

Falcon Highlands Ray & Co.

INTERGOVERNMENTAL AGREEMENT
(WOODMEN HILLS-FALCON HIGHLANDS)

This Intergovernmental Agreement ("IGA") is made and entered into effective this 17th day of April 2003 by and between Woodmen Hills Metropolitan District ("Woodmen Hills") and Falcon Highlands Metropolitan District ("Falcon Highlands"), collectively, the "Districts".

RECITALS

A. Woodmen Hills is an established quasi-municipal corporation and political subdivision of the State of Colorado formed pursuant to Title 32 Colorado Revised Statutes and is a special district.

B. Woodmen Hills provides various municipal services, including central waste water treatment, to its residents located at Falcon, Colorado.

C. Falcon Highlands is a newly formed special district which intends to engage the services of Woodmen Hills to assist in the delivery of waste water services as described herein with treatment to occur at the Paint Brush Hills Regional Waste Water Treatment Facility (Paint Brush WWTP).

D. Pursuant to Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, Colorado Revised Statutes, Districts may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each.

NOW THEREFORE, based upon the mutual considerations and promises contained herein, the Districts agree as follows:

1. **Infrastructure-Wastewater.** Falcon Highlands shall be responsible for the design, construction, installation, maintenance and financing of a complete municipal waste water collection system consisting of sewer outfall lines, boosters, taps and related facilities to individual residences and commercial/industrial users within its District boundaries as set forth in the Falcon Highlands Service Plan approved by the El Paso County Board of County Commissioners. This infrastructure includes all facilities, lift stations, and equipment necessary to connect to the Woodmen Hills system, north of Falcon Highland. These municipal systems will be designed to at least the same standards as the Woodmen Hills infrastructure and shall connect to the same. The improvements offsite of Falcon Highlands which connect to the Woodmen Hills system will be dedicated to Woodmen Hills at no charge. This infrastructure shall contain a one year warranty period. Attached hereto is the final approved design for the connection to Woodmen Hills.

All improvements shall be inspected for main line pressure manhole vacuum tests together with televising 25% of the sewer lines at the cost of Falcon Highlands with

observation by Woodmen Hills employees. Should any test fail, Woodmen Hills shall have the authority to require the repair of deficiencies prior to proceeding with further work.

2. ~~Parcels Served.~~ The parcels in Falcon Highlands to be served are as follows:

TYPE OF LAND USE	ACREAGE	UNITS
Residential Single Family	266	532
Residential Multi Family	12	96
Office Space	7	14 SFE*
Light Industrial	15	30 SFE
Commercial	25	50 SFE
School Site	16	32 SFE
TOTAL		754 SFE

(SFE = Single Family Equivalency)

3. **PreTreatment Standards.** Falcon Highlands shall be responsible for the adoption of, and enforcement of, pretreatment waste water standards acceptable to Woodmen Hills and the Paint Brush WWTP.

4. **Services.** Woodmen Hills will provide all wastewater services to the residents, businesses, and users within Falcon Highlands on the acreages set forth above up to 754 SFE's. Woodmen Hills will have no duty to service any additional or included properties unless it agrees to do so. Woodmen Hills will also provide all monthly waste water billing and related services to the customers of Falcon Highlands. On behalf of Falcon Highlands, Woodmen Hills will enforce collection of any unpaid monthly service charges pursuant to all remedies available under Colorado law.

5. **Tap Fees and Revenues.** Woodmen Hills shall retain all monthly sewer service charges as compensation for its services with the understanding that such charges shall be at the then in-district rate charged by Woodmen Hills presently at a monthly minimum of twenty dollars (\$20.00) per month per SFE which sum increases based on water usage. In the months of January-March, when there is no irrigation use, the average use from these three months will be used to calculate the base line. This average at \$2.00 per 1000 gallons will be added to the above minimum to determine the Falcon Highland minimum monthly fee. In the first quarter of each subsequent year, there will be a recalculation of the base minimum fee using this same methodology. Fees may be increased by Woodmen Hills upon thirty (30) days notice. The parties shall agree upon the best method to use to read water meters for billing purposes.

The monthly user fee for non-residential properties will be based upon the SFE for the particular use based on the monthly water usage which will be calculated the same as the residential use, metered, and billed accordingly.

In addition, each user within Falcon Highlands shall pay a sewer tap fee to Woodmen Hills based on the Woodmen Hills In-District Tap Rate. Tap rates will be set based upon the size of water connection: i.e. a residential 3/4" tap would be \$5,000.00. Water taps in excess of 3/4" will have a sewer tap based on the water tap size or SFE as follows:

<u>Tap Size</u>	<u>Tap Fee</u>
3/4"	\$ 5,000.00
1"	\$10,000.00
1 1/2"	\$20,000.00
2"	\$40,000.00
3"	\$80,000.00
Over 3"	To be calculated upon request

Any tap fees charged over and above these amounts shall be retained by Falcon Highlands.

6. **Easements.** Falcon Highlands shall be responsible for providing all rights-of-way and easements necessary for the installation, construction, and maintenance of the above-described municipal infrastructure.

7. **Maintenance/Capital Replacement.** Following the one year warranty period, Woodmen Hills shall provide at its expense all normal maintenance and repair to the infrastructure; however, Falcon Highlands shall be responsible for the replacement, upgrade, and improvements to this infrastructure.

Falcon Highlands will pay for the cost of enlarging the Woodmen Hills system if such enlargement becomes necessary because of any increase in the number of units served.

8. **Connection Fee.** Falcon Highlands agrees to pay a "Connection Fee" in the amount of \$654,472 which consists of the following:

Aid in Construction	\$ 89,726.00
Line Extension Fee	\$ 95,004.00
Plant Investment Fee	\$469,742.00
Total	\$654,472.00

The Connection Fee shall be paid as follows:

- \$50,000 non-refundable by April 17, 2003;
- \$168,157.34 due at the earlier of (a) recording the first plat or (b) 90 days immediately following the date of this Agreement;
- \$218,157.33 due six months following the date of this Agreement;
- \$218,157.33 due one year following the date of this Agreement.

9. **Effluent Return Flows.** As and for additional consideration for the services to be provided by Woodmen Hills, it is agreed that all effluent flows emanating from within Falcon Highlands, including those return flows resulting from the Paint Brush WWTP shall be owned by Woodmen Hills to be used by Woodmen Hills for all lawful purposes as Woodmen Hills may determine in its sole discretion including the rights of use for augmentation and/or replacement.

10. **Other Municipal Services.** All other municipal services (drainage, park-recreation, roads, water service, except for the temporary service, etc.) as contemplated in the Falcon Highlands Service Plan, shall be the responsibility of Falcon Highlands.

11. **Termination.** It is recognized that this IGA received voter approval as a long term obligation of Falcon Highlands at the November 2002 general election and involves the issue of "water and water rights" and therefore, this Agreement is in perpetuity and may not be terminated by Falcon Highlands so long as Woodmen Hills is providing the services contemplated herein.

12. **Indemnification.** Each party to this Agreement agrees to defend and hold harmless, to the extent allowed by law and without waiving the provisions of the Colorado Governmental Immunity Act, the other party, their directors, officers, agents, and employees, from any and all loss, costs (including attorney fees), damage, injury, liability, claims, liens, demand, actions and causes of action whatsoever caused by or arising from the actions (or inaction) of the indemnifying party.

13. **Miscellaneous.**

a. **Governing Law.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Colorado.

b. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

c. **Captions.** The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

d. **Assignability.** Neither party may assign its rights under this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld provided that the assignment is to another Colorado special district or other political subdivision of the State of Colorado.

e. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

f. Modifications; Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

g. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

h. Partial Invalidity. Any provision of this Agreement which is unenforceable or invalid or the inclusion of which would impair the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

i. No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

j. Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable attorneys' fees and costs incurred in such action.

k. Dispute Resolution. The parties agree that should any dispute arise over this Agreement, the same shall be resolved by binding and mandatory arbitration to be held in El Paso County, Colorado before one mutually-agreed to arbitrator who shall make all decisions concerning procedure and discovery. Should the parties be unable to agree upon said arbitrator, the same shall be appointed by an El Paso County District Court Judge. The cost of the arbitrator shall be paid equally by the parties.

Made and entered into the year and date first above written.

(SIGNATURE PAGE FOLLOWS)

FALCON HIGHLANDS METROPOLITAN DISTRICT

BY:

ATTEST:

BY:

WOODMEN HILLS METROPOLITAN DISTRICT

BY:

ATTEST:

BY: