

ARTICLE 6

MAIN EXTENSIONS AND OTHER SYSTEM IMPROVEMENTS

- 6-1 APPROVAL REQUIRED; IMPROVEMENTS AGREEMENT:** No person shall commence any construction to extend a Main or install any appurtenant facility within the jurisdiction of the District without the prior written approval of the District, following formal application therefor, upon compliance with these Rules and Regulations. If required by the District, any person desiring to extend a District Main or install any appurtenant facility shall enter into a written Improvements Agreement with the District setting forth any or all terms and conditions applicable to any Main Extension or installation. For purposes of this Article 6, all Main Extensions and appurtenant facilities of whatever kind or nature shall be collectively referred to as “System Improvements,” and the person desiring to construct or install System Improvements shall be referred to as the “Developer.”
- 6-2 LOCATION:** System Improvements shall be installed only in easements deeded to the District, or in platted easements, roads or streets which a city, county, State Highway Department, or other public agency has approved as a public right-of-way.
- 6-3 DEEDED EASEMENTS:** Deeded easements are required to cover System Improvements not located in public rights-of-way, and shall be granted at no cost to the District upon such terms as the District may reasonably require before construction of any such System Improvements begins. Plans for construction of System Improvements within easements shall not be reviewed, nor shall construction be authorized, prior to the acceptance of the easement by the District. The minimum width of any easement granted to the District shall be 30 feet. The following additional minimum requirements shall be in effect in connection with all such easements:
- 6-3-1 Legal Description.** The District shall be provided 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.** The District shall be provided suitable evidence of title, consisting of a title insurance policy or commitment, an attorney title opinion, a subdivision certificate, 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 Subordination Agreement or Partial Release.** The District may require a properly executed and acknowledged subordination agreement or partial release, at the Board's discretion, for any easement parcel to exempt the same from the lien of any mortgage or deed of trust. If so required, the District shall not accept the System Improvements for maintenance until it receives all required subordinations or partial releases, whichever is required. The District reserves the right to require additional or supplemental evidence of title when the subordination agreement or partial release is tendered to the District for recording.
- 6-4 EASEMENT ACQUISITION COSTS:** The Developer shall be responsible for and pay all costs and expenses associated with the acquisition and approval of all easements necessitated thereby. These costs and expenses include, but are not necessarily limited to, the District's attorney fees, fees for engineering review of any special provisions and exhibits, and any and all fees and costs associated with condemnation. This Section shall not be construed as imposing any obligation whatever upon the District to commence or prosecute any condemnation action.
- 6-5 DESIGN AND CONSTRUCTION:** The Developer shall, at his sole cost and expense, design, construct, and install such System Improvements, including without limitation frontage extensions, reasonably required by the District. All such work shall be in conformity with and subject to these Rules and Regulations, and in particular, to the Technical Specifications set forth in Article 9, Part C.
- 6-6 PLAN REVIEW AND APPROVAL:** No construction of any System Improvements shall begin unless and until (a) the plans and design therefor have been reviewed and approved by the District as conforming with applicable standards; and (b) the District has issued written notice that construction may begin.
(Cross reference: 7-3 PLAN REVIEW FEES)
- 6-7 CONSTRUCTION OBSERVATION AND INSPECTION:** The District shall be notified at least 48 hours before construction is commenced, and at any and all other times specified by the District, for construction observation, inspection or testing required in any plan approvals or otherwise required by the District.
(Cross reference: 7-4 INSPECTION FEES; 9B-1-6 Inspections)

6-8 **CONDITIONAL ACCEPTANCE:**

6-8-1 **Standards.** Upon completion of construction, a request shall be submitted to the District for a preliminary inspection and conditional acceptance of the System Improvements. The System Improvements will qualify for Conditional Acceptance by the District when all of the following conditions have been met:

6-8-1.1 District Review. The District has determined that the System Improvements have been constructed and connected to District facilities in conformity with 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.

6-8-1.2 Developer Requirements. Developer has tendered and the District has approved the following:

(1) Record drawings photographically reduced to 11” by 17” mylar drawings and provided on electronic media compatible with the District standards;

(2) Certified compaction test results;

(3) Construction plans and drawings consistent in form and content with current District requirements as set forth in Part C of Article 9, Technical Specifications, showing the location of all component parts of the System Improvements, or other arrangements approved in writing by the District have been made for the preparation thereof;

(4) A 12-month maintenance bond, or other security approved by the District, in an amount equal to 10% of the costs of constructing the System Improvements, or such greater amount as may be reasonably determined by the District on account of special circumstances of the particular System Improvements, or any portion thereof;

(5) A duly executed written statement that all suppliers of labor and materials have been fully paid, with lien waivers attached;
(Cross reference: 8-1-15 False Official Statement; Report)

(6) A duly executed written assignment of all manufacturer's warranties on materials, if applicable;

(7) All subordination agreements and partial releases required pursuant to Section 6-3-3;

(8) Payment of all sums then due to the District in connection with the System Improvements; and

(9) A verified statement of Actual Cost of the System Improvements, itemized as the District may require.

(Cross reference: 8-1-15 False Official Statement; Report)

6-8-2 Approval; Tap Permits. The District will evaluate the request for conditional acceptance, and give written notice to the Developer of its action, stating any special conditions attached to the Conditional Acceptance, or the reasons for denial of the request, if applicable. No Taps or Service Connections to the System Improvements will be permitted, nor will the District accept applications for such Taps, until the District has conditionally accepted the System Improvements as herein provided.

6-8-3 Effective Date. Conditional Acceptance shall be effective as of the date the District executes the Conditional Acceptance appearing on the District-approved "Conveyance and Acceptance" form. As of such date, the System Improvements shall be deemed operational, and any person may apply to the District for Tap Permits for service connections thereto. The District's acceptance of the System Improvements, whether conditional or final, 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: Until Final Acceptance of the System Improvements, Developer shall be solely responsible for all routine maintenance and for correction of any and all defects in the System Improvements, as set forth below:

6-9-1 Routine Maintenance. Developer shall, at its sole cost, protect the System Improvements and perform all routine maintenance thereon so as to keep the System Improvements in good repair and operating condition. Such obligations shall include the repair or replacement of any part or parts thereof damaged as a result of

street construction, paving, other utility installation or vehicular traffic. In addition, Developer shall, at its sole cost, correct any soil subsidence or erosion which the District determines occurred in connection with or as a result of construction of the System Improvements.

6-9-2 Cure of Defects and Deficiencies. Developer shall, at its sole cost and subject to Parts B and C of Article 9, correct, repair or replace any part or parts of the System Improvements 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 and deficiencies by Developer shall be administered and enforced under the rules set forth in Sections 7-8 and 9B-4.

6-10 ACCEPTANCE FOR MAINTENANCE (FINAL ACCEPTANCE):

6-10-1 Standards. Prior the expiration of one year from the date of Conditional Acceptance (or any longer period of time reasonably determined by the District on account of the particular circumstances) of the System Improvements or any portion thereof, Developer may request the District to perform a final inspection and accept the System Improvements for maintenance. Upon such request, the District shall inspect the System Improvements and shall accept the same for maintenance when all of the following conditions are met:

6-10-1.1 District Review. The District determines that the System Improvements have been constructed and connected to District facilities in conformity with these Rules and Regulations, approved plans, construction notes and specifications, have passed all necessary tests, and have been approved for use by all other governmental entities and agencies having jurisdiction.

6-10-1.2 Maintenance and Repair. Developer has fully performed all maintenance and repair obligations imposed upon it by Section 6-9 above during the period of conditional acceptance.

6-10-1.3 Additional Requirements. Developer has tendered and the District has approved all of the following:

(1) A verified statement of Actual Cost of the System Improvements, itemized as the District may require;
(Cross reference: 8-1-15 False Official Statement; Report)

(2) Any and all deeds, bills of sale, or other conveyance instruments necessary to vest title to all component parts of the System Improvements in the District with warranties of title as provided in Section 6-10-2;

(3) All drawings, maps and construction notes pertaining to any changes in the System Improvements made during the period of Conditional Acceptance;

(4) Payment of all sums due to the District from Developer on account of the System Improvements; and

(5) Lien waivers in form acceptable to the District by all independent contractors or others entitled to mechanics liens, including materialmens liens against facilities and properties included in the System Improvements, or in which the System Improvements are located.

6-10-2 Effective Date. The District's final acceptance of the System Improvements for maintenance shall be effective as of the date the District executes the Final Acceptance appearing on the District-approved Conveyance and Acceptance form. As of such date, all of Developer's right, title and interest in and to the constructed System Improvements, including all Mains, manholes, appurtenances, and related parts and materials which comprise the constructed System Improvements, shall immediately pass to and vest in the District, free and clear of all liens and encumbrances, and Developer shall warrant and defend the conveyance of such System Improvements to the District, its successors and assigns against all and every person or persons whomsoever. As of the date of Final Acceptance, the District shall operate and maintain the System Improvements at its expense. Nothing contained herein, however, shall be construed to relieve Developer from its warranty obligations set forth in Section 9B-1-5. Notwithstanding Final Acceptance, any connecting Property Owner, his/her successors and assigns, shall remain responsible for all service lines and private sewer facilities.

6-11 DISTRICT SYSTEM IMPROVEMENTS: Notwithstanding any of the foregoing, the District reserves the right to extend Mains and make other System Improvements 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.

(Cross Reference: 7-17 DEVELOPMENT FEE)

6-12 OVERSIZING; REIMBURSEMENT: Under certain circumstances, when the District requires System Improvements to be designed and constructed with a capacity in excess of that needed solely to serve the property of a particular Property Owner, it may be fair and equitable for such Property Owner to recover a portion of the costs of such System Improvements, by means of charges imposed on subsequent connectors to such System Improvements. The purpose of this section 6-12 is to set forth standards and procedures for the consideration, administration and enforcement of reimbursement plans.

6-12-1 Applications. At any time before or during the process of obtaining District approval for the design of any System Improvements, a Developer may file with the Board a written application for reimbursement of some portion of the costs of constructing such System Improvements. Such application shall contain the following:

(1) A legal description or other accurate identification of the property for which System Improvements are being developed.

(2) A statement explaining why reimbursement is appropriate under the circumstances, and a detailed plan or formula consistent with the provisions of this Section for determining the sources and amounts of reimbursement proposed. Such plan shall include a map clearly showing the property within the District that would be subject to proposed reimbursement charges.

(Cross reference: 6-12-5 Minimum Plan Requirements; Agreement)

(3) A statement obligating the Developer to compensate the District for its actual costs incurred in evaluating, processing, and considering the reimbursement application, regardless of whether the same is ultimately approved.

6-12-2 Threshold Condition. Reimbursement will be considered only when, at the District's request, the System Improvements constructed by the Developer are of greater capacity than needed for Developer's purposes.

6-12-3 Procedure. Any reimbursement plan shall include at a minimum the following:

(1) Upon conditional acceptance of the System Improvements, the Developer shall determine and certify to the Board the total cost of construction for the System Improvements, including without limitation design and engineering fees, construction costs, District inspection and approval fees, and easement and right-of-way acquisition costs. The Developer shall further submit evidence that all such costs have been paid in full.

(2) The District Engineer shall review the total costs of construction as determined and certified by the Developer to evaluate the reasonableness of such costs and whether and to what extent the certified costs should be subject to reimbursement.

(3) Before approving any reimbursement plan, the Board shall conduct a public hearing, following notice to the Developer and to the owners of all property within the area proposed to be subject to reimbursement charges, whereat all such parties in interest may appear and be heard.

6-12-4 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 the administration or enforcement of such plan. It is the intent of this provision to reserve to the Board absolute discretion in making such determination.

6-12-5 Minimum Plan Requirements; Agreement. Reimbursement will be approved only under the terms of a written agreement between the District and the Developer. Although the specific terms of each reimbursement agreement will vary according to the particular System Improvements to be constructed, each reimbursement agreement shall contain all of the following provisions, which shall be deemed to be minimum requirements of any reimbursement plan:

(1) The Developer shall notify the District of any connection made or about to be made to the System Improvements.

(2) The obligation of the District with respect to collecting the reimbursement charges shall be to exercise reasonable care that such charge shall be collected in full at the time application is made for taps for new service within the benefit area, and to remit the amount of charges so collected to the Developer within 90 days

thereof. In no case shall the District be liable to the Developer for any reimbursement charges not actually collected by the District.

(3) By entering into a reimbursement agreement with the District, the Developer shall agree to 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.

(4) The District and the Developer shall cooperate fully with each other in responding to any challenge to or refusal to pay the reimbursement charges, but the Developer shall reimburse the District all of its costs and expenses associated therewith.

(5) Notwithstanding any other provision of the reimbursement plan or agreement, the District shall have no liability to the Developer or any other party 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.

(6) The reimbursement charges to be imposed by the District shall terminate on a date specified in the agreement and plan, which date shall in no event be later than ten (10) years from the date of conditional acceptance of the System Improvements.

(7) The total reimbursement charges to be imposed by the District shall not exceed the total cost of constructing the System Improvements, and no reimbursement charges shall include any allowance for interest on the costs of constructing the System Improvements.

(8) If the District determines that the Developer has violated any provisions of these Rules and Regulations in connection with its construction of the System Improvements and has failed after notice and a reasonable opportunity to cure such violation, the District may terminate the reimbursement plan and agreement, and thereupon any right of the Developer to collect reimbursement pursuant thereto shall terminate and be of no further force or effect.

(9) To the extent the District incurs any expenses in administering the reimbursement plan, it shall be allowed to deduct an amount equal to the actual costs thereof from the sums remitted to the Developer.

