



**COLORADO**  
**Division of Reclamation,  
Mining and Safety**  
Department of Natural Resources

August 13, 2021

Mr. Jim MacDonald  
Oldcastle SW Group, Inc.  
14802 W. 44<sup>th</sup> Ave.  
Golden, CO 80403

**RE: Franciscotti Pit #2, Permit No. M-2018-058, Incomplete Application for  
Transfer of Permit and Succession of Operators (SO-1)**

Dear Mr. MacDonald:

On August 11, 2021, the Division of Reclamation, Mining and Safety received the Application Form for Transfer of Mineral Permit and Succession of Operators from APC Southern Construction Co. to Oldcastle SW Group, Inc. for the Franciscotti Pit #2, Permit M-2018-058. The following items are incomplete for the application to be processed:

1. The Division requires a completed original Financial Warranty Corporate Surety Form, attachment 1.
2. Since the SO is being initiated due to a merger, please clarify if it is intended the current corporate surety on file will be updated with the new company name? If so, please provide a corporate surety rider accounting for the name change.
3. Please provide an original completed Affidavit of Authority, attachment 2.
4. On page 6, Other Reclamation Permits held by the Prospective Successor, is incorrectly filled out. Please list all reclamation permits held by Oldcastle SW Group, Inc. and its subsidiaries.
5. No new structure agreements were provided. At the Franciscotti Pit #2 there were structure agreements for the family cemetery, Dan Mahon Ditch, power line/poles, and County Roads 611 and 613 that were part of the original permit. These structure agreements need to be updated with the successor operator's name. Structure agreements are required where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure. The applicant shall:

(a) provide a notarized agreement between the Applicant and the Person(s) having an



interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or

(b) where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or

(c) where such structure is a utility, the applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

Please provide the above documents by October 12, 2021. All completed permit documents are required to be submitted for consideration of your Request for Transfer of Mineral Permit and Succession of Operators Application. If additional time is needed to respond, an extension request must be received by our Office by the decision date. If on the decision date, outstanding items remain, and no extension request has been received, your application will be denied and the file terminated. The Division reserves the right to further supplement this document with additional items and details as necessary.

Please contact Patrick Lennberg (303) 866-3567 ext. 8114 or by email at [patrick.lennberg@state.co.us](mailto:patrick.lennberg@state.co.us) if you have any questions.

Sincerely,



Patrick Lennberg  
Environmental Protection Specialist

Attachments: 1. Financial Warranty Corporate Surety Form  
2. Affidavit of Authority

cc: Sara Stevenson-Benn, Financial Assurance Specialist, DRMS  
Jared Ebert, DRMS

ec: Jim MacDonald, Oldcastle SW Group, Inc, [jmacdonald@us.apc.com](mailto:jmacdonald@us.apc.com)

## **Attachment 1**



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

### FINANCIAL WARRANTY

### CORPORATE SURETY

Operator: \_\_\_\_\_

Operation: \_\_\_\_\_

Permit No.: \_\_\_\_\_ Bond No.: \_\_\_\_\_

Warrantor: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Area Code: \_\_\_\_\_ Telephone: \_\_\_\_\_

***This form has been approved by the Mined Land Reclamation Board pursuant to sections 34-32-117, C.R.S., of the Mined Land Reclamation Act and 34-32.5-117, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form, without approval by the Board shall result in the financial warranty being invalid and result in the voiding of any permit issued in conjunction with such invalid financial warranty and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to sections 34-32-123, C.R.S., of the Mined Land Reclamation Act and 34-32.5-123, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials.***

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S. 1973, 34-32-101 et seq. (the "Act"), as amended, provides that no permit may be issued under the Act until the Mined Land Reclamation Board (the "Board") receives a Financial Warranty (or Warranties) as described in the Act.

WHEREAS, \_\_\_\_\_ (the "Operator"), a \_\_\_\_\_  
\_\_\_\_\_ corporation, has applied for a permit to conduct a mining operation known as \_\_\_\_\_  
\_\_\_\_\_ (the "Operation"), on certain lands in \_\_\_\_\_ County, Colorado. These lands are described in  
the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands".



WHEREAS, in the application for the permit, the Operator has agreed to be bound by all requirements of the Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, in the application for the permit, the Operator has agreed with the Board to provide for reclamation of the Affected Lands that are now, or may become, subject to the permit, as required by law.

WHEREAS, the Operator and \_\_\_\_\_ (the "Warrantor"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact a bonding and surety business in the State of Colorado are hereby and firmly bound unto the State in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the life of mine or until such time as replacement is received, for the payment of which sum, well and truly made, we hereby bind ourselves and our personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Board has determined, in accordance with the Act, that the estimated costs of reclamation of the Affected Lands are those amounts for the stated periods of time as set forth herein. Said amount may be amended from time to time to reflect revised estimates of said costs of reclamation.

WHEREAS, the Operator and the Warrantor, in accordance with the Act, has promised and hereby promises the Board that it will be responsible for all the estimated costs of reclamation with regard to the Affected Lands.

WHEREAS, the Board has determined that this Financial Warranty by the Warrantor equals the estimated costs of reclamation, as approved by the Board, with regard to the Affected Lands.

NOW, THEREFORE, the Operator and the Warrantor are held hereby firmly unto the State of Colorado in the amount of those sums for those periods of time as set forth herein, until this Financial Warranty is amended or released in accordance with applicable law.

The Board may, for good cause shown, increase or decrease the amount and duration of this Financial Warranty. The Operator shall have sixty (60) days after the date of notice of any such adjustment to increase the surety amount, but no such increase shall bind the Warrantor unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Operator and the Warrantor shall notify the Board immediately of any event which may impair this Financial Warranty. If the Board receives such notice, or otherwise has reason to believe that this Financial Warranty has been materially impaired, it may convene a hearing in accordance with the Act for the purpose of determining whether impairment has occurred.

The obligation of the Operator and the Warrantor shall continue until the Board has released this Financial Warranty or has ordered it forfeited in accordance with applicable provisions of the Act. It is understood that periods of years may necessarily be required before determination can be made that reclamation of the Affected Lands has been satisfactorily completed. It is also recognized that, as reclamation is accomplished, the amount of this Financial Warranty may be reduced with the approval of the Board so that it reflects the then current estimated cost of the remaining reclamation of the Affected Lands. No revision, extension, or renewal of the permit, or of the time allowed to complete reclamation, shall diminish the Operator's or Warrantor's obligation under this Financial Warranty. No misrepresentation by the Operator which may have induced the Warrantor to execute this Financial Warranty shall be any defense to demand by the State under this agreement.

In any single year during the life of the permit, the amount of the Financial Warranty shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. Reclamation costs shall be computed with reference to current reclamation costs.

The amount of this Financial Warranty is based upon estimates as to the cost of reclamation, and does not operate to liquidate, limit, enlarge or restrict the Operator's obligations to complete reclamation and to comply in all respects with the permit and with applicable laws and regulations governing reclamation, even though the actual cost thereof may substantially exceed the amount of this Financial Warranty.

The Mined Land Reclamation Board or the Office of Mined Land Reclamation may recover the necessary costs, including attorney's fees or fees incurred in foreclosing on or realizing the collateral used in the event this Financial Warranty is forfeited. The face amount of this Financial Warranty shall be increased by five hundred dollars (\$500.00) to cover these costs.

The Warrantor shall not be liable under this Financial Warranty for an amount greater than the sum designated herein, unless increased by a later amendment to this Financial Warranty. This Financial Warranty shall be reviewed by the Board from time to time, and the Board may require an increase in the principal sum of this Financial Warranty (and a corresponding increase in the surety amount) to cover increases in the estimated costs of reclamation, but no such increase shall bind the Warrantor unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Warrantor reserves the right to cancel this Financial Warranty, effective only upon an anniversary date, and only by giving written notice to that effect, mailed by Certified Mail, at least ninety (90) days prior to such anniversary date, addressed to both the Operator at its address herein stated, and to the Board at the address herein stated. In the event of such cancellation, this Financial Warranty shall nevertheless remain in full force and effect as respects the reclamation of all areas disturbed prior to the effective date of such cancellation, unless and until the Operator shall file a substitute Financial Warranty which: (1) assumes liability for all reclamation obligations which shall have arisen at any time while this Financial Warranty is in force; and (2) is accepted in writing by the Board.

In the event of such cancellation, if the Financial Warranty is not fully released, the amount of the continuing Financial Warranty available for the reclamation of areas disturbed and unreclaimed at the date of cancellation shall be fixed by the Board at the amount it determines necessary to complete such reclamation (which amount may not exceed the sum designated herein) and the Board shall concurrently identify such areas in writing, and notify the Warrantor and the Operator thereof. Thereafter, the obligation of the Warrantor shall be limited to reclamation of the areas so identified.

The consideration for the Warrantor's execution of this agreement is the promise of the Operator to pay the premiums, but failure by the Operator to pay such premiums shall not invalidate or diminish the Warrantor's obligation hereunder.

The Board may make demand upon the Warrantor for payment hereunder if the Board determines that reclamation which ought to have been performed by the Operator, or its successors or assigns, remains unperformed, and if Financial Warranty forfeiture procedures required by law have been initiated. No other condition precedent need be fulfilled to entitle the State to receive the amount so demanded. However, if, upon completion of reclamation by the State, the amounts expended for reclamation shall be less than the amount received from the Warrantor, the excess shall be promptly refunded to the Warrantor.

If demand is made upon the Warrantor for payment of an amount due to the Board hereunder, and if the Warrantor fails to make payment of such amount within ninety (90) days after the date of receipt of such demand, or if it should thereafter be determined, by agreement of the Warrantor or by final judgment of court, that the amount demanded was properly payable, the Warrantor agrees to pay to the Board, in addition to the amount demanded, interest at the

current published Wall Street Journal Prime Rate for the period commencing at the end of such ninety-day period and ending on the date of actual payment.

If the Board shall notify the Warrantor that the Operator is in default, and if the Board shall initiate any Financial Warranty forfeiture procedures required by law or regulation, the Warrantor may, in lieu of making payment to the Board of the amount due hereunder, cause the reclamation to be timely performed in accordance with all requirements of the Act and all applicable rules and regulations. In such event, when and if the reclamation has been timely performed to the satisfaction of the Board or Division, this Financial Warranty shall be released. If the reclamation shall not be so performed to the satisfaction of the Board or Division, this Financial Warranty shall remain in full force and effect.

This Financial Warranty shall be subject to forfeiture whenever the Board determines that any one or more of the following circumstances exist:

1. A Cease and Desist Order entered pursuant to Section 34-32-124 of the Act has been violated, and the corrective action proposed in such Order has not been completed, although ample time to have done so has elapsed; or
2. The Operator is in default under its Performance Warranty, and such default has not been cured, although written notice and ample time to cure such default has been given; or
3. The Operator and/or the Warrantor has failed to maintain its Financial Warranty in good standing as required by the Act; or
4. The Warrantor no longer has the financial ability to carry out its obligations in accordance with the Act.

The description of lands herein is for convenience of reference only, and no error in such description, nor any revision of the permitted mining area, nor the disturbance by the Operator of lands outside of the permitted mining area shall alter or diminish the obligations of the Operator and/or Warrantor hereunder, which shall extend to the reclamation of all such lands disturbed.

If this Financial Warranty applies to National Forest System lands, and if this Financial Warranty is accepted by the United States Forest Service ("U.S.F.S.") as the bond required under 36 C.F.R. 228.13, then the Operator, having requested that the Board and the U.S.F.S. accept this single Financial Warranty in lieu of the separate bonds which would otherwise be required by applicable law, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until U.S.F.S. has advised the Board by written notice that the Operator's obligations to U.S.F.S., for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

If this Financial Warranty applies to lands under the jurisdiction of the State Board of Land Commissioners ("Land Board"), and if this Financial Warranty, in whole or in part, is accepted by the Land Board as the bond required under its applicable law and procedures, then the Operator, having requested that the State accept this Financial Warranty in lieu of the separate bonds which would otherwise be required by the Colorado Mined Land Reclamation Board or Division of Reclamation, Mining and Safety and by the Land Board, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until the Board is notified in writing by the Land Board that the Operator's obligations to the Land Board, for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

If all or any part of the Affected Lands are under the jurisdiction of the Bureau of Land Management, United States Department of the Interior (the "BLM"), and if, at the request of the Operator on this Financial Warranty, the BLM has, pursuant to 43 C.F.R. 3809.1-9, accepted this Financial Warranty in lieu of requiring a separate reclamation bond

payable to the United States, then, notwithstanding any other provision of this Financial Warranty, or of law, the Operator and Warrantor hereby agree that this Financial Warranty shall not be released until the Board is advised in writing by the BLM that the Operator's obligations to the BLM, for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

This Financial Warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

SIGNED, SEALED AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Warrantor (SEAL)

By: \_\_\_\_\_

\_\_\_\_\_  
Operator (SEAL)

By: \_\_\_\_\_

#### NOTARIZATION OF WARRANTOR'S ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_



**NOTARIZATION OF OPERATOR'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

APPROVED:

State of Colorado  
Mined Land Reclamation Board  
Division of Reclamation, Mining and Safety

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Division Director

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## **Attachment 2**



# COLORADO

## Division of Reclamation, Mining and Safety

Department of Natural Resources

### **Documentation of Legal Authority to Execute Financial Warranty Documents**

*The Colorado Mined Land Reclamation Board (“Board”) has adopted the attached Affidavit of Authority to Execute Financial Warranty Documents pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.). The Board and the Division of Reclamation Mining and Safety (“Division”) have determined that, in order to carry out the financial warranty requirements set forth in C.R.S. §§ 34-32-117 and 34-32.5-117 with reasonable diligence, it is prudent to verify the legal authority of the individual signing all necessary documents.*

*Accordingly, you must provide confirmation of the legal authority of the individual signing all Financial Warranty Documents to the Division. You may do so either by submitting a resolution of the decision-making body of your company that authorizes an individual to sign the Financial Warranty Documents on the company’s behalf, or by completing and notarizing the attached affidavit. The Division reserves the right to require the attached affidavit in all circumstances. Please note that if you are a sole proprietor who is executing documents on your own behalf, documentation of legal authority is unnecessary.*



### Affidavit of Authority to Execute Financial Warranty Documents

Before me this day, the undersigned \_\_\_\_\_ [name of authorized person], in his/her capacity as \_\_\_\_\_ [title of authorized person] ("Affiant"), personally appeared and, being first duly sworn upon oath said:

1. This affidavit is being executed and submitted on behalf of \_\_\_\_\_ [name of business organization], a(n) \_\_\_\_\_ [legal form of business organization, *e.g.*, corporation, partnership, limited liability company, etc.], in good standing in the State of Colorado (the "Company").
2. It is in the interest of the Company to execute certain financial warranty documents associated with file number \_\_\_\_\_ (DRMS file number), which are required by the Colorado Mined Land Reclamation Board and Division of Reclamation Mining and Safety pursuant to Colorado law ("Financial Warranty Documents").
3. Affiant is duly authorized to sign such Financial Warranty Documents on behalf of the Company and to bind the Company to the same.
4. Affiant is not prohibited or limited by the Company's governing documents or by any applicable law from executing the Financial Warranty Documents.
5. Affiant will inform the Division of Reclamation Mining and Safety within thirty (30) days in the event that his/her authorization to execute Financial Warranty Documents on the Company's behalf is terminated.

Further, Affiant sayeth not.

\_\_\_\_\_  
Affiant's Name

\_\_\_\_\_  
Signature

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_