APPLEWOOD SANITATION DISTRICT

APPLICATION AND AGREEMENT FOR EXTENSION OF SANITARY SEWER MAIN

THIS APPLICATION AND AGREEMENT ("Agreement") is made and entered into between _____ a _____ ("Applicant"), and the **APPLEWOOD SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("District"), with a mailing address of P.O. Box 1109, Golden, Colorado 80402-1109, and telephone number 303-232-6883, effective the date of the first signature below.

RECITALS

WHERAS, Applicant desires to install, in accordance with the Approved Plans, defined below, one or more sanitary sewer main extensions and related appurtenances identified as the _____ Sewer Main Extension Project ("Project") for dedication to the District to become part of the District's public sanitary sewer system; and

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

WHEREAS, the parties desire to execute this Agreement setting forth the terms and conditions pursuant to which the District Main, defined below, 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 ownership and maintenance.

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

1.1 "District Main" means the sanitary sewer line and related appurtenances such as manholes, and other appurtenances, as shown on Approved Plans; provided, however District Main shall not under any circumstances, include private service lines, underdrains, or storm drains.

1.2 "Applicable Government Authority" means the District or any other governmental or quasi-municipal entity that has jurisdiction with respect to the Project.

1.3 "Approved Plans" means the latest set of plans and specifications for the Project approved for construction by the District's consulting engineer, and any changes thereto approved by the District and reflected in the record drawings accepted and approved by the District, and all other applicable specifications in effect on the date the construction plans are approved by the District.

1.4 "Record Drawings" means the final construction documents that represent the as-built condition of the water and/or sewer mains and related appurtenances.

2. Rules, Regulations, and Engineering Standards

The Project shall be designed, constructed, and upon completion transferred to the District in accordance with all applicable District rules and regulations and/or engineering standards, as the same now exist or may hereafter be amended from time to time, including, but not limited to, the rules and regulations setting forth the procedures and requirements for all easements that must be conveyed to the District prior to the commencement of construction. In the event of a conflict between the District's rules and regulations and this Agreement, any such conflict shall be resolved by the District's Board of Directors.

3. Required Application Items

The Applicant has provided the District with the following as part of its application for the Project and represents and warrants that the District may rely upon the same:

3.1 Applicant name and legal entity type is accurately stated in the introductory paragraph and on the signature block of this Agreement.

3.2 A legal description for the real property where the Project will be constructed is attached as **Exhibit A**.

3.3 The contact information for the Applicant and/or the Applicant's authorized representative for the Project is attached as **Attachment A.**

3.4 Applicant has provided proof of property ownership or a written authorization from the property owner granting Applicant authority to represent owner. The Owner Authorization Form is attached as **Attachment B**, if necessary.

3.5 If the Applicant is a corporate entity, Applicant is in good standing with the Colorado Secretary of State's Office and has provided a current Certificate of Good Standing from the Secretary of State's Office for Applicant.

3.6 Applicant has completed the District's development tap fee form quantifying the number of Commercial, Industrial, and/or Residential (specify single family detached from multi-family) connections that the Project is presently intended to support.

4. Deposit.

The Applicant has submitted a deposit to the District for the Project in the amount of $25,000, 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, observations provided for under this Agreement, costs associated with District acceptance of the District Main, and any other engineering or legal costs or expenses of any kind. Applicant shall replenish the deposit amount as deemed necessary by the District during the design, construction, and acceptance phases of the Project. Any such replenishment by the Applicant shall be made in the amount requested, within 15 calendar days from the day of written request by the District. If the Applicant elects not to proceed with the Project, the amount on deposit with the District shall be refunded to the Applicant less any costs or expenses incurred by the District up to and including the date Applicant abandons the Project or Final Acceptance.

The District shall send Applicant invoices for work performed and draw down of Applicant's deposit on a monthly basis.

5. 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 good and workmanlike manner and that, once constructed, the Project will be fit for its intended purpose.

Applicant further warrants that the Project will be constructed upon real property owned by Applicant or upon real property upon which Applicant has permission to enter for the purpose of constructing the Project and for performing all of Applicant's warranty and other obligations contained herein, either by easement, license agreement or otherwise.

6. 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.

7. Applicant's Warranty.

Applicant warrants and guarantees to the District that, without exception:

7.1 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, as defined in Paragraph 12, 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. Applicant to contact the District to request Initial Acceptance. In the event that Applicant is required to perform (or pay for) any warranty repairs or additional work under this warranty, Applicant shall ensure that such

additional work is performed in a good and workmanlike manner and shall provide an additional two (2) year warranty for such additional work and/or repairs from the date that they are finally completed and accepted by the District.

7.2 Applicant will comply with all federal, state and local government applicable laws, rules and regulations applicable to the Project.

7.3 During the two (2) year warranty period and at all times 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, and 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 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 costs 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 attorneys' fees and interest thereon at the rate of 1.5 percent per month on amounts that are past due.

7.4 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 or any other obligation or liability of the Applicant imposed by law or contract.

7.5 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 attorneys' 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.

8. Performance Security.

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 Plans for the Project, Applicant agrees to deliver to the District, prior to Initial Acceptance, a fully executed copy of the District's form Warranty and Maintenance Bond ("Warranty and Maintenance Bond") signed by a surety acceptable to the District in the amount of twenty (20) percent of the Project's construction contract. 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.

In lieu of providing the Warranty and Maintenance Bond described above, Applicant may furnish the District with a written alternative guarantee that is acceptable to the District in its sole discretion. The guarantee shall be executed and delivered to the District prior to Initial Acceptance of the Project by the District.

9. Construction Observation.

The District and its representatives will at all times have access to the construction site and will be permitted to observe any aspect 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 (or otherwise deducted from the Applicant's deposit).

It shall be the responsibility of the Applicant, the Applicant's engineer, and/or the Applicant's contractor, to continuously advise the District of the detailed design and construction schedule, status, and progress.

10. Ownership/UCC Locates.

Until transferred to and conditionally 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, Applicant agrees that until the District conditionally accepts the Project in accordance with the provisions of Paragraph 12 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 conditional acceptance of the Project by District, said locate obligation, if any, shall be the sole responsibility of Applicant.

11. Connection Permits.

No connection permits shall be issued or sold for connection to the Project and no connections shall be made to the Project until Initial Acceptance is issued by the District and the Project, as conditionally accepted, is connected to the District's wastewater collection system.

Stub in connection fees may be accepted prior to Initial Acceptance. But such acceptance of payment should not be relied upon in any way.

12. Conditions for Initial Acceptance.

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

12.1 Approved Plans. The District, in its sole discretion, must be satisfied that the Project has been constructed in accordance with the Approved Plans.

12.2 Easements/Title Policy. The District, in its sole discretion, must be satisfied that applicable easements have been recorded for the Project and that the Project as constructed is located within said easements or other suitable right-of-way. Any easement must be insured in the amount of $5,000 and issued to the District as owner by a title company suitable to the District. Applicant shall remove or obtain subordination of all title impediments objected to by the District.

12.3 Record Drawings. Receipt by the District of signed and stamped, by the Applicant's engineer, Record Drawings for the Project, certified compaction and/or material test results, and any survey certifications satisfactory to the District. Refer to Section 1.3 of Applewood Sanitation District Engineering Standards.

12.4 Current Videos. Current videos of the entire system have been reviewed by the District and any defects have been repaired to the satisfaction of the District's Engineer. Refer to Section 1.3. of Applewood Sanitation District Engineering Standards.

12.5 Testing. The District, in its sole discretion, must be satisfied that all sewer main and trace wire testing has been successfully completed.

12.6 Documents. Applicant must provide a bill of sale listing a description and the cost of the Project being accepted by the District, final lien waivers, and an engineer's certificate of inventory and cost, or a materials list, including labor and final lien waivers.

12.7 Warranty and Maintenance Bond. The Applicant must obtain a warranty and maintenance bond as described above.

12.8 Contemplated Use. Without in any way being limited by the specificity of the foregoing, the District, in its sole discretion, must be satisfied that there

are no matters outstanding which would prohibit or unreasonably interfere with the use of the Project for its intended purpose.

13. Initial Acceptance.

Initial acceptance shall be accomplished by the District's President and District Engineer affixing their signatures to the last page of this Agreement ("Initial Acceptance"). 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 and appurtenances that comprise the Project, shall pass to and be conveyed to the District with no additional transfer proceedings or documents being necessary; provided, however, 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 (and any further subsequent warranty period for additional repairs as set forth in this Agreement).

14. 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.

15. Conditions of Final Acceptance.

Applicant is responsible for providing the following documentation and requesting Final Acceptance.

Two (2) years from the date of Initial Acceptance, Applicant shall contact the District's engineer to review the Project for Final Acceptance. Each of the following conditions must be satisfied before the District shall finally accept the Project (Final Acceptance):

15.1 Current Videos. Current videos of the entire system must have been reviewed and any defects have been repaired to the satisfaction of the District. For additional requirements refer to sSection 1.3. of Applewood Sanitation District Engineering Standards. Jetting may be required by the District after review of the video.

15.2 Full Performance. Applicant must have faithfully and fully performed its obligations under this Agreement.

15.3 No Damage. Any damage or destruction of the Project has been repaired, and the cost of such repair paid by Applicant.

15.4 Compliance with Approved Plans. Any deviation in the construction of the Project from the Approved Plans must have been corrected. Without limiting the foregoing, attention shall be paid to ensuring that all manholes

and manhole covers are at finished grade, free and clear of sand, gravel, stones, or other foreign material.

15.5 Contemplated Use. Without limiting the foregoing, the District, in its sole discretion, must be satisfied that there are no matters which prohibit or unreasonably interfere with the use of the Project for its intended purpose.

16. Final Acceptance.

Final acceptance ("Final Acceptance") shall be accomplished only by the District's President and District Engineer affixing 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 ownership, maintenance and repair, and the Applicant's obligations shall cease; provided, however, that Applicant's indemnification obligation as set forth below shall survive Final Acceptance and Applicant is subject to obligations in paragraph 18 below.

17. Manholes.

Notwithstanding any other provision contained in the Agreement to the contrary, if the sewer mains 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 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, 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 issuance of the District's 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.

18. Indemnification.

Applicant shall defend and hold harmless the District, its officers, agents, consultants and employees, from all claims and demands or liability of any kind (including attorneys' 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 arising from any way by Applicant, its agents or employees, or by Applicant's contractor or subcontractor, their agents or employees activity, or by any product or materials installed on the Project by Applicant, its contractors or subcontractors. In connection with this duty to indemnify and defend, the District shall have the right to select its legal counsel notwithstanding Applicant's obligation to pay the fees, costs, and expenses incurred by such legal counsel.

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 and for a period of six (6) years after the date of Final Acceptance of the Project.

19. 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 as stated above. It is the Applicant's sole responsibility to construct the Project in accordance with the Approved Plans.

Applicant represents that Applicant will read through the Approved Plans for the Project, examine the Project site and ascertained all soil, geological, groundwater, environmental 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.

20. Insurance.

The following insurance coverages, issued by insurance companies acceptable to the District, shall be obtained, paid for and kept in full force and effect by Applicant until conditional 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 conditional acceptance of the Project:

(a) Workers' 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 $100,000.00.

(b) Liability insurance, including automobile liability and commercial general liability written on an "occurrence" basis and maintained in a minimum amount of $1,000,000 per occurrence, with a $2,000,000 general aggregate limit and a $1,000,000 product/completed operations aggregate limit. Said policies shall contain an endorsement naming the District 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 and any other named insured. Nothing contained in this paragraph shall give or create in any third-party any claim or right of action against the District, except which may exist irrespective of this paragraph.

21. Proof of 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 certificates 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 is named as an additional insured. Such certification or policies shall provide that the insurance may not be cancelled, terminated or modified without thirty (30) 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; provided, however, in no event shall any exclusions be permitted which conflict with any coverage required by this Agreement.

22. Modification.

This Agreement can be modified only by a written agreement signed by both parties hereto. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach of this Agreement.

23. 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.

24. Governing Law and Attorneys' Fees/Costs.

This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado. Jurisdiction and venue for any dispute between the parties related to or arising out of this Agreement shall be the District Court in and for Jefferson County, Colorado. In any

dispute arising from or relating to this Agreement, the substantially prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in any appellate action and in collecting upon any judgment, order, or award.

25. Signatures/Counterparts.

This Agreement may be executed in several counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

26. Assignment.

Applicant may not assign this Agreement without the express written consent of the District, which may be withheld for any reason.

27. No Third-Party Beneficiaries.

The rights and obligations of the Parties hereto are solely for their benefit, and no person or entity shall be a third-party beneficiary of such rights or obligations.

28. Colorado Open Records Act.

This Agreement and any communications, documents, invoices, drawings, papers, or other materials of any kind or nature provided by Contractor to the District may be subject to disclosure by the District pursuant to the Colorado Open Records Act, Colorado Revised Statute § 24-72-201, et seq. Any information that Contractor deems proprietary or trade secret must be clearly marked as such. The District will only protect from disclosure expressly marked propriety or trade secret information to the extent permitted by law.

29. Colorado Government Immunity Act

The District is relying upon and does not waive or intend to waive by any provision of this Agreement, the monetary limitations of any rights, immunities, defenses or protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq*., C.R.S.

[Signature Pages Follow]

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

APPLICANT:

_____

By: _____
Printed Name: _____
Title: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was subscribed, sworn to and acknowledged before me this _____ day of _____, _____, by _____ as _____ of _____.

My commission expires:

(S E A L)

_____
Notary Public

APPROVALS BY DISTRICT

APPLEWOOD SANITATION DISTRICT

Approval of Application and Agreement: Date: _____

_____
District President

Initial Acceptance of Project: Date: _____

_____
District President

_____
District Engineer

Final Acceptance of Project: Date: _____

_____
District President

_____
District Engineer

EXHIBIT A

Legal Description

[To be inserted by Applicant]

ATTACHMENT A

Project	
Project Street Address:	
Applicant	
Applicant Name:	
Contact Name:	
Mailing Address:	
Phone Number:	
Contact Email:	
Project Manager	
Project Manager Name:	
Contact Name:	
Mailing Address:	
Phone Number:	
Contact Email:	
Billing Information – Accounts Payable	
Contact Name:	
Mailing Address:	
Phone Number:	
Contact Email:	

ATTACHMENT B

Date: _____

Applewood Sanitation District
P.O. Box 1109
Golden, Colorado 80402-1109

Re: Property Owner Authorization for Development Work

To Whom it May Concern:

I am the authorized signer of the fee owner of real property located at _____ _____, with the legal description of the property attached as Exhibit A to the Application and Agreement for Extension of Mains. A copy of a current title commitment verifying the ownership of the real property is attached hereto as Attachment A. My mailing address is: _____.

I hereby authorize_____, a _____, to conduct development activity on my property. I specifically authorize the design and construction related activity for a sanitary sewer main extension and appurtenances, to be designed and constructed in accordance with Applewood Sanitation District specifications.

PROPERTY OWNER:

_____

By: _____
Name/Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__ by _____, as _____ , of _____.

Witness my hand and official seal.

My commission expires:

_____
Notary Public

Attachment A to Owner Authorization
Title Commitment

[To be provided by Applicant]