



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

AGREEMENT AND BILL OF SALE
for Water or Wastewater Facilities

This **AGREEMENT AND BILL OF SALE** (“Agreement”) is made this 16 day of July, 2024 (the “Effective Date”) by and between Colorado Springs Equities LLC (“Owner”) and Cherokee Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”). In consideration of the mutual promises, covenants, and agreements set forth herein and the District’s permission to connect the Facilities to the District’s public water system and/or wastewater system (“Public System”), the Owner and the District agree as follows:

1. Definitions. The following words shall have the following definitions:

“Construction Plan” means the construction plan approved by the District for Project No. **18-003** titled **Crossroads Mixed Use Filing 1**, providing for the plan for construction of water and/or wastewater infrastructure.

“Facilities” means the water and/or wastewater infrastructure and appurtenances identified as public on the Construction Plan.

“Preliminary Acceptance Date” means the date the District accepts the Facilities into its Public System as evidenced by the signature of the District below.

“Record Drawings” means the final construction documents that represent the as-built condition of the Facilities.

2. Indemnification. Owner hereby releases the District and shall fully protect, defend, discharge, indemnify and hold harmless the District, the District’s Board of Directors, and their respective officers, employees, agents and representatives from and against any and all liability for damages, injuries to the person or property of the Owner or any third party, causes of action, demands, or actions of whatsoever kind or nature arising from the failure of Owner to perform its obligations herein, and further, from and against any other claims, costs and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature arising from, in connection with, or related in any way to the construction or operation of the Facilities and to any extent arising from or due to Owner’s action(s) or failure(s) to act. Owner’s period of indemnification shall commence on the Effective Date and shall be in effect for eight years from the Preliminary Acceptance Date or until the applicable statute of limitations has expired, whichever is sooner.

3. Warranty.

a. Owner hereby represents and warrants that: (i) it will own the Facilities and will have the right and authority to transfer the Facilities, or that in the event of any sale or transfer of ownership, that Owner will sign an Assignment Agreement in a form acceptable to the District; (ii) that the Facilities will be constructed in accordance with the Construction Plan approved by Cherokee Metropolitan District in the El Paso EDARP system (and any changes thereto approved by the District and reflected in the record drawings accepted and approved by the District), all applicable provisions of Colorado Springs Utilities' Water and/or Wastewater Line Extension and Service Standards ("LESS"), Cherokee Metropolitan District Water and Wastewater Infrastructure Construction Standards, and all other applicable specifications in effect on the date the Construction Plans are approved by the District; (iii) the Facilities will be installed within a street, right-of-way previously dedicated to the District, or easement granted to and accepted by the District at no cost to the District which dedication or easement will be recorded at the El Paso County Clerk and Records Office, Colorado; and (iv) the Facilities will be free and clear of all claims, liens, and other security interests, including, but not limited to, claims for labor or materials.

b. For a period of 24 months from the Preliminary Acceptance Date or any extension thereof ("Warranty Period"), Owner warrants: (i) that the condition, safety, suitability, and utility of the Facilities are adequate for their intended purpose; and (ii) that the Facilities shall be free from all defects and faults in materials or workmanship and conform to Colorado Springs Utilities' Water and/or Wastewater LESS and the Cherokee Metropolitan District Water and Wastewater Infrastructure Construction Standards. For the Warranty Period, Owner agrees that, at its sole cost and responsibility, any defects or failures of the Facilities shall be remedied by Owner to the District's satisfaction ("Corrections") within thirty (30) days following provision of the District's written notice of any defect or failure of the Facilities; and that Owner shall schedule such Corrections in order to minimize any related service interruptions. In the event of an emergency, or if Owner fails to timely make such repairs after provision of written notice, the District shall have the right to perform work on the Facilities during the Warranty Period to correct such defects or failure of the Facilities. In the event the District performs any such work on the Facilities, Owner shall reimburse the District for its costs to repair, replace, or move the Facilities within 30 days from the date of the District's invoice for such costs. In the event Owner fails to so reimburse the District, the District may, in its sole discretion, withhold any further approvals of connections to the Facilities until the District is reimbursed by Owner.

c. Owner acknowledges and agrees that the Correction of any failure to comply with the above warranties, other than any variances expressly identified on the Construction Plan approved by the District, shall be the sole responsibility of Owner during the Warranty Period. Any such Correction whether made by Owner or the District shall cause the period of warranty to be extended to (i) the date twelve months from the date such Correction is approved by the District, or (ii) the end of the original 24-month period of warranty as established by the Preliminary Acceptance Date, whichever occurs later.

4. Effect of the District's Preliminary Acceptance. The Owner and the District agree that upon the Preliminary Acceptance Date set forth below, ownership of the Facilities shall automatically transfer to the District from Owner. The parties further agree that as of the Preliminary Acceptance Date, the Facilities will have been inspected for adherence to required material and installation standards, and appear to be in compliance with the approved Construction Plan (and any field changes

thereto approved by the District and reflected in the record drawings accepted and approved by the District), the Cherokee Metropolitan District Water and Wastewater Infrastructure Construction Standards, and all other applicable specifications in effect at the time of approval of the Construction Plan. Owner acknowledges that prior to Preliminary Acceptance, the District will operate the Facility for testing and inspection. Inspection and preliminary acceptance by the District shall not waive any of Owner's representations, warranties, or obligations herein. Additionally, such inspection and preliminary acceptance shall not constitute a representation by the District that the Facilities are properly located and that all existing or future defects have been discovered. During the Warranty Period, the District may conduct inspections of the Facilities to determine whether the Facilities are in compliance with Section 3 above, or whether the Facilities require warranty work. Upon expiration of the Warranty Period, the District will document final acceptance of the Facilities.

5. Effect of Non-Acceptance. In the event the District does not preliminarily accept the Facilities, the transfer of the Facilities shall not be effective, and the Facilities shall remain private.

6. 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.

7. Amendments. This Agreement may be amended only by written document signed by both the Owner and the District.

8. 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.

9. 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.

10. Counterparts; Copies of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Copies of signatures shall be permitted for purposes of the binding nature of this Agreement.

CHEROKEE METROPOLITAN DISTRICT

By: [Signature]
President
7-25-2024
Date

By: [Signature] J. W...
Director
7/25/2024
Date

By: [Signature] Tracey Ferguson
Director
7-25-2024
Date

By: [Signature]
General Manager
7-22-24

By: [Signature] Kimberly J Wilson
Director
7-25-24
Date

By: [Signature]
Director
7/22/24
Date

ATTEST:

Secretary

IN WITNESS WHEREOF, Owner warrants that the executing representative has authority to bind Owner and has executed this Agreement and Bill of Sale.
OWNER'S SIGNATURE MUST BE NOTARIZED

OWNER: Wulpho Springs Services LLC

By: _____
Signature

DANNY MIENTKA

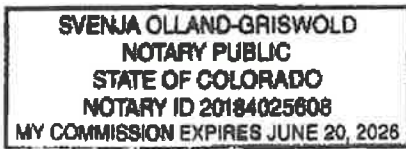
Printed Name

ACKNOWLEDGEMENT

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

The foregoing instrument was acknowledged before me this 10 day of July, 2024, by Danny mientka.

Witness my hand and seal.



S. Olland-Griswold
Notary Public

CHEROKEE METROPOLITAN DISTRICT PRELIMINARY ACCEPTANCE:

The District has preliminarily accepted the Facilities by execution of this Agreement and Bill of Sale this day of July 16, 2024 (“**Preliminary Acceptance Date**”).

Approved: Brian Beaudette

Print name: Brian Beaudette

Title: Interim General Manager

PRELIMINARY ACCEPTANCE OF WARRANTY PERIOD WORK:

If any Warranty Period work was performed on the Facilities, the District has preliminarily accepted the work as of [date] and the Warranty Period is hereby extended to [date].

Approved: _____

Print name: Brian Beaudette

Title: Interim General Manager

CHEROKEE METROPOLITAN DISTRICT FINAL ACCEPTANCE:

Final Acceptance is effective this ___th day of ____, 20__

Approved: _____

Print name: Brian Beaudette

Title: Interim General Manager

