

2011-201

**AGREEMENT AND PLAN FOR EXCLUSION OF TERRITORY  
FROM  
THE LAKEHURST WATER AND SANITATION DISTRICT**

**THIS AGREEMENT** ("Agreement") is made and entered into the Effective Date, by and among the **City and County of Denver**, a Home Rule City and Municipal Corporation of the State of Colorado (hereinafter referred to as "the City"), the **City and County of Denver, acting by and through its Board of Water Commissioners** (hereinafter referred to as "Denver Water"), and the **Lakehurst Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter referred to as the "District"). The City, Denver Water, and the District are hereinafter sometimes collectively referred to as the Parties and singularly as a Party.

**RECITALS**

**WHEREAS**, the boundaries of the District initially consisted of territory lying wholly within the County of Jefferson, State of Colorado; and

**WHEREAS**, as a result of certain City annexations that occurred in 1973 a portion of the District's boundary is now overlapped by the corporate limits of the City (hereinafter referred to as the "Area of Overlap"); and

**WHEREAS**, the District provides generally sanitary sewer service and potable water service to all areas within its boundaries, except for the Area of Overlap; and

**WHEREAS**, the District has no plans in the future to provide either water or sanitary sewer service to the Area of Overlap; and

**WHEREAS**, sanitation service is, and always has been, provided to the Area of Overlap by the City; and

**WHEREAS**, potable water service is, and always has been, provided to the Area of Overlap by Denver Water; and

**WHEREAS**, to eliminate the duplication of service and the associated double taxation that often occurs when an area lies both within the boundaries of a municipality and a special district, the legislature provided a procedure in Section 32-1-502, C.R.S., for excluding such area from the boundaries of the special district; and

**WHEREAS**, because the Area of Overlap receives no water or sanitary sewer service from the District and has no need to receive any such service from the District in the future, the Parties desire to utilize the procedures set forth in Section 32-1-502, C.R.S., to exclude the Area of Overlap from the boundaries of the District; and

**WHEREAS**, the procedure provided by Section 32-1-502, C.R.S., contemplates that the exclusion of territory from a special district that lies both within a special district and a municipality shall be accomplished pursuant to a Plan of Exclusion that is either agreed upon by the Parties or formulated by the District Court; and

**WHEREAS**, with respect to the Area of Overlap, the Parties have agreed upon a Plan for Exclusion and in accordance with the provisions of Section 32-1-502(2)(c), C.R.S., intend to incorporate the provisions of said Plan into this Agreement; and

**WHEREAS**, City, Denver Water and District respectively are authorized by the Colorado Constitution and Section 29-1-201, C.R.S., et. seq., to enter into and perform cooperative intergovernmental agreements.

**NOW THEREFORE**, the Parties hereto agree as follows:

## **ARTICLE I. PURPOSE AND CONTINGENCY**

1.1 Purpose. The purpose of this Agreement is to set forth the procedure whereby the Area of Overlap will be excluded from the District. The Area of Overlap is legally described on Exhibit 1 (consisting of one page) and depicted on Exhibit 2, both of which are attached hereto and incorporated herein by this reference.

1.2 Condition Subsequent. To the extent the exclusion of the Area of Overlap requires further approval through either the judicial or electoral process, pursuant to the provisions of Section 32-1-502, C.R.S., this Agreement shall automatically terminate and be of no further force and effect if such approvals are not obtained on or before December 31, 2011, unless such period is extended by mutual agreement of the Parties hereto, which for the City's purposes must be evidenced in writing by the signature for the Manager of Public Works for the City.

1.3 Effect of Termination. Termination of the Agreement under paragraph 1.2 above shall relieve all Parties hereto of any further obligations hereunder, except that the provisions of paragraph 2.4 shall survive such termination.

## **ARTICLE II. PLAN FOR EXCLUSION**

2.1 General. The Parties agree that with respect to the exclusion of the Area of Overlap from the boundaries of the District, this Agreement addresses: (i) the disposition of assets to the extent necessary to provide for the continuation of potable water and sanitary sewer service within the Area of Overlap, and (ii) the continuation of potable water and sanitation service to all remaining areas of the District, and as such, constitutes a single plan for exclusion as contemplated by Section 32-1-502(2)(c), C.R.S., (the "Plan for Exclusion").

2.2 Petition for Exclusion. The District, acting by and through its Board of Directors, shall cause a Petition for Exclusion to be filed with the Jefferson County District Court ("District Court") requesting exclusion of the Area of Overlap from the District. In connection therewith, the District shall publish notice of the filing of the Petition and shall expeditiously seek a hearing on the Petition, all in accordance with and pursuant to the provisions of Section 32-1-502, C.R.S., (this process carried to completion shall hereinafter be referred to as the "Exclusion").

2.3 Prosecution of Exclusion. The District, with the cooperation of the City and Denver Water, shall produce all documents that the Parties determine necessary or desirable for the District to file with the District Court for the Exclusion to be successfully completed, unless directed otherwise in this paragraph. The District, City, and Denver Water agree that to the extent possible the Parties shall seek to obtain a District Court Order excluding the Area of Overlap from the District no later than December 31, 2011. By way of explanation the District shall prepare, for City review and City Council approval, a form of Ordinance whereby the City approves this Agreement and agrees pursuant to Section 32-1-502(2)(a), C.R.S. to provide sanitary sewer service to the Area of Overlap from and after the effective date of the entry of an Order of Exclusion. Denver Water shall prepare a form of Resolution whereby Denver Water agrees pursuant to Section 32-1-502(2)(a), C.R.S. to provide water service to the Area of Overlap from and after the effective date of the entry of an Order of Exclusion.

2.4 Exclusion Costs and Fees. Each Party shall pay its own costs and expenses including attorney fees incurred in connection with the Exclusion, except that the District, at its sole cost and expense, shall prepare and file with the District Court all documents including pleadings and notices required for the initiation and completion of the Exclusion proceeding, including but not limited to the cost of publishing the Notice of Hearing on the Petition as required by Section 32-1-502(1)(a), C.R.S., and the District shall pay any costs incurred by the City or Denver Water in connection with the Exclusion not to exceed \$2,500 without the District's prior written consent.

2.5 Disposition of Assets. The District has no assets or facilities that serve any persons or property located within the Area of Overlap. Accordingly, it is agreed that no assets will be transferred by the District to either the City or Denver Water in connection with the Exclusion. Neither the City nor Denver Water shall transfer any assets or facilities in connection with the Exclusion. Nothing herein contained shall be deemed to dispose, transfer, or in anyway affect any City or Denver Water facilities or assets of whatsoever kind or nature.

2.6 Continuation of Service.

2.6.1 Continuation of Water Service to Area of Overlap. From and after the effective date of the entry of an Order of Exclusion excluding the Area of Overlap from the District, Denver Water shall continue to provide potable water service to the

Area of Overlap utilizing Denver Water's existing facilities, as the same now exists or may hereafter be replaced or rehabilitated, some of which are located within the Area of Overlap.

2.6.2 Continuation of Sanitary Sewer Service to Area of Overlap. From and after the effective date of the entry of an Order of Exclusion excluding the Area of Overlap from the District, the City shall continue to provide sanitation service to the Area of Overlap using the City's existing facilities, as the same now exists or may hereafter be replaced or rehabilitated, some of which are located within the Area of Overlap.

2.6.3 Service to Remaining Territory of the District. The District shall, to the extent required by law and in accordance with the Petition for Organization that was filed in connection with the District's formation, continue to provide water and sanitation service to all areas that remain within the District from and after the effective date of any order excluding the Area of Overlap from the District.

2.7 General Obligation Bonds. The District represents and the Parties agree that the District has no general obligation debt outstanding as of the date of this Agreement nor does the District intend to incur any such debt prior to the date the Area of Overlap is excluded from the District's boundaries. Any order excluding the Area of Overlap from the District shall specifically recite that the District has no outstanding general obligation debt and that no portion of any District debt service mill levy certified by the District's Board of Directors from and after the date of the entry of an order excluding the Area of Overlap from the District shall apply to or be imposed within the Area of Overlap.

2.8 Operations and Maintenance Mill Levy. The District further represents and the Parties agree that the District has no operation and maintenance mill levy. From and after the date of the entry of an Order excluding the Area of Overlap from the District, should the District impose a property tax mill levy for operation and maintenance purposes, the property located within the Area of Overlap shall not be subject to any such property tax levied by the District.

### ARTICLE III. MISCELLANEOUS

3.1 No Election Necessary in Remaining Territory of District. The Parties acknowledge that the Area of Overlap constitutes less than 50% of the territory within the District's boundaries. The Parties further acknowledge that the valuation for assessment of the Area of Overlap is less than the valuation for assessment of the area that will remain within the District after the Area of Overlap is excluded. Accordingly, the provisions of Section 32-1-502(7), C.R.S., regarding an election are not applicable. In the event it is ever determined that the provisions of Section 32-1-502(7), C.R.S., are applicable, then this Agreement shall automatically terminate, relieving all Parties

hereto of any further obligations hereunder, except that the provisions of paragraph 2.4 shall survive such termination, and the District shall be deemed to have withdrawn its consent to the Exclusion.

3.2 Fair and Equitable. The Parties acknowledge that the provisions of this Agreement and the Plan for Exclusion contained herein are both fair and equitable. Accordingly, the Parties request that any Order of Exclusion excluding the Area of Overlap from the District incorporate by reference the terms and provisions of this Agreement.

3.3 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof.

3.4 Interested Parties. Nothing in this Agreement shall be construed as conferring an enforceable right or benefit on any third party or as a waiver of the limitations on damages or any of the privileges, immunities or defenses provided to, or enjoyed by, any Party under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

3.5 Amendments. This Agreement shall be amended only by a writing duly signed by the Parties hereto and approved by the District Court. No City Council approval of an amendment shall be necessary unless required by City Charter.

3.6 Severability. If any provision of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall be found to be invalid by a Court of competent jurisdiction, such findings shall not affect the validity of the remainder of the Agreement.

3.7 Waiver. No waiver by any of the Parties to this Agreement of any covenant, term, condition or agreement contained herein shall be deemed or construed as a waiver of any other covenant, term, condition or agreement; nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of the Agreement.

3.8 Appropriation. Each Party hereto represents that it has budgeted and appropriated funds available to the extent necessary to fund its performance obligations under this Agreement during calendar year 2011. In relation to the City, "its performance obligations" are only the provision of sanitation services to the Area of Overlap. However, no provision of this Agreement shall be construed or interpreted as creating an indebtedness or a multiple fiscal year direct or indirect debt or other multiple year financial obligation whatsoever of any Party within the meaning of any constitutional or statutory debt provision including without limitation, Article XI, Sections 1, 2, and 6, and Article X, Section 20 of the Colorado Constitution. This Agreement shall not directly or indirectly obligate any Party to make any payment

beyond the funds legally available to it for the current fiscal year for the purposes of this Agreement. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of monies of any Party, nor shall any provision of this Agreement restrict or limit the discretion of any Party in the budgeting and appropriation of its funds.

3.9 Examination of Records. District shall provide Denver Water and City, including the City's Auditor, unlimited access to all District records that either City or Denver Water deem necessary to inspect in connection with this Agreement or with the exclusion of the Area of Overlap from the District. By way of explanation and not limitation such records shall include all accounting records and any and all technical information including all District maps, videos, easements, inspection reports, etc. to the extent the same exists with regard to the Area of Overlap.

3.10 Conflict of Interest. District represents that to the best of its information and belief, no official or employee of the City or Denver Water is either directly or indirectly a party or in any manner interested in this Agreement, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

3.11 Effective Date and Term. The effective date of this Agreement shall be September 30, 2011 ("Effective Date"). This Agreement shall be effective only upon the full execution of this Agreement by the Parties hereto. The term of this Agreement shall be 10 years or until the Order of Exclusion is approved, whichever is sooner.

3.12 Authority to Execute. District represents that the persons who have affixed their signature here have all necessary and sufficient authority to bind District.

3.13 Cooperation of the Parties. In the event that an action is brought against any Party regarding the validity or operation of this Agreement, the other Parties shall cooperate in any such litigation.

3.14 Assignment. No Party shall have the right to assign its rights and obligations under this Agreement without prior written approval of the other Parties, which approval shall not be unreasonably withheld or delayed. Consent by the City shall be evidenced by a signature of the Manager of Public Works.

3.15 Subject to Local Laws. Each and every term, provision and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver and Rules and Regulations enacted and pursuant thereto, including but not limited to the Rules and Regulations enacted by Denver Water. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

This Agreement is made, shall be deemed to be made, and shall be construed in accordance with the Laws of the State of Colorado.

**3.16 Notices.** All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered mail or certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses given below or such other address that may be specified by written notice to the other Parties.

**If to City:**

**Mayor, City and County Building  
1437 Bannock Street, Room 350  
Denver, Colorado 80202**

**With copies to:**

**Denver County Attorney  
1437 Bannock Street, Room 353  
Denver, Colorado 80202**

**Manager of Public Works  
201 W. Colfax, Department 601  
Denver, CO 80202**

**If to Denver Water:**

**Denver Water  
Director of Customer Relations  
1600 West 12<sup>th</sup> Avenue  
Denver, Colorado 80204**

**Copy to:**

**Patricia L. Wells, Esq.  
Denver Water Legal Division  
1600 West 12<sup>th</sup> Avenue  
Denver, Colorado 80204**

**If to District:**

**Lakehurst Water and Sanitation District  
7995 West Quincy Avenue  
Littleton, Colorado 80123**

Copy to:

Timothy J. Flynn, Esq.  
Collins Cockrel & Cole  
390 Union Boulevard, Suite 400  
Denver, Colorado 80228

3.17 Parties' Liabilities. Except as otherwise set forth herein, each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

3.18 Paragraph Headings. Paragraph headings are inserted only as a matter of convenience and for reference, and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement, or to particular paragraphs to which they refer.

3.19 Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one of the same document. The Parties consent to the use of electronic signatures by the City. The Agreement and any other documents requiring a signature may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature, or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY AND COUNTY OF DENVER

By: \_\_\_\_\_  
Michael B. Hancock, Mayor

Attest:

\_\_\_\_\_  
Debra Johnson, City Clerk



Approved as to Form

Denver City Attorney

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

Assistant City Attorney

**REGISTERED AND COUNTERSIGNED**

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

Manager of Finance

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

Auditor

LAKEHURST WATER AND SANITATION DISTRICT

By: David G. Bane  
David G. Bane, President

Attest:

Steven Posavec  
Steven Posavec, Secretary

CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS

ATTEST:

By: Robert J. Pfeiffer  
Secretary  
531

By: [Signature]  
President



APPROVED:

By: Julie Anderson  
Director of Customer Relations

APPROVED AS TO FORM:

By: Michael K...  
Legal Division

**EXHIBIT 1  
(LEGAL DESCRIPTION)**

**Area of Overlap**

A PARCEL OF LAND SITUATED IN SECTIONS 10, 15 AND 16, TOWNSHIP 5 SOUTH, RANGE 69 WEST OF THE 6<sup>th</sup> P.M., CITY AND COUNTY OF DENVER, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 5 SOUTH OF THE 6<sup>th</sup> P.M. EXCEPT THE FOLLOWING: THE WEST 690 FEET OF THE SOUTH 1,050 FEET OF SAID 1/2 OF SAID SECTION 10, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**EXHIBIT 2**

