

Rural Water System Participation Agreement

Falcon Fire Protection District, Colorado

This Rural Water System Participation Agreement ("**Agreement**") is entered into by and between _____ ("**Owner**"), and the Falcon Fire Protection District ("**District**"), a special district organized under the laws of the State of Colorado. The Owner and the District are referred to collectively as the "Parties" and individually as a "Party."

I. Recitals

WHEREAS, the District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to C.R.S. §32-1-101, *et seq.* to provide fire suppression, fire prevention, rescue, hazardous materials, ambulance and emergency medical services ("**Emergency Services**") to the citizens and property within its jurisdiction and individuals passing through, or conducting business or other activities within, the District's jurisdiction; and

WHEREAS, the Owner is the 100% fee owner of certain real property located within the District's jurisdiction, commonly known as _____, and more specifically identified on the vicinity map and legal description attached as Exhibit A to this Agreement ("**Property**"); and

WHEREAS, the Owner has built a single family residence on the Property; and

WHEREAS, it is the Owner's obligation to meet the minimum fire flow (water supply) requirements of the applicable fire code and nationally recognized standards (collectively, the "**Fire Code**") for the proposed improvements on the Property; and

WHEREAS, The Owner currently does not meet the Fire Code's minimum fire flow requirements for the improvements on the Property; and

WHEREAS, under the specific circumstances relating to the Property and the improvements on the Property, the District's Fire Chief has, in the exercise of the discretion granted him/her under the Fire Code, (1) determined the Owner may satisfy or reduce the Fire Code's minimum fire flow requirements through "alternative materials or methods of construction" by installing one or more water cisterns on the Property; and (2) given the Owner the option of not installing the water cistern(s) and, instead, voluntarily paying the District an amount that is intended to approximate the monetary value of the water cistern(s) the Owner would otherwise be required to install and maintain to comply with the Fire Code, such payment to be applied toward the installation of a uniform system of water cisterns and related equipment and/or toward the purchase of tanker trucks and other equipment which the District may utilize in conjunction with or in lieu of the water cistern system (collectively, the "**Rural Water System**").

WHEREAS, the District has established a fund for the purpose of the Rural Water System ("**Rural Water System Fund**"); and

WHEREAS, the Owner voluntarily, and without threat or coercion by the District or its Directors, officers, employees, volunteers and agents, wishes to pay _____ Dollars (\$_____) ("**Payment**") into the District's Rural Water System Fund in lieu of installing the water cistern(s) on the Property in accordance with the Fire Code.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements contained herein, the Parties agree as follows:

II. Agreement

1. The Owner shall make the entire Payment to the District in good and sufficient funds upon execution of this Agreement.

2. The District shall deposit the Owner's Payment into the District's Rural Water System Fund. Subject to paragraph 3(a), below, the District shall use the money in the Rural Water System Fund for the installation of the Rural Water System.

3. The Owner expressly acknowledges and agrees that:

a. Because the Owner does not meet the Fire Code's minimum fire flow requirements for the proposed improvements on the Property, and because the Owner has elected not to install a water cistern or other alternative to satisfy or reduce the minimum fire flow requirements, such as a fire sprinkler system, the Property may be subject to greater fire related risks, and, while the District will respond and provide Emergency Services on the Property, as it does on all properties within the District's boundaries, the District's ability to provide Emergency Services at the Property may be diminished. The Owner assumes all responsibility for, and agrees that the District shall have no liability in the event of, any fire-related death, injury or property damage relating to the Property. The Owner agrees to indemnify, defend, and hold harmless the District and its officers, directors, agents, and employees from and against any and all demands, claims, and damages to persons or property, losses and liabilities, including reasonable attorney fees, arising out of or relating to the Property.

b. The location, size and other characteristics of, and the timing of construction or purchase of, any cistern or other equipment installed or purchased by the District for use in connection with the Rural Water System, shall be determined in the sole discretion of the District.

c. If at any time the District Board, in its sole discretion, determines the goals and purposes for which the Rural Water System Fund was established have been accomplished (or as a practical matter cannot reasonably be accomplished), the Board may terminate the Rural Water System Fund and transfer all remaining Rural Water System Fund monies to the District's General Fund, or such other Fund as the District Board may establish, to meet the District's general administrative and operational needs; provided that, before taking such action, the District Board shall hold a public meeting on

the proposed termination of the Rural Water System Fund. At least 5 business days before the public meeting, notice of the public meeting shall be published once in a newspaper of general circulation within the District's jurisdiction; and

d. The Owner's Payment to the District pursuant to this Agreement does not relieve the Owner or any future property owners of all or a portion of the Property from the obligation to pay any *ad valorem*, specific ownership or other tax, or any fee, charge, rate, toll or assessment the District is authorized to levy, impose or assess against the Property by law now or in the future.

e. It is the intent of the Parties that any cistern installed by the District as part of the Rural Water System will be maintained, filled, repaired and replaced, as necessary, through a homeowner's association or other entity to be formed by the homeowners, including the Owner, upon such terms as they may agree. The District shall have no obligation to maintain, fill, repair or replace any cistern installed by the District using the Rural Water System Fund.

4. If the Owner fails to make the Payment in the amount and at the time required by this Agreement, the District may file an action against the Owner in the District Court for El Paso County to compel the Owner's specific performance of this Agreement. The District shall be awarded its reasonable attorneys' fees, costs and expenses incurred in any action brought under this paragraph 4 including any attorneys' fees, costs and expenses incurred in collecting upon any judgment, order or award.

5. The Parties agree that nothing herein is intended to, nor shall it be construed as constituting a waiver by the District of the monetary limits of, or any rights, immunities, and/or protections provided by, the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as amended, or any other federal or state law.

6. To the extent that the District's obligations under this Agreement extend beyond the current fiscal year, the District has currently appropriated funds sufficient to meet its financial obligations under this Agreement in the current fiscal year, and appropriations in any subsequent fiscal year are subject to all statutory restrictions and requirements related to budget and appropriations.

7. The Owner represents that it has the right, power and authority to enter into this Agreement, and that it is voluntarily doing so without threat or coercion by the District or any of its directors, officers, employees, volunteers, agents and representatives. The Owner expressly states that the Owner's Payment to the District is not an impact fee, or any other statutory fee, charge or assessment.

8. The individual(s) executing this Agreement on each Party's behalf has all requisite authority to bind that Party.

9. No Party may assign its rights and duties under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

10. Any notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be delivered (a) by United States registered or certified mail, return receipt requested, postage prepaid; (b) by delivery via a nationally recognized overnight courier service, or a recognized same day courier service, that obtains receipts; or (c) by delivery via electronic (facsimile) transmission with receipt confirmation by telephone and with an original sent by first class mail. A Party shall address a notice to another Party at its address set forth below its signature, or such other address(es) (and facsimile numbers) as may be changed by a Party by written notice in accordance with this paragraph 8. A notice, request or other communication sent by registered or certified mail shall be deemed delivered on the third day after the date of deposit in the United States Mail.

11. Colorado law governs this Agreement. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorney's fees, costs and expenses, including any attorneys' fees, costs and expenses incurred in collecting upon any judgment, order or award. This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Agreement, effective on the last date specified below.

Dated as to Owner: _____

[NAME OF PROPERTY OWNER]

Signature By: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Fax No. _____

Dated as to the District: _____ FALCON FIRE PROTECTION DISTRICT,

By: _____

Name: _____

Title: _____

Address: 7030 Old Meridian Road
Falcon, CO 80831

Phone: (719) 495-4050

Fax No.: (719) 495-3112

EXHIBIT A

Legal Description and Vicinity Map