

# INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATMENT SERVICES

This Intergovernmental Agreement ("Agreement") is entered into on this 3<sup>rd</sup> day of June, 2011, by and between Woodmen Hills Metropolitan District ("WHMD"), and Paint Brush Hills Metropolitan District ("PBHMD"). Collectively, WHMD and PBHMD are referred to as the "Districts."

## I. Recitals

WHEREAS, the Districts are both quasi-municipal corporations and political subdivisions of the State of Colorado, located adjacent to one another in El Paso County, Colorado. The Districts provide various services to their respective residents, including water, wastewater, and parks and recreation.

WHEREAS, the Districts' relationship has been governed, *inter alia*, by the terms of a February 25, 1988 Purchase and Sale Agreement ("1988 Agreement").

WHEREAS, WHMD is the successor to all interests in the 1988 Agreement held by Falcon Properties and Investments and Woodmen Hills Associates, Inc., which entities were original parties, along with PBHMD, to the 1988 Agreement.

WHEREAS, the Districts now wish to terminate the 1988 Agreement and enter a new Intergovernmental Agreement defining their rights and obligations and relationship, particularly with respect to the Paint Brush Hills Wastewater Treatment Facility ("WWTF"), on the terms set forth below:

## II. Covenants

Therefore, in consideration of the mutual promises and covenants contained in this Agreement, it is hereby agreed by and between the Districts:

1. **NEW INTERGOVERNMENTAL AGREEMENT:** This is a new Intergovernmental Agreement. This Agreement supersedes and supplants the 1988 Agreement. The Districts mutually agree that the 1988 Agreement is hereby terminated. The Districts acknowledge that the parties to this current Agreement were parties or are successors or assigns to the 1988 Agreement and that the parties to the instant Agreement have the authority to terminate the 1988 Agreement.

2. **TRANSFER OF PERMIT:** This Agreement is contingent upon successful transfer of the Colorado Department of Public Health and Environment ("CDPHE") Discharge Permit for the WWTF operated for the benefit of both Districts. Failure to gain CDPHE approval of the transfer will terminate this Agreement.

3. **CUSTOMER RELATIONSHIP:** PBHMD agrees that WHMD shall be the exclusive provider of wastewater treatment services to all customers located on lands within the PBHMD service area as defined by the PBHMD district boundaries as of the date of this agreement, all as generally depicted on **Exhibit A** attached hereto. Falcon Middle School and Grace Community Church are also currently served by PBHMD and shall also be served by WHMD. All present and future customers within the PBHMD service area shall be subject to the WHMD Rules and Regulations pertaining to wastewater services, as such are adopted or amended over time. Existing prior approved variances from PBHMD Rules and Regulations regarding wastewater services shall be deemed grandfathered as long as such variances do not create a risk to public health and safety of the wastewater treatment system. WHMD agrees that it shall provide all such wastewater treatment services to PBHMD as may be needed for all present and future development, subject only to limitations described in paragraphs 10 through 15 below. WHMD shall be entitled to utilize any wastewater treatment facility in which it has capacity and a right to use for the treatment of effluent originating from within the PBHMD service area.

4. **TERM:** The term of this Agreement shall be perpetual.

5. **POINT OF CONNECTION:** WHMD shall own, operate, and maintain wastewater delivery and treatment facilities from a point at the southeast corner of the intersection of Stapleton Road and Meridian Road (the "Point of Connection") downstream to the treated wastewater discharge location and shall own, operate, and annually calibrate wastewater metering stations located at points to measure all influent treated by WHMD and all effluent. PBHMD shall own, operate, and maintain wastewater collection and delivery facilities upstream of said Point of Connection. Additionally, PBHMD will own, operate, annually calibrate, and maintain wastewater metering stations located at the southwest corner of the intersection of Stapleton Road and Meridian Road and at the PBHMD lift station. WHMD will have full access at all reasonable times to said metering stations. In addition to maintaining the meters in proper working condition, PBHMD will provide a 120 volt extension from the power service, so that WHMD can add remote sensing devices (SCADA) to transmit the meter signal to the WHMD SCADA system. PBHMD may, at its discretion, provide secondary receivers to also receive the metering data. The SCADA device uses minimal power. Upon request, PBHMD shall have reasonable access to and a right to review all influent and effluent data collected related to the treatment of its wastewater and this Agreement.

6. **EXISTING WATER RIGHTS:** Effluent delivered by PBHMD to the wastewater treatment plant is the return flow from in-house and in-building uses made within PBHMD's water service area, which is diverted and delivered to PBHMD's water service customers pursuant to water rights now owned or hereafter obtained by PBHMD. PBHMD shall continue to solely own, and shall be deemed to maintain dominion and control over, its existing, or future water rights, notwithstanding the delivery of its

customer's effluent to the wastewater treatment plant. The volume of water associated with such water rights, whether directly or by discharge to any tributary of Black Squirrel Creek, shall be directly proportional to the monthly volume of wastewater flow contributed by PBHMD as determined at the wastewater metering station, as referenced in paragraph 4. If PBHMD requires its return flow to be conveyed to a location other than the discharge location of the wastewater treatment plant, PBHMD shall be solely responsible for all costs associated with delivering its return flow to an alternate location from the wastewater treatment plant. PBHMD shall have the right to erect and install such structure, pipelines and associated facilities and is hereby granted easements as the Parties shall mutually agree to access, use, construct and maintain them. Any structure and associated facilities proposed to withdraw a portion of the plant's discharge shall be subject to the approval of WHMD, which approval shall not be unreasonably denied or delayed.

7. **ASSIGNMENT OF INTEREST IN WWTF:** PBHMD assigns and conveys all interest in the WWTF to WHMD, including rights of use with respect to all treatment capacity in the WWTF. The form of bill of sale, which shall be executed by PBHMD at the same time as this Agreement, is attached as **Exhibit B**. The form of assignment, which shall be executed by PBHMD at the same time as this Agreement, is attached as **Exhibit C**.

8. **TIMING OF TRANSFER OF PERMIT:** PBHMD shall notify CDPHE and request transfer of the CDPHE Discharge Permit as soon as practicable but no later than 5 days after this Agreement is executed. The form of transfer paperwork is attached as **Exhibit D**.

9. **TRANSFER OF EASEMENT RIGHTS:** PBHMD hereby transfers all and any easement and easement rights associated with the WWTF to WHMD, or in the event WHMD desires, shall alternatively maintain its ownership position in name only if deemed necessary by WHMD to avoid abandonment of such easement rights. The form of assignment of easement is attached hereto as **Exhibit E**, and same shall be duly executed by PBHMD and recorded in the public records of El Paso County by WHMD after execution of this Agreement and the satisfaction of all contingencies herein.

10. **AGREEMENT TO SERVE EXISTING PBHMD USERS:** WHMD agrees to serve PBHMD's existing wastewater customers who are actively contributing wastewater to the WWTF as of June 3, 2011, specifically 713 residential taps, one (1) commercial tap (equivalent to 6 residential taps) for Falcon Middle School, and one (1) commercial tap (equivalent to 2 residential taps) for Grace Community Church. In addition to the foregoing, the Districts acknowledge that there are 36 residential taps that have been purchased within PBHMD's boundaries, but are not yet in use ("Future Users"). The addresses of these Future User taps are listed on **Exhibit F**; the remaining 25 have been allocated without current addresses through the TPS Agreement as defined in paragraph 13(a). PBHMD agrees to notify WHMD of the addresses of the remaining

Future User taps as they are identified. WHMD agrees to serve these Future Users at the time they begin contributing wastewater to the WWTF. PBHMD will not owe any fees to WHMD for these Future Users, and WHMD will not begin charging a Future User the monthly user charges described in Section 12 below until such time as such Future User begins contributing wastewater to the WWTF.

11. **AGREEMENT TO SERVE FUTURE PBHMD USERS:** WHMD agrees to serve PBHMD customers, present and future, within PBHMD's existing geographical boundaries as described and shown on **Exhibit A** hereto. Capacity in the current WWTF is limited to approximately 500 to 700 new residential tap equivalents, and such capacity shall be allocated to new development occurring in PBHMD, WHMD and Falcon Highlands Metropolitan District on a first come, first served basis. Capacity shall be allocated upon the payment of tap fees, but capacity for no more than 50 residential tap equivalents to any one party may be paid for and reserved without written approval of WHMD. Regardless of any capacity allocations, WHMD agrees that it shall leave available for PBHMD not less than 75 residential tap equivalents, which number of residential tap equivalents shall be reduced annually by the lesser of 15 residential tap equivalents or the number of taps purchased by customers within PBHMD. The Districts agree that they themselves shall not pay for and reserve residential taps. It is anticipated that WHMD will be constructing a new wastewater treatment plant within a 4 to 6 year time frame. The Districts acknowledge that treatment plant sizing and expansion require a significant period of time in planning, permitting, design, and construction of between 3 and 5 years.

12. **FUTURE COMMERCIAL USES:** The Parties acknowledge that commercial uses can require unique analysis to determine the number of equivalent single family taps that should be assigned for tap fee and monthly billing purposes. The Parties agree that when a new PBHMD commercial customer desires wastewater service, the engineers of both districts shall mutually agree on the number of equivalent single family taps such use shall constitute, and in the event they cannot agree the districts' respective engineers shall appoint a third, independent engineer to decide the issue, and the cost, if any, of the services of the independent engineer shall be equally shared by the districts.

13. **NEW WASTEWATER TAP FEES:**

(a) **TPS Districts Taps:** Subject to Section 10 above, PBHMD agrees to pay WHMD a flat fee of \$2,000 for every new PBHMD residential wastewater tap or residential wastewater tap equivalent issued after the date of this Agreement pursuant to the August 2009 Settlement Agreement, as amended, between PBHMD and the TPS Districts ("TPS Agreement"), a copy of which is attached as **Exhibit G**.

(b) **Non-TPS Districts Taps:** For all wastewater taps or residential wastewater tap equivalents issued by PBHMD after the date of this Agreement, which are

not subject to the TPS Agreement, PBHMD agrees to collect an amount equal to or greater than WHMD's then-current wastewater tap fee and remit 36% of WHMD's then-current wastewater tap fee to WHMD at the time of collection of such fees.

(c) **Time of Collection of Tap Fees:** Subject to Section 10 above, for all taps issued by PBHMD after the date of this Agreement, PBHMD shall collect the entire tap fee and remit to WHMD the appropriate portion of the tap fee amount as described in subparagraphs (a) and (b) above prior to issuance of the building permit for the property for which the tap fee is collected.

14. **MONTHLY USER RATES:** WHMD agrees to directly charge PBHMD's customers then-current in-District wastewater service rates for any customers PBHMD is presently obligated to serve within PBHMD's geographical boundaries as identified in **Exhibit A**. The then-current in-District wastewater service rates charged to PBHMD's customers will not include charges associated with the operation and maintenance of WHMD's collection and pumping system, assessments or charges for capital development, or charges for financial penalties arising from or associated with events preceding the date of this Agreement. The Parties acknowledge that charges for financial penalties that might later arise from or associated with any subsequent NOV could at WHMD's discretion be included in the then-current in-District wastewater service rates. WHMD shall provide an itemized description of the basis for any adjustment to in-District wastewater service rates to the PBHMD Board of Directors prior to the first billings to customers and annually by October 1 for budget purposes thereafter. Prior to giving public notice of any planned changes to in-District wastewater service rates, WHMD shall give the PBHMD Board of Directors reasonable notice of such intent.

15. **PBHMD INCLUSIONS:** PBHMD has identified all inclusions, and proposed inclusions, to its territory that are subject to services provided under this Agreement. Those inclusions include parcels that are referred to informally as "Grace Community Church", "CU Parcel" and "State Land Board". The "State Land Board" parcel is subject to the terms and conditions of an inclusion agreement, attached as **Exhibit H**. Other than the "Grace Community Church" and "CU Parcel" referenced above, any other inclusions approved by PBHMD after the date of this Agreement shall be provided wastewater services by WHMD, but only after amendment of this Agreement. Such amendment shall be negotiated in good faith and shall address capital contributions required of PBHMD for additional infrastructure and treatment capacity, as well as appropriate tap fees, service charge rates and other fees reasonably necessary for providing service. The Districts acknowledge that PBHMD has approved and accepted an inclusion petition for the CU Parcel (with which inclusion WHMD agrees not to interfere), but has not completed the inclusion as of the date of this Agreement. Due to the large size of the CU Parcel and potential tap demand, PBHMD agrees and shall be obligated to include WHMD as a party to an inclusion agreement with any or all

developers of the CU Parcel to provide for capital contributions as deemed necessary to plan for and build WWTF capacity as a mandatory pre-condition to obtaining District Court approval of the CU Parcel inclusion, or any part thereof.

16. **PRETREATMENT STANDARDS:** PBHMD shall be responsible for the adoption of, and enforcement of, reasonable pretreatment wastewater standards substantially equivalent to pretreatment standards as adopted by WHMD from time to time.

17. **OPERATION AND MAINTENANCE OF SYSTEM:** PBHMD shall at all times operate its wastewater collection and pumping system properly and in a sound and economical manner and shall maintain, preserve, and keep the same properly or cause the same to be so maintained, preserved, and kept, with the appurtenances and every part and parcel in good repair, order, and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals so that at all times the operation of the PBHMD wastewater collection and conveyance system may be properly and advantageously conducted without risk to public health and safety. PBHMD agrees to cooperate with WHMD to provide information reasonably requested by WHMD management and planning of the wastewater treatment facility and future needs.

18. **VOLUNTARY AND KNOWINGLY:** The Districts acknowledge they have read this Agreement and understand all of its terms, and that this Agreement is executed voluntarily, without duress, and with full knowledge of its legal significance. The Districts have received independent legal advice from its/their attorney(s) with respect to the legal consequences of making this Agreement.

19. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT:** The Districts represent and warrant that no other person or entity currently has, or has had, any interest in the property or obligations referred to in this Agreement, except as otherwise set forth herein, and that the Districts have the sole right and exclusive authority to execute this Agreement. The Districts represent and warrant that they have the legal power and authority to enter into and bind themselves to the terms and conditions contained in this Agreement.

20. **CONSTRUCTION:** The Districts agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. The Districts agree they have had ample opportunity to influence the choice of language and terms of this Agreement.

21. **DUTY TO EFFECTUATE:** Each of the Districts agree to perform any lawful additional acts, including the execution of additional documents, to the extent the same are reasonably necessary to effectuate this Agreement.

22. **SUFFICIENCY OF CONSIDERATION:** Other than as contained herein, the Districts each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed or will pass between them by virtue of this Agreement to render this Agreement valid and enforceable.

23. **ARBITRATION AND MEDIATION:** This Agreement will be governed by and construed according to the laws of the State of Colorado. The Districts agree and acknowledge that any controversy arising out of or relating to this Agreement or the breach thereof, or any claim or action to enforce this Agreement or any provision herein, or any controversy or claim requiring interpretation of this Agreement or any provision herein, shall be adjudicated by a single arbitrator before the Judicial Arbitrator Group, Inc. (or similar mutually acceptable firm if the Judicial Arbitrator Group no longer exists), using the rule set provided by the then-existing American Arbitration Association's Commercial Arbitration Rules, its Expedited Procedures, and the Colorado Rules of Civil Procedure and Evidence, to the extent not in conflict with the foregoing. The venue for any such arbitration shall be Denver, Colorado. Any action brought in contravention of this paragraph by one District is subject to dismissal at any time and at any stage of the proceedings by the other, and no action taken by the other in defending, counterclaiming, or appealing shall be construed as a waiver of this right to immediate dismissal. A District bringing an action in contravention of this paragraph shall be liable to the other party for the costs, expenses and attorney fees incurred in successfully dismissing the action or successfully compelling arbitration. Prior to bringing any claim or action arising out of or relating to this Agreement or the breach thereof, or any claim or action to enforce this Agreement or any provision herein, or claim requiring interpretation of this Agreement or any provision herein, the Districts agree that they shall first submit their dispute to non-binding mediation, before a mutually-agreed upon mediator. If the Districts cannot agree on a mediator, the Districts shall contact the Judicial Arbitrator Group, Inc. (or similar mutually acceptable firm if the Judicial Arbitrator Group no longer exists) and request a mediator be appointed. The Districts agree to equally split the cost of any mediator.

24. **SUCCESSORS AND ASSIGNS:** This Agreement shall bind the successors and assigns of the Districts, and inure to the benefit of each District, its successors and assigns. WHMD agrees that in the event it elects to provide or to obtain wastewater services through a third party, it agrees that all of WHMD's obligations to PBHMD pursuant to this Agreement shall remain in full force and of binding effect, and no partial assignment of any of WHMD's obligations to PBHMD shall be permitted or effective without the express prior consent of PBHMD in writing.

25. **WAIVER:** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by an express agreement signed by the District charged with

the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any other act than that specifically waived.

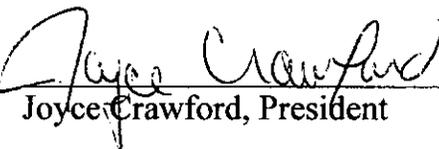
26. **DAMAGES AND ATTORNEY FEES:** Should either District breach the terms of this Agreement, the breaching District shall be liable to the non-breaching District for damages and/or specific performance. Damages shall include but not be limited to, attorney fees and costs incurred by the non-breaching District in enforcing its/their rights under this Agreement.

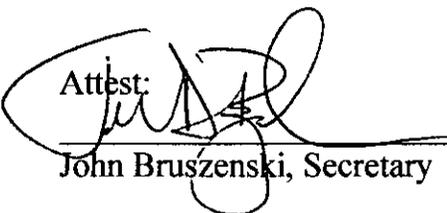
27. **BUDGET AND ANNUAL APPROPRIATION:** The Districts' respective obligations to operate their wastewater collection and treatment facilities hereunder are subject to the budgeting and annual appropriation of funds necessary for the provision of services to customers of the respective Districts, and such budgeting and appropriations shall be made in the sole discretion of each District's Board of Directors. However, the Districts agree that a failure to annually budget and appropriate funds for the operation of the Districts' respective facilities, while possibly affecting the level of services provided to customers, does not and cannot terminate this Agreement. The Districts also hereby agree that any required tap fee remittances per paragraph 13 in this Agreement will occur only as tap fees are paid by prospective customers as a consequence of the services provided, and do not constitute multiple-fiscal year financial obligations as contemplated in Article X, Section 20 of the Colorado Constitution.

28. **MODIFICATION, INTEGRATION AND MERGER:** The terms of this Agreement are final. They shall not be modified except by a written agreement executed by the Districts, which writing expressly states that it is intended to modify the terms of this Agreement. The Districts acknowledge that they will have continuing discussions regarding consolidation of the Districts.

29. **SECTION HEADINGS:** The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

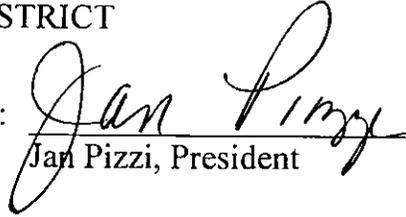
PAINT BRUSH HILLS METROPOLITAN  
DISTRICT

By:   
Joyce Crawford, President

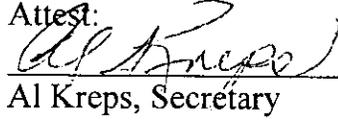
Attest:   
John Bruszenski, Secretary

WOODMEN HILLS METROPOLITAN  
DISTRICT

By:

  
\_\_\_\_\_  
Jan Pizzi, President

Attest:

  
\_\_\_\_\_  
Al Kreps, Secretary

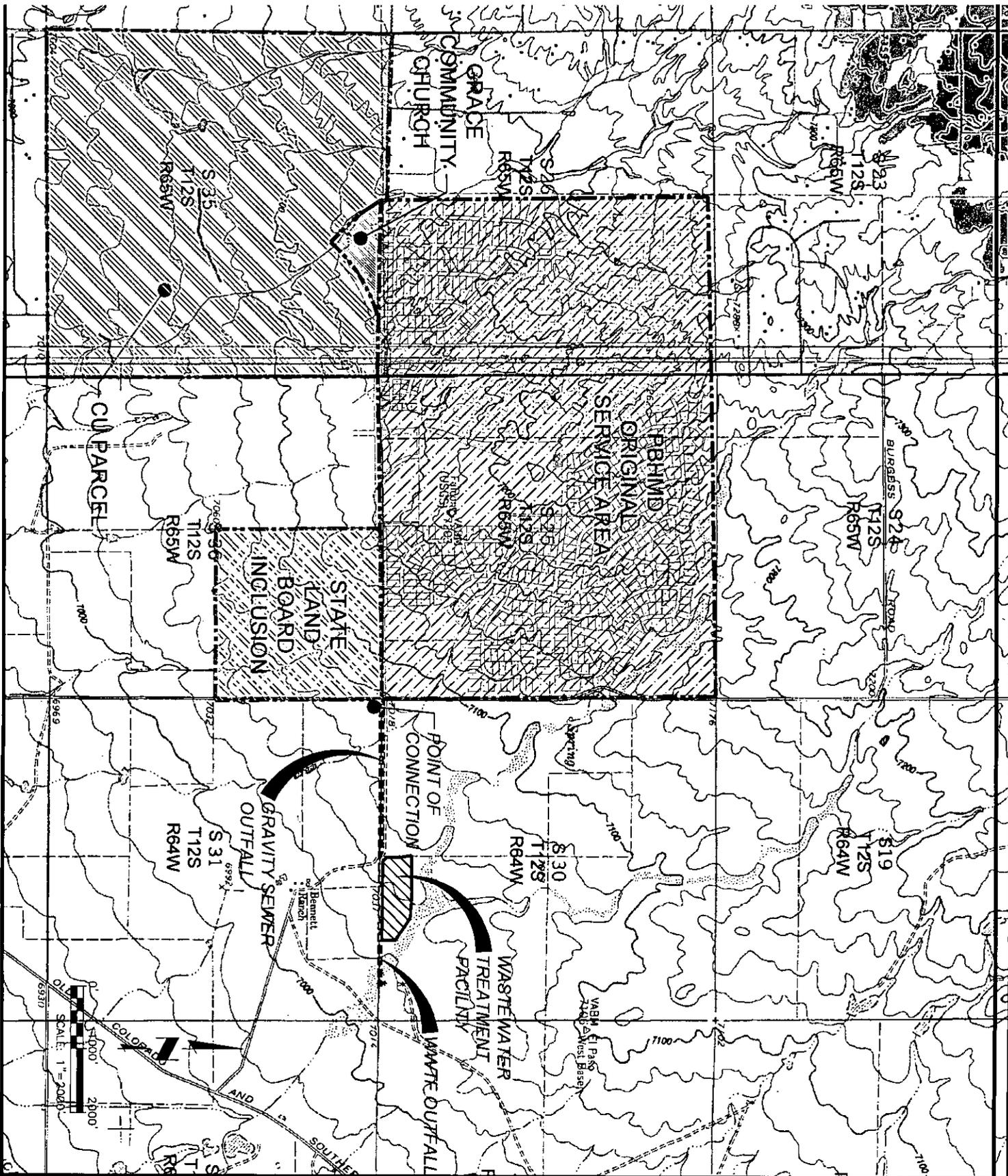


EXHIBIT A

**JDS-HYDRO** CONSULTANTS, INC.  
 545 East Pikes Peak Avenue, Suite 300  
 Colorado Springs, Colorado 80903  
 (719) 227-0072

Project No.:	11387
Scale:	AS SHOWN
Date:	09/07/11
Designer:	
Drawn:	
Checked:	
Reviewed:	

**EXHIBIT B to IGA for Provision of Wastewater Services to PBHMD**

**BILL OF SALE**

This BILL OF SALE from Paint Brush Hills Metropolitan District (the "Seller") to Woodmen Hills Metropolitan District (the "Purchaser") is dated the date of satisfaction of the contingency described below.

WHEREAS, pursuant to that certain Settlement Agreement and Mutual Release entered into by and between Purchaser and Seller, dated of even date herewith (the "Settlement Agreement"), that certain Intergovernmental Agreement for the Provision of Wastewater Treatment Services entered into by and between the Purchaser and Seller, dated of even date herewith (the "Intergovernmental Agreement"), that certain Assignment of Easement Agreement entered into by and between Purchaser and Seller, dated of even date herewith (the "Assignment of Easement") and that certain Assignment of Ownership Interest entered into by and between the Purchaser and Seller (the "Assignment of Ownership Interest"), the Seller agreed to grant, sell, assign, convey, transfer and deliver to the Purchaser (i) all of its rights, title and interest in, under and to that certain Easement Agreement, dated March 6, 1987, by and among Seller, First American Title Company of Colorado and Paul Tchang, which was recorded in the real property records of El Paso County, Colorado on May 19, 1987 at Reception No. 001569641 and (ii) all of its interest as the owner of an undivided fifty percent (50%) interest in a wastewater treatment plant on a site located in Section 30, Township 12 South, Range 64 of the 6<sup>th</sup> P.M. in El Paso County, Colorado (the "Purchased Assets").

NOW, THEREFORE, subject to satisfaction of the condition precedent as more particularly described in the Intergovernmental Agreement, that the Colorado Department of Public Health and Environment approve transfer of the wastewater treatment Discharge Permit held by Seller to Purchaser, and for and in consideration of the payment of Ten Dollars (\$10.00) and the premises and the mutual covenants contained in the Settlement Agreement, the Intergovernmental Agreement, the Assignment of Easement and the Assignment of Ownership Interest, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller by these presents does hereby sell, convey, transfer, assign, set over to, and vest in, the Purchaser, its successors and assigns, all of the Seller's right, title and interest, legal or equitable, in and to the Purchased Assets. Purchaser purchases the Purchased Assets AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED

The terms of this Bill of Sale shall not supersede the terms of the Settlement Agreement, the Intergovernmental Agreement, the Assignment of Easement and the Assignment of Ownership Interest.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed as of the date first written above.

PAINT BRUSH HILLS METROPOLITAN DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest:

\_\_\_\_\_, Secretary

## **EXHIBIT C to IGA for Provision of Wastewater Services to PBHMD**

### **ASSIGNMENT OF OWNERSHIP INTEREST**

THIS ASSIGNMENT OF OWNERSHIP INTEREST (this "Assignment") by and between **Woodmen Hills Metropolitan District** ("Assignee") and **Paint Brush Hills Metropolitan District** ("Assignor"). shall be effective as of the date of satisfaction of the contingency described below.

### **RECITALS**

A. WHEREAS, Assignor is the owner of an undivided fifty percent (50%) interest in a wastewater treatment plant on a site located in Section 30, Township 12 South, Range 64 of the 6<sup>th</sup> P.M. in El Paso County, Colorado (the "Ownership Interest").

B. WHEREAS, Assignee is the owner of an undivided fifty percent (50%) interest in the same wastewater treatment plant on a site located in Section 30, Township 12 South, Range 64 of the 6<sup>th</sup> P.M. in El Paso County, Colorado, which interest was originally purchased from Assignor pursuant to that certain Agreement dated February 25, 1988 by and among Falcon Properties and Investments, Woodmen Hills Associates, Inc. and Assignor (the "Purchase Agreement"), a copy of which is attached hereto and incorporated herein as Exhibit A.

C. WHEREAS, the parties hereto are involved in litigation pending before the District Court, El Paso County Colorado and the Colorado Supreme Court, but have entered into a Settlement Agreement and Mutual Release, dated of even date herewith, and an Intergovernmental Agreement for the Provision of Wastewater Treatment Services, dated of even date herewith (the "IGA"), which include and require this Assignment as consideration for the settlement of the litigation.

D. WHEREAS, subject to satisfaction of the condition precedent as more particularly described in the IGA, that the Colorado Department of Public Health and Environment approve transfer of the waste water treatment Discharge Permit held by Assignor to Assignee, Assignor desires to assign and convey to Assignee, and Assignee desires to accept and assume, all of Assignor's remaining rights, obligations, title, interest in, under and to the Ownership Interest.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Assignment, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The parties hereby acknowledge and agree that the above recitals are true and correct and are incorporated herein by reference.

2. Assignment. Assignor hereby assigns and conveys to Assignee all of Assignor's right, title and interest in, under and to the Ownership Interest. Assignee hereby accepts this Assignment and agrees to assume all obligations associated with or arising from or through the Ownership Interest.

3. Representations & Warranties. Assignor hereby represents and warrants to Assignee that it is assigning the Ownership Interest to Assignor free and clear of all claims, liens, security interests, and other encumbrances of any kind whatsoever except as described in that

certain Easement Agreement recorded May 1987 in Book 5367, at Pages 1361-1366 and again at Reception No. 001569641 in Book 5367 at Pages 1367- 1372 of the real records of the El Paso County Clerk and Recorder, or as may exist as a result of acts or omissions of the Assignee;

4. Sufficiency of Consideration. Other than as contained herein, the parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed or will pass between them by virtue of this Assignment to render this Assignment valid and enforceable.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; this Assignment, however, is not intended to confer any additional right or remedies upon any person other than the parties hereto and their successors and assigns.

6. Not to be Construed Against Drafter. This Assignment shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been initially drafted by one of the parties or its counsel, since both parties have contributed substantially and materially to the preparation hereof.

7. Authority. Each party and individual executing this Assignment on behalf of that party represents that said individual has the full authority to do so. Assignor further represents and warrants that no other person or entity currently has, or has had, any interest in the Ownership Interest. The parties represent and warrant that they have the legal power and authority to enter into and bind themselves to the terms and conditions contained in this Assignment.

8. Severability and Invalidity. If any provision of this Assignment or any portion thereof shall be found by a court of competent jurisdiction to be void, illegal or unenforceable, then such court shall enforce such provision and the other terms of this Assignment to the fullest extent permitted by applicable law.

9. Attorney's Fees. Should any action be brought in connection with this Assignment, including, without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees.

10. Applicable Law; Venue. This Assignment and all claims or controversies arising out of or relating to this Assignment shall be governed by and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than law of the State of Colorado. Venue for all actions arising from this Assignment shall be in the District Court in and for El Paso County, Colorado.

11. Counterparts and Signatures. This Assignment may be executed in multiple counterparts, each of which when taken together shall be deemed one original. Any counterpart may be executed and delivered through facsimile or e-mail transmission.

**[The remainder of this page is intentionally left blank.]**

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

**ASSIGNOR:**  
PAINT BRUSH HILLS METROPOLITAN DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest:

\_\_\_\_\_, Secretary

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2011, by \_\_\_\_\_ as President of Paint Brush Hills Metropolitan District.

WITNESS my hand and official seal.  
My commission expires \_\_\_\_\_

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

**ASSIGNEE:**  
WOODMEN HILLS METROPOLITAN DISTRICT

By: \_\_\_\_\_  
Jan Pizzi, President

Attest:

\_\_\_\_\_  
Al Kreps, Secretary

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2011, by Jan Pizzi as President of Woodmen Hills Metropolitan District.

WITNESS my hand and official seal.  
My commission expires \_\_\_\_\_

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

**EXHIBIT D to IGA for Provision of Wastewater Services to PBHMD**

# STATE OF COLORADO

Dedicated to protecting and improving the health and environment of the people of Colorado

**COLORADO DEPARTMENT OF PUBLIC  
HEALTH AND ENVIRONMENT**  
Water Quality Control Division  
4300 Cherry Creek Drive South B2 Permits  
Denver, Colorado 80246-1530



Colorado Department  
of Public Health  
and Environment

## For Agency Use Only

Date Received \_\_\_/\_\_\_/\_\_\_

Complete \_\_\_\_\_

Paid \_\_\_\_\_

Effective Date \_\_\_/\_\_\_/\_\_\_

### APPLICATION FOR TRANSFER OF OWNERSHIP FOR ALL PERMITS, CERTIFICATIONS, AND AUTHORIZATIONS

PHOTO COPIES, FAXED COPIES, PDF COPIES OR EMAILS WILL NOT BE ACCEPTED.

**TO BE COMPLETED BY NEW PERMITTEE:** Permit or Certification or Authorization Number \_\_\_\_\_

I hereby apply for a transfer of ownership of this Colorado Discharge Permit, Certification, or Authorization listed above, which was issued to (permittee listed in Part 2, page 2) \_\_\_\_\_.

I have reviewed the terms and conditions of this permit and accept responsibilities, coverage and liability (including Stormwater Management Plan where applicable).

If all information is correct, form is complete, and transfer approved, I request this transfer to be effective on \_\_\_\_\_.

I have ensured that all of the following requirements have been met:

- 1. BOTH parties have completed and signed this form – pages 1 and 2
- 2. ORIGINAL Form mailed to Division 30 Days Prior to the Transfer Effective Date (which may be the date property exchanges hands.  
Copies, PDF versions, and Faxes will NOT be accepted and will delay the issuance of the transfer.
- 3. All existing invoices paid and verified by the Division. Payment MUST be received prior to transfer issuance

### PROJECT OR FACILITY INFORMATION

Project or Facility Name: \_\_\_\_\_

Facility Address (location) \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

### NEW PERMITTEE INFORMATION (fill out all appropriate contacts)

Company name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone No: \_\_\_\_\_

- **Legal Contact:** will receive all future permit correspondences and is legally responsible for compliance with the permit

Name: \_\_\_\_\_ email address \_\_\_\_\_

Title: \_\_\_\_\_ Telephone No: \_\_\_\_\_

- **Local Contact:** will be contacted for questions relating to the facility and the discharge authorized by the permit for the facility.

Name: \_\_\_\_\_ email address \_\_\_\_\_

Title: \_\_\_\_\_ Telephone No: \_\_\_\_\_

- **Authorized Agent(s)** - may sign reports (such as DMR's or Annual Reports) required by the permit.

**Authorized Agent** \_\_\_\_\_ email address \_\_\_\_\_

Title: \_\_\_\_\_ Telephone No: \_\_\_\_\_

**Authorized Position** \_\_\_\_\_ Telephone No: \_\_\_\_\_

Currently held by: \_\_\_\_\_ email address: \_\_\_\_\_

**APPLICATION FOR TRANSFER OF OWNERSHIP FOR ALL PERMITS, CERTIFICATIONS, AND AUTHORIZATIONS**

- **Billing Contact Information** - if billing address is different than legal contact

Name: \_\_\_\_\_ email address \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone No: \_\_\_\_\_

**REQUIRED SIGNATURE:**

**Signature of Applicant:** The applicant must be either the owner and/or operator of the construction site. Refer to Part B of the instructions for additional information. The application must be signed by the applicant to be considered complete. In all cases, it shall be signed as follows:

- a) In the case of corporations, by a principal executive officer of at least the level of vice-president or his or her duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application originates.
- b) In the case of a partnership, by a general partner.
- c) In the case of a sole proprietorship, by the proprietor.
- d) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee if such representative is responsible for the overall operation of the facility from which the discharge described in the form originates.

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Signature(Legally Responsible Party) \_\_\_\_\_ Date \_\_\_\_\_

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_

.....  
**PART 2 - TO BE COMPLETED BY PREVIOUS PERMITTEE**

As previous owner, I hereby agree to the transfer of the above-referenced permit and all responsibilities thereof.

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone No: \_\_\_\_\_

Signature (Legally Responsible Party) \_\_\_\_\_ Date \_\_\_\_\_

Name (printed) \_\_\_\_\_ Title \_\_\_\_\_

Email address \_\_\_\_\_

## **EXHIBIT E to IGA for Provision of Wastewater Services to PBHMD**

### **ASSIGNMENT OF EASEMENT AGREEMENT**

THIS ASSIGNMENT OF EASEMENT AGREEMENT (this "Assignment") by and between **Woodmen Hills Metropolitan District** ("Assignee") and **Paint Brush Hills Metropolitan District** ("Assignor") shall be effective as of the satisfaction of the contingency described below.

#### **RECITALS**

A. WHEREAS, Assignor agreed to assign to Assignee all of Assignor's rights, title, interests and obligations in, under and to that certain Easement Agreement, dated March 6, 1987, by and among Assignor, First American Title Company of Colorado and Paul Tchang, which was recorded in the real property records of El Paso County, Colorado on May 19, 1987 at Reception No. 001569640 in Book 5367 at Pages 1362- 1366 and again at Reception No. 001569641 in Book 5367 at Pages 1367- 1372 (the "Easement"), a copy of which is attached hereto and incorporated herein as Exhibit A.

B. WHEREAS, on February 25, 1988, pursuant to a Warranty Deed executed by Assignor, and recorded in the real property records of El Paso County, Colorado on February 7, 1995 at Reception No. 095013244, Assignor transferred to Assignee an undivided fifty percent (50%) interest in and to the Easement.

C. WHEREAS, the parties hereto are involved in litigation pending before the District Court, El Paso County Colorado and the Colorado Supreme Court, but have entered into a Settlement Agreement and Mutual Release, dated of even date herewith, and an Intergovernmental Agreement for the Provision of Wastewater Treatment Services, dated of even date herewith (the "IGA"), which include and require this Assignment as consideration for the settlement of the litigation.

D. WHEREAS, subject to satisfaction of the condition precedent as more particularly described in the IGA, that the Colorado Department of Public Health and Environment approve transfer of the waste water treatment Discharge Permit held by Assignor to Assignee, Assignor desires to assign and convey to Assignee, and Assignee desires to accept and assume, all of Assignor's remaining rights, title, interest and obligations in, under and to the Easement.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Assignment, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The parties hereby acknowledge and agree that the above recitals are true and correct and are incorporated herein by reference.

2. Assignment. Assignor hereby assigns and conveys to Assignee, as a permitted assignee, all of Assignor's right, title, interest in and to, and all of Assignor's burdens, obligations and liabilities under the Easement Agreement. Assignee hereby accepts this Assignment and agrees to assume all obligations associated with or arising from or through the Easement.

3. Representations & Warranties. Assignor hereby represents and warrants to Assignee that it is assigning the Easement to Assignor free and clear of all claims, liens, security interests, and other encumbrances of any kind whatsoever except as may be described in the Easement or as may exist as a result of acts or omissions of the Assignee.

4. Conditions of Assignment. Assignor grants this Assignment with the good faith belief that (a) Assignee is a permitted assignee of the Easement under the terms of the Easement; (b) Assignor has not abandoned the Easement, nor does this Assignment constitute an abandonment of the Easement; (c) the Easement has not been terminated, nor are there grounds to terminate the Easement, pursuant to Section 4 of the Easement; and (d) that Assignor has the full right and power to assign the Easement to Assignee. Notwithstanding the foregoing, Assignor neither warrants nor represents these facts to Assignee.

5. Sufficiency of Consideration. Other than as contained herein, the parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed or will pass between them by virtue of this Assignment to render this Assignment valid and enforceable.

6. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; this Assignment, however, is not intended to confer any additional right or remedies upon any person other than the parties hereto and their successors and assigns, except as otherwise delineated under the Easement.

7. Not to be Construed Against Drafter. This Assignment shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been initially drafted by one of the parties or its counsel, since both parties have contributed substantially and materially to the preparation hereof.

8. Authority. Each party and individual executing this Assignment on behalf of that party represents that said individual has the full authority to do so. Assignor further represents and warrants that, with the sole exception of Assignee, no other person or entity currently has, or has had, any interest in the Easement, except as otherwise set forth therein. The parties represent and warrant that they have the legal power and authority to enter into and bind themselves to the terms and conditions contained in this Assignment.

9. Severability and Invalidity. If any provision of this Assignment or any portion thereof shall be found by a court of competent jurisdiction to be void, illegal or unenforceable, then such court shall enforce such provision and the other terms of this Assignment to the fullest extent permitted by applicable law.

10. Attorney's Fees. Should any action be brought in connection with this Assignment, including, without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees.

11. Applicable Law; Venue. This Assignment and all claims or controversies arising out of or relating to this Assignment shall be governed by and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the

application of any law other than law of the State of Colorado. Venue for all actions arising from this Assignment shall be in the District Court in and for El Paso County, Colorado.

12. Counterparts and Signatures. This Assignment may be executed in multiple counterparts, each of which when taken together shall be deemed one original. Any counterpart may be executed and delivered through facsimile or e-mail transmission.

**[The remainder of this page is intentionally left blank.]**

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

**ASSIGNOR:**  
PAINT BRUSH HILLS METROPOLITAN DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest:  
\_\_\_\_\_  
\_\_\_\_\_, Secretary

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2011, by \_\_\_\_\_ as President of Paint Brush Hills Metropolitan District.

WITNESS my hand and official seal.  
My commission expires \_\_\_\_\_

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

**ASSIGNEE:**  
WOODMEN HILLS METROPOLITAN DISTRICT

By: \_\_\_\_\_  
Jan Pizzi, President

Attest:  
\_\_\_\_\_  
Al Kreps, Secretary

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2011, by Jan Pizzi as President of Woodmen Hills Metropolitan District.

WITNESS my hand and official seal.  
My commission expires \_\_\_\_\_

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

**EXHIBIT F to IGA for Provision of Wastewater Services to PBHMD**

9583 Rockingham Drive  
9646 Keating Drive  
9807 Keating Drive  
9679 Keating Drive  
9849 Rockingham Drive  
9821 Rockingham Drive  
9723 Rockingham Drive  
9709 Rockingham Drive  
9695 Rockingham Drive  
9653 Rockingham Drive  
9935 Keating Drive

## EXHIBIT G to IGA for Provision of Wastewater Services to PBHMD

### Settlement Agreement and Mutual Release

This Settlement Agreement and Mutual Release (the "Agreement") is between TPS Fund, LLC ("TPS"), Six Ninety Nine Properties, LLC, Six Ninety Nine LA, LLC, Philip J. Anderson, Harold Fong and Jay Bartz (collectively, the "TPS Parties") and Paint Brush Hills Metropolitan District (the "District").

#### Introduction

On January 25, 1999, the TPS Parties, or their predecessor, purportedly acquired 851 sewer and water taps to the District's water and sanitation system (the "Taps") by bill of sale signed by Eagle Ranch and BLPS, LLC. Subsequently, TPS sold 395 Taps. The District has raised questions concerning ownership of the Taps and certain actions by the TPS Parties in connection with the prior sales of the Taps. The Parties would now like to fully settle their dispute and consequently, in consideration of the covenants contained herein, they agree as follows:

1. Prior Sales. The prior sale by TPS of 395 Taps is ratified and confirmed by the District, and the District waives any claims it may have to proceeds from those sales. The Parties acknowledge the District currently holds \$40,200 in proceeds from TPS' previous sale of three of these 395 Taps, which funds will be disbursed to TPS by the District on or before the Effective Date.

2. Remaining Taps. As of the Effective Date of this Agreement, the TPS Parties hereby assign and transfer to the District all right, title and interest, if any, they may have in the 456 remaining Taps (the "Remaining Taps"). The TPS Parties represent and warrant that, as of the Effective Date, they have not assigned, sold, transferred, conveyed or encumbered any of their rights in the Remaining Taps to any third party. The TPS Parties further acknowledge and agree that they shall have no right to sell any of the Remaining Taps or any other District taps. As of the Effective Date, the Parties stipulate and agree that the Remaining Taps shall be owned solely by the District. No party other than the District shall be entitled to sell, transfer, convey or encumber the Remaining Taps. As consideration for this, the District:

(a) Will sell the Remaining Taps to purchasers desiring water and sewer service within the real property currently or previously owned by Six Ninety Nine, LA, LLC and any of the TPS Parties other affiliated entities within the District with the exception of the 40-acre tract of currently undeveloped vacant land generally located in the southeast portion of the District and identified as Parcel Number 5225400001 according to the El Paso County Assessor's website, prior to any other District taps being utilized for such purposes. However, the Remaining Taps will not be utilized by the District for any other property within the District's boundary as it now exists or may hereafter be expanded.

(b) Each sale of a Remaining Tap will be at the District's then prevailing rate for water and sewer taps, and will be conducted through an escrow with Stewart Title of Colorado Springs (or such other escrow agent as the Parties may agree upon). The escrow agent will collect the gross proceeds for the tap, deliver the District's acknowledgment of the Tap sale

to the purchaser, deduct its escrow fees from the sales proceeds and distribute the balance of the funds sixty percent (60%) to TPS and forty percent (40%) to the District. Distribution of these proceeds will be made within three (3) business days after closing of a sale. The Parties will execute such additional escrow instructions as are reasonably necessary to accomplish this escrow. Any discounted bulk sale of the Remaining Taps shall require the prior written consent of both Parties.

3. Case Sale. R.W. Case has previously purchased 25 Taps from TPS pursuant to a contract between those parties dated November 5, 2008 (the "Case Contract"). The District acknowledges and will comply with the terms of the Case Contract concerning the priority, use and resale of these 25 Taps. In addition, R.W. Case has committed to purchase three additional Taps from the TPS Parties for \$58,000 as part of a letter of intent between the District and Marksheffel-Woodmen Investments, LLC ("MWI") dated July 11, 2008 concerning inclusion of MWI's property into the District. As of the Effective Date, TPS assigns its right to receive the proceeds from the sale of these three Taps to the District. These three Taps will not be considered Remaining Taps and the District will be entitled to keep all proceeds from this sale. Both Parties will use good faith efforts to expedite the closing of the sale of these three taps, and to that end, the District will require this sale be completed as a condition to the execution of the inclusion agreement related to the inclusion of MWI's property into the District.

4. Mutual Release. As of the Effective Date, the TPS Parties, their managers, members, employees and agents on the one hand, and the District, its managers, board members, employees and agents on the other hand, hereby release each other from any and all claims of any kind they may have, whether currently known or unknown, relating to either the District's or the TPS Parties' claimed ownership of, and activities related to, the Taps, including, but not limited to, those which were raised or could have been raised in connection with the Litigation discussed in Section 5 below.

5. The Litigation. On the Effective Date, the Parties will stipulate that Case No. 2009CV1896, El Paso County, Colorado District Court (the "Litigation") will be dismissed with prejudice, each party to pay their respective attorneys fees and costs.

6. Resignation. On the Effective Date, Harold Fong will resign as a member of the District's Board of Directors.

7. Prior Resolutions. On or before the Effective Date, and subject to the full execution of this Agreement, the District will rescind District Resolution 2009.02.17-4 and will modify District Resolution 2009.02.17-3 so that the terms of that Resolution will not apply to any of the 395 Taps previously sold by the TPS Parties, including the Taps sold to Randy Case pursuant to Section 3 above.

8. Effective Date. As used herein, the "Effective Date" is three (3) business days after execution of this Agreement by all the Parties.

9. Representation. The Parties acknowledge that they have been represented and advised by independent counsel of their own choice throughout all negotiations which preceded

the execution of this Agreement and in connection with their execution of this Agreement. Each Party is executing this Agreement based on its own analysis and is not relying on any representation or statements by any other Party.

10. Further Assurances. The Parties each agree to cooperate in good faith with one another, and to execute and deliver such other documents to one another as are necessary to effectuate the agreements reached in this Agreement.

11. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein and such waiver shall operate only as to the specific term or condition waived and not for the future or as to any act other than that specifically waived.

12. Entire Agreement. When fully executed by the Parties, this Agreement shall be binding on all Parties and shall inure to the benefit of their heirs, personal representatives, successors and permitted assigns. This Agreement is the entire agreement between the Parties and supersedes any prior written or oral agreements with respect to the subject matter hereof. No previous or contemporaneous oral or written agreements concerning the subject matter of this Agreement shall be of any force or effect. This Agreement may not be modified, amended or altered without the prior written consent of all of the Parties.

13. Governing Law. This Agreement has been executed and delivered in the State of Colorado. The Parties agree that the payments and delivery obligations of this Agreement are to be performed in Colorado. All matters concerning the validity, interpretation, performance and enforcement of this Agreement shall be governed by the substantive law of the State of Colorado.

14. Choice of Forum. The Parties agree that any claim under this Agreement, including, but not limited to, those relating to its breach, enforcement or interpretation, and any claim concerning the efficacy or enforceability of this Agreement shall be submitted to Division 16 of the District Court for the County of El Paso, Case No. 2009CV1896, and that Division 16 shall retain jurisdiction over the Parties for the purpose of enforcing the terms of this Agreement.

15. Headings. The headings of paragraphs and subparagraphs in this Agreement are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

16. Joint Authorship. The Parties acknowledge and agree that this Agreement has been the subject of negotiation such that each Party has had an opportunity for input into the terms and conditions of and the language used in this Agreement. The Parties agree that this Agreement is the work product of all Parties and, accordingly, any rule of construction providing that agreements drafted by a Party shall be construed against that Party has no applicability to the construction or interpretation of this Agreement.

17. Severability. If any provision of this Agreement is deemed unenforceable, for whatever reason, that particular provision is void and the remaining provisions of this Agreement continue to be binding and in full force and effect.

18. Counterparts, Facsimile and Electronic Signatures. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Once executed by a Party, this Agreement may be delivered to the other Parties by facsimile or electronic mail transmission of a copy of this Agreement bearing the signature of the Party or Parties so delivering this Agreement. A facsimile or electronic mail transmission of this signed Agreement shall be as legally binding and effective as the delivery of an originally executed counterpart.

19. Notices. Any notice, request or other document to be given by any Party to this Agreement to another Party to this Agreement shall be in writing and delivered personally, sent by receipted overnight delivery, or sent by U.S. Mail, certified/return receipt requested, postage-prepaid, as follows:

If to the TPS Parties:

c/o Bruce M. Wright, Esq.  
Flynn Wright & Fredman, LLC  
111 South Tejon, Suite 202  
Colorado Springs, CO 80903

If to the District:

c/o Timothy J. Schutz, Esq.  
Hanes & Schutz  
102 S. Tejon Street, Suite 800  
Colorado Springs, CO 80903

Notice shall be effective on the date received if personally delivered or given by overnight express, or if given by certified mail, three (3) days after depositing the same in the U.S. Mail. Any Party may change their address for notices by delivering notice of its new address at least thirty (30) days in advance of the new address becoming effective.

20. Enforcement. In the event that arbitration is commenced by any Party to enforce the terms of this Agreement, the prevailing Party(ies) shall be awarded reasonable attorneys' fees and costs.

21. Time. The Parties hereby acknowledge and agree that time is of the essence.

"The District"  
Paint Brush Hills Metropolitan District

8/26/09  
Date

By: [Signature]  
Its: Director/President

"The TPS Parties"  
TPS Fund, LLC

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: Manager

Six Ninety Nine Properties, LLC

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: Manager

Six Ninety Nine LA, LLC

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its: Manager

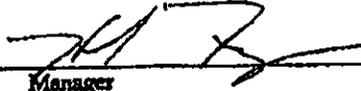
"The District"  
Paint Brush Hills Metropolitan District

\_\_\_\_\_  
Date

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

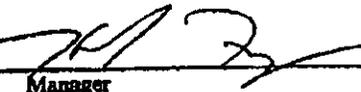
8/27/09  
\_\_\_\_\_  
Date

"The TPS Parties"  
TPS Fund, LLC

By:   
Its: Manager

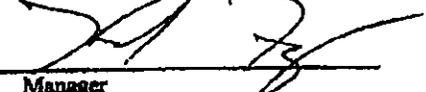
8/27/09  
\_\_\_\_\_  
Date

Six Ninety Nine Properties, LLC

By:   
Its: Manager

8/27/09  
\_\_\_\_\_  
Date

Six Ninety Nine LA, LLC

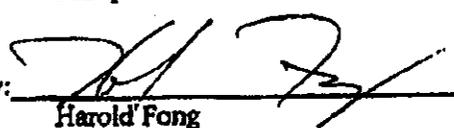
By:   
Its: Manager

\_\_\_\_\_  
Date

8/27/09  
\_\_\_\_\_  
Date

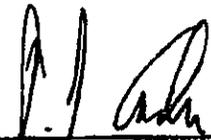
\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Philip J. Anderson

By:   
\_\_\_\_\_  
Harold Fong

By: \_\_\_\_\_  
Jay Bartz

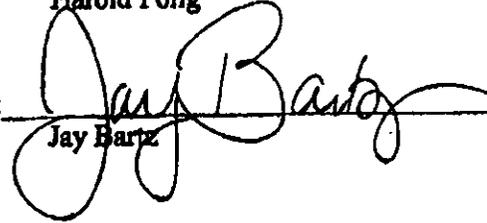
8/27/9  
Date

By:   
Philip J. Anderson

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Harold Fong

8/26/09  
Date

By:   
Jay Bartz

## Amendment of Settlement Agreement and Mutual Release

This Amendment of Settlement Agreement and Mutual Release ("Amendment") is made and entered into as of April 1, 2010 by TPS Fund, LLC, Six Ninety Nine Properties, LLC, Six Ninety Nine LA, LLC, Philip J. Anderson, Harold Fong, and Jay Bartz (collectively, "TPS Parties") and Paint Brush Hills Metropolitan District ("District") (collectively, the "Parties").

1. Background. The Parties entered into a Settlement Agreement and Mutual Release (the "Agreement"), a copy of which is attached hereto, in August 2009, and the capitalized terms used herein are those defined in the Agreement. Pursuant to Section 12 of the Agreement, the Agreement may be amended by a writing signed by the Parties. The Parties desire to amend the Agreement as set forth in this Amendment to change the manner in which the Remaining Taps are collected and disbursed.

2. Amendment. The Parties hereby delete the former Section 2(b) of the Agreement in its entirety and replace it with the following:

(b) The District will sell each of its Remaining Taps at the District's then prevailing rate for water and sewer taps and will do so by collecting from the tap purchaser a check payable to the District in the amount of forty percent (40%) of the tap fee sold and another check payable to TPS Fund, LLC in the amount of sixty percent (60%) of the tap fee sold. The District will forward the check payable to TPS to TPS within three (3) business days following the District's receipt of that check by sending it to the mailing address given by TPS to the District from time to time. Any discounted bulk sale of the Remaining Taps shall require the prior written consent of both Parties.

3. Remaining Terms. Except as expressly modified by this Amendment, the remaining terms of the Agreement shall remain in full force and effect.

Paint Brush Hills  
Metropolitan District

TPS Fund, LLC, Six Ninety Nine LA, LLC,  
and Six Ninety Nine Properties, LLC

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

Its: President

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

Their: Manager

Philip J. Anderson  
Philip J. Anderson

Harold Fong  
Harold Fong

Jay Bartz  
Jay Bartz

ROBERT C. "BOB" BALINK  
05/19/2010 03:35:22 PM  
Doc \$0.00 Page  
Rec \$6.00 1 of 1

El Paso County, CO



210047286

## **EXHIBIT H to IGA for Provision of Wastewater Services to PBHMD**

### **INCLUSION AGREEMENT (PAINT BRUSH HILLS METROPOLITAN DISTRICT/STATE OF COLORADO, ACTING BY AND THROUGH THE STATE BOARD OF LAND COMMISSIONERS)**

THIS INCLUSION AGREEMENT (the "Agreement") is made and entered into effective this 16<sup>th</sup> day of September, 2008 by and between the Paint Brush Hills Metropolitan District (the "District") and the State of Colorado, acting by and through the State Board of Land Commissioners ("Owner").

#### **RECITALS**

- A. The District is a Colorado Special District and political subdivision of the State of Colorado formed pursuant to Title 32, Colorado Revised Statutes.
- B. The District provides various services to its residents in El Paso County, Colorado, which services include potable water, waste water treatment, park and recreation, drainage and roads.
- C. The Owner is the record title owner of 160 acres of real property located to the immediate south of the District boundaries (the "Real Property"). The legal description of the Real Property is attached hereto as Exhibit A and incorporated herein. The Real Property is presently located outside the boundaries of the District.
- D. The Owner has filed a petition to include the Real Property into the boundaries of the District.
- E. Subsequent to the inclusion of the Real Property, it is the intent of the Owner to convey said Real Property to a third party (the "Developer"), with the Developer to be responsible for the development of the Real Property by obtaining the appropriate land use entitlements from El Paso County and other applicable governmental agencies, and by constructing certain municipal infrastructure thereon.
- F. The parties agree and acknowledge that the District has no obligation to include the Real Property but, if it elects to do so, it may impose certain conditions and obligations upon Owner and the Real Property.
- G. Should the District approve the Petition for Inclusion of the Real Property, Owner and the Real Property shall be subject to the terms and conditions of this Agreement. If the District does not approve the Petition for Inclusion, this Agreement shall be null and void.

NOW, THEREFORE, based upon the mutual promises and considerations contained herein, and in consideration of the inclusion of the Real Property into the boundaries of the District, the parties agree as follows:

1. **Petition for Order.** Upon the mutual execution of this Agreement by the District and the Owner, the District shall prepare and file a Petition with the District Court for El Paso County, requesting that the Real Property be included in the District subject to the terms and conditions of this Agreement. Any Order to include the Real Property with the District shall be subject to the terms and conditions of this Agreement. A copy of such Order, with this Agreement attached thereto, shall be recorded in the Real Estate Records of the El Paso County Clerk and Recorder's Office.
2. **Acknowledgement.** In its inclusion petition, the Owner has acknowledged and agreed that the Real Property shall be subject to all rules, regulations, terms and conditions, provisions, obligations, assessments, and liabilities as now in effect or at any time imposed by the District and that the Real Property will be subject to all tap fees, monthly user fees and other fees which are applicable at any time. Owner acknowledges and agrees to this condition.
3. **Exclusion.** In the event that the Owner is unable to obtain entitlements from El Paso County for urban development necessitating public water and wastewater services, the parties agree that the Real Property will be excluded by the District upon the appropriate petition for exclusion from the Owner. All legal and other costs associated with such an exclusion request shall be paid by the Owner. Any such exclusion request shall be made prior to the approval of a final plat of the Real Property by El Paso County.
4. **Inclusion Fees.** An inclusion fee of Ten Thousand dollars (\$10,000.00) shall be paid to the District or the District's designee by or on behalf of Owner at the time of the Board Resolution approving the Inclusion of the Real Property. An additional inclusion fee of Ninety Thousand dollars (\$90,000.00) shall be paid to the District or the District's designee by or on behalf of Owner upon the approval by the County of the Owner's request to rezone the Real Property to a zoning district permitting urban development (lots less than 2.5 acres in size). In the event that such a rezoning request has not been approved by the County one year from the date of the entry of the Board's Resolution approving the Inclusion of the Real Property, or October 1, 2009, whichever occurs first, the Owner shall either request exclusion from the District or pay an additional inclusion fee of Twenty Thousand dollars (\$20,000.00) to the District or the District's designee. Thereafter, upon receipt of urban development zoning, a final inclusion fee of Seventy Thousand dollars (\$70,000) shall be paid to the District or the District's designee by or on behalf of Owner. It is the intent of the parties hereto that the total inclusion fee, should the Real Property remain in the District, shall be One Hundred

Thousand dollars (\$100,000.00). Once paid, each of the foregoing payments shall be non-refundable.

5. **Infrastructure.** Subject to Section 8 below, Owner agrees that the design, construction and installation of all on-site municipal infrastructure including water and wastewater facilities with related infrastructure such as lift stations, collection and distribution systems, wells and pumps, water storage, roads and drainage improvements, neighborhood parks and all other public improvements necessary to serve the Real Property including the construction and drilling of sufficient wells to serve the Real Property shall be done at the sole expense of the Owner or Developer. All water, wastewater, drainage and park improvements shall be designed and constructed in accordance with the criteria and policies of the District. Owner agrees to provide for and construct neighborhood parks as part of the County subdivision process rather than paying fees in lieu of the provision of said parks. Upon completion and approval by the District, all water, wastewater, drainage and park infrastructure improvements shall be assigned or deeded to the District (at no cost to the District) and shall become District property. Roads shall be dedicated to El Paso County who shall thereafter maintain the same and Owners will work with El Paso County to achieve approval and acceptance of such dedication.

The Owner or Developer, solely at their expense, shall also design, construct and install any off-site collection and distribution lines and related facilities necessary to connect the Real Property to the District's existing water and wastewater systems.

6. **Permits.** Prior to commencing any excavation or construction activities, the Owner or Developer shall obtain all necessary permits from any applicable governmental entity or agency, and the Owner or Developer shall be solely responsible for complying with the terms and conditions of such permits.
7. **Water Supply.** In addition to the requirements of Sections 5 and 6, all water and water rights associated with the Real Property shall be assigned, deeded, and otherwise dedicated to the District without cost to the District prior to the submittal of a request for final plat approval of any portion of the Real Property to El Paso County. It is anticipated by the parties hereto that the water rights associated with the Real Property will be insufficient in terms of quantity and dependability for the proposed subdivision and development of the Real Property. It is also understood and agreed by the parties hereto that the District has no excess water with which to serve the Real Property and shall not be obligated to acquire additional water rights to serve said Real Property. It shall be the obligation of the Owner or Developer to acquire whatever additional water rights are necessary to serve the future subdivision and development of the Real Property and to convey same to the District at no cost to the District. Such additional water rights shall be conveyed to the

District prior to the District committing to El Paso County and the Colorado State Engineer's Office to serve any final plat of the Real Property requiring said additional water. Understanding that it is the Owner's obligation to pay for wells located on the Real Property, the parties agree to cooperate in such matters as adjudication of water rights, well locations and depths, and related matters to ensure the most efficient utilization of the water rights associated with the Real Property.

- 8. Inspection and Warranty.** The District's designated engineer shall inspect and reject or accept, all the improvements that are to be constructed in accordance with the criteria and policies of the District. Any acceptance shall be made in writing. Prior to acceptance, the Owner shall provide the District with lien waivers from each contractor or subcontractor who has worked on the project. Upon acceptance, the Owner shall provide the District with a one-year warranty, commencing on the date of acceptance of the improvements, warranting the improvements and the workmanship associated with their installation against any material defect for a period of one year. Such warranty shall include warranties of merchantability and fitness for the particular purpose. In such warranty, the Owner shall agree to pay for the cost of any necessary repairs or replacements of the improvements caused by a breach of such warranties occurring during the one-year period.
- 9. Easements.** If requested by the District, the Owner shall deliver to the District any necessary easements in a form acceptable to the District.
- 10. Recordation.** This Agreement shall bind the parties, their successors, and assigns and shall run with the Real Property which is described on the attached legal description in Exhibit A and incorporated herein. This Agreement shall be recorded in the real property records of El Paso County, Colorado.
- 11. 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. In the event of any litigation that may arise under this Agreement, the exclusive jurisdiction and venue for any such litigation shall be the District Court of El Paso County, 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 or obligations under this Agreement without the prior written consent of the other.
- 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, including any exhibits, 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 awarded from the non-prevailing party all of its reasonable attorneys' fees and costs incurred in such action. It is understood and agreed by the parties hereto that this provision shall be applicable only upon the conveyance of the Real Property by the Owner to a Developer unless the Owner commences development of the said Real Property.





EXHIBIT A

The Real Property subject to this petition and agreement for inclusion in the Paint Bruch Hills Metropolitan District is the

NE1/4 Section 36, Township 12 South, Range 65 West of the 6<sup>th</sup> Principal Meridian in El Paso County, consisting of 160 acres, more or less.