

**CITY OF GRAND JUNCTION CITY COUNCIL  
SPECIAL MEETING AGENDA  
TUESDAY, OCTOBER 9, 2007, 2:00 P.M.  
TRAINING ROOM B, OLD MESA COUNTY COURTHOUSE  
544 ROOD AVENUE**

**PERSIGO BOUNDARIES – Long Term Planning:** Discussion on establishing a process to review policy alternatives with Mesa County relative to growth and annexation.

**[Attach 1](#)**

**Attach 1  
PERSIGO BOUNDARIES**

**CITY OF GRAND JUNCTION**

<b>CITY COUNCIL AGENDA</b>			
<b>Subject</b>	Discussion of a joint policy-making process with Mesa County relative to growth and development		
<b>File #</b>			
<b>Meeting Day, Date</b>	Tuesday, October 9, 2007; 2:00 PM		
<b>Placement on the Agenda</b>	<b>Consent</b>		<b>Individual</b>
<b>Date Prepared</b>	October 4, 2007		
<b>Author Name &amp; Title</b>	Greg Trainor, Utility and Street Systems Director		
<b>Presenter Name &amp; Title</b>	Greg Trainor, Utility and Street Systems Director		

**Summary:**

Establishing a process to review policy alternatives with Mesa County relative to growth and annexation.

**Budget:**

**NA**

**Action Requested/Recommendation:**

Discussion, with Mesa County, of goals, policies and opportunities relative to growth, annexation and other common ideas for guiding growth.

**Attachments:**

Chart  
"Persigo Agreement"

**Background Information:**

The City and Mesa County own, operate and deliver sewer service within the urban area, currently bounded on the North by I-70 and on the South by Highway 50, on the west by 20 ½ Road, and on the east by 31 ¼ Road.

There are growth opportunities/pressures in the Grand Valley, outside of this area, that need to be addressed. These areas are Whitewater, Central Orchard Mesa and areas north of I-70.

The City Council and Mesa County are the proper entities to address these issues. In fact, the City is undertaking a comprehensive planning process that will offer recommendations relative to growth and development.

The City and the County have an intergovernmental agreement ("Persigo Agreement") that addresses urban growth issues. This agreement is nine years old.

The City believes that, by combining the strengths of the City and the County, the strongest assets of the Valley can be brought to bear on the issues of growth management.

The first step is the re-examination of common goals with Mesa County and others for guiding growth.

With a common vision, the City and the County can craft policies that ensure future quality development.

The City is committed to making timely progress on these issues and is committed to meet near and longer term deadlines. These discussions will be integrated into the City's comprehensive planning process.

# WHERE WE'VE BEEN..... WHERE CAN GO

1980      << >>      1998

## Joint Sewerage Agreement

- ❖ **All about sewer**
- ❖ Regional plant
- ❖ How it works
- ❖ How it is managed
- ❖ Who pays for it.
- ❖ City-County ownership
- ❖ Annex to receive sewer

1998      << >>      2007

## "Persigo Agreement"

- ❖ **All about growth**
- ❖ Very little about sewer
- ❖ But removes annexation as a prerequisite to receiving sewer

- ❖ 10 years of experience.
- ❖ Opportunity to examine goals, policies and opportunities
- ❖ Realize full potential of "Persigo Agreement".

1998 INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF GRAND JUNCTION AND MESA COUNTY  
RELATING TO CITY GROWTH  
AND JOINT POLICY MAKING FOR THE PERSIGO SEWER SYSTEM

[October 12, 1998]

13-A J.R.B.  
A.

Goals

The overriding goal of the County is to make available connection to the System to all properties within the 201 Service area and to participate jointly with the City to provide policy direction for operation and maintenance of the System.

The overriding goal of the City is that all new development shall occur within, and be annexed to, the City, and under the City's land use jurisdiction.

The parties agree that these two goals can be accomplished together.

The Master Plan is the community's best effort to identify those areas of the Central Grand Valley that should be urbanized, and those that should not.

In addition, the parties have expressed their willingness and resolve to guarantee, for themselves and for the Boards and Councils that will follow, that:

- (a) The City may continue to grow, in accordance with its Charter and applicable state law;
- (b) Within the 201, all Annexable Development, as herein defined, must only occur within the City and under the City's jurisdiction;
- (c) The County shall continue to participate jointly with the City to provide policy direction for operation and maintenance of the System;
- (d) So that the integrity of the City and County planning efforts is not threatened in the Joint Planning Areas (herein defined), the parties will not allow growth inconsistent with: the Master Plan adopted by each entity or by the Planning Commissions of each; or existing zoning; and
- (e) The City will continue to manage, operate and maintain the System as it has done, subject to policy guidance by the Board of County Commissioners and City Council, acting jointly, as provided herein.

This Agreement between the City and the County addresses the following goals and community values:

- (a) The System was constructed and will be operated for the benefit of the current and future users in the 201;
- (b) The Agreement should resolve all issues that were in dispute in the Lawsuit;
- (c) The pursuit of health and water quality on behalf of all citizens is of the utmost importance;
- (d) Continue quality management, operation, and maintenance of the System;
- (e) Encourage connection of all properties within the 201 to the System in the short term, rather than waiting for septic systems to fail; and
- (f) Agree on, and adopt, the boundaries of the 201.

B.  
**Policy.**

1. The City Council and the Board of County Commissioners shall jointly establish and provide policy direction relating to the System.
2. No policy shall be effective until formally adopted by both the Council and the Board of County Commissioners.
3. Policy means:
  - (a) Setting goals and objectives;
  - (b) Reviewing and adopting capital improvement plans and annual operating budgets;
  - (c) Reviewing and setting System rates and fees;
  - (d) Entering into bond issues and other financing arrangements, adopting or amending Sewer Rules and Regulations;
  - (e) Adopting policies and philosophies which govern rate and capital reviews and studies;
  - (f) Acting jointly regarding any changes to the 201. The parties recognize that their joint decision and recommendation regarding the 201 boundary may be subject to the approval of others pursuant to the Federal Clean Water Act and implementing regulations; and

(g) Approving and entering into new sewer service contracts or amending existing sewer service contracts with special districts, municipalities, or other sewer service providers.

4. In the event the parties fail to jointly adopt an annual operating budget, the previously approved operating budget shall be the operating budget.

5. The parties agree that, unless required by a debt instrument or similar obligation, the following shall apply to the System:

(a) Operating and maintenance reserves required by any debt instrument will not be used for trunk line extension or plant expansion;

(b) Jointly adopted differential fees and charges may be used to encourage in-fill;

(c) Plant investment fees and monthly charges may be established to meet anticipated future capital needs and inflation indexing; and

(d) The plant investment fee will be put into an expansion fund until plant usage reaches 90% of capacity, at which point construction is expected to expand the plant capacity. After such construction, expansion fund moneys may be accumulated for future uses or may be used to plan and construct new or replacement facilities.

6. Arbitration. Subject to the overriding provisions of Section F, "Remedies," in the event of a dispute of any matter determined by either body to be necessary to effectuate this Agreement or to establish any policy, the parties shall first mediate the dispute. If mediation does not resolve the dispute, the parties shall each state its position in writing and deliver the same to the other party. If, within ten days of the delivery of such writings to each party, the parties have not resolved the dispute, the parties shall proceed to binding arbitration. Each party shall designate an arbitrator of its choice and the two designees shall designate a third. Arbitration shall be subject to the rules of the American Arbitration Association. Expenses of mediation and arbitration shall be shared jointly by the parties.

7. The 1998-1999 existing system capital improvement plan, and existing operating budgets, and the Sewer Rules and Regulations (to the extent not inconsistent with this Agreement) and the boundary of the 201 as indicated on "**Persigo Exhibit A**" are hereby continued and ratified until jointly modified.

C.

**Implementation-Zoning-Master Plan.**

8. The parties agree to provide for, encourage, and assist growth of the City through annexation by the City of all Annexable Development within the boundaries of the 201. In the event of a question, the parties agree that annexation is to occur, unless prohibited by applicable law or this Agreement.
9. The Parties shall jointly develop appropriate incentives to encourage annexation to the City. If a neighborhood or other area petitions or elects to be annexed to the City, the County and the City may jointly fund incentives. As allowed by available money, the incentives may include, but are not limited to, parks, roads, fire stations or road improvements.
10. The parties agree to implement this Agreement, in letter and in spirit, through the various tools, plans and powers of each party, including but not limited to the adopted codes of each, the policies and procedures of each, and the agents and employees of each. Throughout the term of this Agreement, the parties agree to continue to amend and adopt such provisions as are authorized and necessary to implement all provisions and goals of this Agreement.
11. (a) The parties acknowledge the importance of adoption of, or implementation of, and compliance with, the Master Plan. The parties shall implement the Master Plan through their resolutions, ordinances or other actions or shall comply with the zoning existing as of the date of this Agreement. The parties may jointly allow for exceptions, in writing.
- (b) When one party approves an amendment or other change to the Master Plan for property within such party's jurisdiction if the other party does not consider and decide whether to amend within thirty calendar days of the first party's approval, the amendment shall be deemed approved.
12. To maintain the integrity of the Master Plan, and the implementation of it, and for other reasons, the parties agree that any property within the 201 should eventually develop at an urban level of density. For this agreement, residential lot sizes of two acres gross or larger are deemed to not be "urban" while smaller parcel or lot sizes are deemed to be "urban." The parties agree to amend the 201 to implement this principle.

D.

**City Growth. Powers of Attorney. Annexation.**

13. Neither contemporaneous annexation to the City, nor a power of attorney to annex later, shall be required as a condition of service by or connection with the System, subject to, and in accordance with, the several provisions hereof. However, annexation is



required pursuant to this Agreement in order to implement the goals and objectives of this Agreement.

14. (a) Over time all properties within either the UGA or the 201, as those boundaries are adjusted and amended pursuant to this Agreement, will be annexed by the City. The parties agree that the UGA and the 201 should be the same, although amendments are required to accomplish this consistency, except that Clifton Sanitation District I and II will be excluded from the 201. All land use review of whatever form of any Annexable Development within the 201 Boundary, beginning with the very first contact with the planning offices or departments of the parties (such as a pre-application conference or the acceptance of any application or permit request), shall exclusively occur in, and be exclusively subject to the land use jurisdiction of, the City through the development review or other review process.

(b) Until the 10<sup>th</sup> anniversary of the signing of this Agreement, the City shall not annex outside of the 201 or the UGA unless the Board of County Commissioners consents.

15. All decisions relating to infrastructure standards, location and similar technical matters for Annexable Development shall be performed by the City pursuant to City standards and requirements, even if an earlier phase or portion of an Annexable Development had occurred without City review or process or standards. Within the 201, the parties shall jointly agree upon the infrastructure standards which shall be followed throughout the 201. The parties shall agree on such standards within one year of execution of this Agreement. Thus, the general principle to accomplish the goals of this Agreement, and to replace the existing arrangement is that no Annexable Development in the 201 shall, after the effective date of this Agreement, occur except through the City's land use process and after annexation to the City is completed. The City Council may allow the land use review process of Annexable Development to proceed along with the annexation, as required by the City.

16. Except as provided in paragraphs 21-23, any proposed non-residential (including but not limited to commercial, industrial, institutional or public, *e.g.*, schools, churches) use or development which fits at least partially any one or more of the following criteria shall first annex to the City prior to, or concurrent with, review and approval of the development proposal. Even if the developer or applicant would experience a delay, the City shall require that annexation shall occur forthwith so that the City has complete land use authority over the proposed development from its initial planning and review stages. Those criteria are as follows:

(a) Any development requiring a change of the text of, or to any map which is a part of, the adopted Joint Urban Area Plan;

(b) Any property, or portion thereof, the owner of which has requested or applied for a rezoning or any change to a planned zone or any amendment to any planned zone;

(c) Any subdivision of property that results in the creation of one or more additional lot(s), parcel(s) or tax parcel(s). Judicial and partition actions are included within the definition of "subdivision." Notice of any such judicial or partition action shall be given to the City;

(d) Any use or development requiring a Conditional Use Permit, except a home occupation located in a residence;

(e) Any new principal structure;

(f) Any addition to an existing principal structure which contains less than 10,000 square feet of gross floor area if, following the addition, the gross floor area of the structure is equal to or greater than 10,000 square feet; or

(g) Any addition of 10,000 square feet of gross floor area or larger to an existing principal structure of 10,000 square feet or more of gross floor area.

17. The County hereby agrees to sign such documents as are reasonably necessary to complete every annexation initiated or completed by the City within the 201 which reasonably complies with the Annexation Act and the provisions of this Agreement.

(a) Specifically, the parties agree that the County may intervene, sue or otherwise take action against or contrary to any City effort to annex any property within the 201 only if:

(i) The City is not complying or reasonably attempting to comply with the Annexation Act and this Agreement; or

(ii) The property involved is County park, recreational property or other property such as courthouses, jails, maintenance yards, Intermountain Veterans Memorial Park, and the offices or buildings of the County Clerk and other County Officials.

(b) The County specifically consents to the annexation of all or a portion of any road, street, highway, easement, right-of-way, open space or other County-owned property, unless excluded in (ii) above, at any time for any purpose consistent with the terms of this Agreement.

(c) For or on behalf of any third party, the County shall not intervene, sue or otherwise take action against or contrary to any City effort to annex pursuant to the Annexation Act and this Agreement. Even though the County is granted standing

by the Annexation Act or otherwise, the County agrees not to exercise such right, to require an election for, or contest any annexation in the 201, unless inconsistent with the Annexation Act.

18. (a) Annexation techniques such as the use of "flagpole(s)," including the annexation of all or any portion of any right-of-way, street, easement or road, may be used by the City to accomplish annexations and the objectives of this Agreement. The City agrees to minimize the use of "flagpoles," other than the use of linear strips (normally portions of a right-of-way or other roadway), when establishing contiguity and compliance with the Annexation Act.

(b) The City may require that annexation be completed prior to issuance of any final development approval and the City may complete annexation prior to initiating any development review. The City may choose to allow a land use application or proposed use to proceed contemporaneously with the annexation process.

(c) Other parcels shall not be involuntarily included in an annexation petition prepared or controlled by the City pursuant to 18 (b) above. However, if a majority of property owners file a petition to annex, the minority may be annexed involuntarily without violating this Agreement.

(d) The parties agree that a "pole" of a "flagpole" annexation does not create an enclave. The City agrees that it will not attempt to use any "pole" to create or "close" an enclave.

(e) All phases, filings, or portions of any property subject to a public approval such as planned developments, Official Development Plans ("ODP"s), and any other process or step whereby a portion of one or more tax or other parcels are reviewed or evaluated (even though such parcels, lots or properties are not expected to be finally approved, subdivided or zoned at the same time) are to be treated as one property, and therefore all such phases, filings or portions shall be annexed to the City when the first such phase, filing or portion of property is reviewed and/or annexed.
19. Powers of Attorney for annexation ("POA's") or other instruments which provide for the exchange of sewer for an agreement to annex (only such documents shall be called POA's for purposes of this agreement) which were entered into or recorded as of the dismissal of the Lawsuit will not be used by the City to effect annexation during the time this Agreement is in effect.
20. Any POA which has not been exercised or released as of December 31, 2005 will be canceled on or before that date by formal action by the City Council. Such notice of cancellation, which shall be recorded, shall provide that the cancellation is subject to the several terms of this Agreement.

21. **Redlands.** Within that portion of the 201 which is west/south of the Colorado River and west of the Gunnison River, (termed the "Redlands" in this Agreement), and which is shown more particularly on the attached "**Persigo Exhibit A**":

(a) For any residential development, no permit or approval shall be given for such development if any portion of the property is within 1/4 mile (1,320 feet) of any portion of the City limits, as those limits change from time to time, except through the City's land use process and until the property is annexed to the City. The County shall refuse to review or approve any such development proposal; and shall refer the applicant to the City which shall process and decide if the permit, application or proposed development shall be approved. The City may require that annexation be completed prior to initiation of any land use review process by the County, or the City may choose to allow a land use application or proposed use to proceed contemporaneously with the annexation process.

(b) Regardless of proximity to the limits of the City, all non-residential Annexable Development on the Redlands shall be exclusively processed and evaluated by, and possibly approved only after it is annexed to, the City. The City may elect to begin the land use review process prior to completion of the annexation process if the City has land use jurisdiction as determined by the City.

22. **Eastern area.**

(a) Any proposed Annexable Development of any property within the 201 and which is partially or wholly WEST of the line shown on the attached "**Persigo Exhibit A**," and which will be referred to as "The Line," shall be exclusively processed and reviewed by, and annexed to, the City.

(b) Until December 31, 2005, all non-residential Annexable Development and any residential development which requires a rezoning to higher density, which is east of "The Line" will be exclusively processed by, and annexed to, the City.

(c) On or after January 1, 2006, "The Line" shall no longer have any force or effect: any Annexable Development any portion of which lies within the 201 shall be processed and reviewed exclusively by and annexed to the City, except for property on the Redlands which shall continue to be treated in accordance with §21, above.

(d) To the extent that property, upon annexation to the City, is excluded from the Clifton Fire Protection District ("Clifton Fire"), the City promises to pay to Clifton Fire that amount of money which would have been received by Clifton Fire by virtue of its current mill levy as applied throughout Clifton Fire which would have applied absent exclusion, subject to the on-going requirement that Clifton Fire shall continue to provide its full services to the excluded property.

23. **Orchard Mesa.**

(a) For properties south of the Colorado River and east of the Gunnison within the 201 ("Orchard Mesa"), there shall be no development nor uses approved in the area east of 30 Road, west of Highway 141 (32 Road) which are connected to the System except the already fully developed subdivision "Valle Vista." Structures lawfully existing as of the date hereof which are within four hundred (400) feet of the existing sewer service line which connects to Valle Vista may be connected to that Valle Vista sewer line.

(b) Development of any property any portion of which is west of 30 Road, on Orchard Mesa, which meets the criteria of Annexable Development shall only occur within the City and contemporaneous with annexation and City review and approval.

(c) The parties shall commit to a successful resolution with Orchard Mesa Sanitation District (OMSD) of resolving the OMSD debt related to construction of the Valle Vista sewer service line described above.

24. **Appleton Service Area.** The Appleton Service Area is defined by Exhibit A of the Resolution known as MCM-98-51 (County) also known as Resolution 22-98 (City). Annexation of existing residential development is not required in order to obtain sewer service; however, Annexable Development within the Appleton Service Area shall be annexed similar to other Annexable Development as provided herein.

25. **Clifton.** Property which is east of "The Line", south of I-70B and which is within the Clifton Sanitation Districts I or II is not Annexable Development under this Agreement and may develop without annexation to the City.

E.

**Enclaves.**

26. (a) The parties agree that all property within an enclave shall be unilaterally, in accordance with the procedures provided for in the Annexation Act, annexed by the City on or before the fifth anniversary of the creation of the enclave.

(b) In an effort to eliminate duplication of services provided to the enclaves, the parties may contract with each other concerning urban services to be provided to enclaves and 'flagpoles.'

(c) The City and County will work toward amicable annexation of enclaves to the fullest extent possible.

(d) Until annexation of an enclave is final (*i.e.* all appeal periods have expired for any protest or appeal and all litigation contesting any such enclave in whole or in

part is finally adjudicated following the completion of all appellate proceedings), the county shall continue to provide its ordinary services (unless otherwise agreed in writing with the city) throughout such enclave.

(e) The County agrees to complete the capital planning, expenditures and construction of improvements which are identified in the County's adopted two-year budget and in the County's adopted two-year capital plan with respect to a portion or all of any enclave area, notwithstanding that the area, or a portion of the area, has been annexed.

F.

**Remedies.**

27. (a) This Agreement can be amended or terminated only with the concurrence of both parties as expressed in a joint resolution passed by a majority vote of the City Council and the Board of County Commissioners respectively, except as otherwise provided herein.

(b) Each party shall have the right to enforce each and every provision hereof, using the right of specific performance or otherwise. The court shall award the prevailing party its reasonable attorney's fees and costs.

(c) If either party breaches or otherwise fails to comply with the terms and goals of this Agreement, the parties agree that, upon declaration of a court of competent jurisdiction, to the fullest extent allowed by law, all of the breaching party's right, title, and interest to the System shall immediately and irrevocably vest in the non-breaching party. The parties term this remedy "Here are the Keys."

(d) If a court of competent jurisdiction determines that the "Here are the Keys" remedy is not enforceable for whatever reason, or if, due to the actions or inactions of a third party or intervening force, either party is not able to obtain the benefit of its bargain or is not able to accomplish the goals of that party, the court shall enforce as many provisions and terms hereof as are consistent with such goals and benefits. In addition, if the City's goals and benefits are not able to be met, the City may require that no development of any kind within the 201 shall occur except upon annexation to the City.

(e) The parties desire that the Agreement shall be perpetual, so long as the terms and goals of this Agreement are being accomplished, and the benefits are being realized. If there comes a time that the "scope" of this Agreement needs to be expanded in order to continue the City's role as the urban services provider, and other method or methods of accomplishing land use review and control by the City in urbanizing areas are necessary, or to continue the County's role as a co-manager of the System and as a policy decider of the System, the parties agree to negotiate reasonably. In the event they cannot agree, either or both may request that the court fashion such a modification of the terms hereof, based on then existing law

and circumstances, as will satisfy the goals and intents of the parties and allow each to obtain the benefit of this Agreement.

G.

**Other Provisions**

28. Within one year of the effective date hereof, the parties agree to, in good faith, amend the Urban Growth Boundary, or the 201, or both, so that such boundaries and areas are identical.
29. The provisions of this Agreement are not assignable without the specific consent of the parties, which consent may be unreasonably withheld.
30. This document is intended to be an Intergovernmental Agreement (IGA), pursuant to the several powers of the parties, including but not limited to 29-1-201, C.R.S. *et seq.*, 29-20-101, C.R.S. *et seq.*, title 30, C.R.S., especially articles 11, 15, 20 and 28 thereof, and the statutory and home rule powers of the City. It is intended that this Agreement replace the Existing Arrangement.
31. The three existing contracts, between the City and Orchard Mesa Sanitation District, Central Grand Valley Sanitation District and Fruitvale Sanitation District, respectively, which districts are served by the System, shall remain unchanged by this Agreement.
32. This Agreement shall not grant any status or right for person or any third party, specifically any owner of any property, to make any claim as a third party beneficiary, or for deprivation of any right, violation of any vesting of rights, inverse or other condemnation, or other theories. The parties intend this Agreement to be for their benefit only, to resolve issues between these two governments.
33. Generally Accepted Accounting Principles ("GAAP"), as published by the Government Accounting Standards Board ("GASB"), which are standards applicable to local governments, will continue to apply to the System.
34. (a) The parties also agree that the failure of either to implement each and every term of this Agreement shall constitute a breach.
- (b) Because of the severity of a declaration of a breach, a party desiring to declare a breach shall first, in writing, inform the other party of the basis for the breach, including as much detail and specificity as is possible. The other party shall have 120 calendar days to either cure the breach or to inform the other party what steps are being taken, in a reasonable time and with reasonable efforts, to cure the breach. If the 120<sup>th</sup> day falls on a holiday or weekend, the party shall have until the following day which is not a holiday or a weekend to cure or inform. No breach shall occur without a court of competent jurisdiction having declared so.

(c) Either party may ask for direction from the court, in the form of a declaratory judgment, in anticipation of a breach argument being made by the other party.

35. The City as operator and manager will acquire and own any and all new and/or additional real and/or personal property or property interest only under the name and style of "the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System."

36. The City shall manage, operate, and maintain the System for the benefit of the current and future users of sewer service in the Persigo 201, according to sound utility practices and principles and, except as otherwise provided herein, without regard to whether or not current and future users of sewer service in the Persigo 201 are located within or without the boundaries of the City.

37. Other matters, decisions and issues which have been decided by the City, acting as manager, shall continue to be decided by the City, unless included in the definition of policy provided in this Agreement. For example: the City may, as the manager, accept a bid which is within budget, without obtaining any further approval from the Council or the Board of County Commissioners; the City, acting as the manager, has complete authority, subject to policy direction as provided for herein; all System employees who operate and manage the System will continue under the City's personnel, pay and benefit system; matters of insurance, employee discipline, benefits, and similar questions, shall continue to be determined by the City.

38. Policy decisions and guidance shall be provided at joint meetings which shall occur at least annually. At least one of these meetings shall occur before July of each year so that any policy decisions (including changes to the boundaries of the 201) may be implemented by the City in the proposed budget for the joint System for the subsequent year. The City shall inform each special district of proposed rates for the subsequent year by September 1 of each year so that each district has reasonable advance information upon which to base its own budget projections.

39. Rate studies shall be made by outside consultants at least every five (5) years, or more often at the joint request of the City and County.

40. Since attorneys for both parties may, from time to time, give legal advice to either or both parties regarding policy directives, management, operation, and/or maintenance of the System, neither party shall assert against the other any attorney-client privilege with regard to any communication involving either party and either party's attorney, which communication occurred prior to the giving and receiving of written notice of a disagreement pursuant to this Agreement.

41. Except as provided in 14 (b), with regard to property outside of the 201 or the UGA, this Agreement shall in no way limit or expand the existing powers of the City.



42. In any zoning or other land use decision undertaken by the City, those persons who own property which is within the area of the City's standard notification and which is not within the City's limits shall be entitled to the same rights of appeal and participation in the land use review process as City residents.

43. The parties agree to the definitions as shown in Exhibit "Persigo Definitions."

H.

**Rules of Construction.**

44. (a) If a term or the application of this Agreement is ambiguous or cannot otherwise be determined, these rules, in the order presented, shall guide resolution of the question: (i) annexation of the property to the City should be accomplished; (ii) Sewer service to all properties within the 201 shall be provided; (iii) the other terms and provisions hereof shall be implemented.

(b) The goals and community values as referred to herein are properly used to construe this Agreement.

(c) In the event there exists a conflict between the body of this Agreement and any exhibit to this Agreement, the body of this Agreement shall prevail.

(d) If a conflict exists between this Agreement and any other document executed or adopted by either Party and necessary to and associated with operation of the System, this Agreement shall prevail, except as otherwise provided for herein.

(e) This Agreement is not intended to be and shall not be interpreted to be in derogation of any rights of the Trustee or the Bondholders pursuant to Mesa County Resolution No. MCM 92-160 (Series 1992).

(f) In the event this agreement is deemed to be ambiguous or vague, the parties agree that the rule that 'ambiguities shall be construed against the drafter,' or similar rules of construction, shall not apply because this Agreement is a result of mutual negotiation and drafting.

Effective Date: Oct. 13, 1998

CITY OF GRAND JUNCTION

Janet L. Terry  
Janet L. Terry, Mayor

Effective Date: Oct. 13, 1998

MESA COUNTY

James R. Baughman  
by its Board of Commissioners

Exhibit 1 "Persigo Definitions"

**Definitions**

For this Agreement, the parties agree to the following definitions and meanings.

1. Annexable Development: includes non-residential development, as defined herein, and residential development, as defined herein.
2. City Council, City or Council: the City Council of the City of Grand Junction, the City Manager of the City of Grand Junction, or the City of Grand Junction as an entity, as the context may require.
3. Commercial or non-residential development: all development which is described in paragraph 16, *infra*.
4. County, Commissioners, Board or BoCC: Mesa County, a political subdivision of the state of Colorado, acting through its Board of Commissioners.
5. Development: construction, improvement, or placement of a use on a parcel or lot or other property. For this agreement, changes in intensity of use, reconstruction of a building after demolition, rezonings and the other activities or thresholds as defined in the body of this Agreement, are included within the definition of "development." It is intended that in cases which are not clear, an activity or property be included within the term "development," rather than excluded.

Below is a list of those activities, approvals and review processes which will subject the applicant to being annexed by the City prior to any land use review by the County.

The following are examples of Annexable Development, as defined in this Agreement. This list is intended to be illustrative only and not an all-inclusive list of development types that would trigger land use review and approval or annexation by the City.

**Residential Annexable Development**

In general, Residential Annexable Development includes any proposed development that would require a public hearing under the Mesa County Land Development Code as it was on April 1, 1998. Such development includes, but is not limited to, any residential development that:

- Is generally defined as single family dwellings (detached and attached), duplexes, triplexes, quadplexes, townhomes, multi-family buildings, apartments, condominiums, rooming houses, boarding houses, group homes, nursing homes, retirement homes, adult congregate living facilities, hospices, or similar residential

- development. The term does not include commercial facilities such as hotels, motels, hospitals, penal/correctional facilities, or similar commercial or institutional facilities
- Requires a change to the Future Land Use Map of the Master Plan, or a change to the text, exhibits, goals or policies of the Master Plan, if requested by or on behalf of a property owner/developer
  - Requires a change in zoning applicable to a property or a change in the text of the Mesa County Land Development Code as it existed as of April 1, 1998
  - Requires a rezoning to planned development or Planned Unit Development (PUD)
  - Requires Official Development Plan (ODP) approval for a planned development or PUD
  - Requires Preliminary Plan approval for a planned development or PUD, regardless of any previous approval of an ODP
  - Requires approval of a major amendment to an approved planned development or PUD. A major amendment includes:
    - o A change in density, number of lots or number of dwelling units
    - o A change in a permitted use(s)
    - o A change in dwelling unit type (e.g., detached, attached, townhome, zero lot line, etc.)
  - Requires approval of Conditional Use (except a home occupation)
  - Requires approval of a Special Use (except a home occupation )
  - Results in the subdivision of land (including judicial and partition action, but not foreclosure) whereby more than one additional lot or parcel is created
  - Requires approval of a subdivision plat or replat resulting in the creation of more than one additional lot or parcel

**Non-Residential Annexable Development**

In general, Non-Residential Annexable Development includes any proposed development that would require a public hearing under the Mesa County Land Development Code in effect on April 1, 1998, and any new or significantly non-residential principal structure(s). Such development includes, but is not limited to, any non-residential development that:

- Is generally defined as commercial, industrial, institutional, public (other than some property owned by Mesa County; see *infra*) or any combination thereof, or any one of the foregoing in combination with a residential use
- Requires a change on the Future Land Use Map adopted as part of the Master Plan , or a change to the text, exhibits, goals or policies of said plan, as may be requested by or on behalf of a private property owner
- Requires a change in zoning or a change in the text of the Mesa County Land Development Code
- Requires a rezoning to planned development or Planned Unit Development (PUD)
- Requires Official Development Plan (ODP) approval for a planned development or PUD
- Requires Preliminary Plan approval for a planned development or PUD, regardless of any previous approval of an ODP

- Requires approval of a major amendment to an approved planned development or PUD, such as:
  - o A change in intensity, lot coverage or floor area ratio
  - o A change in a permitted use
  - o A change in the location of a principal structure
- Requires approval of Conditional Use (except a home occupation)
- Requires approval of a Special Use (except a home occupation )
- Results in the subdivision of land (including judicial and partition actions) whereby one or more additional lots or parcels are created
- Requires approval of a subdivision plat or replat resulting in the creation of one or more additional lot(s) or parcel(s)
- Results in the construction of any new principal structure
- Results in any existing principal structure of less than 10,000 square feet of gross floor area being enlarged to 10,000 square feet or greater of gross floor area
- Results in an addition of 10,000 square feet or larger of gross floor area to any existing principal structure of 10,000 square feet or greater of gross floor area

6. Existing arrangement: that state of affairs and status, with all attendant powers, defenses, liabilities and duties, which existed the instant before the Lawsuit was dismissed.

7. Gross Floor Area: the sum of the areas, expressed in square feet, at each floor level of a structure including cellars, basements, mezzanines, penthouses, corridors, lobbies, stores, offices, *etc.*, included within the principal outside faces of exterior walls. Included are all stories or areas that have floor surfaces with clear standing headroom (six feet six inches (6'6") minimum) regardless of their uses. The gross area of any parking garage within a building shall not be included within the Gross Floor Area.

8. Jointly agreed upon infrastructure standards: those standards to be agreed upon by the City and County within one year of the signing hereof which include all necessary technical construction specifications of roads, drainage, water, sewer and other public or private utilities necessary to serve a non-residential or residential development.

9. Jointly: a joint decision of the City and County. While the City and the County may be required to act separately, according to applicable law, no such action shall be effective until both bodies have adopted identical actions, terms and provisions.

10. Joint Urban Area Plan ("JUP"): means that portion of the Mesa County Countywide Land Use Plan as shown in color on the City's Future Land Use Map (adopted October 2, 1996), along with the corresponding text, goals and policies. Note that the colored portion is larger than the Urban Growth Boundary.

11. Lawsuit: Mesa County v. City of Grand Junction, 94 CV 233, Mesa County District Court.

12. Lot: a parcel of land as measured and established by a plat recorded with the Mesa County Clerk and Recorder.

13. Master Plan: also known as Comprehensive Plan, Growth Plan; for the purposes of this Agreement, it is Chapter 5 of the Mesa Countywide Land Use Plan (October, 1996), also known as the Joint Urban Area Plan.

14. Non-residential development or commercial: all development which is described in paragraph 16, *infra*.

15. Official Development Plan: As defined by Mesa County Land Development Code, in effect as of April 1, 1998.

16. Parcel: an area of land defined by a legal description and recorded with the County Clerk and Recorder.

17. Persigo Wastewater Treatment System: see Sewer.

18. Policy: see paragraph 3, *infra*.

19. Principal Structure or Use: the main or primary purpose for a structure or use on a property; Included are accessory structures which are attached to and architecturally integrated with the principal structure.

20. Property: includes the terms "lot" and "parcel," as defined herein. Adjacent or contiguous tax parcels, according to the Mesa County Assessor, which are in identical ownership, shall be treated as one property, parcel or lot, for the purposes of this Agreement. The term is intended to be inclusive and to refer to all lands, grounds, and areas.

21. Public approval: for any proposed use development or change to either, an approval which requires or involves a public hearing process, based on the provisions of the County's Code and the administrative practices in effect in Mesa County on April 1, 1998 (unless consented to in writing by the City if the provisions or practices changes). Thus, if a subdivision of property requires a public hearing of some sort, the subdivision cannot occur without "public approval." If construction can occur without a public hearing or public notice of a meeting, for example only staff review of a set of plans must occur before the activity is authorized, no public approval is required for the development. It includes any, according to the County's adopted Code as of April 1, 1998, any development, subdivision, platting, planned or planned unit development (including all phases, steps, and filings), conditional or other use permit, land use review, change of use, change of intensity of use or other permitting process, permit or approval applicable to land or structure thereon which requires a public hearing.

22. Residential Development: includes single family dwellings, multi-family homes, apartments, townhomes and condominiums, and other dwelling places, along with appurtenant structures, such as a club house which serves only the residents of a particular subdivision, and which requires a public approval.

23. Septic system: all forms of State of Colorado and Mesa County Health Department approved individual sewage disposal systems, as defined in state law and state implementing regulations.

24. Septic system failure: as defined by County Health Department or, in lieu of any definition by the County Health Department, by the State of Colorado's statutes or implementing regulations.

25. Structure: has the same meaning as is provided for in the most current version of the Uniform Building Code, as published by the ICBO, or a successor entity or uniform code, as adopted from time-to-time by the City.

26. System: the plant, and all lines, interceptors, and pipes, valves, pumps and other facilities and appurtenant devices, including the real property rights, necessary or used for the collection and transportation of sewage and waste liquids to, and the operation and maintenance of, the Persigo Wastewater Treatment Plant. "System" includes all pipes and devices however large or small, including what has been termed "backbone," collection, trunks, *et cetera*, and all necessary personal property needed to operate the System. *See*, Sewer Regulations, as adopted by the City.

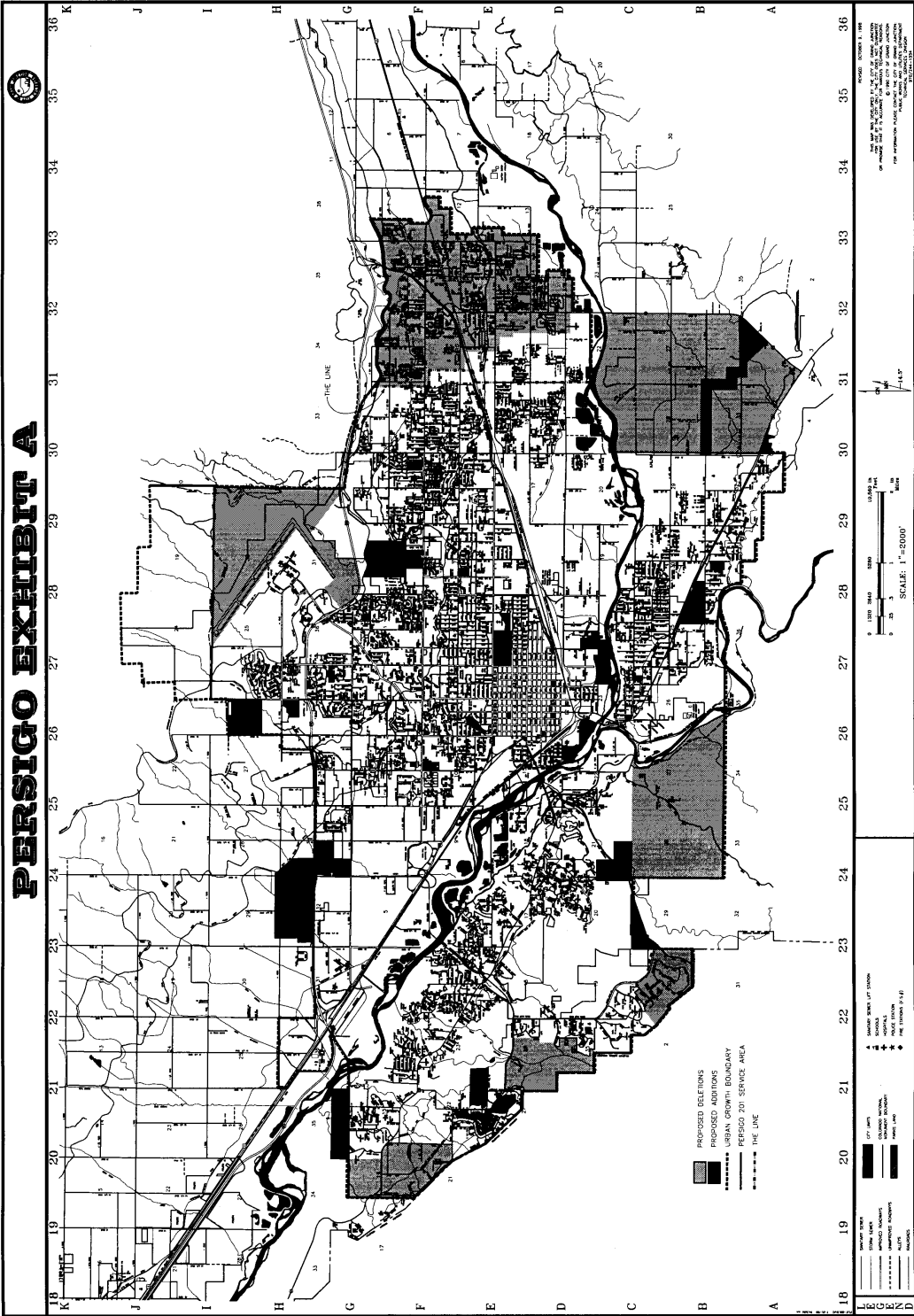
27. 201 Service Area or 201 or Persigo 201: as shown on the attached map, "**Persigo Exhibit A**," within which area it is intended that all properties shall be connected to, and served by the System, to the exclusion of septic or other individual sewage disposal systems.

28. Urban or Urbanizing: Within the JUP, any development or use other than residential single family dwelling(s) on lots, parcels or tracts which are smaller than two acres in size, net.

29. Urban Growth Boundary or Area: as shown on "**Persigo Exhibit A**" ("UGA").

30. Use: the purpose for which land or the building is designed, arranged, or intended, or for which is or may be occupied or maintained; also includes any activity, occupation, business or operation which is carried on, in, on a structure or on a tract or parcel of land.

# PERSIGO EXHIBIT A



NOTED: SUBJECT TO THE CITY OF PERSIGO'S 2012 GROWTH AND DEVELOPMENT STRATEGY, WHICH IS A PART OF THE CITY'S GENERAL PLAN. THIS MAP IS A PRELIMINARY PLAN AND IS NOT A GUARANTEE OF THE CITY'S FUTURE DEVELOPMENT. THE CITY OF PERSIGO RESERVES THE RIGHT TO MODIFY THIS MAP AT ANY TIME WITHOUT NOTICE.