

CGV04SAN

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF CONTRACTOR: CENTRAL GRAND VALLEY SANITATION DISTRICT,
ORCHARD MESA SANITATION DISTRICT, AND
MESA COUNTY

SUBJECT/PROJECT: INTERGOVERNMENTAL AGREEMENT WHICH WILL
SUPERSEDE THE CENTRAL GRAND VALLEY
SANITATION DISTRICT OR CGVSD AGREEMENT
WITH RECITALS AND COVENANTS
MESA COUNTY FILE # MCA 2004-028

CITY DEPARTMENT: UTILITIES AND STREETS

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INTERGOVERNMENTAL AGREEMENT

CENTRAL GRAND VALLEY SANITATION DISTRICT
ORCHARD MESA SANITATION DISTRICT
COUNTY OF MESA
CITY OF GRAND JUNCTION

This Agreement is entered into effective the 8th day of March, 2004, by and among the Central Grand Valley Sanitation District ("CGVSD"), the Orchard Mesa Sanitation District ("OMSD"), Mesa County ("County") and the City of Grand Junction ("City"). The two districts may be referred to jointly in this Agreement as the "Districts".

Recitals

- A. On November 4, 1970, CGVSD entered into an Agreement ("CGVSD Agreement") for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City of Grand Junction. The CGVSD Agreement has been modified on several occasions.
- B. On November 19, 1975, OMSD entered into an Agreement ("OMSD Agreement") for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City of Grand Junction. The OMSD Agreement has been modified on several occasions.
- C. The parties now desire to enter into this new Intergovernmental Agreement which will (except as otherwise specifically provided herein) supercede the CGVSD Agreement, as modified, and the OMSD Agreement, as modified. This Intergovernmental Agreement will govern the relationship of the parties from and after the effective date of this Agreement.

Now, therefore, in consideration of the Recitals above and the covenants below, the parties agree as follows:

1. Joint Persigo Sewer System Agreement. The City and Mesa County have entered into a Joint Policy Making Agreement for the Persigo Sewer System signed October 13, 1998 ("Persigo Agreement"). The parties acknowledge that the Persigo Agreement controls the relationship between the City and the County regarding the operation, management and control of the Persigo Sewer System as that System is defined in the Persigo Agreement. Nothing in this Intergovernmental Agreement is intended to modify or supercede the Persigo Agreement and if a conflict exists, then the provisions of the Persigo Agreement will prevail.
2. CGVSD Lines and Fixtures. CGVSD has constructed and currently owns, operates and maintains approximately 95 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, CGVSD owns discharge lines that carry effluent from the District to City Lines. Those discharge lines are commonly referred to as the 29 Road and the 29 3/8 Road lines. CGVSD currently serves several out-of-District customers through a verbal understanding with Fruitvale Sanitation District. In addition, certain properties in WestPark Subdivision and Eastbury Subdivision are within the CGVSD boundaries but are serviced by Fruitvale Sanitation District. All

properties within the District boundaries are also within the Persigo System 201 Service Area ("201 Service Area"). Except as otherwise provided herein and by the terms of the Total Service Agreement ("TSA"), a copy of which is attached hereto and incorporated herein by this reference, CGVSD will continue to own, operate and maintain all of its current lines and will own any lines that are constructed in the future by the District, whether located within or outside of the District boundaries. All such lines and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the "CGVSD Lines".

3. OMSD Lines and Fixtures. OMSD has constructed and currently owns, operates and maintains approximately 46 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, OMSD owns the B Road Line which services the Valle Vista subdivision and certain other properties between that subdivision and the District boundaries. The District also owns certain major lateral lines that carry effluent from the District and discharge the effluent to City Lines. All properties serviced by OMSD are also within the 201 Service Area. Except as otherwise provided for herein or by the terms of the TSA, OMSD will continue to own, operate and maintain all of its current lines and will own any lines which are constructed in the future by the District and which connect to OMSD Lines or which are located within the OMSD boundaries. All such lines and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the "OMSD Lines."

4. Construction Standards. OMSD is responsible for the proper construction and maintenance of all of the OMSD Lines and CGVSD is responsible for the proper construction and maintenance of all of the CGVSD Lines. All such construction shall comply with all rules and regulations of each respective District and with all local, County and state laws and regulations. In addition, such construction shall at a minimum meet the standard construction specifications as adopted from time to time by the City. The Districts' standards may exceed those of the City.

5. City Lines and Fixtures. All sanitary sewer lines, and any facilities attached to or used in connection with such lines (including lift stations) which are not CGVSD Lines or OMSD Lines (and excluding any lines which belong to the Fruitvale Sanitation District) will be referred to in this Agreement as the "City Lines." The Districts acknowledge that they do not have any ownership interest in such City Lines and the City Lines are under the control of the City, either by virtue of actual ownership or by virtue of agreements with other parties. The City is responsible for the maintenance of the City Lines.

6. Acceptance of Effluent for Treatment. The Districts will continue to discharge their effluent into the City Lines at the currently existing locations. If additional discharge points are required in the future, then the City will negotiate with the respective District regarding the terms and locations of such additional discharge points. In addition, the City will continue to treat all District effluent at the Persigo Plant.

7. Rates For Treatment. All rates for treatment and for maintenance and operation of all parts of the Persigo System, except for the OMSD Lines and the CGVSD Lines, shall be established pursuant to the Persigo Agreement and shall be assessed uniformly to all users of the Persigo System, including District users ("Persigo Rate"). Effective as of January 1, 2004, and as of the date of the signing of this Agreement, the Persigo Rate is \$13.23 each month for one EQU. For purposes of determining the charges to be paid by the Districts' customers, the Persigo Rate shall be reduced by twenty seven and

two tenths percent (27.2%) for all District customers; this number will be referred to as the "District Rate." The District Rate as of the date of the signing of this Agreement is \$9.63 for one EQU. "EQU" is defined by the City's Code. When the City changes the Persigo Rate from time to time, the District Rate shall be adjusted to continue to be equal to seventy-two and eight tenths percent (72.8%) of the Persigo Rate.

8. Additional District Charges. In addition to the District Rate, each District may assess or charge such additional amounts to its customers as may be determined from time to time by the Board of each District; provided, however, from and after the date of this Agreement each District shall assess or charge monthly service fees to its customers (including the District Rate) which equals or exceeds the Persigo Rate. Each District may establish its own procedures for setting rates, fees, tolls and charges to be assessed against its customers for services. In addition, each District may incur such debt, enter into such contracts and establish such ad valorem taxes as each Board may determine is needed or proper for the administration of its services.

9. Plant Investment Fee.

(a) In addition to the Persigo Rate, the City, pursuant to the Persigo Agreement, shall continue to assess to and require the payment of a Plant Investment Fee ("PIF") to each new tap into the Persigo System. This PIF shall be charged by each District for new taps into the District System. Such PIF shall be uniform throughout the Persigo System and shall be paid at the time of physical connection to either the Districts' Systems or the Persigo System ("Tap.") In addition to the City PIF, each District may establish its own Tap fee or system development charge in such amounts and payable under such terms as determined by each District's respective Board. All such fees or system development charges assessed by the Districts shall be retained by the respective District and shall be used in accordance with the rules and regulations of such District.

(b) Each District shall require that each new customer of such District, and with respect to each new Tap into the District's or the Persigo System, shall pay to and be assessed by the City the then current PIF, in addition to any other lawful charges assessed or charged by the City as manager of the Persigo System.

10. Operation of District Lines.

(a) Except as provided in the TSA, each District shall be responsible for the operation, maintenance and control of its respective Lines. Each District shall monitor its lines to locate areas of inflow and/or infiltration ("I & I") into the respective District Lines and shall take such steps and make such capital expenditures as are reasonably required to reduce such I & I. All costs for the operation, maintenance and capital expenditures of the District Lines will be paid by the respective District, except as provided in the TSA.

(b) In addition, each District shall police its own lines to minimize the discharge of substances which may be detrimental to the treatment process employed at the Persigo Plant, including oils, acids or other such materials. Each District shall continue to enforce and abide by the City's and U.S. E.P.A.'s pretreatment rules and regulations. The City may perform such inspections of the District Lines as it deems appropriate to fulfill its duties and

responsibilities, including identification and location of any source of any illegal or other discharges into the Persigo System that could cause an "upset" or which violates any permit or other City requirement.

11. Pretreatment.

(a) The Districts shall continue to delegate to the City, and the City hereby accepts such continued delegation, the administrative, managerial and enforcement authority concerning pretreatment programs as applied to industrial and other users of the Persigo System. The City shall continue to act as the agent for each District in pretreatment matters to the extent necessary to allow regulatory and health-related control by the City over industrial and non-residential users within each respective District. It is the intent of the parties that the City shall continue to exercise such pretreatment authority throughout the Persigo Sewer System as may be reasonably required to comply with all federal and state grant and discharge permit requirements applicable to the Persigo Sewer System.

(b) As the manager of the Persigo System, the City agrees to hold the Districts harmless from any and all liability whatsoever which may result either directly or indirectly from the City's acts or omissions arising from or related to the administrative, managerial or enforcement authority concerning pretreatment programs.

(c) The City may pay any costs, expenses, penalties or fines, whether administrative or otherwise, from the revenues and assets of the Persigo System without having to adjust for revenues or assets derived directly or indirectly from the Districts.

12. Participation in Joint Funds. The City shall continue to collect the District Rate from the District customers. The parties have determined that a portion of the District Rate that is collected by the City should be returned to each respective District under the following provisions.

a. Unrestricted Capital Funds. In each fiscal year for the City, beginning in 2004, the City shall propose a budget item to the City Council and Board of County Commissioners (acting jointly as "co-owners") in the amount of \$154,070 which shall be referred to as the "Unrestricted Capital Funds."

(i) Of said \$154,070, on or before March 1 of each calendar year, beginning with the 2004 calendar year, and through the 2012 calendar year, the City will pay to CGVSD the sum of \$110,670.

(ii) Similarly, on or before March 1 of each calendar year, beginning with the 2004 calendar year, and finishing on or before March 1, 2015, the City will pay to OMSD the sum of \$43,400.

(iii) The Districts will be entitled to rely on the amount of such distributions in the preparation of their annual budgets, subject only to the final appropriations decision of the co-owners of the Persigo System.

(iv) Unrestricted Capital Funds shall only be used for repairs to existing capital systems or for capital improvements of the respective District Lines. Permissible capital improvements shall not include the construction of new line extensions that shall continue to be solely funded by developers under each District's rules and regulations that exist as of the date of this Agreement.

(v) If Unrestricted Capital Funds are not spent within the two calendar years following the year of distribution, the City may withhold the future distribution of Unrestricted Capital Funds until such time as the City is assured that previously distributed Unrestricted Capital Funds have been used only in accordance with this paragraph 12 and as otherwise provided in this Agreement.

b. Restricted Capital Funds. In addition to the Unrestricted Capital Funds, in each City fiscal year beginning in 2004, the City shall propose a budget item to the co-owners in the amount of \$200,930 (referred to as the "Restricted Capital Funds"), which, if approved, shall be distributed to the Districts as described in this paragraph (b).

(i) CGVSD shall receive an amount not to exceed \$144,330 annually to be paid on or before March 1 beginning on or before March 1 2004 and continuing through March 1, 2012.

(ii) Similarly, OMSD shall be entitled to receive an amount not to exceed \$56,600 annually to be paid on or before March 1 beginning on or before March 1, 2004 and continuing through March 1, 2012.

(iii) In order to receive such annual Restricted Capital Funds, each District hereby warrants and promises to expend the funds only on Capital Improvements to the existing District Lines or in the construction of new or replacement collector lines that are not funded by developers under the line extension policy of each District as such policies exist as of the date of this Agreement.

(iv) In addition, each District shall match District Funds dollar-for-dollar with the Restricted Capital Funds. The matching District Funds shall not include amounts received through the Unrestricted Capital Fund distributions.

(v) Each District shall submit to the City by August 1 of each year (beginning in 2004) its plans for Capital Improvements to be funded with the Restricted Capital Funds. Such plans may be for any number of future years. If the District plan includes Capital Improvements as described in this Agreement to increase capacity, replace aging lines, construct new or replacement collector lines that are not funded by developers, maintain or repair existing lines or to reduce or cure Inflow and Infiltration, then the City shall disburse to such District its share of the Restricted Capital Funds up to the allocated amount.

(vi) The District is not required to spend all of the Restricted Capital Funds in the year received; Restricted Capital Funds may be accrued for up to three years following the year of distribution for the funding of capital projects.

(vii) Such funds shall be accounted for separately in the District's accounting and records. The District will maintain and submit such records as the City may reasonably require to reflect the proper use or aggregation of such funds. If upon the eventual dissolution of each District (as described below) any funds remain in the Restricted Capital Fund account, then any plan of dissolution shall show a return to the City of such unused funds unless the City otherwise consents in writing to the funds being used for Capital Improvements.

13. Provisions Relating Specifically to CGVSD. The provisions of this paragraph 13 shall apply only to CGVSD.

- a. Customer Billing. The City shall continue to bill all District customers on a monthly basis. Included in the billing is the monthly District Rate and the Additional District Charges. The District shall continue to be responsible for the collection of all delinquent accounts. The City shall continue to provide to the District on a monthly basis information on delinquent accounts.
- b. Emergency Call Outs. The District and the City currently have a separate agreement for emergency call out services. The terms of that separate agreement shall remain in effect and may be modified from time to time as provided in that agreement.
- c. Line Cleaning. The District is responsible for cleaning and televising its own lines and for paying the costs thereof.

14. Provisions Relating Specifically to OMSD. The provisions of this paragraph 14 shall apply only to OMSD.

- a. Customer Billing. The District shall continue to be responsible for billing its customers for all monthly sewer charges, including District Rate charges and City Rate charges.

(i) The City shall continue to send to the District a single bill for all sewer charges payable to the City for customers serviced by the District based on the City's standard EQU calculation. The bill is to be received by the District by the 15th of each month and the District shall pay the bill to the City by the last business day of each month. If not paid by the last business day of the month, the bill shall be delinquent and shall accrue interest at the rate of nine percent (9%) per annum until paid. It will be the sole responsibility of the District to bill its customers.

(ii) The City shall not send bills to any of the individual customers of the District, except for industrial and similar non-residential pre-treatment charges. If there are

any customers within the District that require pre-treatment, all pre-treatment charges shall be billed separately by the City.

(iii) The amount to be billed and collected by OMSD for its single family customers shall be the District Rate less eight percent (8%), which represents the savings to the City in customer billing costs. OMSD Customers other than single family residents shall continue to be charged at the District Rate for such customers less the per customer reduction for the billing charge at the rate calculated for single family residents. The reduction effective January 1, 2004 is \$0.77.

b. Customer List. At least once each calendar year, the District shall provide to the City, at no cost to the City, the District's current customer and address list.

c. New Connects and Disconnects. Each month the District will provide to the City a list of new connects and disconnects.

d. Emergency Call Outs. The District and the City currently have a separate agreement for emergency call out services. The terms of that separate agreement shall remain in effect and may be modified from time to time as provided in that agreement.

e. Line Cleaning. The District is responsible for cleaning and televising its own lines and for paying the costs thereof.

f. District System Expansion.

- (i) All of the area serviced by OMSD is within the 201 Service Area. No future amendment of the 201 boundary on Orchard Mesa between 30 Road and 32 Road shall be permitted without the express approval of the City, the County and OMSD.
- (ii) The District shall not allow the connection to any District Line or any City Line with regard to any property on Orchard Mesa east of 30 Road except those properties the owner of which holds a paper tap issued by the District in exchange for granting easements for the construction of the Valle Vista line extension; each of such properties is listed by parcel number on the attached **Exhibit "B"**.
- (iii) Prior to construction, the District shall submit to the City all plans for extensions or enlargements of any District Line for engineering review and to determine if the terms of this Agreement, and the Persigo Agreement, are being complied with. If the design meets City engineering standards and applicable regulations and agreements, the City shall approve the submittal within ten (10) City working days; if the City issues its approval, no further concurrence from the City shall be required. If the City does not respond to a submittal within said ten (10) working days, concurrence shall be presumed.

15. Dissolution of Orchard Mesa/TSA. On or before the general election to be held in November of 2015, the Board of Directors of OMSD shall take such steps as are required by statute to take to the voters of the District a plan and proposal to dissolve the District.

(a) In preparation for such vote, the OMSD Board shall pass a resolution endorsing such dissolution and shall recommend to its qualified electors that the plan be adopted and that the electors vote in favor of the dissolution.

(b) The District's plan of dissolution shall call for the transfer of all District Lines and sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System, free and clear of any liens or encumbrances, and without cost or expense to the City.

(c) The plan shall call for the final dissolution of the District and the transfer of all District Lines and the District's sewer related assets to the City within one year of the date of the election.

(d) If the election is unsuccessful, the TSA, a copy of which is attached to this Agreement, shall become effective as of the following June 1st. In addition, the Board shall forthwith after the November 2015 election ratify and approve the attached TSA, without changes.

(e) The conduct of the affairs of the District from and after the failure of the election shall be consistent with the intent of the parties to transfer effective control to the City, as provided in the TSA.

(f) In any plan of dissolution to be voted upon by the qualified electors of the District, the plan shall provide for the distribution of cash reserves under the following guidelines: the Board may elect to waive all or part of the monthly sewer service charges to its customers for a period of up to six months, and to use the cash reserves to pay for all costs of the operation of the district (including payments of the Persigo Rate to the City). After completion of the dissolution, any remaining cash reserves shall be accounted for separately by the City and spent exclusively on capital improvements to the district system.

16. Dissolution of Central Grand Valley Sanitation District. On or before the general election to be held in November of 2012, the Board of Directors of CGVSD shall take such steps as are required by statute to take to the voters of the District the Board's plan and proposal to dissolve the District.

(a) In preparation to such vote, the CGVSD Board shall pass a resolution endorsing such dissolution and shall recommend to its qualified electors that the plan be adopted and that the electors vote in favor of the dissolution.

(b) The District's plan of dissolution shall call for the transfer of all District Lines and sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction, Colorado, for the benefit of the Persigo 201

Sewer System, free and clear of any liens or encumbrances, and without cost or expense to the City.

(c) The plan shall call for the final dissolution of the District and the transfer of all District Lines and the District's sewer related assets to the City within six months of the date of the election or when the TSA is effective, whichever is sooner.

(d) If the election is unsuccessful, the Directors shall again endorse and refer the question of dissolution to its voters within 25 months of the date of the first such vote. If the second election is also unsuccessful, the TSA, a copy of which is attached to this Agreement, shall become effective as of the next June 1st. In addition, the Board shall forthwith ratify and approve the attached TSA.

(e) The conduct of the affairs of the District from and after the failure of the second election shall be consistent with the intent of the parties to transfer effective control to the City, as provided in the TSA.

(f) In any plan of dissolution to be voted upon by the qualified electors of the District, the plan shall provide for the distribution of cash reserves under the following guidelines: the Board may elect to waive all or part of the monthly sewer service charges to its customers for a period of up to six months, and to use the cash reserves to pay for all costs of the operation of the district (including payments of the Persigo Rate to the City). After completion of the dissolution, any remaining cash reserves shall be accounted for separately by the City and spent exclusively on capital improvements to the district system.

17. Limitation of Liability. No party shall be liable to any other party for any damages for failure to deliver or receive sanitary sewer discharges if such failure is due to war or civil strife, broken lines, accidents, fires, strikes, lockouts or other such occurrences beyond the reasonable control of such entity. Nothing in this Agreement is intended to waive any of the rights and privileges of the Colorado Governmental Immunity Act.

18. Term of Agreement. This Agreement shall continue with respect to each District until the respective District is dissolved.

19. Termination/Enforcement/Remedies.

(a) This Agreement may be enforced by either party through a suit for specific performance or for damages or for both. The prevailing party in any such proceeding may be awarded attorney fees and costs at the discretion of the Court.

(b) Upon the giving of thirty days written notice and the failure of the receiving party to comply with each and every term hereof, or with other applicable laws or regulations, the party giving the notice may terminate this agreement with a subsequent writing given within sixty days of the initial notice. The remedy of termination is cumulative to other remedies of the parties, including the remedies described above.

(c) The failure of the City/County joint Persigo Board to make the payments to each District as required herein shall be deemed a default and upon proper notice and right to cure as provided in paragraph 19(b), each District may elect to terminate this Agreement.

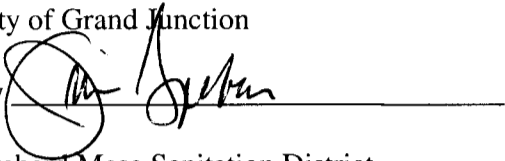
20. The terms and provisions of the City's Code, the Sewer Regulations, as both are amended from time to time, are incorporated herein by this reference as though fully set forth herein.

21. This Agreement shall become effective upon approval of the City Council, the County Commissioners and the Boards of Directors of each District.

Dated effective this 8th day of March, 2004.

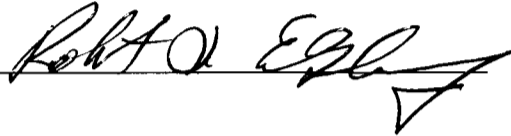
City of Grand Junction

By



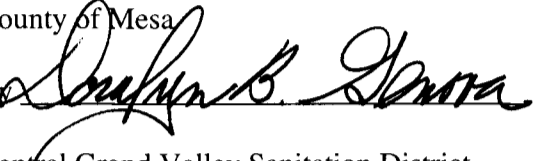
Orchard Mesa Sanitation District

By



County of Mesa

By



Central Grand Valley Sanitation District

By

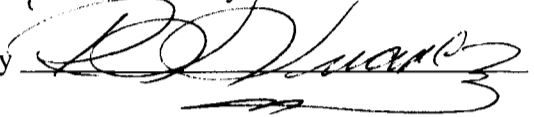


EXHIBIT B

List of Properties pursuant to Paragraph 14(f)(ii)

Paper Taps have been issued to the following properties. These taps stay with the property. For parcel #2943-331-00-087, if this property is divided into different parcels, then taps for up to four parcels may be issued.

| <u># of Taps</u> | <u>Address</u> | <u>Parcel Number</u> | <u>Current Owner</u> |
|------------------|----------------|----------------------|--------------------------|
| 4 | 155 31 Road | 2943-331-00-087 | Rooks |
| 1 | 3124 A1/2 Rd. | 2943-342-00-076 | Peale |
| 1 | 3130 A1/2 Rd | 2943-342-00-104 | Traudt |
| 1 | 3094 C. Rd | 2943-214-00-065 | A & G Partnership LLP |