

OMS95SEW

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	ORCHARD MESA SANITATION DISTRICT
SUBJECT/PROJECT:	AMENDMENT TO ORIGINAL AGREEMENT DATED NOVEMBER 19, 1975 REGARDING SEWER MATTERS, MAP
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	1995
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AMENDMENT TO CITY/OMSD AGREEMENT

This Amendment to City/OMSD Agreement is entered into effective the 17 day of October, 1995, between the City of Grand Junction ("City") and the Orchard Mesa Sanitation District ("OMSD" or "District").

Recitals:

A. On November 19, 1975, the parties entered into an Agreement regarding sewer matters. The original agreement was subsequently modified on January 28, 1976; March 19, 1976; September 3, 1980 and April 18, 1984. The original agreement and all amendments thereto are referred to as the "City/OMSD Agreement."

B. The parties desire to amend the City/OMSD agreement.

NOW, THEREFORE, the parties agree as follows:

1. Billing.

a. After giving at least 45 days' written notice to the City and beginning on the first day of any month on or after January 1, 1996, Orchard Mesa Sanitation District may assume responsibility for all billing for all monthly sewer charges including District charges and 201 Joint System charges to those persons owning property(ies) located within the boundaries of the District and who are connected with or whose sewage is treated by the Persigo 201 System ("OMSD Customers"). Monthly charges are billed in arrears. For example, the January bill is for services provided in December.

b. For each month while the City/OMSD Agreement is in effect and during such times as OMSD continues to assume responsibility for billing as described herein, the City will send to the District a single bill for all sewer charges payable to the City for OMSD Customers. If the bill is mailed by the City addressed to the District by the 15th day of a month, the District will pay the bill in full to the City by the last business day of such month. If the bill is not mailed by the City on or before the 15th day of a month, the District will pay the bill in full within twenty (20) days of receipt thereof. If the District does not timely pay a bill in full, the District will pay the City interest on the amount of the bill at the rate of 12% per annum until paid.

c. It will be the duty and obligation of the District to bill and collect from OMSD Customers; however, the District's duty to pay the City is not contingent on collection by the District from OMSD Customers. Once OMSD assumes responsibility for billing as provided for herein, the City will not send regular monthly bills to OMSD Customers, except that the City shall

continue to bill and collect from OMSD Customers charges other than the regular monthly charges, such as industrial pre-treatment charges, surcharges for grease or for other special services.

d. At present, the City charges single family dwelling District Customers (those using one EQU) a monthly sewer service charge on a uniform and system-wide basis. The present monthly sewer service charge (as authorized by City Code § 38-56) for one EQU is \$8.30 per month for the 201 Joint System sewer charge. The amount to be billed and collected by OMSD for its single family dwelling customers as of January 1, 1996 shall be equal to the present monthly sewer service charge for other single family dwelling customers connected to the 201 System less the amount of \$0.66 per customer (hereafter, the "OMSD billing adjustment amount") for a total monthly sewer service charge of \$7.64 per Customer. If the City increases or decreases its monthly sewer service charge, the OMSD billing adjustment amount for the District doing its own billing will change by the same percentage as the percentage change in the City monthly sewer service charge. For example, if the monthly sewer service charge increases 10% to \$9.13 per month, the amount to be subtracted from the monthly sewer service charge as the OMSD billing adjustment amount would be \$0.73 for a net bill charged by the City of \$8.41 per month. The result of the final step of this calculation shall be rounded to the nearest penny. All OMSD non-single family dwelling Customers will continue to be charged at the rate charged for such customers under the City Code; all such OMSD Customers shall receive a per customer reduction for the billing charge equal only to the applicable single family dwelling customer reduction as calculated per this paragraph 1.d, notwithstanding the number of EQU's. For example, a commercial OMSD customer, at present, shall receive an OMSD billing adjustment of \$0.66. The City shall give OMSD at least sixty days' notice of any proposed rate increase.

e. Within 30 days from the date OMSD gives notice to the City of its intent to start billing, the City will, at no cost to OMSD, give the District current billing information on each OMSD Customer and information on its billing practices such as mail carrier routes. At least once each twelve month period, the District shall provide the City, at no cost to the City, current billing information for each OMSD Customer; and each month the District will provide to the City a list of new connects and disconnects, i.e., additions and deletions. "Current billing information" includes the customer name, address, EQU, an account number, amount of current bill, any credits or delinquent amounts and carrier routes. Upon request from either the City or the District, the other will provide copies of reasonably requested billing information.

f. If OMSD assumes responsibility for billing pursuant to this Amendment and later determines to stop such billing, OMSD shall give the City written notice at least 180 days prior to the

cessation of billing by the District and also current billing information for the period 30 days prior to cessation. Once OMSD ceases to bill as provided above, it shall not thereafter have any further right to assume or perform billing.

2. Building Permits/Powers of Attorney.

a. Prior to the issuance of a building permit and prior to any authorization by the District to connect to any portion of the District System, the District shall require that each applicant for connection to the District's system pay to the City a Plant Investment Fee ("PIF") and a Hook Up Permit Fee ("HUP") in such amounts as are charged by the City to all new sewer customers. In addition, except for single family dwellings on septic and which single family dwellings subsequently apply for connection to the District System, the District shall require each such applicant for connection to grant to the City a Power of Attorney for Annexation ("POA"). The owner of a single family dwelling which is served by septic and who subsequently applies to connect with the District System is not required to provide a POA to the City. The PIF and HUP fees shall be paid and the Power of Attorney shall be given at such location as the City determines, presently the City utilities office. With respect to platted or to be platted property or property being developed or redeveloped, the City may require that the owner of such property execute a POA for all lots, parcels or tracts within the platted or to be platted property or associated with the development prior to the earlier of: the issuance of any building permit for any structure to be located on any portion of the platted property; or prior to installation of any sewer collection lines or connection to the District System. The owner of property (even though separate tax parcels) shall grant a POA for annexation for all portions of such property which is planned to be developed, platted, or redeveloped even though only a portion thereof is being then proposed for final platting or other preliminary or final approval. For example, an owner who obtains approval for an overall development plan or a preliminary plan shall grant a POA for annexation for all portions of the property subject to the overall plan or preliminary plan, and not just for the portion being final platted at such time. OMSD shall cooperate in any such City efforts so that these requirements are accomplished.

b. The District shall not approve any connection to the District System nor issue any other approval for connection to the District System, until the City has received its required documents, including POAs, and fees. The City will provide written notice to the District of approved connections.

c. The powers of attorney for annexation given to the City pursuant to this paragraph 2 shall be effective for a period of 60 months from the date the POA is granted by the property owner. If the City does not use the POA within the sixty months,

the POA will terminate. The City will have "used" a power of attorney for annexation if the City Clerk has referred a petition for annexation to the City Council for an area or areas which include the property, lot or parcel subject to the POA either singly or with other properties. If litigation or other intervening force results (but not the failure of the City Council to approve the proposed annexation) in such a petition not resulting in a completed annexation, the City may "use" such a power of attorney for annexation by the last day of the sixth month following the completion of the litigation (including appeals) or the end of the intervening force. Each such POA shall contain language describing the sixty month termination and the possible extension as provided above. The City shall send to the District a copy of such powers of attorney for properties serviced by the District System.

d. Pursuant to a Memorandum issued by Mesa County on July 28, 1994, the District modified its procedures so that since that time, new tap purchasers have signed a declaration ("declarants") that they will execute a power of attorney for annexation to the City in accordance with the provisions of a Stipulation or court order entered in Mesa County Court action 94 CV 233. The City and OMSD intend that this Amendment to the City/OMSD Agreement form the basis for the Court to enter its Order that all such tap purchasers and/or the current owner(s) of the structure or lot served by such tap shall now execute the above described City's power of attorney for annexation. The District shall notify those declarants that they are required to grant such a POA and copy the City with each such correspondence; however, the District shall have no duty to enforce this obligation of the declarants, nor shall the District have any responsibility to the City if a declarant does not sign a POA so long as the District is cooperating in and encouraging compliance by the declarants with any such City efforts. The effective date for each such POA shall be the date of the granting of the POA.

3. District System Expansion.

a. The District shall not permit any taps from new construction into the "Valle Vista Line extension service area" (the shaded area on the attached map) until such time as Mesa County has adopted the Orchard Mesa zoning plan. All new taps into the Valle Vista Line shall be constructed in compliance with said zoning plan. The District shall not provide sewer service to any property lying outside the 201 Service Area Boundary, as that boundary is amended from time to time, in accordance with law.

b. Paragraph 7 of the November 19, 1975 City/OMSD Agreement requires the District to construct all extensions or enlargements in concurrence with the City. The parties hereby define "in concurrence with the City" as follows:

i. As to properties west of 30 Road and serviced now or in the future by the District: all plans for extensions or enlargements shall be submitted to the City for engineering review, and if the design meets City engineering standards the City shall approve the submittal within 10 working days and no further concurrence from the City shall be required. If the City does not respond to a submittal within 10 working days, concurrence shall be presumed.

ii. As to properties east of 30 Road proposed to be serviced by the District, except for the shaded area on the attached map which represents the service area for the Valle Vista Line: When the District sends its review comments to the County or other local review agency, the District shall send to the City copies of any of its review comments for developments, redevelopment, and platted or to be platted property and the District shall submit a copy of all plans for sewer extensions or enlargements for City engineering review and for City approval of the extensions or enlargements. The City may withhold its consent to such extensions or enlargements for any reason. Absent the City's written consent, no such extensions or enlargements shall be connected to the Persigo 201 system or the OMSD system. If the City does not respond to a submittal within 30 days from the date of submittal, then it shall be presumed that the City consents to the proposed extensions or enlargements.

iii. As to the properties east of 30 Road now or proposed in the future to be serviced by the Valle Vista Line as shown in the shaded area on the attached map:

(A) The District has spent \$100,600.00 of its funds for the construction of the Valle Vista Line. Until the District recovers this capital cost plus interest on this amount at the rate of six percent per annum from March 1, 1995 until paid in full ("outstanding costs") from the sale of new taps into the Valle Vista Line, the provisions of (3)(b)(i) shall apply. At any time the City may pay the full balance of the outstanding costs minus tap fees paid to OMSD to such date.

(B) Once the District has recovered its outstanding costs, or the City has paid as set forth in (A) above, the provisions of 3(b)(ii) shall thereafter apply.

4. Extensions and Enlargements.

For purposes of the City/OMSD Agreement, as amended, "extensions or enlargements" means any physical change to the District's collection system, including but not limited to new sewer service lines, changes in size, length and location of pipes, lines, lifts, force mains and other appurtenances.

DATED the year and day first above written.

ORCHARD MESA SANITATION DISTRICT

CITY OF GRAND JUNCTION

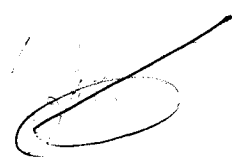
By:

Robert J. Elby

By:

Shirley Adams

s: omsd.3: 10/16/95



DISTRICT COURT, MESA COUNTY, COLORADO

Case No. 94 CV 364

STIPULATION AND ORDER OF DISMISSAL

ORCHARD MESA SANITATION DISTRICT, Plaintiff,

v.

THE CITY OF GRAND JUNCTION, COLORADO, Defendant.

STIPULATION

Plaintiff (OMSD), by and through its counsel, and Defendant by and through its counsel, pursuant to C.R.C.P. 41 (a) (1) (B), hereby stipulate that:

1. As to Plaintiff's claims against Defendant. All of Plaintiff's claims against Defendant in the above-captioned action shall be dismissed, with prejudice;
2. As to Defendant's claims against Plaintiff.
 - a. Defendant's "First and Fourth Claims for Relief against OMSD" asserted in Defendant's Amended Answer and Counterclaims, shall be dismissed, with prejudice;
 - b. Defendant's "Second and Third Claims for Relief against OMSD" asserted in Defendant's Amended Answer and Counterclaims, shall be dismissed, without prejudice.
3. The parties hereto, further stipulate and agree that the dismissal of Plaintiff's and Defendant's claims pursuant to this Stipulation and Order of Dismissal, as provided in paragraph (2) above, shall be subject to the following:
 - a. This Stipulation represents the compromise settlement of disputed claims as between the parties.
 - b. Defendant expressly reserves its right to assert or continue to assert, in that certain action identified as Civil Action 94 CV 233, an action currently pending in the District Court of Mesa County between The Board of Commissioners of the County of Mesa, Colorado and Defendant, all, or any portion of its

allegations, claims or defenses plead in this action, whether plead in its Answer and Counterclaims, Amended Answer and Counterclaims, Affirmative Defenses or Reply to Affirmative Defenses. Further, nothing in this Stipulation and Order of Dismissal shall be a waiver by Defendant of its right to assert any allegations, claims or defenses in 94 CV 233.

- c. Plaintiff and Defendant are parties to ongoing contracts, as amended from time to time, and the dismissal of the claims asserted by each, as set forth above, is not intended to amend or otherwise affect the parties' ongoing contractual relationship, rights, entitlements, responsibilities, duties, or obligations.
4. Each party shall pay its own respective costs and attorneys' fees herein.

AS GROUNDS for this Stipulation it is stated that the disputes between the parties to the above captioned action has been settled to the satisfaction of both parties.

THEREFORE the parties respectfully request that the Court enter an Order, in the form below, dismissing this action, as per their Stipulation, as set forth above.

DATED this 18th day of October, 1995.

ATTORNEYS FOR DEFENDANT:

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By: 

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ATTORNEY FOR PLAINTIFF:

William M. Kane

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Grand Junction, CO 81506

ORDER OF DISMISSAL

The Court has reviewed the above Stipulation of dismissal entered into by the parties. Pursuant to the stipulating parties agreement, it is therefore ordered that all of Plaintiff's claims against Defendant in the above-captioned action are hereby dismissed, with prejudice. Further, it is ordered that, subject to the rights reserved and agreements asserted in Paragraph 3, above, Defendant's "First and Fourth Claims for Relief against OMSD" are hereby dismissed, with prejudice, and Defendant's "Second and Third Claims for Relief against OMSD" are hereby dismissed, without prejudice. Each party shall pay its own respective costs and attorneys' fees herein.

DATED this 24th day of October, 1995.

BY THE COURT:

[Signature]

CERTIFICATE OF MAILING

The undersigned hereby certifies that on this ____ day of October, 1995, a true and correct copy of the foregoing **STIPULATION AND ORDER OF DISMISSAL** was served by mail upon the following:

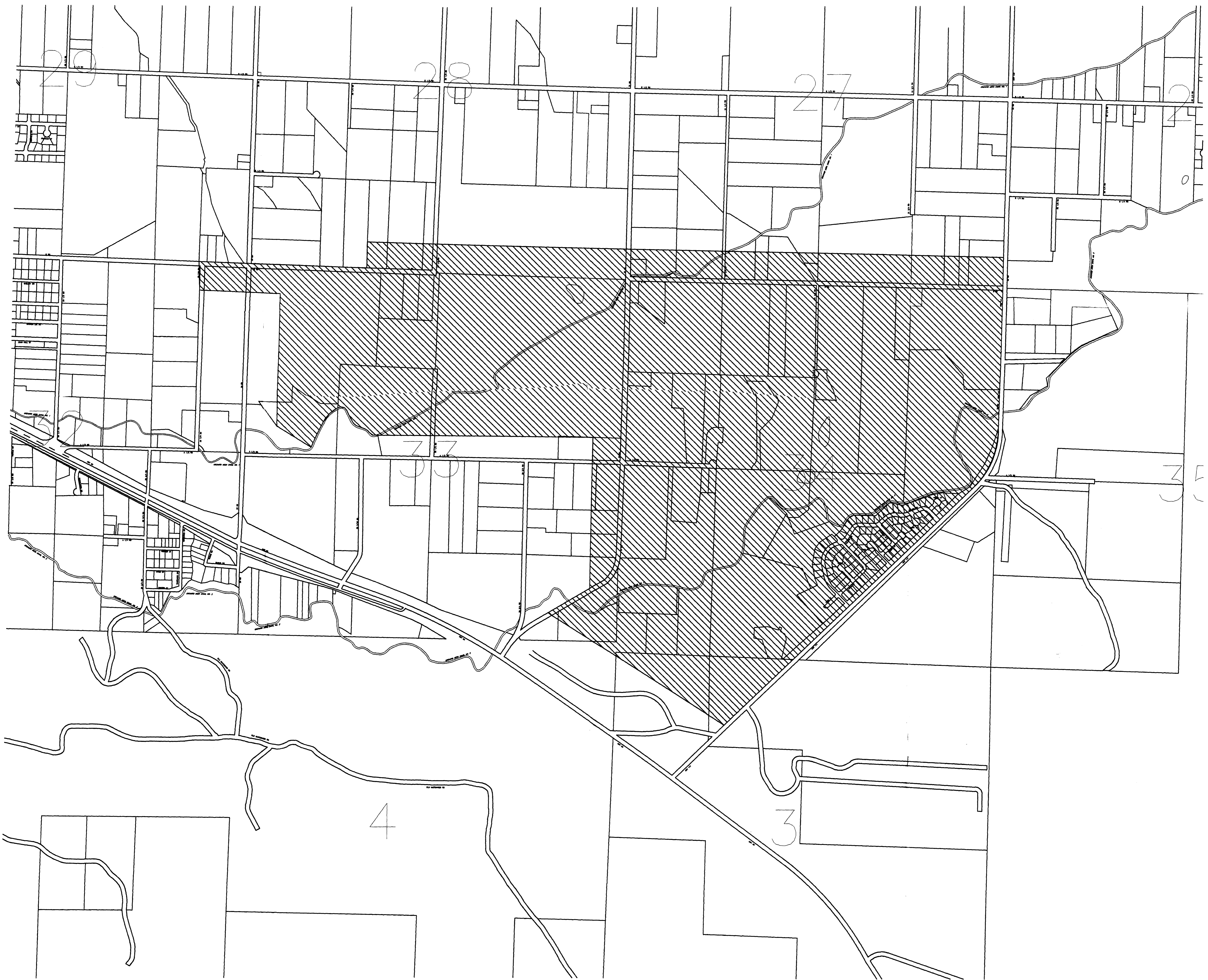
William M. Kane
744 Horizon Court
Grand Junction, CO 81506

Peter R. Black
P. O. Box 2540
Grand Junction, CO 81502

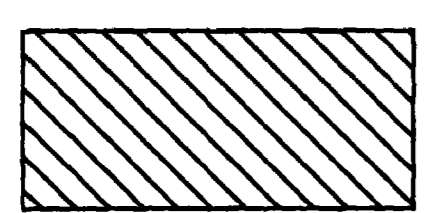
Dan E. Wilson
City Attorney, City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501

VALLE VISTA LINE EXTENSION SERVICE AREA

(AN ATTACHMENT TO THE OCTOBER 17, 1995 AMENDMENT TO CITY/O.M.S.D. AGREEMENT)



LEGEND



PROPERTIES, OR PORTIONS OF PROPERTIES, WHICH ARE ALLOWED TO BE SERVED BY THE VALLE VISTA/O.M.S.D. SEWER LINE.
PROPERTIES, OR PORTIONS OF PROPERTIES, OUTSIDE ARE NOT ALLOWED CONNECTION TO THE VALLE VISTA LINE EXTENSION.



SCALE: 1" = 500'

*Don Wilson
Dreglas
Lynn R. Beckman 1/16/96
Robert O. Blodgett O.M.S.D.
1-16-96*