

ARTICLE 6

MAIN EXTENSIONS

- 6-1 APPROVAL REQUIRED; IMPROVEMENTS AGREEMENT: No Property Owner or Developer shall construct or install an extension to any District line or main within the jurisdiction of the District without the prior written approval of the District and Englewood, following formal application therefor, upon compliance with these Rules and Regulations, Property Owner shall enter into a written Improvements Agreement, and where applicable, other required agreements with the District setting forth additional terms and conditions applicable to the extension of any District line or main.
- 6-2 LOCATION: All extensions shall be located only in rights-of-way or easements deeded to the District, or in roads or streets which a city, county, State Highway Department, or other public agency has accepted for maintenance as a public right-of-way.
- 6-3 DEEDED RIGHTS-OF-WAY AND EASEMENTS: Deeded rights-of-way or easements necessary for extensions not located in public rights-of-way shall, if located within property owned or under the control of the Property Owner, be granted at no cost by Property Owner to the District at such time and upon such terms as the District may reasonably require. In addition to the requirements set forth in Section 2.6 of the System Specifications, Property Owner/Developer shall comply with the following minimum requirements in connection with all such grants:
- 6-3-1 Legal Description. Property Owner/Developer shall furnish the District with a legal description of all right- of-way or easement parcels to be granted by any single conveyance instrument, consisting of a printed legal description, certified by a land surveyor registered in the State of Colorado, and an accurate survey drawing of each parcel, including north arrow and scale, tying each parcel to a survey land corner or corner of a platted parcel of land.
- 6-3-2 Evidence of Title. Property Owner/Developer shall furnish suitable evidence of title, consisting of a commitment for or a title insurance policy, an attorney title opinion, , or a written ownership and encumbrance report, dated within 30 days before the date of submission to the District. Evidence of title must show all current mortgages and deeds of trust, liens, and other encumbrances against the property.
- 6-3-3 Release of Encumbrances. The District may, at its discretion, require a properly executed and acknowledged release to exempt any easement or right-of-way parcel from the lien of any mortgage or deed of trust. If so required, the District

will not accept the extension(s) or other facilities for maintenance until it receives all required releases. The District reserves the right to require additional or supplemental evidence of title when the release is recorded.

- 6-4 RIGHT OF WAY ACQUISITION COSTS: Property Owner/Developer shall be responsible for and pay, directly or indirectly, or reimburse District for, all costs and expenses of whatever kind associated with the acquisition and approval of all easements and rights-of-way necessary to extend service from existing District facilities to the boundary of the property to be serviced pursuant to the Improvements Agreement. These expenses may include all those costs and expenses associated with and incurred by the District in any condemnation action, including costs of real estate appraisals, expert witness fees, and attorneys' fees, but this requirement shall not be construed as imposing any obligation whatever upon the District to commence or prosecute any condemnation action.
- 6-5 DESIGN AND CONSTRUCTION: Property Owner/Developer shall at his sole cost and expense design, construct, and install all extensions, including without limitation frontage extensions, reasonably required by the District to serve the subject property. All such work shall be in conformity with and subject to the District's Master Plan and to applicable rules, regulations, standards, and specifications as described in Article 1, and in accordance with the terms and conditions of any applicable extension agreement or subdivision service agreement authorized herein.
- 6-6 PLAN REVIEW AND APPROVAL: No construction of any extension shall begin until after the plans and design therefor have been submitted to, and reviewed and approved by the District and Englewood as conforming with the District's Master Plan and other applicable standards, and a preconstruction meeting has been held pursuant to §3.5 of the System Specifications. The District shall inform Property Owner/ Developer in writing of the reasons for any disapproval. Upon approval of the plans and design, the District will schedule the preconstruction meeting.
- 6-7 CONSTRUCTION OBSERVATION: Property Owner/Developer shall notify the District at least two business days before commencing construction and at any and all other times specified by the District for observation, inspection or testing in any plan approvals or otherwise.
- 6-8 ACCEPTANCE OF EXTENSIONS:
- 6-8-1 Standards. Upon completion of construction, Property Owner/Developer shall, if not previously set forth in the Improvements Agreement, execute such additional documents as may be required by the District to effectuate a sale, conveyance, transfer and assignment by the Property Owner/Developer of all its rights, titles, and ownership interests in and to such extension(s). Any and all deeds, bills of

sale, or other conveyance instruments necessary to vest title to all component parts of the Main Extension in the District shall be subject to the following terms and conditions which shall be conditions precedent to such sale, conveyance, transfer and assignment and to service the subject property:

- A. District Review. The District shall determine that the extension(s) has been constructed and connected to District facilities in conformity with the District's Master Plan, these Rules and Regulations, approved plans, construction notes and specifications, has passed all necessary tests, and has been approved for use by all other governmental entities and agencies having jurisdiction.

- B. Property Owner/Developer Requirements. Property Owner/Developer shall tender for the District's approval, and the District has approved and accepted the following:
 - (1) Record "as built" drawings and certified compaction test results and reporting as specified in the District's engineering standards;
 - (2) "As built" documentation showing the location of all component parts of the extension as set forth in System specifications, or other arrangements approved in writing by the District have been made for the preparation thereof;
 - (3) An irrevocable letter of credit, or some other form of security acceptable to the District, in an amount equal to 10% of the costs of constructing the extension, but not less than \$1,000, or such greater amount as may be reasonably determined by the District on account of special circumstances of the particular extension, or any portion thereof, shall be filed with the District prior to conveyance, and shall be maintained in full force and effect during the warranty period;
 - (4) A duly executed written statement that all suppliers of labor and materials, including all subcontractors, have been fully paid, with lien waivers attached;
 - (5) A duly executed written assignment of all manufacturer's warranties on materials, if applicable;
 - (6) Any and all deeds, bills of sale, agreements and other conveyance instruments required by the District to vest merchantable title to all component parts of the extension, including without limitation all

necessary easements, rights of way and other property interests, in the District;

- (7) All subordination agreements and partial releases which may be required pursuant to 6-3-3 above; and
- (8) Payment of all sums then due to the District in connection with the extension.

C. The extension is located in or on property owned by the District, or within or upon which the District has the legal right to construct, install, operate, maintain, repair and replace its facilities.

6-8-2 Approval; Tap Permits. No Taps or Service Connections to the Main Extension will be permitted, nor will the District accept applications for such Taps, until the District has accepted the extension as herein provided.

6-8-3 Effective Date. Acceptance shall be effective as of the date the District executes written documentation thereof in the form of a separate acceptance certificate attached to the Improvements Agreement. As of such date, the extension shall be deemed operational, and any person may apply to the District for Tap Authorizations for Taps or service connections thereto. The District's acceptance of the extension does not, however, guarantee that Taps will be available. Availability of Taps is governed at all times by the provisions of Article 5, and such availability is determined in accordance therewith at the time proper application for service is made.

6-9 MAINTENANCE AND REPAIR: After acceptance of the Main Extension, District shall be solely responsible for all routine maintenance and Property Owner/Developer shall be solely responsible for correction of any and all defects in the extension during the warranty period, as set forth below:

6-9-1 Subsidence. During the warranty period, Property Owner/Developer shall, at his sole cost, correct any soil subsidence or erosion which the District determines occurred in connection with or as a result of construction of the extension prior to conveyance to the District or during the warranty period.

6-9-2 Cure of Defects. During the warranty period, Property Owner/Developer shall, at his sole cost, correct, repair or replace any part or parts of the extension which the District reasonably determines were not constructed in conformity with these Rules and Regulations, approved plans, construction notes or specifications, or which the District determines to be defective, of poor or unworkmanlike quality, or otherwise not in conformity with any applicable warranty. Cure of defects by

Property Owner/Developer shall be administered and enforced under the rules set forth in 3.4 of the System Specifications and 7-10 below.

- 6-10 WARRANTY PERIOD: All conveyances to the District shall be subject to a warranty period of 12 months during which time the Property Owner/Developer shall be responsible for the cure of defects as stated in this paragraph 6-10. Ninety days after the expiration of the warranty period, the District shall release the letter of credit or other security given to the District at the time of acceptance, unless there remains pending on such date any claim or assertion by the District of any violation or breach of the warranty of such extension(s). In such event, the security shall be retained until such time as the claim or assertion has been resolved to the District's satisfaction.
- 6-11 EFFECTIVE DATE OF ACCEPTANCE; INDEMNIFICATION: The District's acceptance of the extension shall be effective as of the date the District executes written documentation thereof. As of such date, all of Property Owner/Developer's right, title and interest in and to the constructed extension, including all mains, pipelines, valves, manholes, and related parts and materials which comprise the constructed extension, shall be deemed immediately to pass to and vest in the District, free and clear of all liens and encumbrances, and Property Owner/Developer shall warrant and defend the conveyance of such extension to the District, its successors and assigns against all and every person or persons whomsoever. As of the date of Acceptance, the District shall operate and maintain the extension at its expense. Nothing contained herein, however, shall be construed to relieve Property Owner/Developer from his warranty obligations set forth in above. Notwithstanding Acceptance, Property Owner/Developer, his successors and assigns shall remain responsible for all service lines and private sewer facilities as provided in Article 3 above.
- 6-12 DISTRICT EXTENSIONS: Notwithstanding any of the foregoing, the District reserves the right to extend its lines in situations which it determines may be in the best interests of the District and its constituents, upon such terms and conditions as the District may reasonably determine.
- 6-13 REIMBURSEMENT: This section sets forth standards and procedures for the consideration, administration and enforcement of plans to reimburse a party which has constructed an extensions at its cost and expense, either independently or with others, from fees and charges imposed upon future users of such facilities.
- 6-13-1 Applications. Any party who desires reimbursement under this section ("Applicant") and who has given District notice of such intent in the Improvements Agreement may file written application therefor with the District no later than 90 days after completion of the extension. Any such application shall state the name, address and telephone number of each Applicant, and shall contain an express promise by each Applicant to reimburse the District for its

actual costs incurred in evaluating, processing, and considering the Application, regardless of whether the same is ultimately approved.

6-13-2 Reimbursement Plan. Each application shall be accompanied by a proposed Reimbursement Plan meeting the requirements set forth in 6-13-3, and which shall in addition thereto contain or be accompanied by the following:

- A. A map clearly identifying the facilities for which reimbursement is sought ("Reimbursement Facilities").
- B. The Applicant shall determine and certify to the District the total actual costs of construction of the Reimbursement Facilities, including without limitation design and engineering fees, construction costs, District inspection and approval fees, and right of way acquisition costs. Applicant shall further submit documentary evidence of all such costs and of the fact that they have been paid in full in accordance with the terms of a line Reimbursement Agreement.
- C. A detailed statement of the method proposed to determine the sources and amounts of reimbursement charges and the proposed allocation thereof among those who have previously contributed to the cost of the Reimbursement Facilities.
- D. A deposit against the cost of District review and processing of the application.

6-13-3 Minimum Plan Requirements; Agreement. Reimbursement will be approved only under the terms of a written Reimbursement Agreement between the District and the Applicant. Although the specific terms of each Reimbursement Agreement will vary according to the particular circumstances of each case, each Reimbursement Agreement shall contain in substance all of the following provisions, which shall also be deemed to be minimum requirements of any Reimbursement Plan.

- A. The Applicant will notify the District of any proposed new service which would be subject to Reimbursement Charge as soon as the Applicant becomes aware of the same.
- B. The District will collect the Reimbursement Charge in full at the time application is made for new service to property subject to the Reimbursement Agreement, and remit the net amount of any charges so collected to the Applicant or party entitled thereto within 45 days of such collection. Notwithstanding the foregoing, however, in no case will the

District be liable to such Applicant or other party for any Reimbursement Charges not actually collected by the District, or for any alleged damages resulting from such failure to collect.

- C. Any right to receive distributions of Reimbursement Charge proceeds will be personal to Applicant or other party and any subsequent payors of the Reimbursement Charge, but such right may be assigned to any third person by written notice to the District including an executed instrument of such assignment delivered to the District. Any unclaimed or undeliverable distributions shall revert to and become the sole property of the District one year after attempted delivery to the Applicant or party entitled thereto. For the purposes of this Paragraph, the term "delivery" shall mean deposited in the United States mail, first class postage prepaid, addressed to the Applicant or party entitled thereto at the address furnished in writing by such party to the District.
- D. The Applicant will indemnify and hold harmless the District, its officers, agents and employees, from any and all claims, expenses and demands arising out of or in any way involving the District's collection or attempted collection of Reimbursement Charges.
- E. The District and Applicant will cooperate fully with each other in responding to any challenge to or refusal to pay the Reimbursement Charges, but Applicant will pay in advance all of the costs and expenses associated therewith, and the District shall be released from any obligation under this Paragraph E in the event of Applicant's default in payment.
- F. Notwithstanding any other provision of the Reimbursement Plan or Agreement, the District will have no liability to Applicant in any case in which the Reimbursement Charge is or has been determined by a court of competent jurisdiction for any reason to be invalid or unenforceable.
- G. The Reimbursement Charge to be imposed by the District shall terminate on a date specified in the Reimbursement Agreement and Plan, which date shall in no event be later than fifteen (15) years from the date of conditional acceptance of the Main Extension.
- H. If the District determines that Applicant has violated any provisions of the System Specifications or these Rules and Regulations applicable to the Reimbursement Facilities and has failed after notice and a reasonable opportunity to cure such violation, the District may terminate the Reimbursement Agreement, and thereupon any right of the Applicant to collect

reimbursement pursuant thereto shall terminate and be of no further force or effect.

- I. The District shall be entitled to deduct an administrative fee to defray its expenses in administering the Reimbursement Agreement from the sums distributable to Applicant and any other person entitled thereto, and may offset any amounts which may be due to the District under any other agreement, or under any provision of these Rules and Regulations.
- J. Nothing herein shall be interpreted to preclude the District from being the reimbursed party for any such extensions which the District constructs or causes to be constructed, and such extension is paid for in whole or in part from District funds.

6-13-4 Procedure.

- A. An application and Plan which meet all the requirements 6-13-1 through 6-13-3 shall be reviewed by District staff. Such review shall address all aspects of the Plan, including the reasonableness of the costs of construction, and whether and to what extent such costs should be subject to reimbursement.
- B. As part of the review process, District staff shall prepare a written Reimbursement Agreement which conforms to 6-13-3 and contains such additional provisions as staff deems appropriate under the circumstances. Such Reimbursement Agreement shall be submitted to Applicant for signature before being referred to the Board for approval or disapproval.
- C. Any differences between District staff and Applicant as to the terms of the Reimbursement Agreement may be resolved by the Board, following reasonable notice to the Applicant.
- D. Approval or disapproval of any Reimbursement Agreement shall be given only by the Board. No such Agreement shall be effective for any purpose, nor shall any Reimbursement Charge be due or payable from any person, until the Reimbursement Agreement is executed and delivered to the District by the Applicant.

6-13-5 Board Discretion. Because of the serious and adverse impact which unforeseen development patterns can have upon the administration and enforcement of any Reimbursement Plan, the Board of Directors may deny any application for reimbursement when, in its sole judgment, future development of property affected by the proposed plan is sufficiently uncertain or unpredictable as to

create a risk that unacceptable or unwarranted administrative or legal burdens may be imposed upon the District in connection with its administration or enforcement. Further, the approval of any Reimbursement Agreement shall have no precedential value whatever with respect to any subsequent application for reimbursement, nor shall it bind or obligate the Board in any way to approve any reimbursement application or plan. It is the intent of this provision to reserve to the Board absolute discretion in determining all matters relating to reimbursement.

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