**CITY RESOLUTION NO. 83-03**
**COUNTY RESOLUTION NO. MCM 2003-149**

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION AND THE BOARD OF COUNTY COMMISSIONERS OF MESA COUNTY AMENDING THE WASTEWATER REGULATIONS, SECTION 4, SYSTEM EXPANSION**

**WHEREAS,** the City is the Manager of the Joint Sewer System; and

**WHEREAS,** the Manager has recommended amendments to Section 4 of the existing sewer rules and regulations; and

**WHEREAS,** the City Council and Board of County Commissioners, in separate sessions, have found that such amended Rules and Regulations are in the public interest and should be approved.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL AND THE BOARD OF COUNTY COMMISSIONERS, THAT;**

The attached Section 4, "System Expansion" is hereby adopted as amended and made a part of the Rules and Regulations which shall govern the operation and management of the Joint Sewer System.

**PASSED** and **ADOPTED** by the Grand Junction City Council this 3rd day of September, 2003.

**PASSED** and **ADOPTED** by the County Commissioners of Mesa County this 6th day of October, 2003.

Attest:

Stephanie Tuin
City Clerk

President of the City Council

Attest:

Janice Ward
County Clerk

James R. Baughman
Chair, Mesa County Commissioners

**AMENDMENTS TO**
**SECTION 4, SYSTEM EXPANSION**

## 2. DEVELOPED AREAS

**Policy - Provide Sewer.**

Some areas have already developed as individual lots and uses without sewer service, however, it is the policy of the Manager as confirmed by the Persigo Agreement that sewer should be provided whenever and wherever practicable. Specific circumstances when sewer must be provided to such individual lots and uses include:

**a.** a residential unit served by an ISDS (individual septic disposal system) which fails and the property is within 400 feet of a sewer, and/or

**b.** the expansion or subdivision of an existing residential or non-residential use or property.

The property owners in both of these circumstances must pay the cost of sewer extension and appurtenant sewer service facilities. The Manager finds that the System should not pay for such costs, except as provided for herein.

The costs of retrofitting an area for sewer service is typically much higher than if sewer is connected/constructed at the time of development and many times construction/connection after the fact means that the costs attributable to each lot, especially residential lots or parcels, is high. The Manager finds that some form of financing may be required, under certain circumstances, to promote providing sewer service and thereby protecting the public health.

**c.** An improvement district is a useful financing tool which allows for payments over time of the costs of retrofitting an area. The Manager endorses and approves the use of improvement district(s).

Typically, an improvement district is used when a neighborhood or other identifiable area needs sewer service and the owners in the area can garner sufficient owner consent to form a district. For areas within the City limits, the City improvement district process is available. For areas not wholly within the City limits, other improvement districts, requiring the oversight and consent of the County Commissioners, may be available.

**d.** In an area where insufficient owners consent to form a district, other mechanisms are needed to allow the continuing use of a property which does not have sewer service available, but for which sewer service is required. Such a situation may arise in an area generally

served by ISDS where one septic system fails or does not meet current standards.

**Rule 4.7.**

In the case of 2a (a residential unit served by an ISDS (individual septic disposal system) which fails and the unit is within 400 feet of a sewer) if a property owner demonstrates to the satisfaction of the Manager that the following two conditions exist:

(1) the construction of a sewer line is *impracticable* and

(2) *adequate disposal and treatment facilities exist* as defined by current regulations (generally by the repair/reconstruction of a failed ISDS)

then the Manager may authorize the continued use of an ISDS.

That approval/permit shall be issued on the following terms and conditions, which shall be specifically agreed upon by the property owner pursuant to a written agreement in advance of repair/reconstruction of an ISDS.

Examples of when sewer construction may be "*impracticable*" include but are not limited to:

i. There is a low likelihood of a local sewer improvement district being formed in the near future based on the manager's discussions of the formation of the same with the benefiting owners, and the number and location of POA's to form a district is insufficient to create the same; or

ii. The sewer line, to be constructed by the property owner, is in a location or with grades such that few if any other nearby properties can be efficiently served by the new line; or

iii. The location of the closest (within 400 feet) sewer line is in a different drainage basin or is across a major street, waterway or similar impediment to the construction of a line such that the expense of the new line is wholly out of proportion to the average cost of extending residential service; or

iv. To construct pumping facilities and a force main would be too great an expense compared to participation in a future local improvement district.

"*Adequate disposal and treatment facilities*" means that a local package treatment plant is or will be made available and functioning or that the ISDS may be regularly pumped and disposed of at the plant.

"Repair/reconstruction of a failed ISDS" means that the property owner meets all state and county health department regulations for ISDS repair or replacement.

**Terms and Conditions of the written agreement**:

**(a)** The property owner shall deliver an executed power of attorney for formation of a future sewer improvement district; and

**(b)** The property owner shall pay that amount of money which the Manager calculates to be the proportionate share of the sewer line construction costs, as defined by the Manager, attributable to the development or property, plus an administrative charge of six percent (6%) of the principal amount of such proportionate share (the "Payment"); and

**(c)** The Manager may authorize the Payment, described in Rule 4.7(b), above, over a term of years, not to exceed ten, upon the execution and delivery by the developer of a promissory note and mortgage or deed of trust sufficient, in the judgment of the Manager, to reasonably ensure that the Payment will be timely made; and

**(d)** Interest shall accrue on the Payment at a rate established by the City Council, by resolution, or in the absence of such a resolution, at a rate which is equal to the rate of return on City investments obtained by the Finance Director of the City on the City's long-term investments; and

**(e)** The obligation to pay the Payment, in addition to the mortgage or deed of trust, shall constitute a lien upon the property and shall be equivalent to the lien provided for in the City Code establishing a water lien, presently § 31-3. All remedies available pursuant to such § 31-3 shall equally apply to the lien described and created herein; and

**(f)** In the event that an improvement district is formed and some or all of the Payment has been paid, the assessment which would otherwise be payable shall be reduced by the amount of principal of the construction cost which has been paid; and

**(g)** The property owner shall dedicate, at no cost to the City, such right-of-way or easements as the Manager shall deem necessary to construct, operate, and maintain the System, in accordance with City specifications and standards. In the event that insufficient information is available to determine the legal description of the required rights-of-way or easements at the time of approval or permit issuance, the developer shall promise and covenant to make such a conveyance or grant at such time in the future as the Manager shall require.

If adequate disposal and treatment facilities do <u>not</u> exist or a failed ISDS can <u>not</u> be repaired so that such a system can adequately serve a property during an interim period before sewer lines are constructed, then the property shall be abandoned or vacated until adequate treatment or disposal is available. Adequate disposal may include regular and periodic pumping and disposal of accumulated waste at the Plant.

In the case of 2b. (the expansion or subdivision of an existing residential or non-residential use or property) if a property owner/developer

demonstrates to the satisfaction of the Manager and the County that the following two conditions exist:

(1) the construction of a sewer line is impracticable and
(2) adequate disposal and treatment facilities exist as defined by current regulations (generally defined as the construction of an engineered ISDS)

then the Manager and the County Commission may authorize expansion or subdivision of the property however that approval or permit, if any, shall be issued based on the conditions in 4.7 (a) – (g) which shall be specifically agreed upon by the property owner/developer pursuant to a written agreement.

The Manager and the County Commissioners may deliberate and act separately but the concurrence of both is required to grant an exception to the sewer construction requirement.

Application for an exception to the requirement that sewer be constructed shall be made prior to submission of development/subdivision plans on forms provided by and with detail determined by the Manager and shall not be made for more than 2 lots in any subdivision or use expansion.

That approval/permit shall be issued on the following terms and conditions, which shall be specifically agreed upon by the property owner pursuant to a written agreement in advance of construction of an ISDS on any lot of for any expansion.

Examples of when sewer construction may be “impracticable” include but are not limited to:

v. There is a low likelihood of a local sewer improvement district being formed in the near future based on the manager’s discussions of the formation of the same with the benefiting owners, and the number and location of POA’s to form a district is insufficient to create the same; or

vi. The sewer line, to be constructed by the property owner, is in a location or with grades such that few if any other nearby properties can be efficiently served by the new line; or

vii. The location of the closest (within 400 feet) sewer line is in a different drainage basin or is across a major street, waterway or similar impediment to the construction of a line such that the expense of the new line is wholly out of proportion to the average cost of extending residential service; or

viii. To construct pumping facilities and a force main would be too great an expense compared to participation in a future local improvement district.

“Adequate disposal and treatment facilities” means that a local package treatment plant is available and functioning or that an ISDS may be constructed, regularly pumped and disposed of at the plant in accordance with all State and County health department regulations.

ix. residential service; or

x. To construct pumping facilities and a force main would be too great an expense compared to participation in a future local improvement district.

“*Adequate disposal and treatment facilities*” means that a local package treatment plant is or will be made available and functioning or that the ISDS may be regularly pumped and disposed of at the plant.

Terms and Conditions of the written agreement:

**(a)** The property owner shall deliver an executed power of attorney for formation of a future sewer improvement district; and

**(b)** The property owner shall pay that amount of money which the Manager calculates to be the proportionate share of the sewer line construction costs, as defined by the Manager, attributable to the development or property, plus an administrative charge of six percent (6%) of the principal amount of such proportionate share (the "Payment"); and

**(c)** The Manager may authorize the Payment, described in Rule 4.7(b), above, over a term of years, not to exceed ten, upon the execution and delivery by the developer of a promissory note and mortgage or deed of trust sufficient, in the judgment of the Manager, to reasonably ensure that the Payment will be timely made; and

**(d)** Interest shall accrue on the Payment at a rate established by the City Council, by resolution, or in the absence of such a resolution, at a rate which is equal to the rate of return on City investments obtained by the Finance Director of the City on the City's long-term investments; and

**(e)** The obligation to pay the Payment, in addition to the mortgage or deed of trust, shall constitute a lien upon the property and shall be equivalent to the lien provided for in the City Code establishing a water lien, presently § 31-3. All remedies available pursuant to such § 31-3 shall equally apply to the lien described and created herein; and

**(f)** In the event that an improvement district is formed and some or all of the Payment has been paid, the assessment which would otherwise be payable shall be reduced by the amount of principal of the construction cost which has been paid; and

**(g)** The property owner shall dedicate, at no cost to the City, such right-of-way or easements as the Manager shall deem necessary to construct, operate, and maintain the System, in accordance with City specifications and standards. In the event that insufficient information is available to determine the legal description of the required rights-of-way or easements at the time of approval or permit issuance, the developer shall promise and covenant to make such a conveyance or grant at such time in the future as the Manager shall require.

If adequate disposal and treatment facilities do not exist or can not be constructed that such a system can adequately serve a property during an interim period before sewer lines are constructed, then the property shall be abandoned or vacated until adequate treatment or disposal is available. Adequate disposal may include regular and periodic pumping and disposal of accumulated waste at the Plant.

Section 4, subsection (f), Rule 4.11, third paragraph, shall be amended in part as follows:

The words "**30 days prior to such hearing**" is changed to read "**10-days prior to such hearing."**