

APPLEWOOD SANITATION DISTRICT
APPLICATION AND AGREEMENT FOR
EXTENSION OF SANITARY SEWER MAINS

THIS APPLICATION AND AGREEMENT (“Agreement”) is made and entered into in duplicate original between _____ (hereinafter referred to as “Applicant”), whose address is _____

and whose telephone number is _____ and the **APPLEWOOD SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado** (hereinafter referred to as “District”), and whose address is P.O. Box 1109, Golden, Colorado 80402-1109, and whose telephone number is 303-232-6883.

RECITALS

WHEREAS, Applicant desires to install sanitary sewer mains identified and known by the parties as the _____ Sewer Main Extension, and to have those mains and related appurtenances become part of the District’s public sanitary sewer system; and

WHEREAS, Applicant may retain a contractor to install the sewer mains and related appurtenances which are subject to this Agreement; and

WHEREAS, Applicant and District desire to execute an agreement setting forth the terms and conditions pursuant to which said sewer mains and related appurtenances will be initially accepted by the District and allowed to connect to the District’s public sanitary sewer system, and if finally accepted by the District, shall become part of the District’s public sanitary sewer system for all purposes including maintenance.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions.

- 1.1 The term “sewer lines” shall mean the sanitary sewer lines and related appurtenances such as manholes, and other appurtenances, as shown on Approved Plans; provided, however this term “sewer lines” shall not under any circumstances, include private service lines, underdrains or storm drains.
- 1.2 “Approved Plans” shall mean the latest set of plans and specifications approved for construction by the District’s consulting engineer.

1.3 “Project” shall mean the sewer lines as shown on Approved Plans.

1.4 “Applicable Government Authority” shall mean the District or any governmental, municipal or quasi-municipal entity that has jurisdiction with respect to the Project.

2. Application. referenced

Subject to all District requirements including, but not limited to, its Rules and Regulations, as the same now exists or may hereafter be amended, Applicant hereby makes application to the District for permission to construct the _____ Sewer Main Extension to serve Applicant’s real property as more particularly described on Exhibit A which is attached hereto and incorporated herein by this reference. An initial deposit in the amount of \$25,000 shall accompany this Application which amount shall be used by the District to pay for costs the District incurs in connection with its administration of this Agreement including, but not limited to, the review of Applicant’s plans, the providing of information in response to inquiries from Applicant or Applicant’s designee, and or observations provided for under this Agreement. Applicant shall replenish the deposit amount as deemed necessary by the District during the design and construction phases of the Project. Such replenishment by the Applicant shall be made in whole, in certified funds, within 15 calendar days from the day of written request by the District to provide replenishment. If the Applicant elects not to proceed with the Project, the amount deposited with the District shall be refunded less any costs or expenses incurred by the District up to and including the date Applicant abandons the Project.

3. Cost of the Project.

Applicant shall pay all of the costs for designing, constructing and installing the Project including, but not limited to, all applicable engineering, legal and administrative Metro Wastewater and Reclamation District costs incurred by the District in connection therewith until final acceptance is granted.

4. Approved Plans.

Applicant covenants and agrees that the Project will be constructed in accordance with the Approved Plans and any District approved modifications or additions made thereto. Further, Applicant warrants that the Project will be constructed in a workmanlike manner and that, once constructed, the Project will be fit for its intended purpose.

5. Supervision of Work.

The District shall have no responsibility to supervise or direct construction of the Project. Applicant or Applicant's contractor will supervise and direct construction of the Project and will be responsible for the means, methods, techniques, sequences and procedures of construction.

6. Applicant's Warranty.

6.1 Applicant warrants and guarantees to the District that, without exception, the Project will be free from any defects (including but not limited to defects in materials and workmanship) for a period of two (2) years from the date of initial acceptance by the District or until the date the Project is finally accepted by the District, whichever period is longer. No exceptions shall be permitted to this warranty provision.

6.2 The Applicant additionally agrees that during the two (2) year period prior to the date of final acceptance of the Project by the District, Applicant will promptly perform all work and supply all materials or cause its contractor to perform all work and supply all materials necessary to remove, replace, maintain, perform annual video, jetting and cleaning or repair the Project constructed hereunder when said work is required by the District for any reason, notwithstanding that said work does not arise out of any negligent or willful acts or omission of the Applicant or Applicant's contractor. In the event any of the maintenance and/or repair obligations required under this subparagraph (6.2) are not performed within twenty (20) days following written notice to Applicant, the District may cause said maintenance and/or repairs to be performed and charge the costs thereof to Applicant. Applicant agrees to pay all District bills for maintenance and repairs for the Project within thirty (30) days after receipt of the District invoice, together with all costs of collection, including reasonable attorney's fees and interest thereon at the rate of 1.5 percent per month on amounts that are past due.

6.3 Applicant agrees that any work required by the District hereunder, whether performed by Applicant or Applicant's contractor or by the District in the event of the refusal or inability of Applicant and/or Applicant's contractor to perform the work until the Project is finally accepted by the District, shall not impair or void the Applicant's warranty and guarantee under this paragraph 6 or any other obligation or liability of the Applicant imposed by law or contract.

6.4 Applicant further agrees that in emergency situations, the District shall have the right to perform whatever maintenance or repairs the District determines are necessary to protect the public health and safety without giving advance written notice to Applicant. Applicant agrees to pay all

cost incurred by the District in performing emergency repairs and maintenance within thirty (30) days after receipt of the District's invoice thereof, together with all costs of collection, fines incurred by the District, including reasonable engineering and attorney's fees and interest thereon at the rate of 1.5 percent per month on amounts that are past due. The term "emergency" shall mean any situation where, in the District's determination, the public health or safety would be jeopardized or endangered by waiting for Applicant or Applicant's contractor to initiate and perform the needed maintenance and/or repairs.

7. Supervision of Work.

7.1 To induce the District to execute this Agreement and to provide additional assurance that Applicant will fully perform all of Applicant's warranty, maintenance and repair obligations contained herein, and as a condition of approval of Applicant's plan for the Project, Applicant agrees to deliver to District concurrent with this Agreement, a fully executed Warranty and Maintenance Bond in the form attached hereto issued by a surety acceptable to the District and in an amount to be determined by the District, but in no event greater than 100 percent of the Project construction costs as determined by the District in the reasonable exercise of its discretion. Until the Project is finally accepted by the District, the performance of any warranty, maintenance or repair work upon the Project by the Applicant, Applicant's contractor or the District shall under no circumstances, release, discharge or modify in any way Applicant's obligations under the Warranty and Maintenance Bond.

7.2 In lieu of providing the Warranty and Maintenance Bond described in subparagraph (7.1) above, Applicant may furnish the District with a written alternative guarantee that is acceptable to the District. The specific provisions of the guarantee shall be acceptable to the District in its sole discretion. The guarantee shall be executed and delivered to the District no later than the date of initial acceptance of the Project by the District.

8. Construction Observation.

The District and its representatives will at all times have access to the construction site and will be permitted to observe conduct of the work, materials and any relevant documents or records necessary for the purpose of determining whether the Project is constructed in accordance with the Approved Plans. All observations, tests, and reviews shall be conducted at the sole cost of the Applicant and shall be paid by the Applicant within thirty (30) days of invoice by the District.

It shall be the responsibility of the Applicant, the Applicant's Engineer and Contractor, to continuously advise the District and the Engineer for the

District of the detailed design and construction schedule, status and progress.

9. Ownership.

Until dedicated to and initially accepted by the District, the Project shall be owned by Applicant and Applicant shall have full and complete responsibility for the Project including the safety conditions at the construction site. By way of explaining and not limiting the foregoing provisions of this Paragraph 7, Applicant agrees that until the District accepts the Project in accordance with the Provisions of Paragraph 11 below, the District shall have no obligation pursuant to Section 9-1.5-103 C.R.S., to locate any sewer main or related appurtenance that is a part of the Project. Until initial acceptance of the Project by the District, said located obligations, if any, shall be the sole responsibility of the Applicant.

10. Tap Permits.

No sewer tap permits shall be issued or sold for connection to the Project and no such taps shall be made to the Project until the District has initially accepted the Project in the manner as set forth in paragraph 11 below. Stub in connection fees may be accepted prior to initial acceptance.

11. Conditions for Initial Acceptance.

Each of the following conditions shall be a condition precedent, which must be satisfied before the District will initially accept the Project:

11.1 Approved Plans. The District, in its sole discretion, is satisfied that the Project has been constructed in accordance with the Approved Plans; and

11.2 Easements. The District is satisfied that all easements have been recorded for the Project and that the Project as constructed is located within said easements or other suitable public right-of-way; and

11.3 Record Drawings. Receipt by the District of signed and stamped, by the Engineer, record drawings for the Project, certified compaction and/or material test results and any survey certifications satisfactory to the District Engineer, that the District's President may require. Refer to sections 2.1.3 and 2.1.4.

11.4 Current Videos. Current videos of the entire system have been reviewed and any defects have been repaired to the satisfaction of the District's Engineer. For additional requirements refer to section 1.3.

11.5 Testing. Passing of all pipe and manhole leak testing, deflection testing and visual inspections. Refer to sections 2.7.6 and 2.9.8. All trace wire shall pass testing.

11.6 Contemplated Use. Without in any way being limited by the specificity of the foregoing, the District, in its sole discretion, is satisfied that there are no matters outstanding, which would prohibit or unreasonably interfere with the use of the Project for its intended purpose.

12. Initial Acceptance.

Initial acceptance shall be accomplished by the District's President and/or engineer, if applicable, affixing his or their signatures to the last page of this Agreement. As of the date of initial acceptance, all of the Applicant's right, title and interest in and to the Project, including but not limited to, all mains, pipelines, manholes, and related parts and materials which comprise the Project, shall automatically and immediately pass to and be conveyed to the District with no additional transfer proceedings or documents being necessary; provided, however, that the Applicant shall remain contractually obligated to perform said contractor's warranty, maintenance and repair obligations for a period of two (2) years from the date of initial acceptance or until the Project is finally accepted by the District, whichever period is longer.

13. Contractor Warranties.

Applicant may cause its contractor to warrant and guarantee to District the contractor's work performed on the Project. Any such warranty by Applicant's contractor shall be in addition to and not in lieu of Applicant's warranty and guarantee obligations to District as set forth in this Agreement.

14. Conditions of Final Acceptance.

Two (2) years from the date of initial acceptance, the District's president and/or engineer, as the case may be, will review the Project for final acceptance. Each of the following conditions shall be a condition precedent, which must be satisfied before the District shall finally accept the Project:

14.1 Current Videos. Current videos of the entire system have been reviewed and any defects have been repaired to the satisfaction of the District's Engineer. For additional requirements refer to section 1.3.

14.2 Full Performance. Applicant has faithfully and fully performed its obligations under this Agreement.

14.3 No Damage. There has been no damage or destruction to the Project; and if there has been damage or destruction, the same has been repaired, and the cost of such repair has been paid by Applicant.

14.4 Compliance with Approved Plans. Any deviation in the construction of the Project from the Approved Plans has been corrected. Without in any way limiting the generality of the foregoing sentence, attention shall be paid to assure that all manholes and manhole covers are at finished grade, free and clear of sand, gravel, stones or other foreign material.

14.5 Contemplated Use. Without in any way being limited by the specificity of the foregoing, the District, in its sole discretion, is satisfied that there are no matters, which prohibit or unreasonably interfere with the use of the Project for its intended purpose.

15. Final Acceptance.

Final acceptance shall be accomplished only by the District's President and/or Engineer, as the case may be, affixing his/her or their signatures to the last page of this Agreement. As of the date of final acceptance, the District accepts the Project for all purposes, including maintenance and repair, and the Applicant's obligation to pay for same shall cease; provided, however, that Applicant's indemnification obligation as set forth in paragraph 17 below shall survive final acceptance.

16. Manholes.

Notwithstanding any other provision contained in the Agreement to the contrary, if the sewer lines that are subject to this Agreement are installed in private or public streets and the surface of the street is not paved by the time of final acceptance, Applicant shall remain responsible for raising the manholes to finished street grade in accordance with specifications of the governing jurisdiction when the street is paved. Applicant shall notify the District when the work to raise the manholes is complete so that the District may review the work. As part of the work on manholes, Applicant shall insure that the manholes are clear of debris and are operational. If the Applicant does not raise the manholes as required herein, the District may perform the work at Applicant's sole cost and expense within thirty (30) days after notice to Applicant. Applicant shall make payment to the District within thirty (30) days after invoice. In the event payment is not timely made, Applicant agrees to pay all costs of collection (including reasonable attorney's fees) together with interest on the unpaid delinquent amount at the rate of 1.5 percent per month or part thereof.

17. Indemnification.

Applicant shall indemnify and hold harmless the District, its officers, agents, consultants and employees, from all claims and demands or liability of whatsoever kind of nature (including attorney's fees) arising out or of encountered in connection with the construction of the Project or its operation or maintenance, whether such claim, demand or liability is caused in any way by Applicant, its agents or employees, or by Applicant's contractor or subcontractor, their agents or employees, or by any product or materials installed on the Project by Applicant, its contractors or subcontractors, excepting only such injury or harm as may be caused solely and exclusively by the District's negligence.

This indemnification shall extend to all claims, demands or liabilities (including reasonable attorney's fees) for injury to persons, property or financial loss occurring before final acceptance of the Project as well as for a period of two (2) years after the date of final acceptance of the Project.

18. No Duty No Reliance.

The District, by its review and approval of the plans for the Project, does not assume any duty of care with respect to the Applicant or the Project. It is the Applicant's sole responsibility to prepare, design the plans and select the materials for the Project in accordance with the District's requirements and all applicable District rules and regulations. It is also the Applicant's sole responsibility to construct the Project in accordance with the Approved Plans.

Applicant represents that Applicant has read through the Approved Plans for the Project, examined the Project site and ascertained all soil, geological, groundwater and other conditions to be encountered and which might affect the construction, operation and maintenance of the Project. Applicant agrees that it enters into the Project relying on its own investigation and information and not on any statements or representations, if any, that have been made by the District, its officers, agents, consultants or employees.

If Applicant or Applicant's professional engineers disagree with any part or portion of the Approved Plans for the Project, such disagreement shall be brought to the attention of the District for resolution prior to the construction of the Project. Nothing herein contained shall be construed to place any obligations on the District to modify, deviate or change its standards and specifications as a result of any disagreement or objection lodged by the Applicant.

19. Insurance.

The following insurance coverages, issued by insurance companies acceptance to the District, shall be obtained, paid for and kept in full force and effect by Applicant until final acceptance of the Project, provided, however, that if Applicant contracts for the construction of the Project, then Applicant's contractor shall cause the following insurance coverages, issued by insurance companies acceptable to the District, to be obtained, paid for and kept in full force and effect until final acceptance of the Project:

a) Worker's compensation insurance covering all workers engaged in performance of the work on the Project in amounts not less than minimum coverage required by law, including employer liability coverage for not less than \$1 million.

b) Liability insurance, including automobile liability and property damage coverage at least equivalent to the 1986 Commercial General Liability Insurance Policy form. Such policy or policies shall be written on an "occurrence" basis and maintained in minimum amounts of \$1 million per occurrence, with a \$2 million general aggregate limit and a \$1 million product/completed operations aggregate limit. Said policies shall contain an endorsement naming the District and District's designated representatives as an additional insured and providing that any insurance maintained by the District is excess and non-contributing with the insurance required hereunder.

c) Any policy of insurance required hereunder shall contain a contractual liability endorsement covering indemnity and defense obligations of Applicant and such other coverages as may reasonably be required by the District. Such policy will, among other things, make specific reference to this Agreement.

d) Any policy insuring against loss caused by physical damage to any portion or all of the Project, or to materials to be incorporated into the Project, or covering Applicant or Applicant's contractor's tools, supplies, machinery or equipment shall contain an endorsement providing that the insurer waives its right of subrogation against the District in any other named insured. Nothing contained in this paragraph shall give or create in any third party irrespective of this paragraph.

20. Proof Insurance.

Prior to the commencement of any construction on the Project, Applicant or Applicant's contractor as the case may be, shall furnish to the District certificated of insurance or copies of policies showing that such insurance required herein is in force and that the premiums due thereon have been paid and that the District and District's designated representatives are named as an additional insured. Such certification or policies shall provide

that the insurance may not be cancelled, terminated or modified without fifteen (15) days advance notice thereof to the District. No policy shall contain any provisions for exclusion from liability other than the provisions for exclusion forming a part of the standard basic, unamended and unendorsed form of policy; provide, however, in no event shall any exclusions be permitted which conflict with any coverage required by this Agreement.

21. Modification.

This Agreement can be modified only by a written agreement signed by both parties hereto,

22. Interpretation of Agreement.

This Agreement and the Approved Plans are intended to supplement one another. However, in the event of a conflict, the conflict shall be brought to the attention of the District's president, who shall have final authority to resolve any conflicts.

23. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

24. Assignment.

Applicant may not assign this Agreement without the express written consent of the District.

IN WITNESS WHERE OF, this Agreement has been executed in duplicate by the parties hereto as of the day and year opposite their signatures.

APPLICANT:

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The above foregoing instrument was acknowledged before me this _____ day of _____ 20____, by _____ as _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

APPROVALS BY DISTRICT

APPLEWOOD SANITATION DISTRICT

a) Approval of Application

Date: _____

District President

b) Initial Acceptance of Project

Date: _____

District President

Date: _____

District Engineer

c) Final Acceptance of Project

Date: _____

District President

Date: _____

District Engineer