

DFM75SEW

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	DOREMUS, FLEISHER, MASON COMPANY
SUBJECT/PROJECT:	SEWER SERVICE AGREEMENT (FUTURE RIDGES METROPOLITAN DISTRICT) – INCLUDING AMENDMENT TO THIS SEWER SERVICE AGREEMENT DATED AUGUST 20, 1980
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1975
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

SEWER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 7 day of May, 1975, by and between the CITY OF GRAND JUNCTION, a Colorado municipal corporation, (hereinafter referred to as "City"), and DOREMUS/FLEISHER/MASON COMPANY, a Colorado corporation, (hereinafter referred to as DFM").

WITNESSETH:

WHEREAS, Warren E. Gardner, William E. Foster, Lynn A. James and Patricia C. James, John Jebsen and Charles V. Woodard (hereinafter collectively referred to as "Sellers"), are the owners of (or are under contract to purchase) certain real property situated in Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado, which property lies in the "Redlands" area immediately southwest of the City of Grand Junction and is more particularly shown and described as Parcels 1 (containing approximately 710 acres) and 2 (containing approximately 370 acres) on the Map attached hereto as Exhibit A and made a part hereof by this reference; and

WHEREAS, by letter dated January 22, 1974, a copy of which is attached hereto as Exhibit B and made a part hereof by this reference, Harvey M. Rose, Grand Junction City Manager, confirmed to Warren E. Gardner, Agent for Sellers, that the City would treat the sanitary sewage collected from Sellers' proposed development on said Parcel 1, provided Sellers delivered the sewage to the existing City sewer system, and provided that no water pollution control law violations resulted therefrom; and

WHEREAS, by Option Agreement dated November 8, 1974, Sellers granted to DFM options to purchase the subject Parcels 1 and 2; and

WHEREAS, City acknowledges that its sewer service obligations under the aforesaid letter agreement with Sellers will run to the benefit of DFM in the event DFM exercises its option to

Parcel 1, provided that DFM's development of Parcel 1 does not produce significantly more sewage than would have resulted from the Parcel 1 project originally proposed by Sellers; and

WHEREAS, City desires that DFM also consider an alternate proposal for the collection and treatment of sewage from Parcel 1, involving the construction of a new sewage treatment plant on land lying North of Parcel 1, and DFM is willing to consider such alternative on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, City and DFM hereby agree as follows:

1. DFM Obligations Under Alternate Proposal. In the event DFM elects to adopt City's alternate proposal pursuant to the procedure hereinafter provided, DFM agrees that its obligations and responsibilities in connection therewith shall be as follows:

(a) Design and construct a sewage treatment facility adequate to service all portions of Parcels 1 and 2 which DFM's studies show can be feasibly served by such plant, which service area can be generally defined to include the entire easterly drainage of the subject property. If the design and cost studies show the same to be feasible, the new treatment facility may be constructed in two or more phases in coordination with the development of the property being served thereby;

(b) Design and construct all sewage collection and trunk lines within the project site and from the site to the new plant;

(c) Submit to the City for prior review and approval all engineering and design plans and specifications for the new facility and the lines connecting

the same with the project site, and permit the City to make periodic inspections of the work in progress;

(d) Upon completion of all of the foregoing facilities, dedicate and convey them to the City of Grand Junction;

(e) Pay for the necessary easements for any of the system except the plant site. In the event condemnation proceedings are necessary, to pay for such condemnation proceedings and any costs.

Unless this Agreement is subsequently amended to provide for the payment by City of a portion of the capital costs of constructing the new treatment facility, all of the foregoing obligations shall be performed at the sole costs and expense of DFM. DFM further agrees that all of its sales agreements covering (i) undeveloped portions of the area to be served by the new facility, and/or (ii) residential or commercial improvements constructed thereon, shall provide for the payment of out of town sewer service charges to the City until such time as the subject area is annexed by the City.

2. City Obligations Under Alternate Proposal. In the event DFM elects to adopt City's alternate proposal pursuant to the procedure hereinafter provided, City agrees that its obligations and responsibilities in connection therewith shall be as follows:

(a) If condemnation of land becomes necessary to acquire easements for the installation of any parts of the system, the City shall promptly commence condemnation proceedings and seek immediate possession of the necessary property as a part of such proceeding. In addition, the City will acquire at its expense the plant site.

(b) Secure as promptly as possible all necessary state and federal discharge permits and approvals;

(c) Promptly review all plans and specifications submitted to it by DFM, and periodically inspect the work during construction;

(d) Upon completion of the treatment facility in accordance with the approved plans and specifications therefor, and dedication of the same to the City, take over, operate and maintain the facility at the cost and expense of the City;

(e) Upon completion of the sewer collection and trunk lines in accordance with the approved plans and specifications therefor, and dedication of the same to the City, take over, operate and maintain such lines at the cost and expense of the City;

(f) Permit all residential and commercial improvements constructed within the portions of Parcels 1 and 2 served by the new facility to tap on to the related collection lines without cost, i.e. without the payment of plant investment fees or similar tap or hook-up fees or charges;

(g) Anything herein to the contrary notwithstanding, it is not the intention of this Agreement to provide the subsidizing of the system by the City, and to that end, it is agreed that DFM or its successor will pay to the City monthly (or as the City may determine) any difference between the costs of operating and maintaining the system and the revenue therefrom until the area is annexed to the City; and

(h) In the event it is determined advisable to oversize the outfall line of the plant to accommodate

premises between the plant and Parcels 1 and 2 herein, the City will pay the cost of the oversize pipe to the extent of its oversize.

3. Annexation and Fee Statement. Under either method of providing sewerage facilities for Parcels 1 and 2, DFM will be required to execute a power of attorney in the City's usual form designating the City Clerk as attorney in fact for the purpose of executing an annexation petition to accomplish annexation of the land at such time as this may be done. Anything herein to the contrary notwithstanding, it is recognized that so long as the lands remain out of the City of Grand Junction, they will pay the usual out-of-city rate for sewerage treatment.

4. Feasibility Study. Promptly following the execution of this Agreement by both parties, DFM agrees to complete at its sole cost and expense a comparative feasibility study and evaluation of the capabilities and costs of both the sewage collection and delivery system originally agreed to by City and the alternate proposal hereinabove discussed, and to provide City with a copy of such study upon its completion. The subject study is already underway, and is being conducted by Robert P. Gerlofs, Engineering Consultant.

5. Election by DFM. Following completion and detailed consideration of the foregoing feasibility study, DFM shall provide City with written notice as to which of the two alternate sewer proposals it has elected to adopt. It is mutually understood and agreed between the parties hereto that in the event such written notice of election has not been delivered to City on or before December 31, 1976, both the within Agreement and the letter agreement attached hereto as Exhibit B shall be automatically deemed null and void and of no further force or effect, and neither party hereto shall have any further rights or responsibilities thereunder.

6. Elaboration of Original Sewer Service Agreement.

In the event DFM elects to proceed with the sewer service arrangement described in Exhibit B hereto, DFM's obligations and responsibilities in connection therewith shall be as follows: To design and construct an outfall line beginning at the point of intersection of Broadway with the principal access road into Parcel 1, and thence along Broadway to the existing City sewer line, together with a lift station if necessary and all sewage collection and trunk lines within the project site and from the site to the new outfall line. Said new outfall line shall be sized to accommodate adjoining land owners along the course of such line, and the City shall pay the extra amount for the oversizing of the line. All plans and specifications for this new system shall be submitted to City for its prior review and approval, and DFM shall dedicate the system to the City of Grand Junction following its completion. Following acceptance of such dedication, City shall take over, operate and maintain the new system at its cost and expense. In addition, DFM agrees to pay plant investment fees to the City as each unit in the area served thereby is hooked on to the system. It shall be the City's responsibility to secure all necessary state and federal discharge permits and approvals. It shall be the responsibility of DFM to pay for the right-of-ways and for the right-of-way easements acquired for the outfall line along Broadway; provided that the City under its power of eminent domain will proceed to condemn wherever necessary to acquire the land with DFM paying for the expense of the proceeding and the cost of the easements.

7. Enforceability. The terms and provisions of this Agreement shall be specifically enforceable by either party hereto, and the parties agree that in the event a court action becomes necessary to enforce any one or more of the provisions hereof, the prevailing party shall be entitled to its costs incurred in connection with such action, including a reasonable attorney's fee,

as a part of the judgment entered therein.

8. Binding Effect; Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and shall be assignable at any time by DFM to a general or limited partnership in which DFM is one of the general partners without City's prior approval being required.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF GRAND JUNCTION

Attest:

Neva B. Lockhart  
Neva Lockhart, City Clerk

By

Harvey M. Rose  
Harvey M. Rose, City Manager

DOREMUS/FLEISHER/MASON COMPANY

Attest:

Wm E. Lash  
Secretary

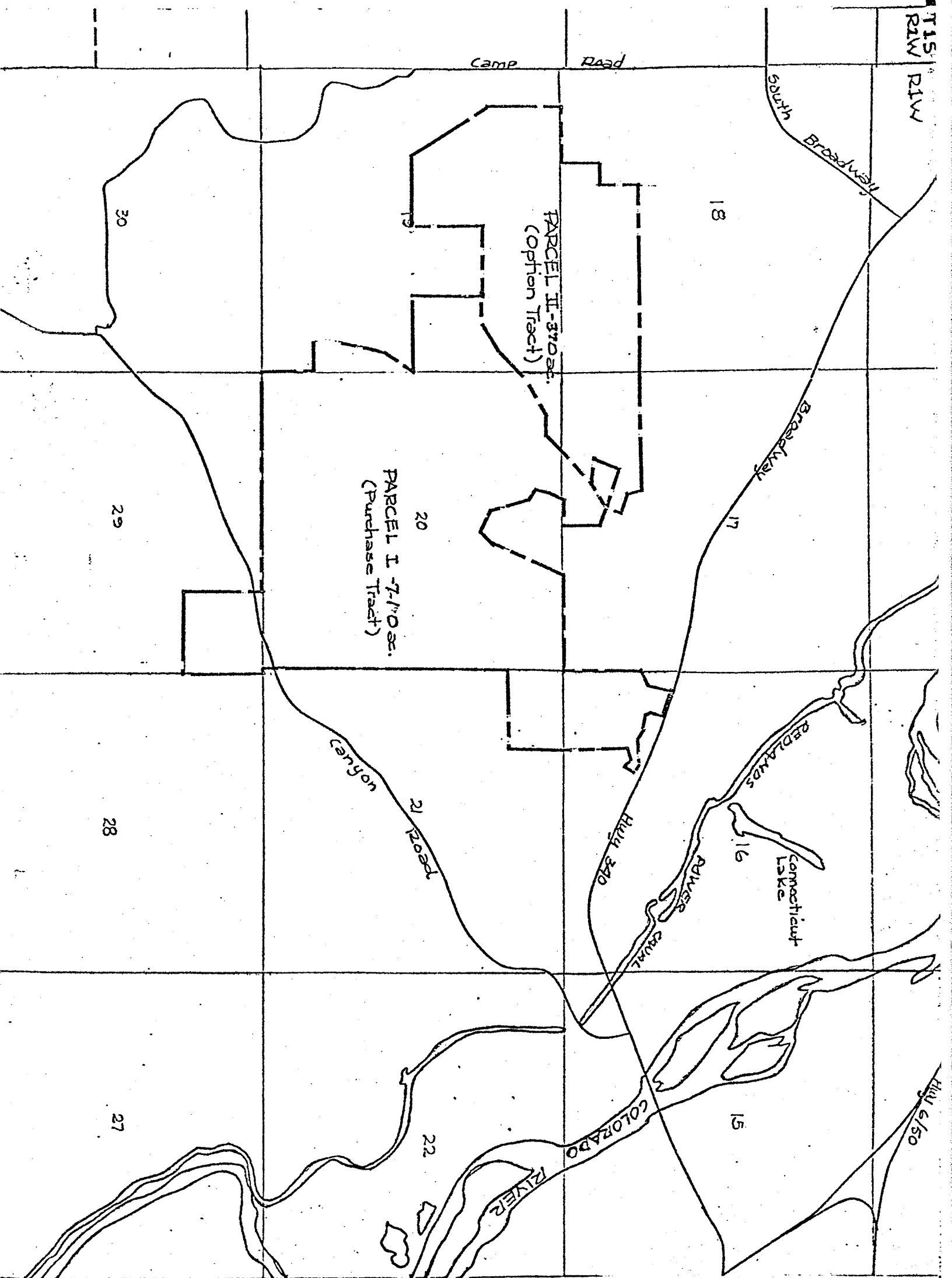
By

President

12-23-76

Ridges Development Company  
by William E. Lash  
President





T15  
R1W  
R1W

Camp Road

Broadwell

18

PARCEL II - 3.7'00 ac.  
(Option Tract)

PARCEL I - 7.1'00 ac.  
(Purchase Tract)

17

BROADWELL

COMPTON LAKE

HILLS ROAD

16

ADWERS CREEK

CANYON

CANYON ROAD

22

COLORADO RIVER

15

Hwy 6/50

30

29

28

27

January 22, 1974

Mr. Warren E. Gardner  
C.B.W. Builders, Inc.  
Box 2163  
Grand Junction, Colo. 81501

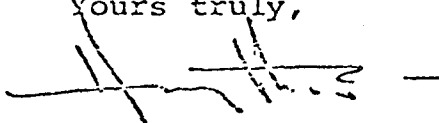
Dear Warren:

This letter is to confirm that the City will treat the sanitary sewage that is to be collected in the approximately 700 acres of the Redlands property that you are planning to develop as per your letter of January 16, 1974.

This sewage will be treated provided it is collected and delivered to the City sanitary sewer system and provided it does not cause the City to be in violation of state or federal water pollution control laws.

It is not anticipated at this time that there will be any trouble in the City accepting this sewage.

Yours truly,



Harvey M. Rose  
City Manager

HMR/JEP/hm

AMENDMENT TO SEWER SERVICE AGREEMENT

THIS AMENDMENT TO SEWER SERVICE AGREEMENT, made and entered into this 20 day of August, 1980, by and between the CITY OF GRAND JUNCTION, hereinafter referred to as "City", and THE RIDGES METROPOLITAN DISTRICT, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the City entered into a Sewer Service Agreement dated May 7, 1975, by and between Doremus/Fleisher/Mason Company providing for the treatment of sewage effluent from property now commonly known as "The Ridges" in the Redlands area of Mesa County, Colorado.

WHEREAS, the District succeeded to the interest in and to said Agreement of Doremus/Fleisher/Mason Company.

WHEREAS, it is now the mutual desire of the parties hereto to amend the original Sewer Service Agreement.

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows.

1. The original Sewer Service Agreement dated May 7, 1975, shall be and is hereby amended to include the following three parcels of land, all of which are contiguous to the original area included in said Agreement, to-wit:

PARCEL A - BELLA PAGO

Beginning at the NE Corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21, Township 1 South, Range 1 West of the Ute Meridian, thence South 87°35'07" East along the North line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 21 a distance of 1067.61 feet, thence South 18°00'17" East 1260.62 feet, thence South 54°16'21" West 230.25 feet to the SW Corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 21, thence South 07°14'50" East 161.77 feet, thence South 34°55'16" West 249.88 feet, thence along the arc of a curve to the right whose radius is 332.96 feet and whose long chord bears South 46°45'16" West 136.56 feet, thence South 58°35'15" West 249.81 feet, thence along the arc of a curve to the right whose radius is 591.00 feet and whose long chord bears South 65°31'46" West 142.86 feet, thence South 72°28'15" West 209.82 feet, thence along the arc of a curve to the right whose radius is

135.83 feet and whose long chord bears North 82°31'45" West 114.81 feet, thence North 57°31'45" West 149.92 feet, thence along the arc of a curve to the right whose radius is 128.77 feet and whose long chord bears North 31°31'45" West 112.91 feet, thence along the arc of a curve to the left whose radius is 50.00 feet and whose long chord bears North 20°16'22" West 98.23 feet, thence North 64°07'34" West 328.35 feet, thence North 02°26'55" East 243.34 feet to the SW Corner of the NE¼NW¼ of said Section 21, thence continuing North 02°26'55" East 1338.83 feet to the point of beginning; Mesa County, Colorado.

PARCEL B - PORTER PROPERTY

A tract of land located in a part of the SE¼ of Section 17, Township 1 South, Range 1 West of the Ute Meridian, being more particularly described as follows:

Beginning at the S¼ Corner of said Section 17, thence North 00°17'01" West along the west line of the SW¼SE¼ of said Section 17 a distance of 763.18 feet, thence North 89°42'59" East 300.00 feet, thence North 00°17'01" West 350.00 feet, thence South 89°42'59" West 275.00 feet, thence North 00°17'01" West 197.87 feet to a point on the North line of the S¼SE¼ of said Section 17, thence South 89°59'12" East along said North line of the S¼SE¼ of Section 17 a distance of 852.70 feet, thence North 03°30'14" East 199.99 feet, thence North 83°54'44" East 343.35 feet, thence South 60°13'49" East 371.13 feet, thence North 20°00'48" East 451.00 feet, thence North 52°19'12" West 111.43 feet, thence North 07°52'48" East 88.78 feet, thence South 52°19'12" East 88.78 feet, thence South 37°40'48" West 8.14 feet, thence South 51°16'12" East 635.71 feet, thence South 69°41'12" East 187.25 feet, thence South 50°03'15" East 259.01 feet, thence South 64°47'00" East 63.38 feet to a point on the East line of the SE¼SE¼ of said Section 17, thence South 00°06'14" West along said east line of the SE¼SE¼ of Section 17 a distance of 1233.54 feet to the SE Corner of said Section 17, thence North 89°50'28" West along the South line of the SE¼SE¼ of said Section 17 a distance of 1297.34 feet to the SW Corner of the SE¼SE¼ of said Section 17, thence North 89°49'09" West along the South line of the SW¼SE¼ of said Section 17 a distance of 1318.50 feet to the point of beginning, containing 85 acres, more or less; Mesa County, Colorado.

PARCEL C - DIXON PROPERTY

Commencing at the NE Corner of the NW¼NE¼ of Section 20, Township 1 South, Range 1 West of the Ute Meridian, thence North 89°49'09" West along the North line of the NW¼NE¼ of said Section 20 a distance of 479.75 feet to the true point of beginning, thence South 23°50'19" West 1290.95 feet, thence North 66°50'49" West 678.51 feet, thence North 25°49'09" West 432.05 feet, thence North 52°44'09" West 145.90 feet, thence South 23°21'51" West 120.62 feet, thence South 89°25'51" West 185.13 feet, thence North 23°21'51" East 600.00 feet to a point on the North line of the NW¼ of said Section 20, thence North 89°53'15" East along said North line of the NW¼ of Section 20 a distance of 606.17 feet to the N¼ Corner of said Section 20, thence South 89°49'09" East 838.75 feet to the true point of beginning, containing 27.89 acres; Mesa County, Colorado.

2. In the event at any time in the future additional parcels of real estate are annexed into The Ridges Metropolitan District, any such parcels will automatically be included and be subject to the Sewer Service Agreement dated May 7, 1975, as amended herein. Upon said annexation, any such parcels of real estate shall be subject to all the terms and conditions of the Sewer Service Agreement dated May 7, 1975, and to the terms of this Amendment to Sewer Service Agreement, in the same manner as if included in said Agreements from their inception. It is further agreed, however, that no additional parcels of real estate shall be annexed into The Ridges Metropolitan District unless the design service loading for the District's sewage transport system is fully adequate to handle the contemplated additional effluent, and that the transport system of the District is not exceeded because of the inclusion of any such annexations.

3. It is mutually agreed between the parties hereto that the foregoing described Parcels A, B and C are hereby incorporated as a part of the original Sewer Service Agreement dated May 7, 1975, said properties being subject to the obligations and entitled to the benefits as set forth in said original agreement, in the same manner as if included in said original agreement from its inception.

4. All other terms and conditions of the original Sewer Service Agreement dated May 7, 1975, are hereby fully ratified by the parties hereto, except as amended by this agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF GRAND JUNCTION

By: Jane L. Gandy

PRESIDENT OF THE CITY COUNCIL

ATTEST: Myra A. Rockhart, cmc  
City Clerk

THE RIDGES METROPOLITAN DISTRICT

ATTEST:

William E. Roth  
Secretary

By: Walter E. Gorden

Chairman