

ASM93MSL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: ARCHIE MAGEE AND SUSAN
MAGEE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: MAGEE
SEWER LINE EXTENSION, REIMBURSEMENT AGREEMENT

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1993

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE



City of Grand Junction, Colorado
250 North Fifth Street
81501-2668
FAX: (303) 244-1599

May 12, 1993

Gregg K. Kampf
Attorney at Law
200 Grand Avenue
Grand Junction, CO 81501

file

*Original signed
Cheney
Glore
Tamm
on file*

5/28/93

Dear Gregg:

Thank you for the signed City/Magee Agreement. I have enclosed a copy for your file (I have written in the May 12, 1993 execution date).

Enclosed is the executed copy of the Power of Attorney which I ask that you have Mr. and Mrs. Magee sign in front of a notary and return to me for recordation. Also enclosed is the Sewer Line Extension Agreement which I ask that you have them sign and return as well.

I appreciate your cooperation. Give me a call if you have any questions.

Very truly,

Dan E. Wilson
City Attorney

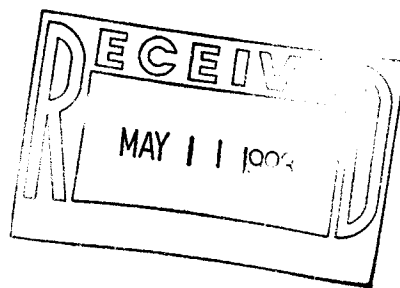
DW/cl

Enc.



Professional Corporation

ATTORNEYS AT LAW



May 11, 1993

Dan E. Wilson, Esq.
City Attorney
250 North 5th Street
Grand Junction, Colorado 81501

Re: Magee Property

Dear Dan:

Enclosed is the originally signed Agreement between the City and Archie and Susan Magee.

Thank you for your assistance.

Sincerely yours,

Gregg K. Kampf

GKK:meg
Enclosure

200 Grand Avenue, Suite 400, Post Office Box 40, Grand Junction, Colorado 81502
(303) 242-4903 • FAX: (303) 241-3760

1700 Broadway, Suite 1200, Denver, Colorado 80290

222 W. Main Street, Rangely, Colorado 81648

Gregory K. Hoskin
Terrance Farina
Frederick G. Aldrich
Gregg K. Kampf

Edward A. Lipton
Curtis G. Taylor
David A. Younger
David M. Scanga

Michael J. Russell
Susan R. Lundberg
John T. Howe
Sherri L. Price

William H. Nelson
(1926-1992)

AGREEMENT

~~MAY~~ THIS AGREEMENT made and entered into this 12th day of ~~January~~, 1993, by and between Archie Magee and Susan Magee ("Developer"), and the City of Grand Junction, a municipal corporation, State of Colorado, hereinafter referred to as "CITY".

Recitals.

The City is the manager/operator and co-owner of the Persigo Wastewater Treatment Facility ("Persigo"). Developer, in order to develop or subdivide its property described on the attached Exhibit A ("Property"), has been required to provide sewer service to the Property; Developer agrees that the availability of sewer service to the Property is necessary and beneficial. The Property does not have presently available facilities to connect to the Persigo system. The City has determined the costs and location of pipes and other facilities needed to connect the Property to the Persigo system. Because Developer desires to subdivide and develop its Property prior to connecting with the Persigo system, and the policy of the Persigo system is to require that the Developer pay for the costs to make sewer service available to the Property, the City has agreed to accept a payment equal to the estimated costs of connecting to the Persigo system.

Based on the "Recitals", and in consideration of the mutual obligations, benefits, duties and promises, the parties hereto agree as follows:

1. The City has studied the drainage basin in which the City has determined the Property is located. In order to be able to establish an estimated cost of connecting the Property to the Persigo system, certain assumptions have been made, which assumptions the Developer agrees are reasonable and are binding on it:

(a). Added to the actual estimated costs of sanitary sewer line construction to the drainage basin is a "contingency" of ten percent (10%). Such contingency is intended to be large enough to pay for inflation and any increase in the cost of materials and labor between the date hereof and the date of construction;

(b). The estimate of the costs associated with the entire drainage basin to be paid by the Developer could have been based on the number of units/uses on the Property in relation to the total units/uses in the drainage basin in which the Property is located. Because such an approach is based on zoning which is subject to change, the City has determined that the acreage of the Property in relation to the total acreage of the drainage basin in which the Property is located is the method to be used to determine the fraction of the total costs of connection that the Developer must pay.

2. The Developer has paid those estimated costs needed to construct those sanitary sewer facilities which are interconnected to the Persigo Plant (the Estimate).

3. The terms, burdens, duties and obligations described in this agreement, until released by the City: constitute a burden on the Property; shall be a part of the title of the Property and each portion thereof; shall run with the benefitted land (the Property); shall bind the heirs, successors and assigns of the Developer.

4. The City shall have the use and benefit of the Estimate until one of the following occurs:

(1) the City uses the money, plus any accrued interest, to pay for the construction and installation of sewer pipes and facilities as are generally described on Exhibit B. Because the Estimate may not be sufficient to complete the construction of the facilities, the parties agree that additional money may be needed to actually provide sewer service to the Property. This agreement does not constitute a duty or an obligation of the City, or the Persigo system, to spend money which has not been lawfully appropriated. The parties agree that the decision that sufficient money is available and such money should be appropriated for such purpose, as opposed to another purpose, is a discretionary one and solely that of the City; or

(2) Five (5) years have elapsed since the date Developer paid the Estimate to the City and construction of the facilities has not been budgeted nor begun. In such event, the City, or the Persigo system, as the case may be, shall repay to the Developer the Estimate plus interest on the Estimate at an average rate equal to the rate obtained by the City on its short-term/long-term investments during the period of time that the Estimate has been held by the City. Interest on the Estimate shall be calculated beginning with the earlier of the date of execution hereof, or the date the Developer paid the Estimate to the City.

5. The Estimate is calculated as follows:

C= cost, as estimated by the City, to construct the sewer line(s) and facilities sufficient to provide an interconnection to the Persigo system (generally as shown on Exhibit B), plus 10% (for contingency and to reflect the expected rate of inflation), plus 16% (for Engineering, Legal and Contract Administration).

PA=total number of acres of the Property. For this agreement PA is 20.

BA=total number of acres in basin. For this agreement, BA is 87.

$E \text{ (the Estimate)} = C \times (PA/BA)$.

If the City's Estimate is low, the Developer shall not be liable for the increased cost.

6. Developer represents and promises that it is the owner of the Property and that it has the authority to enter into this

agreement on the terms and conditions set forth. If Developer needs to obtain the consent or agreement of another party in order to effectuate this agreement, Developer agrees to do so. If Developer is a corporation, it shall provide a copy of a corporate resolution establishing that a corporate officer who signs this agreement has the full authority to bind the corporation to this agreement. If Developer is a partnership, or a limited liability company, it shall provide proof that the person executing this agreement has the authority to sign for and to bind the partnership or company.

7. The City may annex the Property in conjunction with other properties in the area, so as to maximize the extent of territory annexed but only so long as Developer may forthwith proceed with its development. Developer shall execute, contemporaneously herewith, a Power of Attorney (Utility Agreement) in the form attached as Exhibit C. The City may execute, as the Developer's attorney-in-fact for such purpose, such documents as are reasonably required to effect the annexation of the Property to the City. Developer agrees to cooperate in such annexation process, to the extent required.

8. This agreement may be recorded with the Clerk and Recorder in Mesa County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. Developer shall forthwith notify City of assignments and the names and addresses of assignees.

9. Nothing contained in this agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment or collection by City of any fee which is of uniform or general application.

10. Upon the completion of annexation to the City pursuant to the use of the Utility Agreement referred to herein, the City agrees that it shall refund or establish a credit against otherwise payable city sales and use taxation which would apply to the sale or use of those items required to be purchased or used in order to construct City required systems and infrastructure, to wit: pipe, street lights, manholes, sewer connections and appurtenances, asphalt, road base, traffic signs and devices, and concrete and related miscellaneous items.

The provisions of this section shall not exempt any person from the filing requirements established by Chapter 24 of the City Code nor from any other requirement of said Chapter of the City Code. This provision entitles the Developer, and its contractors, to a refund of the sales and use tax identified in this paragraph which would otherwise be retained by the City.

11. Except for a contract claim made by the Developer, or its heirs, successors or assigns for the payment of the Estimate plus interest as provided in this agreement, the Developer agrees to hold harmless and indemnify the City, its officers and employees from and with respect to any claim, demand or cause of action filed by any person for activities on Developer's Property, including reasonable attorneys' fees and experts fees incurred by the City, and including claims by the Developer, any purchaser, successor or assign of the developer, and any third party, whether or not any such claim or cause of action is frivolous, groundless or unsubstantial.

12. Developer understands and agrees that this agreement does not change or modify the Developer's obligation(s) to pay such costs and fees as are now or may be normally charged by the City such as plant investment fees, inspection fees, monthly sewer service charges, or any other charges or fees which the City is now charging, or may require in the future on a uniform or system-wide basis.

13. Developer may assign its rights, duties and obligations, pursuant to this agreement, but only so long as notice of such assignment, with the address of the assignee, is made by certified mail to the City, in care of the City Finance Director. In the event that any claim is made or cause of action is filed by any person alleging that this agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that the interest payable to the developer hereunder from such future user is excessive or is not enforceable in a court of law, the City shall give Developer written notice of the claim within ten days of its receipt by the City. The Developer agrees that it shall be bound by any settlement(s) of such claim(s) or causes of action, whether or not developer or its assigns is a party thereto, and that it waives and releases the City, its officers and employees, from any claims or causes of action Developer may have due to the failure of the City to abide by or enforce this agreement.

14. Upon non-performance by the City pursuant to this Agreement, the Developer shall give notice of default to the City Manager specifying the action giving cause to said default. The City shall have 30 days from its receipt of said notice to correct the alleged default. Upon the correction of said default within the 30 days period the agreement shall be restored and all terms and conditions will be in full force and effect.

15. Written notice pursuant to this agreement shall be given by certified mail to the address listed below or to such other address as a party may hereafter designate by certified mail.

City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501

Stephanie Nye by
Stephanie Nye
City Clerk

Meressa J. Martinez
Deputy City Clerk

By: Mark K. Achen
Mark K. Achen
City Manager

Archie E. Magee
Archie Magee

Susan Magee
Susan Magee

819 27 1/4 Road
Grand Junction, CO 81506

EXHIBIT A

North Point Subdivision, Lots 1 - 5
[Recorded in Book 14, Page 70]

Mesa County, Colorado

EXHIBIT B

SEWER LINE EXTENSION AGREEMENT
(See Agreement)

This one page "Sewer Line Extension Fact Sheet" is a part of an agreement between the Developer and the City of Grand Junction, which agreement is on file with the City Clerk. NOTICE: Read the Developer/City agreement to understand the duties and responsibilities of the parties.

The following information is required to provide proof of payment by Developer of funds paid to the City of Grand Junction as Manager of the 201 Sewer System. The money may be used for extension of sanitary sewer to the drainage basin in which this development is located. The City will determine at what time the sanitary sewer line is to be extended, if at all.

- 1. Name of Subdivision or Development: North Point Estates
- 2. Sewer Drainage Basin Number: 9G
- 3. Total Acres in Basin: 87
- 4. Total Acres in Subdivision or Development: 18.69
- 5. Percentage of Development to Total Basin:
(Line 4 divided by Line 3) 21.48
- 6. Total Cost of Construction
 - a. Estimated: \$63,860.00
 - b. Actual + Calculated Interest: _____
- 7. Amount Owed by Developer - See Attachment
(Line 6a or 6b times Line 5) \$13,718.46
- 8. Term of Agreement in Years
(If Applicable) 5
- 9. Date Eligible for Reimbursement
(If Applicable) 9-3-97

READ THE DEVELOPER/CITY AGREEMENT TO UNDERSTAND THIS FACT SHEET

Date: _____
Archie and Susan Magee

Developer	City of Grand Junction
819 27 1/4 Rd. , Grand Junction, CO	81506
Address	

Assignee for Reimbursement if Other than Developer:

Name

Address

ESTIMATED COST TO EXTEND SEWER TO NORTH POINT ESTATES

Item	Description	Unit	Quantity	Price	Total
1.	8" PVC	L.F.	1200	\$ 21.00	\$25,200
2.	48" Manhole	Ea.	4	\$1,000.00	\$ 4,000
3.	Asphalt Rem.	S.Y.	1467	\$ 1.50	\$ 2,200
4.	Cl 6 Base	S.Y.	1467	\$ 2.65	\$ 3,888
5.	Asphalt Rep.	S.Y.	1467	\$ 6.30	\$ 9,242
6.	Cross Bridge	L.S.	1	\$2,000.00	\$ 2,000
7.	Traffic Cont.	L.S.	1	\$1,500.00	\$ 1,500
8.	Mobilization	L.S.	1	\$2,500.00	<u>\$ 2,500</u>
				Sub-Total	\$50,530
				10% Contingency	\$ 5,000
				Engineering and Administration - 15%	<u>\$ 8,330</u>
				TOTAL	\$63,860

Drainage Basin = 87 acres

Cost/Acre = \$63,860 / 87 Acres = \$734 per acre

Acres in Development = 18.69

Cost to Development = 18.69 acres x \$734/acre = \$13,718.46

EXHIBIT C

POWER OF ATTORNEY

BE IT KNOWN, that we, Archie Magee and Susan Magee, as owners of the real property situate in Mesa County, Colorado, and described as:

North Point Subdivision, Lots 1 - 5
[Recorded in Book 14, Page 70]

do hereby designate and appoint the City Clerk of the City of Grand Junction as my/our Attorney in Fact granting said City Clerk full power and authority for me and in my stead to: sign such documents and instruments as are necessary to cause the above described land(s) to be annexed to the City of Grand Junction; and to sign any petition(s) for annexation of the described land(s) to the City, when eligible; and to do and perform any and all acts which the said City Clerk shall deem necessary, convenient, or expedient to accomplish said annexation, as fully as I/we might do if personally present.

The authority granted by this instrument shall be a covenant running with the land, shall be binding upon successors in interest and shall not cease upon my/our death (the death of either or both of us) or dissolution.

As a further covenant to run with the land, we (I) agree that in the event a counter-petition to a proposed annexation of the land is prepared, any signature on such petition purporting to affect the land herein described may be ignored as of no force and effect by the City under annexation requirements.

IN WITNESS WHEREOF, we (I) have hereunto set our(my) hand(s) and seal(s) this _____ day of _____, 1993.

STATE OF COLORADO)
) ss:
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____, 19 _____ by _____

WITNESS my hand and official seal:

Notary Public

My Commission expires:
