

RESOLUTION NO. 49-94

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MESA COUNTY AND FRUITVALE SANITATION DISTRICT CONCERNING CERTAIN ARREARAGES.

WHEREAS, the City of Grand Junction has for many years supplied contract services to the Fruitvale Sanitation District; and

WHEREAS, the City manages and operates the Persigo Sewer System pursuant to a contract between the City and Mesa County; and

WHEREAS, as a part of those duties and responsibilities the City has been collecting money from Fruitvale for properties, both within the City's limits and without, as the City's limits have changed from time to time; and

WHEREAS, there have been many years of cooperation and problem solving between the City and Fruitvale.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The City, County and Fruitvale Agreement, copy of which is attached hereto, is hereby approved by the City Council.

As provided in the agreement, once the Fruitvale Sanitation District Board of Directors and the Board of County Commissioners of Mesa County have also adopted resolutions approving this, this Agreement shall be effective and the terms thereof shall bind the parties.

PASSED and ADOPTED this 15th day of June, 1994.

Council

/s/ R.T. Mantlo
President of the

ATTEST:

/s/ Stephanie Nye
City Clerk

AGREEMENT

The City of Grand Junction, a Colorado municipality, the County of Mesa, a Colorado political subdivision, and the Fruitvale Sanitation District, a Colorado special district, enter into the following agreement.

Recitals.

The City of Grand Junction ("City") operates and manages the Persigo Wastewater Treatment System ("System") which provides sewer service to much of the urbanized areas of the Grand Valley.

Since 1959, the City has provided treatment and other services to the Fruitvale Sanitation District, a Colorado special district, ("Fruitvale") pursuant to an Agreement dated September 28, 1959, ("City/Fruitvale Agreement"). The terms of the City/Fruitvale Agreement require Fruitvale to collect sewer service fees owing to the City, as Manager of the System, in those areas of Fruitvale which are not within the limits of the City. Fruitvale is, and has been, responsible for calculating each customer's bill and aggregating all collections into a monthly lump payment to the City. Fruitvale is, and has been, responsible for applying the adopted System fees to each customer. That billing arrangement has not changed since 1959.

On May 1, 1980, the City and Mesa County executed an agreement (as amended, the "City/County agreement") which, among other things, acknowledged the existence and continuing validity of the City/Fruitvale Agreement.

After public hearings and published notices the City Council adopted Ordinance 1849 November 20, 1979, which altered the sewer rate structure and increased rates. The Fruitvale Board of Directors adopted on February 5, 1980, these new rates and structure. The City and Mesa County adopted, by joint Ordinance and Resolution dated March 5, 1980, these same rates and rate structure. The Fruitvale Board of Directors in its Supplemental Agreement of August 5, 1980, ratified and again adopted these new rates and rate structure.

Fruitvale improperly implemented the new rate structure for a small number of its customers, to wit, 55 customers. Several of the 55 customers were large multi-unit structures. As a consequence, those 55 customers have been underbilled by Fruitvale since May 1, 1980. This resulted in underpayment of sewer fees to the System by Fruitvale. The City has calculated the amount of the underpayment of January 1, 1994, to be \$352,873 principal and \$213,915 accumulated interest, based on eight percent per annum, simple.

Fruitvale asserts that customers in the District were overcharged by the City. The City does not agree that any error

was made, that any overcharges occurred or that these parties are the proper parties to resolve any such questions. Fruitvale and the City agree, however, that any such questions or issues should be resolved and determined in this agreement.

The City and County are willing to forgive the entire amount of the arrearage for the following reasons:

1. Fruitvale has faithfully discharged its responsibilities under the City/Fruitvale Agreement for nearly four decades;
2. Fruitvale in 1980 adopted the increased rates and new rate structure in good faith;
3. Fruitvale faithfully effected the new rates and structure for more than 3,100 of its customers; and
4. Fruitvale's error in effecting these new rates and structure upon 55 customers was inadvertent and unintentional. Additionally, Fruitvale may be able to sustain the affirmative defense of a partial bar against efforts to collect some portion of the arrearage because of the statute of limitations. Fruitvale argues, in addition, that it may have a setoff for overcharges as noted above.

The City and the County agree that the resolution of the arrearage is not, and shall not be construed to constitute, a breach by the City of the City/County Agreement. Fruitvale agrees that the mention in this agreement of asserted overcharges is not a waiver by the City or the County of the facts or the law concerning any such overcharges.

Therefore, this Agreement, based on the foregoing facts and assumptions, is necessary to resolve the arrearage, plus interest, and to ensure that the City and the County are not jeopardized nor injured by any benefit conferred on or received by Fruitvale.

Wherefore, in consideration of the foregoing Recitals, and the benefits, detriments, and obligations set forth herein, the parties agree as follows:

1. Fruitvale shall not be required to pay the arrearage, including the principal and interest, which would otherwise be due and payable to the System.

2. Fruitvale is hereby released from the obligation to pay the arrearage. Fruitvale hereby releases the City and the County from any obligation to reimburse Fruitvale, or any other person, for any overcharges.

3. This agreement shall be effective upon the adoption, in a public hearing, by each of the signatory parties, of a resolution which binds the governing bodies of each signatory and which approves this agreement and the terms hereof.

4. Mesa County agrees that this Agreement satisfies any duty, whether stated in contract or otherwise, that the City may

have to pursue collection efforts against Fruitvale with regard to the arrearage, or any portion thereof. Further, on behalf of any third party, the City and Mesa County intend that the approval of each of this agreement shall bind third parties.

5. (a) The parties intend that the joint sewer fund/system hold the City and County harmless from the actions and forbearances provided for herein, including but not limited to any claims by any person or entity that the City or the County had any duty with respect to the collection of the arrearage, or a portion thereof.

(b) In the event that such a claim is made, Fruitvale shall not be precluded by virtue of this agreement from raising any legal or equitable defenses or setoffs to which it would otherwise be entitled.

(c) Except as to a claim of a third party, Mesa County agrees that it shall not assert any breach or other violation of any duty by the City with regard to the issues and facts identified in, or reasonably arising from, this Agreement. Except as to a claim of a third party, Mesa County agrees and consents that the City's duties and responsibilities as the Manager of the System, with regard to the subject of this Agreement, are well and faithfully discharged by the execution of this agreement.

Until approved by all of the parties hereto, the statements and recitals herein shall be considered offers of compromise and settlement within the meaning of Rule 408 of the Colorado Rules of Evidence.

CITY OF GRAND JUNCTION

BY: _____
DATE: _____

MESA COUNTY, COLORADO

BY: _____
DATE: _____

FRUITVALE SANITATION DISTRICT

BY: _____
DATE: _____