

FRU95284

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	FRUITVALE LATERAL AND WASTE DITCH ASSOCIATION
SUBJECT/PROJECT:	28 ¼ ROAD DITCH IMPROVEMENTS FROM COLUMBINE PARK TO BUNTING AVENUE DRAIN LINE
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1995
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AGREEMENT

THIS AGREEMENT, made this 27th day of April, 1995, by and between THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter "City," and FRUITVALE LATERAL AND WASTE DITCH ASSOCIATION, a Colorado Not for Profit Association, hereinafter "Association."

Recitals.

A. The Association operates and maintains certain ditches and laterals within the City and unincorporated Mesa County, Colorado, all more particularly described in the attached Exhibit A, hereafter the "ditches".

B. The City and the Association wish to cooperate such that some of the ditches, specifically those along 28 1/4 Road from Columbine Park to Bunting Avenue Drain Line, may be improved as designed in the construction drawings and project manual dated April 21, 1995 (revised), hereinafter referred to as the "plans" or the "project".

C. In furtherance thereof the Association and the City have agreed to certain improvements, operations and maintenance, all as more fully set forth herein.

D. The City and the Association have a long and successful history of cooperative efforts to provide irrigation and drainage through the Association's ditches. The City and Association have been able to cooperatively solve construction, operational and maintenance issues. The City has designed improvements to 28 1/4 Road and will be constructing those improvements during the first half of 1995. The parties desire that their past cooperation be memorialized for the City's 28 1/4 Road re-construction and associated construction of the project.

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and conditions contained herein, and other valuable consideration, the parties by authority of their respective governing bodies, agree as follows:

1. The Association delivers irrigation water for private use to specific ditches, diversions or individuals, that are not part of the Association's ditches. Delivery of water to a specific point, typically a head gate structure owned and maintained by the Association, completes the Association's operation and maintenance responsibility for certain ditches. After delivery to a specific point the private property owners purchasing the service are and become solely responsible for the delivery, operation and maintenance of the water and ditches delivering or distributing water. The Association and the City are not responsible or liable one to the other for the maintenance of any private ditch, ditches, pipes, culverts, conveyances or other works nor are the Association or the City responsible or liable one to the other for the

distribution of irrigation water by or through private ditches. Private ditches are shown on Exhibit A. The City and the Association acknowledge and agree that a private ditch exists within this project and that the parties will make every reasonable effort to accommodate the continued use of the private ditch but such agreement shall not constitute an assumption of maintenance or operation responsibility or liability of any type, manner or sort for the ditch generally described as beginning at the point of delivery at the northeast corner of Columbine Park and south of Orchard Avenue; thence west and parallel to Orchard Avenue to the west side of 28-1/4 Road; thence south and parallel to 28-1/4 Road to the northwest corner with Elm Avenue; thence westerly along the north side of Elm Avenue and leaving the project area.

2. The City will, at its expense, construct and install underground pipe and all necessary and reasonable appurtenances including but not necessarily limited to, turnouts, cleanouts and headgates all in accordance with the plans. Said plans and specifications are incorporated by this reference as if fully set forth. The plans and specifications shall be the operative documents for the project and shall serve to limit and define the project. The Association acknowledges and agrees that it has reviewed and accepted the plans and the project and further represents that the design and specifications of the project are adequate and acceptable to the Association.

3. The Association shall assume, accept and be responsible for, the operation and maintenance of the project immediately upon the City's acceptance of the system installation. At a minimum, the Association shall keep, repair and maintain the project on a comparable basis with other Association facilities and improvements. The Association's maintenance obligations pursuant to this agreement are and shall be perpetual. The Association may negotiate with the City for the City to perform periodic and routine maintenance. Any and all maintenance performed by the City pursuant to this paragraph shall be done only in accordance with a separate agreement signed by the Association and the City stipulating maintenance activities to be performed and compensation to be paid.

4. The City warrants to the Association the design and construction of the project and the installation of the facilities for a period of one year from the date of full and final acceptance of the project by the City. Such full and final acceptance of the project by the City shall be operative and binding upon the Association. The warranty obligations pursuant to this paragraph shall be limited to repair and replacement of pipes, fittings, headgates, turnouts and other improvements installed by or at the direction of the City. The City shall not be liable, in accordance with 24-10-101 et. seq. C.R.S., to the Association or any third party for any direct or consequential damages which may result by

virtue of failure of the project or failure of the project to convey irrigation water to customers or receive and convey wastewater, stormwater or tailwater or for any other action in tort or which may lie in tort.

5. The project shall be designed, bid and expected to be constructed, installed and operational by June 15, 1995. Failure to meet the scheduled and anticipated completion date shall not subject the City to direct or consequential damages.

6. At such times as the Association's water delivery to its customers is interrupted during construction of the project the customers may use potable water for irrigation. The City has agreed that for those customers of the Association that use potable water provided by the City, during construction of the project, the City will charge those customers only the average of each customers billing for the months of December 1994, January 1995 and February 1995.

7. On or before July 1, 1995 the City shall disconnect from the Association's facilities the now existing storm drain inlet located at 28 1/4 Road and North Avenue and connect said drain and inlet into storm drainage facilities to be constructed during the reconstruction of 28 1/4 Road. The terms of this paragraph are more particularly described and depicted in the plans which plans are incorporated by this reference as if fully set forth.

8. The City agrees to design and construct the project so that future extension of storm drainage facilities from the 28 1/4 Road inlet to the East and parallel to North Avenue may be accomplished. The City shall present to the Association at a regularly scheduled meeting of the Board, on or before December 31, 1995, a capital plan and schedule prepared by the City and approved by the City Council, for construction of storm drainage facilities to serve that portion of North Avenue lying within Exhibit A. The plan and schedule so presented are not and shall not become contractual terms but instead are and shall be considered the City's best estimates of cost, design and scheduling. The plan and schedule shall be prepared and presented in good faith with the understanding of the City and the Association that discontinuation of the use of the Association's facilities for storm drainage, as soon as reasonably practicable, is the goal.

9. Failure to substantially perform any act, term, covenant or obligation hereunder, unless such term or obligation is specifically noted as not creating liability or contract, shall be actionable. The non-defaulting party, be it the City or the Association, shall provide written notice of default to the defaulting party, be it the City or the Association, prior to initiating legal action. The notice shall contain a complete and detailed description of the alleged default. The defaulting party

shall have thirty (30) days from and after receiving such notice to correct any such default. If the default is not timely corrected, legal action may be commenced. A condition precedent to filing suit shall be the completion of mediation.

10. This Agreement contains the entire understanding of the parties and is intended as a complete and final expression of their Agreement and of the terms thereof. All prior statements and representations, including those which may have been negligently made, and all prior understandings and agreements are merged herein. The parties specifically waive any claims they may have for negligent misrepresentations in the formation of this Agreement. This Agreement shall not be modified except by a writing signed by the parties hereto or their duly authorized representatives. No waiver by either party of any default shall be deemed a waiver of any subsequent default.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions connected herewith shall be in Mesa County, Colorado.

12. If any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the other terms and provisions of this Agreement shall not be affected thereby.

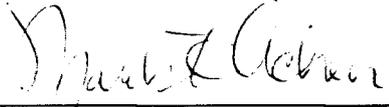
13. If, on account of any breach or default by a party hereto under the terms and conditions hereof, it shall become necessary or appropriate for the other party to employ or consult with an attorney concerning the enforcement or defense of its rights or remedies hereunder, the party breaching or in default hereunder shall pay all reasonable attorney's fees so incurred by the other party.

14. The enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and the Association. To the extent that third parties are direct beneficiaries of and under paragraph 5, the City and the Association recognize the right of third parties to enforce that term.

15. For all purposes under this agreement the City and the Association are separate and distinct legal entities. The City is and shall continue to be a member of the Association and to the extent of such membership shall be allowed to participate in the meetings, discussions and decisions arising under and out of this agreement or the project. No employee of either party is or shall be construed to be an employee of the other party nor are the parties partners or joint venturers for the purpose of this agreement or for any other purpose.

16. Notice arising under or concerning this agreement shall be made in writing by the Association to the City at 250 North 5th Street, Grand Junction, Colorado 81501 and by the City to the Association at P.O. Box 40903, Grand Junction, Colorado 81501, by prepaid United States mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service.

CITY OF GRAND JUNCTION

By: 
Mark K. Achen
City Manager



ATTEST:


Stephanie Ney
City Clerk

FRUITVALE LATERAL AND WASTE DITCH ASSOCIATION

By: 
George Blanka
President

ATTEST:


Gerald L. Hill
Secretary

file:flwda3a

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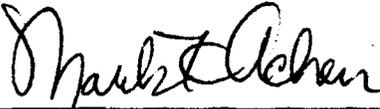
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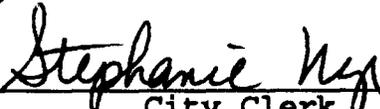
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CITY OF GRAND JUNCTION

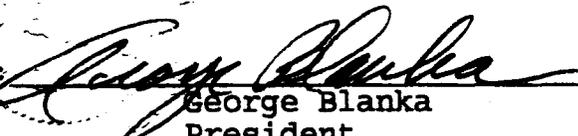
By: 
Mark K. Achen
City Manager



ATTEST:


Stephanie Nye
City Clerk

FRUITVALE LATERAL AND WASTE DITCH ASSOCIATION

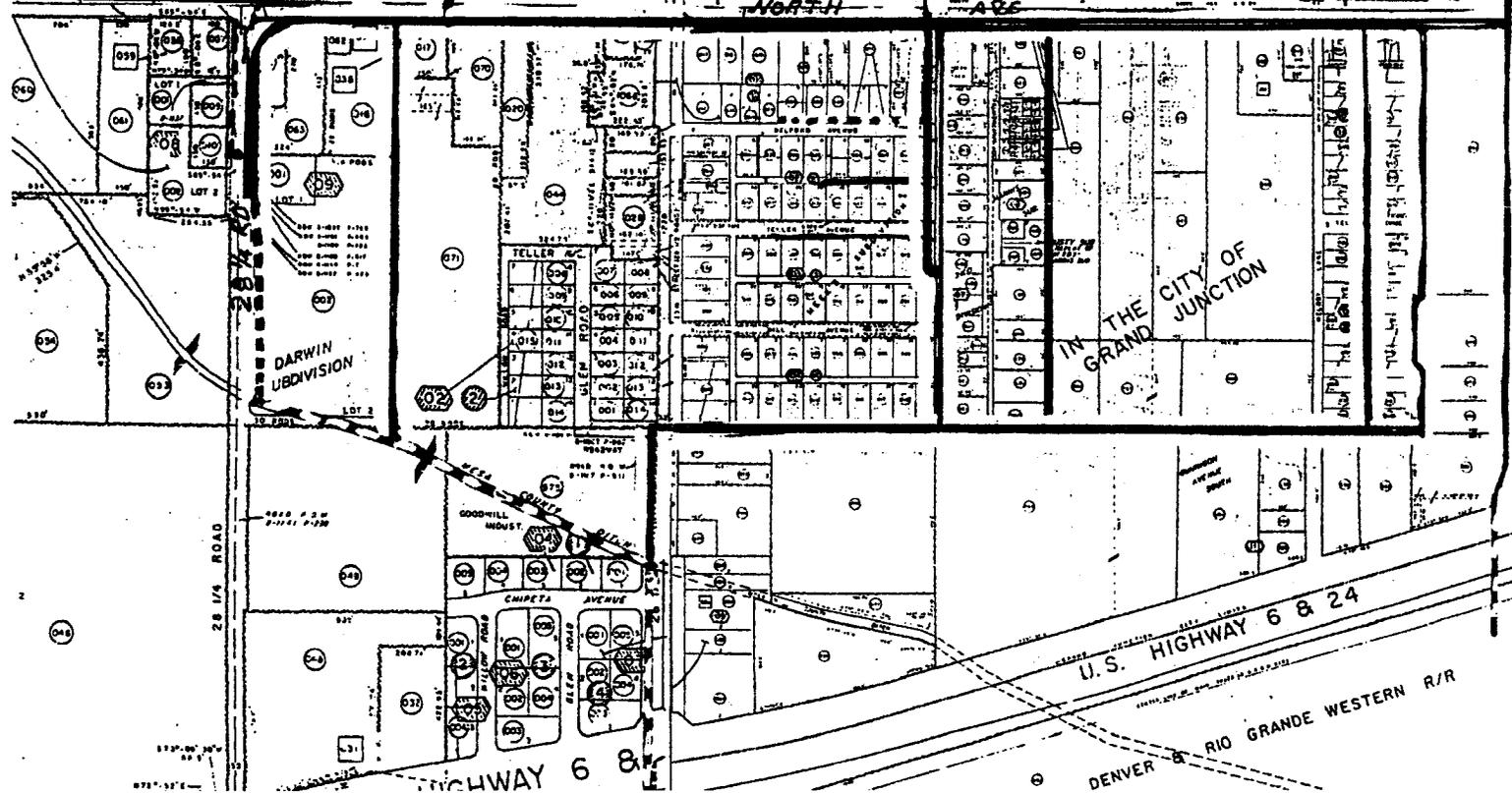
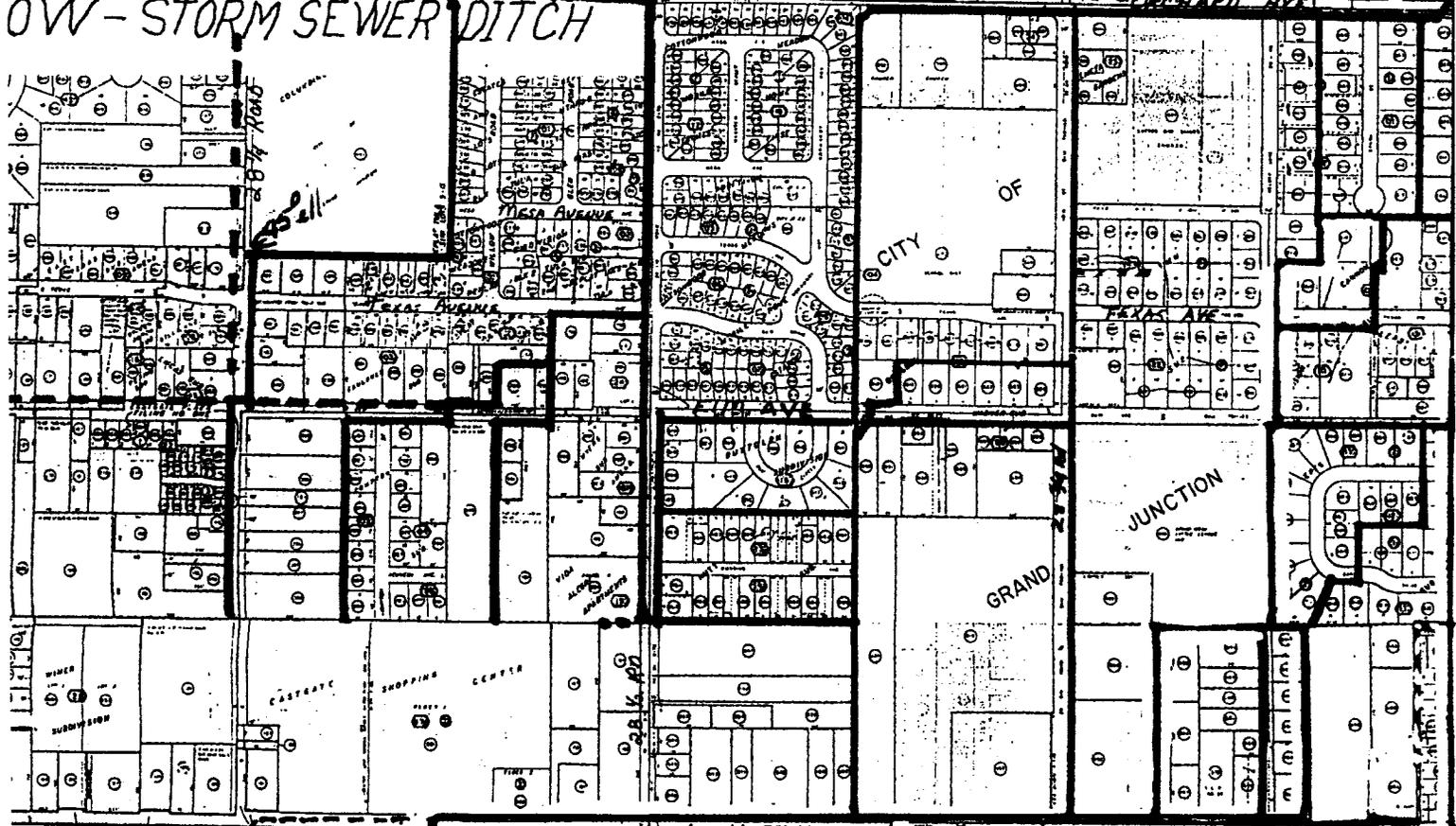
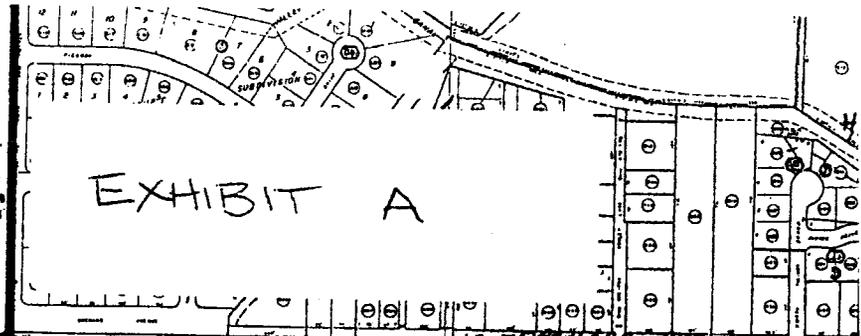
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VALE LATERAL AND ^{Master} WAS. E
DITCH ASSN.

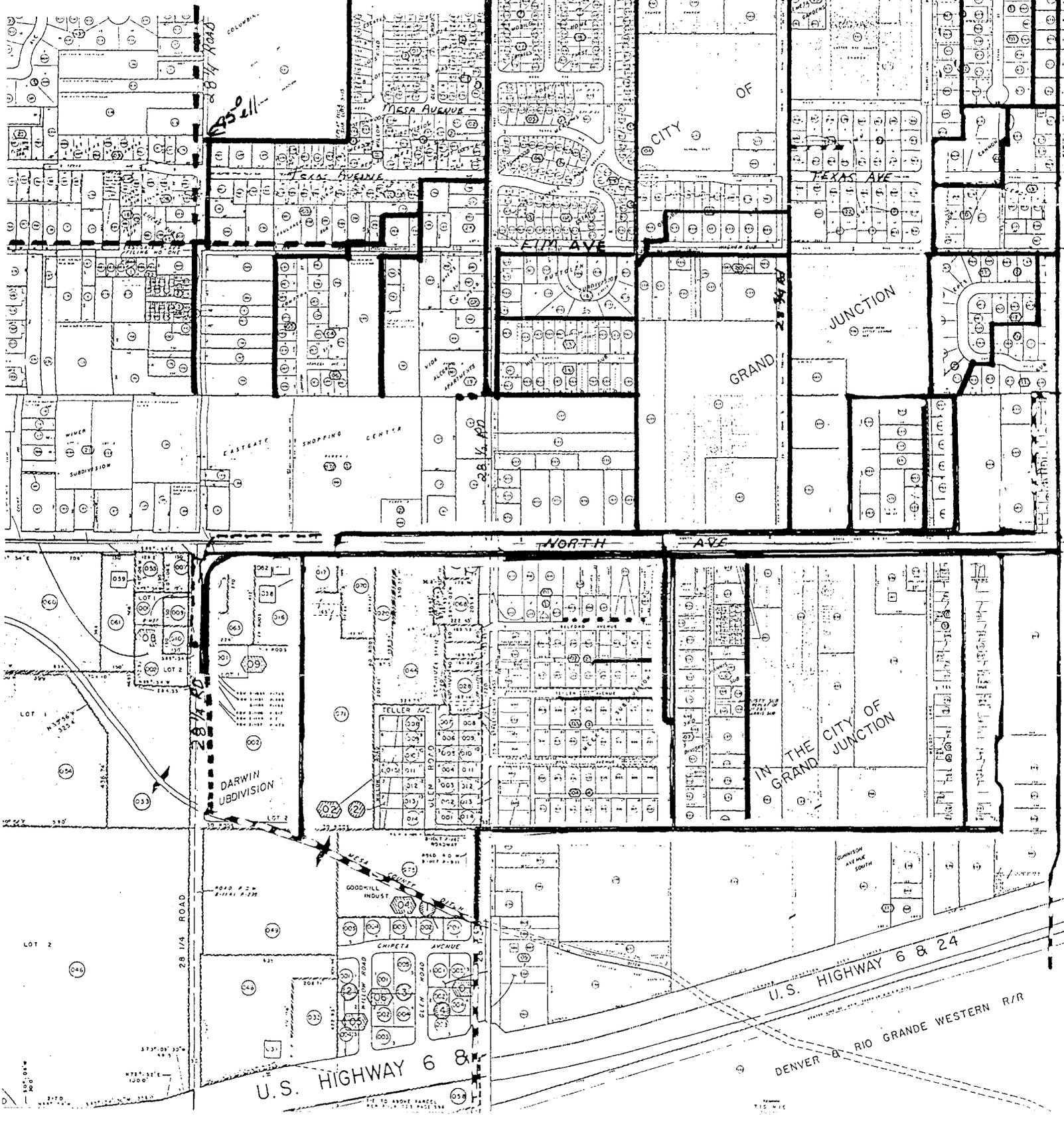
LEGEND --- PRIVATE
ACK-ASS'N. DITCH
OVV-STORM SEWER DITCH



TVALE LATERAL AND ^{Master} WAS. E
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LEGEND --- PRIVATE

BLACK - ASS'N. DITCH
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