

FRT04SEW

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	FRUITVALE SANITATION DISTRICT AND MESA COUNTY
SUBJECT/PROJECT:	A NEW INTERGOVERNMENTAL AGREEMENT TO SUPERSEDE THE FRUITVALE AGREEMENT WHICH IS FOR THE SANITARY SEWER LINES WITHIN THE BOUNDARIES OF THAT DISTRICT AND FOR THE TREATMENT OF SUCH EFFLUENT BY THE CITY
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	2004
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	TERMINATION OF WRITTEN AGREEMENT

INTERGOVERNMENTAL AGREEMENT

FRUITVALE 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 Fruitvale Sanitation District ("Fruitvale"), and the City of Grand Junction ("City"), and Mesa County ("County").

Recitals

A. On the 28th day of September, 1959, Fruitvale entered into an Agreement with the City ("Fruitvale Agreement") for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City. The Fruitvale Agreement has been modified on several occasions.

B. The parties now desire to enter into this new Intergovernmental Agreement which will (except as otherwise specifically provided herein) supercede the Fruitvale 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. Fruitvale Lines and Fixtures. Fruitvale has constructed and currently owns, operates and maintains approximately 9 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, Fruitvale owns what is referred to as the Grand Avenue outfall line which carries effluent from the District to City Lines. Fruitvale currently serves properties in WestPark subdivision and in Eastbury subdivision under the terms of an intergovernmental agreement with Central Grand Valley Sanitation District. Under that agreement, several Fruitvale customers are serviced by CGVSD. All District customers and all properties within the District boundaries are also within the 201 Service Area. Except as otherwise provided herein and under the terms of the Total Service Agreement ("TSA"), a copy of which is attached hereto and incorporated herein by this reference, Fruitvale 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 or which are located within the Fruitvale 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 ``Fruitvale Lines``.

3. Construction Standards. Fruitvale is responsible for the proper construction and maintenance of all lines within its system. 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.

4. 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 Fruitvale Lines (and excluding any lines which belong to the Orchard Mesa Sanitation District and the Central Grand Valley 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.

5. Acceptance of Effluent for Treatment. The District will continue to discharge its 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 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.

6. Rates For Treatment. All rates for treatment and for maintenance and operation of all parts of the Persigo System, except for the Fruitvale Lines, shall be established pursuant to the Persigo Agreement and shall be assessed uniformly to all users of the Persigo System, including all District users (``Persigo Rate``). 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 District's 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 January 1, 2004 and 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.

7. 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 the District; provided, however, beginning with the 2006 calendar year, the District shall assess or charge monthly service fees to its customers (including the District Rate) which equals or exceeds the Persigo Rate. The District may establish its own procedures for setting rates, fees, tolls and charges to be assessed against its customers for services. In addition, the District may incur such debt, enter into such contracts and establish such ad valorem taxes as its Board may determine is needed or proper for the administration of its services.

8. 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 the 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 District's System or the Persigo System (``Tap.``) In addition to the City PIF, the District may establish its own Tap fee or system development charge in such amounts and payable under such terms as determined by the District's Board. All such fees or system development charges assessed by the District shall be retained by the District and shall be used in accordance with the rules and regulations of the District.

(b) The District shall require that each new customer of the 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.

9. Operation of District Lines.

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

(b) In addition, the 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. The 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.

10. Pretreatment.

(a) The District 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 the 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 the 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 District 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 District.

11. 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 the District under the following provisions.

a. Fruitvale Capital Fund. 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 \$62,930 which shall be referred to as the ``Fruitvale Capital Fund.``

(i) On or before March 1 of each calendar year, beginning with the 2004 calendar year, and through the 2008 calendar year, the City will pay to Fruitvale the entire \$62,930.

(ii) The District will be entitled to rely on the amount of such distributions in the preparation of its annual budget, subject only to the final appropriations decision of the co-owners of the Persigo System. The District shall maintain a separate accounting for all such Capital Funds received and spent by the District and shall make available to the City a copy of such accounting upon request.

(iii) The Fruitvale Capital Funds shall only be used for repairs to existing capital systems or for capital improvements of the District Lines. Permitted uses of the funds shall include actions to increase capacity, replace aging lines, construct new or replacement collector lines that are not funded by developers, maintain or repair existing lines or reduce or cure Inflow and Infiltration. Permissible capital improvements shall not include the construction of new line extensions that shall continue to be solely funded by developers under the District's rules and regulations that exist as of the date of this Agreement.

(v) If any portion of the Fruitvale Capital Funds are not spent prior to the date of dissolution of the District (as provided below), then all such unspent funds shall be returned to the Persigo Joint Fund without restriction.

12. Customer Billing. The District shall continue to bill its own customers and will remit monthly payments to the City. All billings will continue as they have been done in the past. The District applies the same EQU formula as used by the City for all properties which the District serves.

13. 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.

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

15. Dissolution of Fruitvale. On or before the general election to be held in November of 2008, the Board of Directors of Fruitvale 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 Fruitvale 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 next June 1st. In addition, the Board shall forthwith after the 2008 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, except for the Fruitvale Capital Fund which shall be repaid to the Joint Fund in accordance with the provisions of paragraph 11(v).

16. Limitation of Liability. No party shall be liable to the 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.

17. Term of Agreement. This Agreement shall continue until the District is dissolved.

18. 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 giving 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 18(b), each District may elect to terminate this Agreement.

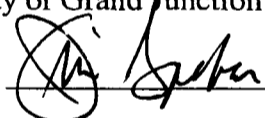
19. The terms and provisions of the City's Code, the Sewer Regulations, as both are amended from time to time, are incorporated herein by this reference as though fully set forth herein.

20. This Agreement shall become effective upon approval of the City Council, the County Commissioners and the Board of Directors of the District.

Dated effective this 8th day of March, 2004.

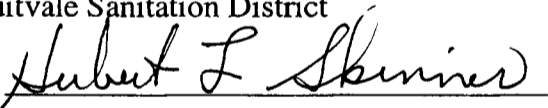
City of Grand Junction

By



Fruitvale Sanitation District

By



County of Mesa

By

