



**CHEROKEE METROPOLITAN DISTRICT**  
6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842  
Telephone: (719) 597-5080 Fax: (719) 597-5145

\_\_\_\_\_, El Paso County, Colorado

**SUBDIVISION PUBLIC IMPROVEMENTS AGREEMENT**

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called "Owner") and the Cherokee Metropolitan District, a special district founded pursuant to the laws of the State of Colorado (hereinafter called "District").

WITNESSETH:

WHEREAS, the Owner is the titleholder of certain real property located within the District known as \_\_\_\_\_ (hereinafter called "Subdivision"); and

WHEREAS, as a condition of approval of the final plats of said subdivisions and of receiving water service and sanitary sewer service, certain public improvements must be completed, as more fully set forth in the document attached hereto and incorporated by reference herein; and

WHEREAS, the Owner is willing to provide security or collateral sufficient in the judgment of the District to make reasonable provision for the completion of certain public improvements and warranties on them; and

WHEREAS, the Owner wishes to provide collateral to guarantee performance of this Agreement, including construction and warranty of the above-referenced public improvements.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the Owner and District agree as follows:

Section 1 - Public Improvements. As Owner elects to proceed with this Subdivision, Owner agrees to construct and install, at his sole expense, all of those public improvements as set forth in the exhibits attached hereto and incorporated by reference herein associated with said Subdivision. Owner's obligation to construct improvements arises only when it elects to proceed with each phase by filing with the District the appropriate collateral and obtaining the necessary permits. It is understood by the parties that the description of public improvements contained herein are general in nature and that reasonable modifications of the scope, nature, cost and similar aspects of such improvements may be necessary to secure approval of the final design of such improvements.

Before beginning any construction of the public improvements, the Owner shall submit to the District an application to do such work, together with final engineering construction plans for all such improvements and proof of satisfactory collateral. A permit shall be issued upon approval by the District Engineer of final construction plans, and the Owner shall construct said improvements in conformity with the requirements of the permit.

Section 2 - Additional Requirements. The Owner agrees that all of those certain public improvements to be completed as identified in the exhibits attached hereto shall be constructed in a good and workmanlike manner and in compliance with the following:

A. All laws and regulations of the United States, State of Colorado, El Paso County, Cherokee Metropolitan District, other affected special districts and/or servicing authorities.

B. Such other designs, drawings, maps, specifications, sketches and other matters submitted to and approved by any of the above-stated governmental entities.

Section 3 - Sewer and Water Improvements. The Owner, its successors, and assigns, shall install and pay for all sewer improvements described in wastewater collection system and water distribution system plans submitted by the Owner and approved by the District. The Owner shall submit construction plans and profiles for the wastewater collection system and water distribution system to the District for approval. It is understood that no application to do work in any public right-of-way or public easement shall be submitted or approved until the wastewater collection system and water distribution system construction plans and profiles have been approved by the District Engineer.

Section 4 – Collateral. To secure and guarantee performance of its obligations as set forth herein, the Owner agrees to provide, prior to beginning construction of any public improvements, security and collateral in form and content acceptable to the District, in the sum of one hundred ten percent (110%), the cost of all sanitary sewer improvements and water system improvements as set forth in Exhibit A, attached hereto. Such collateral shall consist of cash collateral, a Letter of Credit, or a Performance Bond, as directed by the District. If collateral in the form of a Letter of Credit is required by the District, the following additional requirements shall apply:

The Letter of Credit shall be issued by a bank subject to regulation by a national or state banking authority, approved by the District, and shall be maintained continuously in effect for the duration of the responsibilities of Owner under this Agreement. If, not later than thirty (30) days prior to expiration or termination of any Letter of Credit, there has not been delivered to the District a new Letter of Credit, the District may draw all monies then available under the existing Letter of Credit, and hold such funds as collateral for the obligations of Owner hereunder.

The Owner hereby warrants the workmanship and materials of all public improvements hereunder for a period of two (2) years from the date of issuance of a Certificate of Acceptance thereof. The Owner shall ensure that the contractor or subcontractor who works on the improvements will also warrant their work to the same extent as Owner. The Owner shall convey title to the improvements and any necessary easements via bill of sale and warranty deed, as appropriate, free and clear of any lien, encumbrance or cloud upon such title, to the District at the time of, and as a condition of, issuance of a Certificate of Acceptance by the District. The District may require that the Owner procure title insurance for such improvements and interests naming the District as a named insured in such amount as the District shall reasonably require.

The District may require that collateral may be maintained after the completion of construction of improvements, in such amount as the District shall then determine. The District may reduce or increase the required amount of the collateral as circumstances warrant. If a greater amount is required, the District shall so inform the Owner and shall set a date by which such additional collateral must be provided. If the additional collateral has not been provided by said date, a cease and desist order may be issued by the District.

Section 5 - Inspection. The District, and/or their designated representative, shall inspect the work being performed by Owner as they deem necessary. The Owner shall reimburse the District for all costs associated with such inspection.

Section 6 - Certificate of Acceptance. Upon completion of the public improvements, the Owner shall request, in writing, that the District Engineer perform an inspection of the improvements and issue a Certificate of Acceptance of such improvements. The written request from the Owner shall be accompanied by a letter from a registered professional engineer stating that said improvements are fully completed and installed in accordance with this Agreement, District rules and regulations, current ordinances and exhibits attached hereto.

If the District Engineer determines that all improvements are not complete, or if complete, that they are deficient in any respect, the District Engineer shall inform the Owner of the deficiencies. A Certificate of Acceptance will not be issued until the specified improvements are completed or repaired by Owner. Failure to issue said Certificate or to notify Owner of the deficiencies within thirty (30) days of inspection shall constitute acceptance of the improvements by the District.

The Owner shall repair any defect in any improvement covered by the warranty; provided, however, that written notice of obvious or reasonably discoverable defects, shall be provided to the Owner by the District Engineer prior to the expiration date of said warranties. If Owner has commenced repairs and is proceeding diligently, Owner shall be allowed a reasonable time to complete repairs. If Owner has not commenced repairs within thirty (30) days of notice thereof, the District may correct said defect on the Owner's behalf and at the Owner's expense.

All public improvements for the project shall be completed within \_\_\_\_\_ months from Owner's election to proceed, but in no event later than \_\_\_\_\_. If no Certificate of Acceptance has been requested prior to such date or said public improvements have not been completed in accordance with the specifications of this Agreement prior to such date, the District may indefinitely suspend the issuance of taps, or may construct, complete or repair any public improvements required under this Agreement on the Owner's behalf and at the Owner's expense. Upon completion, correction, or repair of such improvements, the District Engineer shall issue a Certificate of Acceptance thereof.

Section 7 - Non-Discrimination. The Owner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability(ies) as defined by the Americans with Disabilities Act (ADA) of 1990. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Owner shall make every subcontract utilized by the Owner in conjunction with this Agreement subject to the foregoing non-discrimination provisions.

Section 8 - Indemnification. The Owner hereby expressly agrees to indemnify and hold the District harmless for and against all claims of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of, the performance of work pursuant to this Agreement, and which is not caused in whole or in part through the fault or negligence of the District, its agents, employees or representatives.

Section 9 - No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any subsequent default hereunder.

Section 10 - Amendments or Modifications. A writing signed by all parties hereto may amend this Agreement from time to time.

Section 11 - Effect of Agreement. This Agreement may be recorded with the Clerk and Recorder of El Paso County, shall constitute a covenant running with the land, and shall be binding upon the heirs, successors, and assigns of the parties.

Section 12 – Choice of Law/Enforcement. This Agreement shall be construed in accordance with and governed in all respects by the internal laws of the State of Colorado. Owner agrees that the exclusive venue and forum for any dispute arising out of or relating to this Agreement, including its negotiation, execution or performance, shall be the District Court for El Paso County, Colorado. Owner shall pay to the District any costs or fees (including legal and engineering fees) incurred by the District as a result of the failure of the Owner to perform any of the obligations set forth herein.

Section 13 - Insurance. Owner or Owner's sub-contractors shall maintain at their sole cost and expense the following insurance coverage (with deductibles, if applicable, in amounts reasonably acceptable to District) at all times during the Agreement.

- (A) Commercial general liability insurance;
- (B) Worker's compensation insurance at no less than statutory requirements, and employer's liability insurance with a limit of not less than One Million Dollars; and
- (C) Owner's sub-contractors shall carry non-occupational disability insurance when required by law.

Section 14 - Exhibits. The following listed exhibits are incorporated herein and made a part of this Agreement:

- (A) Exhibit A- cost of sewer public improvements as filed in the office of the District Engineer.
- (B) Exhibit B - all sewer lines and appurtenances as depicted in the subdivision plat, more particularly described as \_\_\_\_\_, as recorded under Reception No. \_\_\_\_\_ of the records of El Paso County, Colorado.
- (C) Additional Exhibits – any additional exhibits describing utilities, streets engineering and drainage reports.

**CHEROKEE METROPOLITAN DISTRICT**

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

ATTEST:

\_\_\_\_\_  
Secretary

**OWNER:**

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

\_\_\_\_\_  
Printed Name

**ACKNOWLEDGEMENT**

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

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

Witness my hand and seal.

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

**Draw Language for Letter of Credit**

Written certification from the Cherokee Metropolitan District that the Account Party has failed to perform its obligations set forth in that Subdivision Public Improvements Agreement dated \_\_\_\_\_ including, but not limited to, its obligation to keep a Letter of Credit in place for the duration of its obligation thereunder.