

MCA97JUN

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: MICHAEL G. AND CAROL M. ANDERSON

SUBJECT/PROJECT: JUNIATA ENLARGED DITCH, KANNAH CREEK,
BOUDARY LINE DISPUTE AND WATER LINE EASEMENT

LOCATION: THAT PORTION OF THE NW1/4 SE1/4, WHICH
LIES SOUTH OF KANNAH CREEK

CITY DEPARTMENT: PUBLIC WORKS

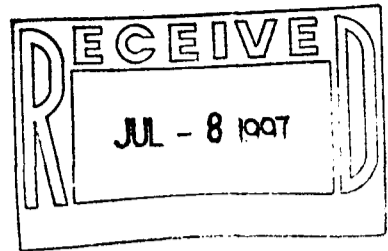
YEAR: 1997

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

WILLIAMS, TURNER & HOLMES, P.C.

ATTORNEYS AT LAW



July 7, 1997

All Attorneys Admitted in Colorado

Anthony W. Williams
Berndt C. Holmes
J. D. Snodgrass
William D. Prakken
David J. Turner*
Mark A. Hermundstad*
Susan M. Corle
Mark E. Hamilton
Kirsten M. Kurath

*Also Admitted in Utah

Dan Wilson, City Attorney
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Re: Anderson Agreement

Dear Dan:

I am enclosing herewith copies of the following documents:

1. The Agreement between the City and the Andersons which was recorded in Book 2335 at Page 955. I have not made a copy of the entire plat map which was recorded with that Agreement. I have only made a copy of the portion of the Agreement that has the recording information on it so that you can see that the plat map was recorded.
2. A copy of the Quitclaim Deed from the Andersons to the City which was recorded in Book 2335 at Page 966.
3. A copy of the Quitclaim Deed from the City to the Andersons which was recorded in Book 2235 at Page 968.

The total fees for recording these documents were \$83.00. Pursuant to our agreement, the City agreed to pay one-half of these charges. Accordingly, I would appreciate it if you would send me a check for one-half of the recording fees.

Thank you for your assistance in resolving this matter. If you have any questions, please let me know.

Very truly yours,

WILLIAMS, TURNER & HOLMES, P.C.

Mark A. Hermundstad

Can we get a check

for 41.50 this week?

the 7/15

call to file

COURTHOUSE PLACE BUILDING
200 N. 6th Street - PO Box 338
Grand Junction, Colorado 81502-0338
Phone 970/242-6262
Fax 970/241-3026

/sr
Enclosures

xc: Mr. & Mrs. Anderson

MOAB OFFICE
94 East Grand Avenue
Moab, Utah 84532-2830
Phone 801/259-4381

AGREEMENT

THIS AGREEMENT is entered into effective June 19, 1997, by and between Michael G. Anderson and Carol M. Anderson, 9470 Kannah Creek Road, Whitewater, CO 81527 ("Anderson") and the City of Grand Junction, 250 North 5th Street, Grand Junction, CO 81501 ("City").

RECITALS

- I. The Andersons own real property located in Mesa County, Colorado, which property is described on Exhibit A, attached hereto and incorporated herein by reference (the "Anderson Property").
- II. The City owns property adjacent and to the north of the Anderson Property, which property is described on Exhibit B, attached hereto and incorporated herein by reference (the "City Property").
- III. Kannah Creek forms a portion of the boundary between the Anderson Property and the City Property.
- IV. The City has maintained, for itself and for the benefit of the Juniata Enlarged Ditch, a diversion structure on Kannah Creek, at or near the boundary between the City and Anderson Properties (the "Diversion Structure"). While the City does not own 100% of the shares in the Juniata Enlarged Ditch, it has operated and acted as the sole owner. The City does not represent that it can bind the owners of the water in Kannah Creek or the Juniata Enlarged Ditch.
- V. Disputes have arisen between the Andersons and the City concerning the location of the boundaries between their respective properties, the location of the Diversion Structure, the right of the City to have access across the Anderson Property to the Diversion Structure, and related matters.
- VI. The parties desire to resolve the disputes which have arisen between them, on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. Establishment of Disputed Boundary. Pursuant to Section 38-44-112, C.R.S., the parties hereby agree, determine, and permanently establish that the boundary between the Anderson Property and the City Property, within Lot 10, Tract 48, Section 33, Township

12 South, Range 97 West, 6th P.M. is the line shown and described as the "Boundary Line By Agreement" on Exhibit C, attached hereto and incorporated herein by reference (the "Boundary Line"). Concurrently with the execution of this Agreement:

(i) the Andersons will execute and deliver to the City a quitclaim deed, conveying to the City all property in said Lot 10, Tract 48 located north of the Boundary Line, except for the easement granted to the Andersons in Paragraph II, below; and

(ii) the City will execute and deliver to the Andersons a quitclaim deed, conveying to the Andersons all property in said Lot 10, Tract 48 located south of the Boundary Line, except for the easements granted to the City in Paragraphs III and IV, below.

Counsel for Andersons will record this agreement and the quitclaim deeds in the records of Mesa County promptly after the execution of this Agreement, and the parties shall each pay one-half of the recording costs.

The Andersons, their successors and assigns understand and agree: that the City has exclusive use and discretion as to the operation, maintenance and repair of the Juniata Enlarged Diversion Structure (which operation, maintenance, and repair shall be done in accordance with applicable law) and, at times, operations of the Diversion Structure will result in the waters of Kannah Creek flowing across the above described Boundary Line in the bed of Kannah Creek. Andersons agree that they will not seek to hold the City liable for any results from the natural flow of the Creek in the bed of Kannah Creek.

- II. Conveyance of Water Shares and Easement. Concurrently with the execution of this Agreement, the City shall convey and assign to the Andersons three (3) shares of the capital stock of the Grand Mesa Reservoir Company, which shares are owned by the City. Such shares shall be conveyed and assigned free and clear of all liens, assessments, and encumbrances. The Andersons intend to divert the water under these shares from Kannah Creek. The eastern portion of the Boundary Line consists of the thread of Kannah Creek as it now exists. The City agrees that Andersons may place a diversion structure (which could include, without limitation, a pumping station) in the Creek to divert such water and any other water or water rights now or hereafter used for domestic, stockwatering, or irrigation purposes on the Anderson Property. In addition, if Kannah Creek should change location in the future, so that all or a portion of it is located north of the Boundary Line, the City hereby grants the Andersons and their heirs, successors, and assigns an easement from the Boundary Line to Kannah Creek, for the purpose of constructing, operating, maintaining, and repairing a diversion structure (which could include, without limitation, a pumping station) in the Creek and conveyance facilities from the diversion structure to the Anderson Property; provided, however, that the use of such easement shall not unreasonably interfere with the City's water system. Such diversion structure

and conveyance facilities may be used to divert and convey water under the shares and any other water or water rights now or hereafter used for domestic, stockwatering, or irrigation purposes on the Anderson Property.

III. Grant of Easement for Water Line. The Andersons hereby grant and convey to the City a non-exclusive easement for the City's Kannah Creek Pipeline (the "Pipeline Easement"), in its current location across the Anderson Property, subject to the following conditions:

- A. The Pipeline Easement is for the purpose of constructing, reconstructing, repairing, operating, and maintaining the Kannah Creek Pipeline, which is a domestic raw water pipeline. The easement shall extend 25 feet on either side of the centerline of the Pipeline in its current location across the Anderson Property.
- B. The Andersons shall have the right to use and occupy the Pipeline Easement area for purposes which are not inconsistent with rights granted to the City in this Agreement and which will not interfere with or endanger the City's facilities in the Pipeline Easement. The parties specifically agree that the Andersons shall not construct any buildings or structures in, over or across the Pipeline Easement area (other than fences, gates, and driveways into the Anderson Property), or plant any trees or shrubs on or in the Pipeline Easement area.
- C. The Kannah Creek Pipeline has been in its present location and has notoriously and openly occupied this location since at least 1912. The City will repair and reconstruct in a reasonable time (if reconstruction becomes necessary, at the sole discretion of the City) the Kannah Creek Pipeline in accordance with reasonable engineering practices, and will maintain it in reasonable condition. The parties agree that the obligations and liabilities of the City with respect to the operation, maintenance, reconstruction, and repair of the pipeline shall be governed by applicable Colorado statutory and common law, including, without limitation and to the extent it is applicable, the Colorado Governmental Immunity Act, or equivalent provisions of law.
- D. The City shall promptly backfill any pipeline repair excavations made by it in the Easement, as dictated by reasonable engineering practices, and shall grade the surface to its original contours after such excavations are made.
- E. The Kannah Creek Pipeline shall be repaired, reconstructed and maintained at the sole expense of the City, and shall remain the property of the City removable or replaceable at its option.
- F. The rights granted to the City in this Paragraph shall be permanent and perpetual.

IV. Grant of Access Easements. The Andersons hereby grant and convey to the City two non-exclusive easements across the Anderson Property for ingress to and egress from the Diversion Structure, subject to the following conditions:

- A. The first easement granted pursuant to this Paragraph is the easement shown and described as the "15' Wide Ingress/Egress Easement" on Exhibit C, and shall be referred to herein as the "North Easement." The North Easement is the road which provides access to the Diversion Structure from the northwest.
- B. The second easement granted pursuant to this Paragraph is the easement shown and described as the "20' Wide Ingress/Egress Easement" on Exhibit C, and shall be referred to herein as the "South Easement." This is the road that comes into the Diversion Structure from Kannah Creek Road.
- C. The South Easement shall be limited to use for ingress to and egress from the Diversion Structure by the City and its employees and agents, and by employees of the State of Colorado responsible for administering water rights. The North Easement shall be limited to use for ingress to and egress from the Diversion Structure and City properties in Lot 10 by the City and its employees and agents, and by employees of the State of Colorado responsible for administering water rights, and for access to and maintenance of the Juniata Enlarged Ditch.
- D. The Andersons shall have, at their option, the right to put a gate across the South Easement, near Kannah Creek Road, and to lock such gate. The City will be allowed to install its own lock on the chain on the gate separate from the Anderson lock and on a different link and, if required, the State of Colorado will be allowed to place its lock on the gate for purposes of ingress and egress to administer the water rights diverted at the Diversion Structure. The City shall instruct its employees and agents to close and lock the gate after they have passed through it, and the City shall be responsible for ensuring that its employees and agents close and lock the gate after each City use.
- E. The City shall maintain the roads existing in the North and South Easements in a condition sufficient for use by the City, at the sole expense of the City. The City shall be entitled (but not obligated) to grade the roads existing in the North and South Easements, and to put gravel on such roads. Any such work shall be at the sole expense of the City. All maintenance and other work done pursuant to this Paragraph shall be done in a workmanlike manner and a timely manner.
- F. There will, on occasion, be scheduled and unscheduled use of the South Easement.

Unscheduled use of the South Easement includes uses for purposes such as inspection, water measurement, observation of the stream, operation of the Diversion Structure, and emergency maintenance and repair. Notice to the Andersons is not required for such unscheduled uses and entrance to the Diversion Structure.

- G. Scheduled uses are uses such as planned maintenance activities or other activities which involve the use of equipment other than ordinary motor vehicles. For scheduled use of the South Easement, notice will be given at least three (3) days in advance and in the following manner:
- i. The City shall first attempt to contact one of the Andersons in person or by telephone regarding the City's intent to use the South Easement. Such notice shall be effective as of the time one of the Andersons is contacted by the City. If such contact is made, no further notice need be given. Leaving a message on an answering machine or equivalent device shall be deemed to be "contact."
 - ii. If the City is unable to contact either of the Andersons in person or the residence on the Anderson Property, the notice shall be delivered to any person over the age of eighteen residing on or in charge of the Anderson Property, or, in case no one is on the Anderson Property at the time delivery is attempted, by posting the notice in a conspicuous place on the Property. Such notice shall be effective upon delivery or posting.
 - iii. The Andersons will have no right to prevent or deny access for the time and duration of any operation, maintenance or repair work performed under and in accordance with the provisions of this Agreement.
- H. The Andersons shall have the right to use and occupy the North Easement and South Easement areas for purposes which are not inconsistent with rights granted to the City in this Agreement. The parties specifically agree that the Andersons shall not construct any buildings or structures in, over, or across the North or South Easement areas (other than the gate described above) or plant any trees or shrubs on or in the North or South Easement areas.
- I. The rights granted to the City in this Paragraph shall be permanent and perpetual.

- V. Attorneys' Fees. If either party defaults in its performance under this Agreement, or if it is necessary for either party to take any action to enforce the terms of this Agreement, each shall pay its own attorney fees and costs.
- VI. Authority. Each party warrants and represents to the other that such party has taken all actions necessary to make this Agreement a valid obligation binding upon the party, and that all requirements of any applicable charter, ordinance, statute, or constitutional provision regarding the approval and execution of this Agreement have been met.
- VII. Binding Effect. All provisions hereof shall apply to and bind the parties hereto, their agents, heirs, successors and assigns.
- VIII. Complete Agreement. This Agreement supersedes any and all prior agreements, written and oral, between the parties and constitutes the complete and entire agreement of the parties.
- IX. Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.
- X. Modification. This Agreement shall be modified by writing only, which writing must be executed by the parties hereto in order to be effective.
- XI. Waiver. Failure of either party to enforce any provision of this Agreement shall not act as a waiver to prevent enforcement of the same provisions at some later time.
- XII. Jointly Drafted. This Agreement was produced as a result of negotiations between the parties and should not be construed against either party as the drafter of this Agreement.
- XIII. Effective Date. This Agreement shall be effective on the last date it is signed by the parties.
- XIV. No Estoppel. Nothing in this Agreement shall estop or otherwise preclude either party from raising valid objections, in the manner provided by law, to the other party's use or appropriation of water or water rights.
- XV. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be considered one instrument.

WHEREFORE, the parties have executed this Agreement as of the date set forth above.

CITY OF GRAND JUNCTION:

ANDERSONS:

By: Shirley Achen
Date: 6-19-97, 1997

Michael G. Anderson Date

Carol M. Anderson Date

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing Agreement was acknowledged before me this ___ day of June, 1997, by Michael G. Anderson and Carol M. Anderson.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing Agreement was acknowledged before me this 19 day of June, 1997, by Mark K. Achen, as City Manager of the City of Grand Junction.

WITNESS my hand and official seal.

My Commission Expires: June 13, 1999

Theresa A. Martinez
Notary Public

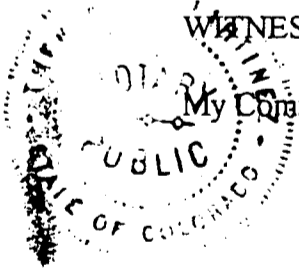


EXHIBIT A

The following real property located in Mesa County, Colorado:

Township 12 South, Range 97 West, 6th P.M.

Section 33: That portion of the NW1/4 SE1/4, which lies South of Kannah Creek, Mesa County, Colorado

AND

A tract or parcel of land located in Lots 11 and 15 of Tract 47, Section 33, Township 12 South, Range 97 West of the Sixth Principal Meridian in Mesa County, Colorado, said tract or parcel being more particularly described as follows: Beginning at Corner No. 1 from which point Corner No. 3 of Tract 47, Township 12 South, Range 97 West bears South 47°45' West a distance of 1,615.0 feet; thence North 65°54' East a distance of 564.0 feet to Corner No. 2; thence North 83°05' East a distance of 504.0 feet to Corner No. 3; thence North 84°33' East a distance of 560 feet to Corner No. 4, the East line of the property; thence along the East line of the property North 0°02' West a distance 495 feet to Corner No. 5; thence South 80°53' West a distance of 1557.3 feet to Corner No. 6; thence South 65°21' West a distance of 148 feet to Corner No. 7; thence South 10°39' East a distance of 540 feet, more or less to Corner No. 1, the point of beginning.

Together with all water, water rights, ditch and ditch rights belonging to the above parcels, if any,

AMENDED LAND SURVEY PLAT IN G.L.O. LOTS 10 & 11, SECTION 33, T12S, R97W, 6TH P.M.

DESCRIPTION OF BOUNDARY LINE BY AGREEMENT

A line situated in Government Lot 10, Section 33, T12S, R97W of the 6th Principal Meridian being described as follows: Beginning at the intersection of the West line of said Government Lot 10 with the Northerly line between Corner No. 5 and Corner No. 6 of that certain parcel of land described in Book 1984 at Page 883 in the records of the Mesa County Clerk and Recorder, which point of beginning bears North 00° 27' 11" West 677.29 feet from the Southwest corner of said Government Lot 10, and considering the West line of said Government Lot 10 to bear North 00° 27' 11" West, with all bearings contained herein relative thereto; thence along the aforementioned Northerly line, North 79° 56' 01" East 115.27 feet to Corner No. 5 of that certain parcel of land described in said Book 1984 at Page 883; thence along the East line between Corner No. 5 and Corner No. 4 of that certain parcel of land described in said Book 1984 at Page 883, South 00° 58' 58" East 265.80 feet to the flowline of a manmade overflow channel from Kannah Creek; thence leaving said flowline, North 88° 50' 49" East 369.45 feet; thence North 47° 28' 19" East 105.20 feet to the "thread" of Kannah Creek, thence along the said "thread" of Kannah Creek the following Seven (7) courses and distances: (1) South 63° 47' 28" East 87.68 feet; (2) North 62° 21' 51" East 131.29 feet; (3) North 52° 18' 59" East 90.69 feet; (4) North 84° 22' 55" East 97.45 feet; (5) South 63° 57' 54" East 102.99 feet; (6) South 77° 54' 15" East 104.06 feet; (7) South 72° 43' 59" East 176.99 feet to the East line of said Government Lot 10, and the terminus of said boundary line, whence the Southeast corner of said Government Lot 10 (also known as Corner No. 6 of Tract 48) bears South 00° 01' 54" East 518.19 feet.

20' WIDE INGRESS/EGRESS EASEMENT

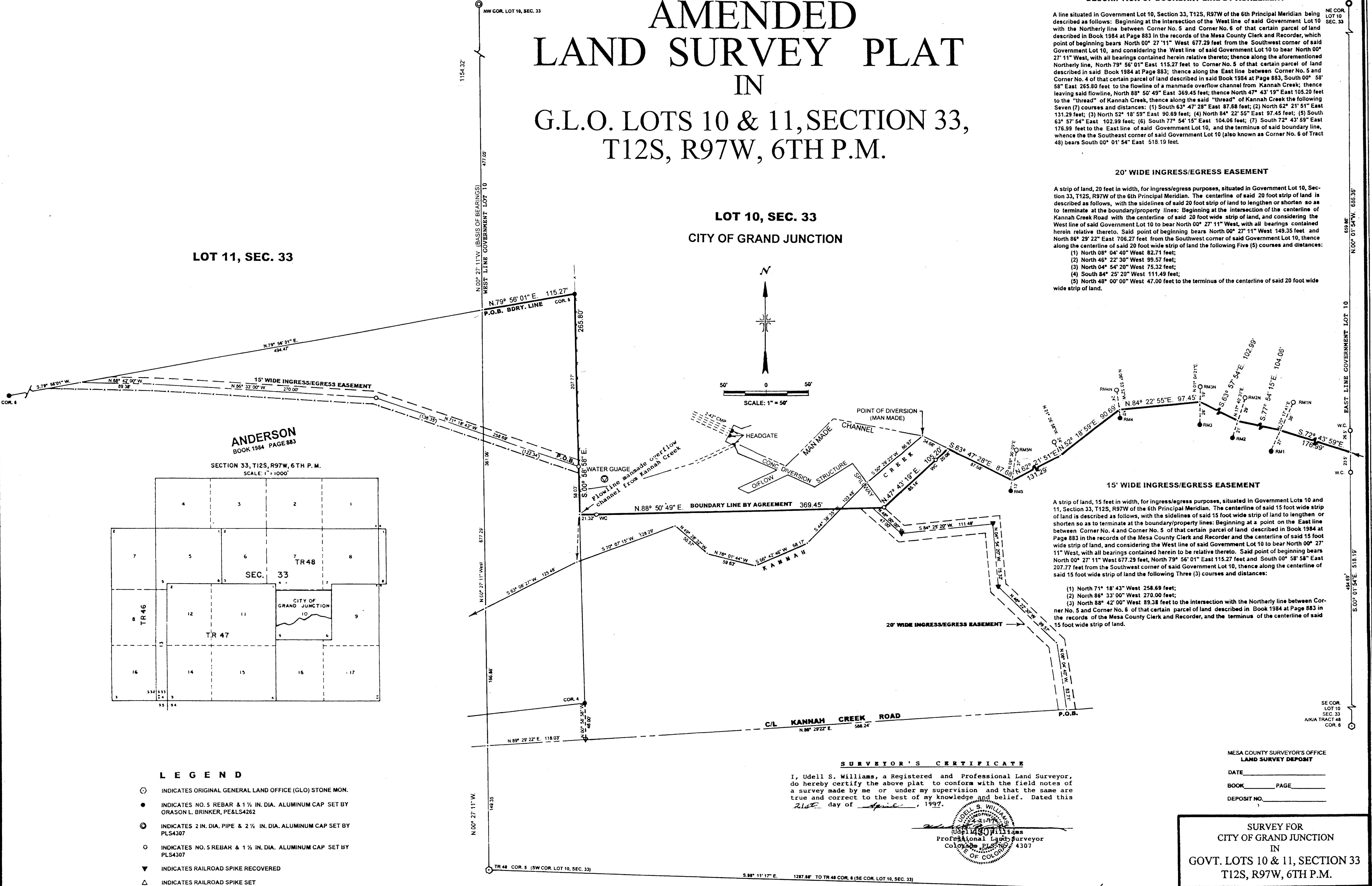
A strip of land, 20 feet in width, for ingress/egress purposes, situated in Government Lot 10, Section 33, T12S, R97W of the 6th Principal Meridian. The centerline of said 20 foot strip of land is described as follows, with the sidelines of said 20 foot strip of land to lengthen or shorten so as to terminate at the boundary/property lines: Beginning at the intersection of the centerline of Kannah Creek Road with the centerline of said 20 foot wide strip of land, and considering the West line of said Government Lot 10 to bear North 00° 27' 11" West, with all bearings contained herein relative thereto. Said point of beginning bears North 00° 27' 11" West 149.35 feet and North 86° 29' 22" East 706.27 feet from the Southwest corner of said Government Lot 10, thence along the centerline of said 20 foot wide strip of land the following Five (5) courses and distances: (1) North 08° 04' 40" West 82.71 feet; (2) North 46° 22' 30" West 99.57 feet; (3) North 04° 54' 20" West 75.32 feet; (4) South 84° 25' 20" West 111.49 feet; (5) North 48° 00' 00" West 47.00 feet to the terminus of the centerline of said 20 foot wide strip of land.

15' WIDE INGRESS/EGRESS EASEMENT

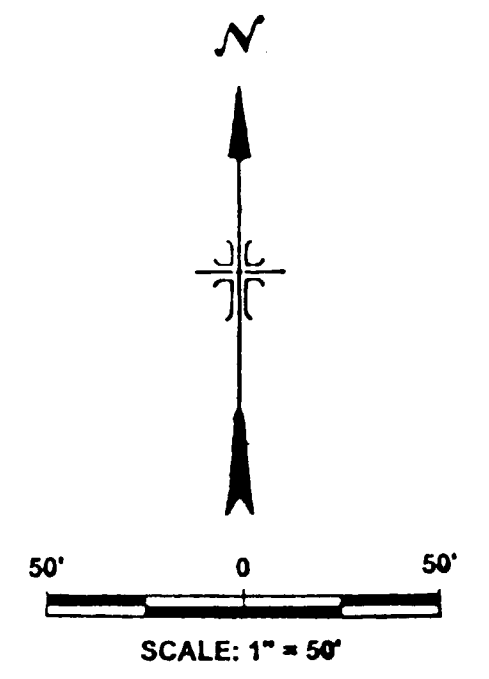
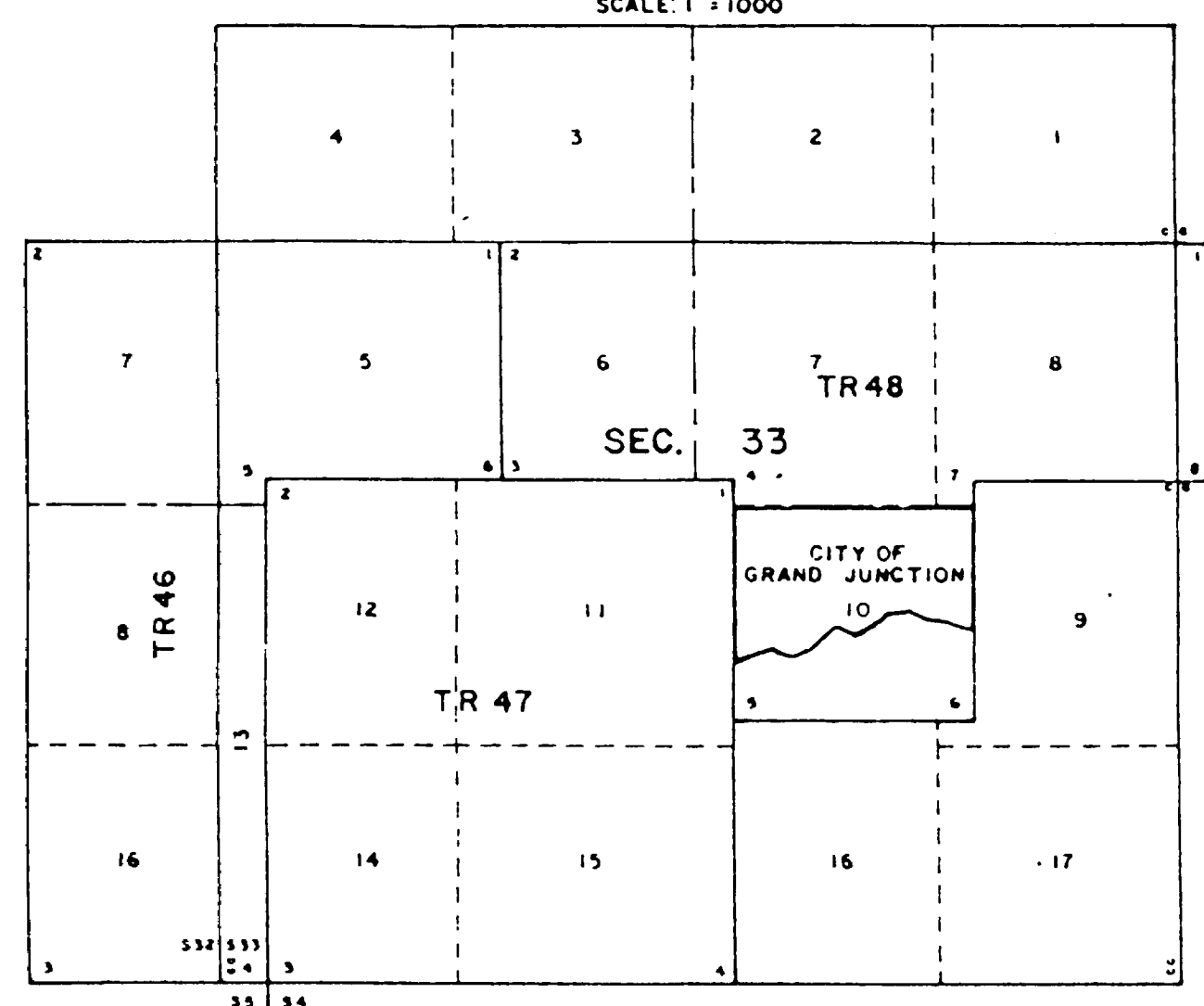
A strip of land, 15 feet in width, for ingress/egress purposes, situated in Government Lots 10 and 11, Section 33, T12S, R97W of the 6th Principal Meridian. The centerline of said 15 foot wide strip of land is described as follows, with the sidelines of said 15 foot wide strip of land to lengthen or shorten so as to terminate at the boundary/property lines: Beginning at a point on the East line between Corner No. 4 and Corner No. 5 of that certain parcel of land described in Book 1984 at Page 883 in the records of the Mesa County Clerk and Recorder and the centerline of said 15 foot wide strip of land, and considering the West line of said Government Lot 10 to bear North 00° 27' 11" West, with all bearings contained herein to be relative thereto. Said point of beginning bears North 00° 27' 11" West 677.29 feet, North 79° 56' 01" East 115.27 feet and South 00° 58' 58" East 207.77 feet from the Southwest corner of said Government Lot 10, thence along the centerline of said 15 foot wide strip of land the following Three (3) courses and distances: (1) North 71° 18' 43" West 258.69 feet; (2) North 85° 33' 00" West 270.00 feet; (3) North 88° 42' 00" West 89.38 feet to the intersection with the Northerly line between Corner No. 5 and Corner No. 6 of that certain parcel of land described in Book 1984 at Page 883 in the records of the Mesa County Clerk and Recorder, and the terminus of the centerline of said 15 foot wide strip of land.

LOT 11, SEC. 33

LOT 10, SEC. 33
CITY OF GRAND JUNCTION



ANDERSON
BOOK 1984 PAGE 883



LEGEND

- ⊙ INDICATES ORIGINAL GENERAL LAND OFFICE (GLO) STONE MON.
- INDICATES NO. 5 REBAR & 1 1/2 IN. DIA. ALUMINUM CAP SET BY ORASON L. BRINKER, PE/LS4262
- ⊙ INDICATES 2 IN. DIA. PIPE & 2 1/2 IN. DIA. ALUMINUM CAP SET BY PLS4307
- INDICATES NO. 5 REBAR & 1 1/2 IN. DIA. ALUMINUM CAP SET BY PLS4307
- ▼ INDICATES RAILROAD SPIKE RECOVERED
- △ INDICATES RAILROAD SPIKE SET
- — — INDICATES EXISTING BARBED WIRE FENCE
- WC INDICATES WITNESS CORNER
- — — INDICATES CALCULATED POSITION, NOT SET

SURVEYOR'S CERTIFICATE

I, Udell S. Williams, a Registered and Professional Land Surveyor, do hereby certify the above plat to conform with the field notes of a survey made by me or under my supervision and that the same are true and correct to the best of my knowledge and belief. Dated this 21st day of April, 1997.

UDPELL S. WILLIAMS
Professional Land Surveyor
Colorado License No. 4307
STATE OF COLORADO

MESA COUNTY SURVEYOR'S OFFICE
LAND SURVEY DEPOSIT

DATE _____
BOOK _____ PAGE _____
DEPOSIT NO. _____

SURVEY FOR
CITY OF GRAND JUNCTION
IN
GOVT. LOTS 10 & 11, SECTION 33
T12S, R97W, 6TH P.M.

UDPELL S. WILLIAMS
Professional Land Surveyor
751 Road Avenue
Grand Junction, Colorado 81501
Surveying Western Colorado & Eastern Utah Since 1953

BASIS OF BEARING STATEMENT: Bearing of N 00° 27' 11" W. along the West line of Government Lot 10, as determined by survey of that line and indicated on the Land Survey Plat bearing Deposit No. 1000-94 as deposited in the office of Mesa County Surveyor on 25 February 1994 in Book 1 at Page 27. Said West line is monumented on the South end by the original GLO stone marker, and monumented on the North end by a 2 1/2 inch diameter alloy cap on a 2 inch diameter alloy pipe set by PLS4307.

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY AS COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.