superintendent

EASEMENT-AGREEMENT

THIS AGREEMENT, Made and entered into this 1st day of September, 1939, by and between WILSON McCARTHY and HENRY SWAN, as Trustees of the property of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation (hereinafter called the "Railroad Company"), parties of the first part, and the CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado (hereinafter called the "City"), party of the second part

WITNESSETH, That

In consideration of the covenants, agreements, and obligations herein contained by the City to be kept, done, and performed, the Railroad Company hereby grants to the City for a period of 25 years, unless sooner terminated in accordance with the provisions hereof, commencing on the 1st day of September, 1939, a right of way and easement over the following described premises for the construction, maintenance, and use of a road for public travel, to-wit:

A portion of The Denver and Rio Grande Western Railroad Company's station grounds at Grand Junction, Mesa County, Colorado, said portion consisting of a strip of land 30 feet wide and about 775 feet long and extending southerly and southeasterly parallel with and contiguous to the southwesterly boundary line of said station grounds from the south line of West Main Street produced east to the north line of West Ute Avenue produced east - containing 0.54 acres more or less as shown on attached map.

For and in consideration of the foregoing easement the City hereby covenants and agrees as follows, to-wit:

1. That this agreement is made without prejudice to the right of the Railroad Company, and the Railroad Company reserves the right to take possession of all or any portion of the said premises at any time after 10 years from and after the date hereof whenever the use thereof shall become necessary or expedient for railroad purposes and the right to cross the said premises with such railroad tracks as may be required in such manner as not to unduly interfere with the use of said premises for highway or street purposes; provided, however, that in the event the Railroad Company elects to take possession of all or any portion of said premises in accordance with this reservation, it shall give to the City six months' notice of its intention so to do.

2. That it will keep said premises free from combustible material; plant no trees or shrubbery upon said premises without previous written consent of the Railroad Company; erect no structures thereon except such as may be necessary for highway or street purposes; provide such culverts, bridges, and other structures as may be necessary to properly care for the drainage from said premises and the adjoining right of way of the Railroad Company; hold the Railroad Company harmless from any and all damages to any such structures on said premises arising from fire caused directly or indirectly by sparks or fire emitted from the engines or trains of the Railroad Company; and further hold the Railroad Company harmless from any damages to the highway and its appurtenances upon the said premises which may result from construction of drainage ditches or waterways by the Railroad Company.

3. That this easement is subject to all outstanding superior rights (including those in favor of telegraph and telephone companies and leases to abutting property owners and others, if others there be) and the right of renewals and extensions thereof, and that nothing herein contained shall be construed as a covenant of the Railroad Company to put the City in the peaceable possession of said premises.

4. That no special assessments for establishing or improving the highway located upon said premises are to be made against adjacent railroad right of way, and to protect the Railroad Company against and save it harmless from such special assessments.

5. That for the purpose of protecting the reversionary interests of the Railroad Company against the assertion of adverse rights, it will prevent encroachment upon said premises, and to this end it will at its own expense take all necessary action, including so far as practicable building of its ditches on or the borrowing of earth from the outer margin of said premises.

6. That it will at its own cost and expense move the existing right of way fence of the Railroad Company from its present location to the inner margin of said premises, where it shall be thereafter maintained by the Railroad Company, and make such arrangements as may be necessary with owners or lessees of property abutting upon said premises as to the establishment, maintenance, and repair of fences or curbs on the outer margin of the said premises, the intention being to relieve the Railroad Company of the expense and all obligations, if there be any, of establishing or maintaining a fence or curb upon the outer margin of said premises.

7. That a nonuser of the whole or any part of said premises for street or highway purposes for a period of 12 months shall, at the option of the Railroad Company, constitute an abandonment by the City of all rights hereunder as to the whole or such part so abandoned.

8. That it will fully indemnify and save harmless and defend the Railroad Company from and against any and all manner of claims, demands, actions, causes of actions, debts, dues, and liabilities, judgments, and attorneys' fees arising out of or predicated upon loss of life or personal injuries and loss of or damage to other property of every kind and nature which may be occasioned or sustained by the City or its agents or employes engaged in the construction, reconstruction, maintenance, or repair of said highway on said premises.

The parties hereto mutually agree that all the provisions, covenants, and conditions contained herein shall be binding upon and inure to the benefit of the Railroad Company and the City and their successors and assigns, respectively.

Notwithstanding anything elsewhere herein contained, it is understood that the Trustees of the property of The Denver and Rio Grande Western Railroad Company, parties of the first part herein, are acting under appointment by the District Court of the United States for the District of Colorado in a proceeding for reorganization of said Railroad Company under Section 77 of the Federal Act in Relation to Bankruptcy, as amended; and it is agreed that upon termination of said trusteeship of The Denver and Rio Grande Western Railroad Company, this agreement (if not theretofore terminated as provided herein) and all of the obligations of the Trustees hereunder, shall be terminated unless this agreement be accepted and adopted by the party in whom the title to or possession of the railroads now in the Trustees' charge is then vested, in manner provided by order or decree of said Court, or otherwise. In any event, this agreement shall not be binding or obligatory upon the Trustees after their discharge as such, or in their personal capacity.

IN WITNESS WHEREOF, The parties hereto have executed this instrument in duplicate the day and year first above written.

*William M. Cooney*  
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*Henry Lane*  
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As Trustees of the property of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

CITY OF GRAND JUNCTION

By *O. E. Boston* Mayor.

Attest:  
*Helen C. Tomlinson*  
City Clerk.

APPROVED AS TO FORM  
*T. R. Woodman*  
GENERAL ATTORNEY

Approved as to Execution  
*T. R. Woodman*  
GENERAL ATTORNEY