

MSA89PAT

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: MARK K. ACHEN (CITY MANAGER)  
AND THERESA F. MARTINEZ (CITY CLERK) OF CITY OF GRAND  
JUNCTION DEBRA D. JOHNS (PRESIDENT) BOARD OF EDUCATION OF  
MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51 ED CURRIER  
(PRESIDENT) AND DORRT THOMPSON (SECRETARY) GRAND VALLEY  
IRRIGATION COMPANY, A NON-PROFIT COLORADO CORPORATION RONALD  
D. CARPENTER (OPERATIONS MANAGER) PUBLIC SERVICE COMPANY OF  
COLORADO

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: PATTERSON  
ROAD 25 1/2 TO 26 ROAD, PARCEL NO. 2945-101-00-942

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1989

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

EASEMENT AND AGREEMENT1522210 03:09 PM 08/04/89  
E.SAWYER, CLK&REC MESA COUNTY CO  
DOC EXEMPT

THIS EASEMENT AND AGREEMENT (Agreement) is dated this 3 day of August, 1989, and is between THE CITY OF GRAND JUNCTION, a municipal corporation (City), MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51 (School District), GRAND VALLEY IRRIGATION COMPANY, a Colorado non-profit corporation (GVIC), and PUBLIC SERVICE COMPANY OF COLORADO (Public Service).

## RECITALS:

A. The City is constructing improvements to Patterson Road in Mesa County, Colorado between 25 $\frac{1}{2}$  Road and 26 Road that include the undergrounding and placement into pipe of the Independent Ranchman's Canal that runs parallel to and south of the existing Patterson Road and construction of a sidewalk adjoining the south side of Patterson Road (Patterson Road Improvements).

B. GVIC is the owner of a parcel of land (GVIC Parcel) south of the existing Patterson Road, including a portion of the land used for the Patterson Road Improvements, the GVIC Parcel being included in the description of land in the document (Quit Claim Deed) recorded in Book 2 at Page 86 of the Mesa County Clerk and Recorder's records. GVIC owns, operates and maintains the Independent Ranchman's Canal, utilizing the GVIC Parcel. Further, GVIC may have acquired by use a prescriptive easement on a part of the property of School District lying adjacent to the south of the GVIC Parcel for the purpose of operating and maintaining the Independent Ranchman's Canal.

C. School District is the owner of certain property that lies south of a part of the Patterson Road Improvements and south of the GVIC Parcel. The property owned by School District is used for Pomona Elementary School, and is hereafter referred to as the "Pomona School Site."

D. Upon completion of the Patterson Road Improvements, the City, GVIC and School District desire to provide for the landscaping, maintenance and future use of that strip of land between the north fence of the Pomona School Site and the south boundary of the Patterson Road Improvements, such land being more particularly described on Exhibit A and depicted on Exhibit B attached hereto and incorporated herein by this reference, and hereafter referred to as the "Subject Property."

E. Public Service desires to obtain an easement for the construction and maintenance of a power pole and guy wire on a portion of the Subject Property.

NOW, THEREFORE, in consideration of the recitals above, and the mutual promises below, the parties agree as follows:

1. Grant of Easements.

A. Easement granted to City and School District. GVIC does hereby grant and convey to City and School District an easement over, under and across the Subject Property for the following purposes:

(1) To relocate the Pomona School Site north fence northward to the south side of the Patterson Road Improvements;

(2) To install and maintain a sprinkler system and grass on the Subject Property; and

(3) To use the Subject Property for playground, park and recreational purposes by students and employees of School District and members of the general public.

The easement granted hereunder shall be nonexclusive in nature, and nothing contained herein shall be interpreted or construed to limit, hinder or impede GVIC from the use of the Subject Property to operate, maintain and repair its irrigation facilities lying in, under or upon the Subject Property; provided, GVIC agrees to exercise reasonable care in all of its maintenance and repair activities, and to exercise reasonable efforts to coordinate with School District and the City in connection with such maintenance and repair for the safety and protection of students and employees of School District and members of the general public and the conduct of school activities during the school year. Further, City and School District agree to not do any act which will limit, hinder or impede GVIC from the reasonable operation, maintenance and repair of its irrigation facilities situate within the Subject Property, and, in that regard, City and School District agree to not construct or place upon the Subject Property any building or permanent structure other than the fence above described, and to not plant, cultivate or grow any large shrubs or trees thereon.

B. Grant of Easement to Public Service. GVIC does hereby grant and convey to the Public Service an easement upon a portion of the Subject Property described on Exhibit C attached hereto and incorporated herein (Utility Easement Area) for the purpose of constructing and maintaining a utility power pole and guy wire, together with a right of ingress and egress to conduct such activities over and

across the Subject Property, subject to the following conditions:

(1) Public Service shall exercise due care in the construction and maintenance of the utility pole and guy wire, for the safety and protection of persons and property, and in particular School District employees and students and members of the general public such that any property damage, personal injury or death caused by Public Service's failure to exercise due care shall be the responsibility of Public Service; and

(2) As a condition of the grant of this the easement, and prior to Public Service constructing the utility pole and guy wire, Public Service shall plan and arrange for construction at its expense, subject to the approval of City, School District and GVIC, a fence designed and intended to protect School District students and employees and members of the general public from damage, injury or death from utility pole and guy wire, while such students or employees or members of the general public are utilizing either the Subject Property or adjoining fields and equipment on Pomona School Site.

The easement granted hereby shall be nonexclusive in nature such that nothing contained herein shall be interpreted or construed to limit, hinder or impede GVIC from the use of the Subject Property, including the Utility Easement Area, to operate, maintain and repair its irrigation facilities lying in, under or upon the Subject Property, including the Utility Easement Area. Public Service agrees to not do any act inconsistent with rights granted to it hereunder to limit, hinder or impede the right of GVIC to the operation, maintenance and repair of its irrigation facilities upon the Subject Property, including the Utility Easement Area, and in that regard, Public Service agrees to not construct or place upon the Subject Property or Utility Easement Area any building or permanent structure except for the utility pole, guy wire and protective fence, and to not plant, cultivate or grow any large shrubs or trees thereon.

C. Status of Prescriptive Rights. Nothing contained herein shall be interpreted or construed, nor shall it constitute a waiver, abandonment or relinquishment of whatever prescriptive easement rights owned by GVIC for the operation or maintenance of the Independent Ranchman's Canal. Further, the parties agree to observe and respect such prescriptive rights of GVIC in the event the use thereof becomes reasonably necessary for better water

management or flood control or the maintenance or use of the delivery of water through the Independent Ranchman's Canal. In the event GVIC exercises its prescriptive rights in such a way as to disturb or damage the surface of the Subject Property or the improvements described in paragraph 2.A below, then GVIC agrees to repair and restore the Subject Property and improvements at its expense to the condition existing prior to such disturbance or damage.

2. Improvements and Maintenance for Subject Property.

A. Improvements. Upon completion of the Patterson Road Improvements, or at such earlier time as City and School District shall agree, but in no event later than December 31, 1989, School District shall commence and diligently prosecute to completion at its cost the relocation of the north fence of the Pomona School Site northward such as to enclose the Subject Property and make the same a part of the adjoining fields of the Pomona School Site. Further, upon completion of the Patterson Road Improvements or at such earlier time as City and School District shall agree, but in no event later than December 31, 1989, City shall commence and prosecute diligently to its completion at its cost the grading, leveling and compacting of the Subject Property and the installation of irrigation sprinkler lines and grass sod to a grade, level and appearance consistent with the adjoining Pomona School Site fields such that the Subject Property can be utilized as a part thereof by School District students and employees and members of the general public for playground, park and recreational purposes.

B. Maintenance. Subsequent to the installation of the improvements previously described, City shall maintain the sprinkler lines and grass as part of the Pomona School Site property in accordance with that certain Agreement between City and School District dated July 30, 1974, and in no event with less care or maintenance than City has provided to the Pomona School Site subsequent to the aforementioned Agreement of July 30, 1974.

3. Repairs to Irrigation Pipeline. In the event it becomes necessary to disturb the surface of the Subject Property and/or excavate the same for any purpose, including, but not limited to, repairs or maintenance to the pipeline carrying water for the Independent Ranchman's ditch, then all of such excavation and disturbance, including damage to the fence, irrigation sprinkler system or grass situate on the Subject Property, shall be repaired and restored to the condition existing prior to such disturbance or excavation. All of such repairs and the payment of the costs and expenses for the same shall be conducted and

paid by either the City or GVIC in accordance with previous agreements between them; provided, however, in the event there is no such agreement, or in the event such previous agreements do not address or govern the disturbance, excavation or damage to the fence, surface and sprinkler system, then, in such case, the City shall be solely responsible to conduct the surface restoration and repair at its cost, and to promptly and diligently pursue repair and restoration in a good and workmanlike manner.

4. Liability and Indemnity. Each party shall indemnify and hold the other parties harmless from all claims for loss or liability for personal injury, death or property damage caused by such party's negligence arising from or in connection with such party's performance of duties or obligations, or the exercise of rights or privileges hereunder, such indemnity to include costs and expenses reasonably incurred by the other parties to investigate, negotiate, compromise, settle, arbitrate or litigate any such claim.

5. Enforcement. The parties agree that the breach or violation, or failure to perform, any of the terms and conditions in this Agreement may cause irreparable injury for which there shall be no adequate remedy at law for the aggrieved party. Accordingly, the parties agree that equitable relief in the form of specific performance or injunction shall be an appropriate remedy for an aggrieved party. However, the existence or exercise of an equitable remedy shall not be interpreted or construed as a limitation upon any other remedy in equity or at law available to any party hereto aggrieved as a result of the default of a breach or nonperformance of another party. In the event any party seeks to enforce any term or provision of this Agreement by legal proceedings, the prevailing party in such legal proceedings shall be entitled to an award of its costs and expenses therefor, including reasonable attorneys' fees.

6. Benefit. The terms of this Agreement shall be binding upon and inure to the benefit of the respective parties, and their successors, assigns and legal representatives.

DATED the year and day first above written.

Attest:

By *Theresa A. Martinez*  
City Clerk *Deputy*

CITY OF GRAND JUNCTION,  
a municipal corporation

By *Mark Achen*  
City Manager







## EXHIBIT A

Beginning at a point 30.0 feet South and 49.77 feet East of the Northwest corner of the NW1/4 NE1/4 of Section 10, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, Mesa County, Colorado, and considering the north line of said NW1/4 NE 1/4 to bear East with all bearings contained herein to be relative thereto;

thence East a distance of 44.10 feet to the intersection of a curve;

thence along the arc of said curve to the right through a central angle of  $3^{\circ}40'04''$ , a radius of 831.50 feet and a long chord which bears  $S 85^{\circ}07'15'' E$  a distance of 53.22 feet to a point of reverse curvature;

thence along the arc of a curve to the left through a central angle of  $6^{\circ}43'09''$ , a radius of 2037.5 feet and a long chord which bears  $S 86^{\circ}38'46'' E$  a distance of 238.80 feet;

thence East a distance of 274.71 feet to the east line of the W1/2 said NW1/4 NE1/4;

thence South, along the east line said W/12 NW1/4 NE1/4, a distance of 51.5 feet;

thence West a distance of 619.0 feet;

thence North a distance of 16.0 feet;

thence  $N 35^{\circ}50'16'' W$  a distance of 22.20 feet;

thence North a distance of 15.5 feet to the intersection of a curve;

thence along the arc of said curve to the right through a central angle of  $83^{\circ}16'46''$ , a radius of 22.5 feet and a long chord which bears  $N 46^{\circ}43'15'' E$  a distance of 29.9 feet to the Point of Beginning.





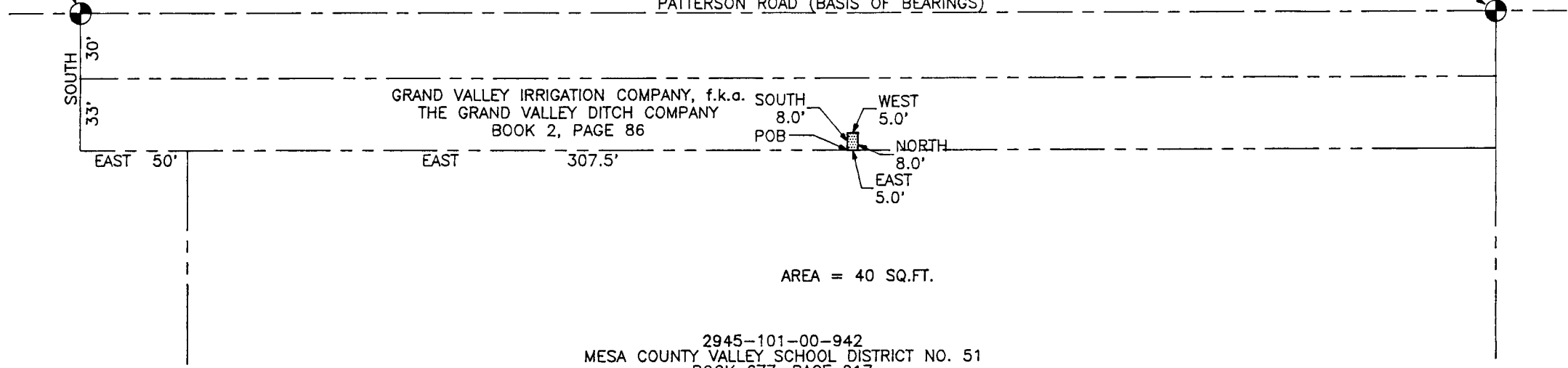
EXHIBIT C



N.W. CORNER  
N.W. 1/4, N.E. 1/4, SEC. 10  
T.1 S., R.1 W., U.M.

N.E. CORNER  
W 1/2, NW 1/4, NE 1/4, SEC. 10  
T.1 S., R.1 W., U.M.


PATTERSON ROAD (BASIS OF BEARINGS)



GRAND VALLEY IRRIGATION COMPANY, f.k.a.  
THE GRAND VALLEY DITCH COMPANY  
BOOK 2, PAGE 86

AREA = 40 SQ.FT.

2945-101-00-942  
MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51  
BOOK 677, PAGE 217

 40 SQ.FT.

R.O.W. DESCRIPTION MAP PARCEL NO. _____ APPROVED _____ DATE _____	CITY OF GRAND JUNCTION ENGINEERING DEPARTMENT
	PATTERSON ROAD - 25 1/2 TO 26 ROAD

