

PSC83ETR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: PUBLIC SERVICE COMPANY OF COLORADO

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CITY CLAIMS A RIGHT TO  
EASEMENTS TO CERTAIN PARCELS OF REAL PROPERTY BELONGING TO K.L. ETTER, JIMMIE  
ETTER, AND EMANUAL EPSTEIN, HEREINAFTER REFERRED TO AS "OWNERS"

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1983

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## AGREEMENT

This Agreement made this 9 day of March, 1983, between the City of Grand Junction, Colorado, a municipality, hereinafter "The City", and the Public Service Company of Colorado, a corporation under the laws of the State of Colorado, hereinafter "PSCO, in exchange for mutual covenants contained herein.

### RECITALS

1. The City claims a right to easements to certain parcels of real property belonging to K. L. Etter, Jimmie Etter, and Emanuel Epstein, hereinafter referred to as "Owners", by documents dated September 9, 1982, and September 22, 1982, (such property being more particularly described herein and in the attachments hereto), by virtue of certain memorandum agreements entered into between The City and such Owners.

2. The conveyance of such easements or rights to The City has not been completed at this time, and further disputes have arisen between The City and such Owners.

3. The City is in the process of constructing road improvements along such property, and, as part of such construction, is requesting PSCO to move existing utility lines.

4. On February 22, 1983, The City authorized undergrounding of such utilities pursuant to the franchise agreement entered into previously between The City and PSCO.

5. The Owners have not agreed to allow PSCO upon their property to proceed with the necessary temporary and permanent construction to move utility lines for road construction and to underground such facilities.

6. The City desires to obtain the agreement of the Owners to allow such construction to proceed, which consent the Owners will not give until they have an agreement signed by PSCO with the Owners, which agreement PSCO has been reluctant to sign.

### SECTION 1

PSCO shall sign the Agreement between the Owners and PSCO, at the request of The City, such Agreement being attached hereto and incorporated herein as Exhibit "A".

## SECTION 2

PSCO shall attempt to install such underground facilities and remove any temporary poles or lines within 180 days from written notice from The City to commence such construction.

## SECTION 3

It is agreed between the parties that PSCO shall attempt to complete such construction within 180 days, but it is understood by the parties that PSCO will not be liable under this or any other agreement for delays caused by acts of God, acts of third parties that delay construction, acts of the Owners or The City that delay construction, the negligence of any party, or inability to complete such construction for reasons beyond the control of PSCO.

## SECTION 4

The City shall complete its negotiations with the Owners and obtain such permanent and necessary rights of way and easements as are needed for road construction and the installation of both temporary and permanent utility facilities as shown on attached Exhibits "B" and "C". The City shall do this without further cost to PSCO and shall be solely responsible for obtaining such easements or rights of way prior to the expiration of the 180-day term herein. The City then shall grant PSCO the right to use such easements or rights of way for the installation of such facilities. Failure to obtain such easements or rights of way shall make The City liable to PSCO for any damages suffered by such failure.

## SECTION 5

The City undertakes and agrees to indemnify, hold harmless, and defend PSCO from any and all liability, loss, or damage PSCO may suffer as a result of any and all claims, demands, costs, judgments or causes of action arising from or under the Agreement signed by PSCO as shown on attached Exhibit "A" or arising from or under The City's claim of right to such easement and PSCO's reliance thereon to the property that is the subject of this Agreement. This indemnity shall cover any claims of any nature under such agreement, including claims based upon PSCO's negligence, if any.

## SECTION 6

The City agrees to defend any and all claims brought or actions filed against PSCO with respect to the subject of this indemnity contained herein, whether such claims or actions

AGREEMENT

WHEREAS, K. L. ETTER and JIMMIE ETTER are owners of an undivided 50% interest and EMANUAL EPSTEIN is an owner of an undivided 50% interest in a certain parcel of land in the State of Colorado, County of Mesa, City of Grand Junction, to wit:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN  
Section 1: a part of lot 3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$ )

and

WHEREAS, a transaction is currently pending which will transfer certain property rights for roads and utilities on a portion of this land from the above-named owners to the City of Grand Junction and to the Public Service Company, as evidenced by Exhibit A attached hereto and made a part hereof;

NOW, THEREFORE, the owners hereby agree to allow the Public Service Company the right to construct a temporary above-ground powerline over their property for the purpose of facilitating road construction and the installation of a permanent underground powerline on G Road to the extent of the sidewalk and curb and gutter portion of the project shown on Exhibit A. (As of this date, documents for the above referenced transaction have not yet been prepared.)

Public Service Company hereby agrees to remove all of the temporary above-ground powerline on the above described property within 180 days. Public Service Company further agrees to pay any and all damages or costs incurred by the land owners, including reasonable attorney fees and reasonable rent, if Public Service Company defaults in its obligation to remove all of the temporary above-ground powerline within 180 days.

Effective this 9 day of March, 1983.

LANDOWNERS

By: \_\_\_\_\_  
KENNETH LAMAR ETTER

PUBLIC SERVICE COMPANY

By: N. J. Temple  
N. J. TEMPLE  
Western Region Manager

CITY OF GRAND JUNCTION  
As Indemnitor for  
PUBLIC SERVICE COMPANY

By: Quayle J. Ashby  
City Attorney