

EASEMENT AGREEMENT

This Easement Agreement is entered into this _____ day of _____ of 20____ by and between: _____ with an address of _____ hereinafter referred to as "Grantor" and the **Cherokee Metropolitan District**, 6250 Palmer Park Boulevard., Colorado Springs, CO 80915, (the "District").

RECITALS

WHEREAS, the District desires to install utility facilities, including water and wastewater pipelines and related facilities and appurtenances ("Improvements") in or upon certain real property owned by Grantor and situated in El Paso County, Colorado, which real property is more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein (along with appurtenances thereto, the "Easement Property"); and

WHEREAS, Grantor is willing to grant an easement to the District in the Easement Property for the aforesaid purposes, subject to the terms and provisions hereof.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor expressly grants and conveys to the District a perpetual nonexclusive easement over, under, across and through the Easement Property for the purposes of construction, replacement, improvement, repair, maintenance and operation of utility facilities, including but not limited to underground pipelines, manholes, fixtures, water and wastewater collection and distribution lines, fixtures, appurtenances, and attachments, together with the right of ingress and egress to and from said Easement over and across Easement Property and adjacent lands of the Grantor in the exercising of the rights granted herein. The Easement is described in **Exhibit B**, attached hereto and incorporated herein.

2. Grantor's Covenants.

A. Grantor covenants and agrees that during the term of this Agreement it shall not plant within or allow to grow into the Easement Property any trees, bushes or other planted material that would interfere with the District's use of the Easement Property, and that it shall not construct any buildings or other improvements within, over or upon the Easement Property without the prior written permission of the District, except that Grantor may install roadways, sidewalks, curbs, gutters, and trails on the Easement Property, without written permission, provided Grantor shall be responsible for repairing or replacing any private improvements damaged by District's permitted activities in or on the Easement Property, including payment of the costs thereof.

B. To the fullest extent permitted by applicable law:

i. Grantor hereby warrants title to the easement herein granted and conveyed to the District;

ii. Grantor warrants that that the Easement Property is free and clear of all liens and encumbrances; and

iii. Grantor agrees to protect and defend the title of the District to the Easement Property from and against all persons whomsoever.

C. Any other utilities placed within the Easement (i.e., natural gas, telephone, cable, etc.) shall only be placed with the District's prior written consent, which consent shall not be unreasonably withheld or delayed, so that such other utilities shall not be located on top of the District's utility facilities or so close thereto as to interfere with or impair the District's access to, construction, replacement, and/or maintenance of the utility facilities within said Easement.

D. Grantor warrants and guarantees that it has the power and authority to grant the easement created by this Agreement.

3. Retained Rights of Grantor.

A. Grantor reserves the right of ownership, use and occupancy of the Easement Property insofar as said ownership, use and occupancy do not impair the rights granted to the District pursuant to this Agreement. The District's rights hereunder are non-exclusive, and Grantor shall have the authority to grant other easements or rights to use the Easement Property, so long as it does not impair the rights granted to the District.

B. In the event that the construction of any other utilities, roadways, or other improvements upon, over, under or across the Easement Property or the violation of any of the warranties made by Grantor herein necessitates the relocation and/or encasement of the Improvements, then Grantor shall, at its sole cost and expense, timely perform or cause the performance of such relocation and/or encasement of the Improvements and shall provide a replacement easement for the relocation, if necessary, subject to the District's specifications. In the event Grantor does not relocate, encase the Improvements, and/or provide a new easement as required by this Subsection B within a reasonable period of time, not to exceed ninety (90) days after notice thereof from the District, then the District may do so, at Grantor's expense.

4. Indemnification of the District by Grantor. Grantor agrees, and hereby does, to the fullest extent permitted by law, indemnify and hold harmless the District, any directors, officers employees and agents of the District, and any successors or assigns of the District, from any costs, expenses, damages, claims or demands incurred or asserted against the District as a result of or arising out of Grantor's warranties or covenants set forth herein.

5. Miscellaneous.

A. Subjacent and Lateral Support. Grantor and the District shall each have the right of subjacent and lateral support for the Easement Property; neither Grantor nor the District shall take any action that would impair the lateral or subjacent support for the Easement Property.

B. Binding Effect - Runs With Land. This Agreement shall extend to and be binding upon the successors and assigns of the respective Parties hereto. The rights and responsibilities set forth in this Agreement are intended to be covenants upon the Easement Property and are to run with the land.

C. Governing Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado, and exclusive venue for any action relating to this Agreement shall be with the District Court of El Paso County, Colorado.

D. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating to the Easement and sets forth the rights, duties and obligations of each to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified, except by a writing executed by both Parties.

E. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

F. Assignment. The District may assign or license all or a portion of its rights hereunder to another political subdivision of the State of Colorado, provided any assignee shall be bound by all terms and conditions set forth herein.

G. Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. If any provision of this Agreement or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement and each and every provision thereof, are declared to be severable.

H. Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

I. No Third Party Beneficiary. The Parties enter into this Agreement for the sole benefit of the Parties, to the exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this Agreement.

J. Recording. This Agreement shall be recorded in the official records of the El Paso County Clerk and Recorder upon full execution.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement by their respective duly authorized officers as of the date and year first above set forth.

[Remainder of Page Intentionally Blank - Signatures on Following Page]

GRANTOR:

Print Name and Title

STATE OF COLORADO)
)ss.
COUNTY OF EL PASO)

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

Witness my hand and official seal.

My commission expires: _____

Notary Public

DISTRICT:

Cherokee Metropolitan District

Print Name and Title

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ___ day of _____, 20___, by _____ as the General Manager of the Cherokee Metropolitan District, a Colorado special district and political subdivision.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

To

Grant of Utility Easement

Grantor's Property

That parcel of land described in that instrument recorded under Reception Number _____ of the records of El Paso County, Colorado.

EXHIBIT B

To

Grant of Utility Easement

Utility Easement

Prepared By: .

Date of Preparation: .

EXHIBIT C

To

Grant of Utility Easement

Sketch of Utility Easement

Prepared By: .

Date of Preparation: .