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TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	COUNTY OF MESA AS A PARTICIPANT IN THE JOINT SYSTEM WITH THE CITY AND THE ORCHARD MESA SANITATION DISTRICT MESA COUNTY FILE #MCA 2004-030
SUBJECT/PROJECT:	TOTAL SERVICE AGREEMENT ORCHARD MESA SANITATION DISTRICT, SANITARY SEWER SERVICES
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	2004
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

MCA 2004-030
TOTAL SERVICE AGREEMENT
ORCHARD MESA SANITATION DISTRICT

THIS AGREEMENT is made and entered into as of the 8th day of March, 2004, by and among the CITY OF GRAND JUNCTION, State of Colorado (the "City"), as manager and operator of the wastewater collection, transmission and treatment system more fully described below (the "Joint System"), the County of Mesa (the "County") as a participant in the Joint System with the City, and the ORCHARD MESA SANITATION DISTRICT, Mesa County, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado ("District").

WHEREAS, each party is authorized by law to furnish sanitary sewer services and has the means to perform the same; and

WHEREAS, each party is authorized by the provisions of Article XIV, §18, Colorado Constitution, and §§ 29-1-201, *et seq.*, C.R.S., to enter into contracts with other local governments for the performance of functions which it is authorized by law to perform on its own; and

WHEREAS, the City and the County, have, pursuant to that agreement dated October 13, 1998 (the "System Agreement"), established the Joint System in order to provide for the collection, transmission and treatment of wastewater from and within an extensive area described in the System Agreement as the "Persigo Area"; and

WHEREAS, the District is located within the Persigo Area and has utilized the Joint System to transmit wastewater flows from its system to the Joint System treatment works for treatment but has prior to the date of this Agreement owned, operated and maintained the collection and transmission system within its legal boundaries; and

WHEREAS, the District now desires to contract with the City as the manager and operator of the Joint System for complete wastewater services as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and among the parties as follows:

Article 1
DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

"City" shall mean the City of Grand Junction, in its capacity as manager and operator of the Joint System, and any authorized person or entity acting on its behalf in such capacity. Pursuant to the System Agreement, when reference is made to the City as owner of, or owing, pipes and related facilities that are components of the Joint System, the parties acknowledge that the City accepts and holds title to pipes and related facilities of the Joint System in the name and style of "the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System."

"Collection System" shall refer to the pipes and related appurtenances for the collection and transmission of wastewater within the District's Contract Service Area. In general, the Collection System will be owned by the City for the benefit of the Persigo 201 Sewer System, but certain facilities in place prior to the City's provision of wastewater service pursuant to this Agreement shall be owned by the District under the terms of this Agreement.

"Contract Service Area" shall mean the presently existing legal boundaries of the District together with any amendments to those boundaries within the Persigo Area accomplished in accordance with the terms and provisions of this Agreement.

"District" shall refer to the Orchard Mesa Sanitation District and any authorized representative thereof.

"Joint System" shall have the same definition as contained in the Persigo Contract.

"Persigo Area" shall mean the outer geographical boundaries of the 201 Service Area as contemplated and defined in the System Agreements, which the Joint System serves.

"Rules and Regulations" shall mean the operating rules and design standards promulgated by the City to govern the design, construction, operation, maintenance and use of the Joint System, including the rates, fees, tolls and charges imposed from time to time, including future modifications thereto.

"Sewer Tap" shall mean a physical connection to the Collection System which effects wastewater service to the connected premises.

Article 2 COMPLETE WASTEWATER SERVICE

2.1 The City shall furnish all service necessary to effect full and complete sanitary sewer service to all lands within the District's Contract Service Area, including the full development and any redevelopment of any and all such lands in accordance with applicable law.

2.2 Wastewater service furnished by the City under this Agreement shall be provided in a manner uniform and consistent with that provided to customers throughout the Persigo Area. To the extent the City determines that maintenance of the Collection System is necessary to the furnishing of wastewater service under this Agreement, the City agrees to maintain or replace all portions of the Collection System it owns or which come under its dominion. The City agrees to construct, maintain, replace and keep inventory of such additional physical facilities as the City deems necessary.

2.3 The District represents that it has authority to use, connect, disconnect, modify, renew, extend, enlarge, replace, convey, abandon or otherwise dispose of the pipes and other facilities, including pump stations, for providing wastewater service to users within its Contract Service Area, and grants to the City all such authority deemed necessary by the City to perform its obligations under this Agreement. The District hereby delegates to the City, and the City hereby accepts administrative, managerial and enforcement authority concerning the District pre-treatment program as applied to industrial users of the joint system. The City will act as the District's agent in pre-treatment matters to the extent necessary to

allow direct regulatory and health-related control by the City over industrial users within the District. All additions to the Collection System installed or replaced by the City within the District's Contract Service Area shall be owned by the City. The District shall not exercise any dominion over any of its wastewater facilities that is in any way inconsistent with the exercise or performance by the City of its rights and obligations.

2.4 The City shall not make any Sewer Tap within the Contract Service Area or issue any approval or license for attachment to the Collection System within the Contract Service Area except upon written authorization of the District. Upon receipt of written authorization by the District, the City shall make the necessary taps in the regular course of its business. The District shall be fully liable to the City for unreported connections, including payment of all charges thereon. No new Sewer Taps may be made to the Collection System which would impair the capacity of the Joint System to furnish wastewater service in accordance with the Rules and Regulations.

2.5 Each of the parties to this Agreement recognizes in the other the right to enforce its rules and the terms of this Agreement by interrupting or disconnecting wastewater flows from the premises of those who violate the rules of either party or this Agreement. Neither party shall interfere with the other in the enforcement of its rules or this Agreement. Neither party shall restore any service connection after the same has been interrupted or disconnected by the other in the course of enforcing its rules or the terms of this Agreement, except upon written authority of the party causing the interruption or disconnection of service. Each party agrees to provide oral or written notice to the other prior to interrupting or disconnecting any service connection, except when disconnection is made by either solely for reason of delinquency in payment for charges or to prevent an immediate threat to public health or safety.

2.6 Wastewater service furnished under this Agreement shall be governed by the Rules and Regulations and the System Agreements. Future amendments or modifications to the Rules and Regulations shall be binding on the District unless the District objects thereto in writing within thirty (30) days after the adoption of such amendment or modification and the Board of County Commissioners and the City Council, acting jointly pursuant to the System Agreements, determine to repeal or reject the proposed amendment(s) and/or modification(s). The Rules and Regulations shall be applied uniformly and equitably throughout the Persigo Area. The City may require the installation of additional wastewater service facilities at the expense of the customer requiring service in accordance with the Rules and Regulations. The District retains the full right to make and enforce rules, not inconsistent with the Rules and Regulations, to govern use of the Collection System use within its Contract Service Area. The District agrees to exercise its rule-making, fee-setting and other powers to assist the City in enforcing the Rules and Regulations.

2.7 The District warrants that all portions of the Collection System it owns or controls are in public rights-of-way or easements it now owns, that its rights-of-way and easements are free and clear of all liens and encumbrances, and that title to all such rights-of-way and easements is adequately granted or dedicated

to or vested in District in documents recorded in the real property records of the Mesa County Clerk and Recorder. Where a portion of the Collection System owned or controlled by the District is located on private property, or the District's easement is insufficient in size, the District agrees to acquire at its expense such easements as may be reasonably required by the City.

2.8 The District may not expand its Contract Service Area without the express written approval of the City, in its unfettered discretion.

2.9 The City reserves the right to refuse to accept wastewater flows from any premises when the same would impose unreasonable risk of a health hazard or other harm to the Joint System.

2.10 The wastewater service to be furnished by the City shall comply with the federal Clean Water Act and any and all other applicable regulations.

2.11 The damage to the Joint System if the District disconnects from the Joint System shall be not less than the reproduction cost of any of the Joint System's facilities which are rendered useless by such disconnection and which must be replaced in order to serve customers outside the Contract Service Area. The District agrees to pay the damages described in this paragraph immediately upon the occurrence of such disconnection.

Article 3 RATES AND CHARGES

3.1 For the wastewater services provided by the Joint System, the City shall be paid by the users within the District's Contract Service Area the rates, fees tolls and charges calculated in accordance with the System Agreements, which shall be the same as all such rates and charges imposed and collected generally throughout the Persigo Area. Methods of collection and schedules of charges shall be applied uniformly among similar users throughout the Persigo Area. In addition to any other rate or charge herein provided, the District shall pay or cause to be paid all applicable plant investment fees, and such other rates, tolls, charges or combinations thereof as the City may, from time to time, in the exercise of its lawful authority and pursuant to the System Agreements impose.

3.2 Rates for wastewater service shall be established by the joint action of the City Council and the Board of County Commissioners, pursuant to the System Agreements.

3.3 The District grants and delegates to the City all of the District's power and authority deemed necessary by the City to impose and collect the Joint System's fees and charges, including charges for Sewer Taps and other purposes within the Contract Service Area. This paragraph shall not be construed to limit in any manner the District's powers to impose and collect its own fees and charges.

3.4 The District shall require the users within its Contract Service Area to pay the City's plant investment fees and other charges and wastewater service rates. The District grants and delegates to the City all of the District's power and authority for the City to enforce collection of such rates and charges in the same manner as it employs generally throughout the Persigo Area.

**Article 4
SPECIAL PROVISIONS**

4.1 By special warranty deed and bill of sale of even date herewith, the District transfers and conveys to the City for the benefit of the Persigo 201 Sewer System, for the purposes of this Agreement, all of its wastewater pump stations, and all underground pipelines having a diameter of ten (10) inches or larger, together with (i) all manholes and other surface and subsurface appurtenances thereto, (ii) all easements and rights of way covering or accommodating the same and (iii) fee title held by the District in all parcels of real property upon which any such facilities are located.

4.2 In consideration of payments made to the City by the District customers under prior agreements and the provisions of this Agreement, the receipt and sufficiency whereof is acknowledged, the City shall pay for and shall make all improvements necessary to bring the Collection System up to the standards applicable generally within the Persigo Area.

4.3 Based upon the City's representations that it is able and willing to supply the District with all of the wastewater service for the full development of the District's Contract Service Area, the District finds that the making of this Agreement will provide for satisfactory, uniform and dependable service available for current and future use within its Contract Service Area, and is in the best interests of the users within its Contract Service Area.

**Article 5
MISCELLANEOUS PROVISIONS**

5.1 No assignment by either party of its rights under this Agreement shall be binding on the other unless the other party shall have assented to such assignment with the same formality as employed in the execution of this Agreement.

5.2 No party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such party to exercise at some future time the rights not previously exercised.

5.3 None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either party's pursuit of further relief to which it may be entitled.

5.4 The benefits and obligations created by this Agreement shall not be modified by amendment to the

Constitution or the laws of the State of Colorado; provided, however, that in the event that the General Assembly or an amendment to the Colorado Constitution lawfully places the Joint System under the jurisdiction of the Public Utilities Commission, the City's obligations hereunder shall cease. Nothing in this paragraph, however, shall be construed as a waiver by the District of any rights it may have to continued wastewater service arising outside of this Agreement.

5.5 The City shall have the authority to exercise all rights with respect to the Collection System in order to use the Collection System to serve or contribute to the service of any lands within the Persigo Area, consistent with the Rules and Regulations.

5.6 If the District commits a Material Breach of this Agreement and the City gives the District written notice specifying the particular Material Breach, the District shall have such time as provided in the notice, which time shall be reasonably sufficient to permit the District to cure the noticed material breach but in no event no less than ninety (90) days. In the event that the District fails to correct such breach within the time provided in the notice, or if more than the time provided in the notice is reasonably required to cure such matter complained of, if the District shall fail to commence to correct the same within said period or shall thereafter fail to prosecute the same to completion with reasonable diligence, the City, without obligation to the District or any person claiming by, through or under the District, may take such steps as it may deem necessary to cure or remedy the breach. The District agrees to reimburse the City for all fees and expenses incurred by the City in correcting the default or defaults. The 90-day notice provision of this paragraph shall not apply if the City determines that the breach will probably result in an immediate health hazard or harm to persons or property, in which case the City may unilaterally implement such cure or remedy upon hand delivery of written notice of the breach and description of the harm that is probable to result. The term "Material Breach" shall include, but not be limited to, failure by the District to continue to exist as a title 32 quasi-municipal corporate entity, an unauthorized extension of wastewater service, and other actions or inactions which could cause a health hazard or harm to persons or property.

5.7 The District shall not assert this Agreement as a defense to any action seeking to dissolve the District pursuant to § 32-1-701 *et seq.*, C.R.S., as amended.

5.8 This Agreement shall remain in force until terminated by mutual written agreement or pursuant to the provisions hereof.

5.9 This Agreement shall be construed and enforced as the fully integrated expression of the parties' agreement with respect to the matters addressed.

5.10 No express or implied covenant not specifically set forth shall be a part of this Agreement.

5.11 The parties expressly aver that no representations other than those specifically set forth in this Agreement have been relied upon by either party to induce it to enter into this Agreement.

5.12 This Agreement supersedes and replaces in their entirety all prior agreements between the City and the District for sanitary sewer service.

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

ORCHARD MESA SANITATION DISTRICT

By:

Robert D. Phelps President

ATTEST:

By:

Secretary

CITY OF GRAND JUNCTION

By:

John Decker, Mayor

ATTEST:



By: *Stephanie Turner*
City Clerk

COUNTY OF MESA

By:

Joseph B. Genova Chairman

ATTEST:



By: *Janice Ward*
Clerk