

APPLICATION AND AGREEMENT FOR EXTENSION OF SEWER MAINS

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

and **SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT, a quasi-municipal corporation of the State of Colorado** (hereinafter referred to as “District”), whose address is 8739 West Coal Mine Avenue, Littleton, Colorado 80123, and whose telephone number is (303) 979-2333.

WITNESSETH:

WHEREAS, Applicant desires to install sewer mains identified and known by the parties as the _____ **Sewer Main Extension**, and to have those mains and related appurtenances become a 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 the subject of this Agreement; and

WHEREAS, Applicant and District desire to execute an agreement setting forth the terms and conditions pursuant to which such sewer mains and related appurtenances will be conditionally 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 a 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 sewer lines and related appurtenances such as manholes, and other appurtenances, as shown on Applicant’s Approved Plans; provided, however, the term “sewer lines” shall not under any circumstances, include private service lines, under drains 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 Applicant’s Approved Plans.

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

2. Approved Plans.

Applicant covenants the Project will be constructed in accordance with the Approved Plans and any 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.

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 performing all of Applicant’s warranty and other obligations contained herein.

3. 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.

4. Applicant’s Warranty.

a) 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 one (1) year from the date of conditional acceptance by 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.

b) The Applicant additionally agrees that during the one (1) year period subsequent to the date of conditional acceptance of the Project by 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 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 omissions of the Applicant or Applicant’s contractor. In the event any of the maintenance and/or repair obligations required under this subparagraph (b) 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 of 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.

c) 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 4 or any other obligation or liability of the Applicant imposed by law or contract.

d) 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 costs 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, including reasonable 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.

5. Additional Security.

a) 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 District concurrent with this Agreement, a fully executed Warranty and Maintenance Bond in the form attached hereto as Exhibit "A" issued by a surety acceptable to the District and in an amount to be determined by the District, but in no event greater than twenty-five percent (25%) of the Project construction cost 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.

b) In lieu of providing the Warranty and Maintenance Bond described in subparagraph (a) above, Applicant may furnish the District with a written personal guarantee from one or more individuals whose financial condition is acceptable to the District. The personal guarantee(s) shall obligate the guarantor(s) to pay and perform as primary obligor(s) all of the Applicant's obligations to the District arising upon conditional acceptance of the Project as set forth in this Agreement, including but not limited to the Applicant's warranty, maintenance and repair obligations as set forth in paragraph 4 above. The specific provisions of the personal 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 conditional acceptance of the Project by the District.

6. Inspection.

The District and its representatives will at all times have access to the construction site and will be permitted to inspect 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 inspections, 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.

7. Ownership.

Until dedicated 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 7, Applicant agrees that until the District conditionally accepts the Project in accordance with the provisions of Paragraph 10 below, the District shall have no obligation pursuant to Section 9-1.5-103 C.R.S., to locate any water 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.

8. 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 conditionally accepted the Project in the manner as set forth in paragraph 9 below.

9. Conditions to Conditional Acceptance.

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

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

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

c) Record Drawings. Receipt by the District of record drawings for the Project, certified compaction test results, and any survey certifications that the District's manager may require;

d) 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.

10. Conditional Acceptance.

Conditional acceptance shall be accomplished only by the District's manager and/or engineer, if applicable, affixing his or their signatures to the Agreement in the space provided for on page 9. As of the date of conditional acceptance, all of 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 compromise 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's shall remain obligated to perform said Applicant's warranty, maintenance and repair obligations for a period of one (1) year from the date of conditional acceptance or until the Project is finally accepted by the District, whichever period is longer.

11. Contractor Warranties.

Applicant may cause its contractor to warrant and guarantee to District 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.

12. Conditions to Final Acceptance.

One (1) year from the date of conditional acceptance, the District's manager and/or consulting engineer, as the case may be, will inspect 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:

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

b) 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.

c) 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.

d) 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 would prohibit or unreasonably interfere with the use of the Project for its intended purpose.

13. Final Acceptance.

Final acceptance shall be accomplished only by the District's manager and/or engineer, as the case may be, affixing his or their signatures to this Agreement in the space provided on Page 9. As of the date of final acceptance, the District accepts the project for all purposes, including maintenance and repairs and the Applicant's obligation to pay for same shall cease; provided, however, that Applicant's indemnification obligation as set forth in paragraph 15 below shall survive final acceptance.

14. 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 of raising the manholes to finished street grade in accordance with applicable County specifications when the street is paved. Applicant shall notify the District when the work to raise the manholes is complete so that the District may inspect the work. As part of the work on the 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 attorneys fees) together with interest on the unpaid delinquent amount at the rate of 1.5 percent per month or part thereof.

15. Indemnification.

Applicant shall indemnify and hold harmless the District, its officers, agents and employees, from all claims and demands or liability of whatsoever kind or nature, (including attorneys' fees) arising out of or 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.

16. 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 and design the plans and select the materials for the project in

accordance with the District's specifications and all applicable District rules and regulations. It is also Applicant's sole responsibility to construct the Project in accordance with the Approved Plans.

Applicant represents that Applicant has read thoroughly the Approved Plans for the Project, examined the Project site, and ascertained all soil, geological, groundwater and other conditions to be encountered 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 not on any statements or representations, if any, that have been made by the District, its officers, agents or employees.

If Applicant or Applicant's professional engineers disagrees with any part or portion of the Approved Plans for specifications for the Project, such disagreement shall be brought to the attention of the District Manager 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.

17. 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) Workmen's compensation insurance covering all workmen 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 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 \$500,000.00 per occurrence, with a \$1 million general aggregate limit and a \$500,000.00 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.

18. 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 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; provided, however, in no event shall any exclusions be permitted which conflict with any coverage required by this Agreement.

19. Modification.

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

20. 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 manager, who shall have final authority to resolve any conflicts.

21. Governing Law.

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

22. Assignment.

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

APPROVALS BY THE DISTRICT



a) Approval of Application:

Date: ____/____/____

Patrick J. Fitzgerald
District Manager

b) Conditional Acceptance of Project:

Date: ____/____/____

Patrick J. Fitzgerald
District Manager

c) Final Acceptance of Project:

Date: ____/____/____

Patrick J. Fitzgerald
District Manager

EXHIBIT A

SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT

WARRANTY AND MAINTENANCE BOND

(Sewer Improvements)

KNOW ALL MEN BY THESE PRESENTS, that we _____, hereinafter called Principal, and _____, hereinafter called Surety, are held and firmly bound unto the Southwest Metropolitan Water and Sanitation District, a quasi-municipal corporation of the State of Colorado, hereinafter called "District", in the sum of _____ dollars (\$_____), lawful money of the United States of America for the payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly, by these presents:

WHEREAS, Principal has applied to the District for permission to install the sewer mains and related appurtenances generally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Project"), for the purpose of obtaining sewer service for a development known as _____; and

WHEREAS, as a condition of the District's approval of the Project, Principal and District have entered into the Application and Agreement for Extension of Sewer Mains attached hereto as Exhibit "B" (hereinafter called the "Contract") which Contract is by this reference made a part hereof; and

WHEREAS, the Contract contains: a) Principal's warranty that the Project will be free from defects for the period beginning with the date of conditional acceptance and ending with the date the project is finally accepted by the District; and, b) Principal's promise to maintain and repair the Project until the same has been finally accepted by the District and to raise the manhole to paved street level at such time the street is finally paved, even if the same occurs after final acceptance of the Project; and

WHEREAS, the approval of the Project by the District and Principal's authorization to proceed with the construction thereof is in part conditioned upon Principal's furnishing of an adequate warranty and maintenance bond to the District guaranteeing that Principal will perform or cause to be performed all of Principal's warranty, maintenance and other obligations that arise under the Contract from and after the date the same is conditionally accepted by District.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly, faithfully and fully perform all the undertakings, covenants, terms, conditions and agreements of said Contract arising after conditional acceptance of the Project by the District, including but not limited to Principal's maintenance, repair, warranty and manhole raising obligations; and shall also well and truly perform all undertakings, covenants, terms, conditions and agreements, of any and all duly authorized modifications of said Contract that may hereinafter be made, notice of which modifications to the Surety being hereby waived, then this obligation shall be null and void; otherwise it shall remain in full force and effect for a period of eighteen months from the date of this Bond as set forth below.

AND THE SAID SURETY, for value received, hereby stipulates and agrees that whenever the Principal shall be, and is declared by District in default of its post-conditional acceptance obligations under said Contract, the District having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly (1) perform the Principal's post-conditional acceptance obligations in accordance with the terms and conditions of the Contract, or (2) obtain a bid or bids for submittal to the District for completing said post-conditional acceptance obligations of the Principal in accordance with the terms and provisions of the Contract and upon a determination by the District and the Surety of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as work progresses (even though there should be a default or a succession of defaults under the Contract of completion arranged under this paragraph) sufficient funds to pay the cost of completion in an amount up to but not exceeding the dollar amount of this Bond.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the District named herein or the successors and assigns of the District. Any suit under this Bond must be instituted before the expiration of two years from the date on which the Project is finally accepted by the District under the Contract.

Nothing herein contained is intended to cause the Surety to guarantee that the Project will be constructed in the first instance. Surety's obligations hereunder arise only at such time as the Project is conditionally accepted by the District.

IN WITNESS WHEREOF, the Principal and Surety have executed this Bond as of this ____ day of _____, 2002.

PRINCIPAL:

By: _____
Title:

[S E A L]

ATTEST:

[S E A L]

SURETY:

By: _____

*SWWarrantyMaintenanceBond.sewer.FORM.doc
revised: April 4, 2001*