

**RESOLUTION OF THE BOARDS OF DIRECTORS OF
WATERFALL METROPOLITAN DISTRICTS NOS. 1 & 2**

A RESOLUTION ESTABLISHING A POLICY REGARDING THE INSPECTION,
RETENTION AND DISPOSAL OF PUBLIC RECORDS AND ADOPTING A PUBLIC
RECORDS RETENTION SCHEDULE

WHEREAS, Waterfall Metropolitan Districts Nos. 1 & 2 (the “Districts”) were organized pursuant to §32-1-101 *et seq.*, C.R.S.; and

WHEREAS, the Districts wish to establish certain record management practices by adopting a policy for the inspection, retention and disposal of its public records in full accordance with federal and state laws, regulations, and administrative rules; and

WHEREAS, pursuant to §§24-72-202(6) & (7), C.R.S., “public records” means and includes all writings made, maintained, or kept by the Districts, including all books, papers, maps, photographs, cards, tapes, recordings, digitally stored data such as electronic mail messages, or other documentary materials, regardless of physical form or characteristics, and held for use in the exercise of its functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds; and

WHEREAS, in the interest of efficiently using public resources, the Districts desire to retain its public records and have such records available for public inspection only to the extent as is necessary and required by law; and

WHEREAS, the Districts recognize the value of adopting a records retention schedule to provide legal authority for the destruction of nonpermanent records of the Districts when they are no longer needed and the permanent retention of records of the Districts that have enduring value; and

WHEREAS, the Colorado State Archives (“State Archives”) has created a “Special District Records Retention Schedule”, attached hereto and incorporated herein as **Exhibit A**, which sets forth a timeline for retaining and disposing of the Districts’ public records; and

WHEREAS, the State Archives requires special districts to obtain approval from the State Archives to follow the Special District Records Retention Schedule; and

WHEREAS, the Districts desire to adopt herein, and request approval from the Colorado State Archives to follow, the Special District Records Retention Schedule, as attached hereto as Exhibit A, and to set forth additional policies and procedures for the inspection, retention and disposal of the Districts’ public records.

NOW THEREFORE, the Districts’ Boards of Directors hereby RESOLVE as follows:

1. Inspection of Public Records. All public records of the Districts, as such term is defined in §24-72-202(6), C.R.S., which are retained but not yet disposed of pursuant to the

Special District Records Retention Schedule attached hereto as Exhibit A and adopted herein, shall be available for public inspection by any person at reasonable times as provided in §24-72-203, C.R.S.

a. Official Custodian. The official custodian of the Districts' public records shall be appointed annually by the Districts' Boards of Directors in the Districts' annual administrative resolution. The official custodian may develop rules for the inspection of the Districts' public records as are reasonably necessary for the protection of such records and for the prevention of unnecessary interference with the duties of the official custodian or the custodian's office. The official custodian shall adhere to all rules and regulations set forth in §24-72-201, *et seq.*, C.R.S. of the Colorado Open Records Act in responding to a public records inspection request and shall allow any person the right of inspection of the Districts' public records unless otherwise prohibited pursuant to §§24-72-203 & 204, C.R.S.

b. Notification for Inspecting Public Records Not Under Control of the Official Custodian. If the public records requested are not in the custody or control of the official custodian, the official custodian shall notify the person requesting to inspect such records that said records are not in the custody or control of the official custodian. The notification shall state in detail to the best of the official custodian's knowledge and belief, the reason for the absence of the records, the location of the records, and what person has custody or controls the records.

c. Notification for Inspecting Public Records in Use or Otherwise Unavailable. If the public records requested are in active use, in storage, or otherwise not readily available at the time requested, the official custodian shall notify the person requesting to inspect the public records of the status of the public records. Such notification shall be made in writing if desired by the person requesting to inspect the public records. The official custodian shall set a date and hour at which time the records will be available for inspection, which date and hour of inspection shall not exceed seven (7) working days from the date such public records were requested for inspection unless extenuating circumstances exist as provided in §24-72-203(3)(b), C.R.S.

d. Fees for Copies of Public Records. The official custodian shall furnish, for a fee as set forth herein, a copy, printout, or photograph of the Districts' public record requested by the person inspecting said record. The fee shall be twenty-five cents (\$0.25) per standard page for a copy of the public record except as follows:

- (1) When the format is other than a standard page, the fee shall not exceed the actual cost of providing the copy.
- (2) If other facilities are necessary to make a copy of the public record, the cost of providing the copy at the other facilities shall be paid by the person requesting the copy.
- (3) If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable

portion of the costs associated with building and maintaining the information system.

- (4) If, in response to a specific request, the Districts have performed a manipulation of data so as to generate a record in a form not used by the Districts, a reasonable fee may be charged to the person making the request, which fee shall not exceed the actual costs of manipulating the data and generating the record in accordance of the request.
- (5) Where the fee for a certified copy or other copy, printout, or photograph of a public record is specifically prescribed by law, that specific fee shall apply in lieu of the fee(s) set forth herein.

2. Electronic Records and Signatures. Pursuant to §32-1-1001(1)(o), C.R.S., the Boards of Directors of the Districts hereby adopt the following policies and procedures for the use of electronic records and signatures created, generated, sent, communicated, received, or stored by the Districts, its directors, officers, agents, employees, and assigns. Said policies and procedures may be amended from time to time by the Boards of Directors as necessary and in compliance with the Uniform Electronic Transaction Act set forth in §24-71.3-101, C.R.S.

a. Use of electronic records and signatures is hereby authorized in transactions between the Districts, its directors, officers, agents, employees, and assigns, and third parties (collectively, the “Parties”) which have agreed to conduct transactions by electronic means. Whether the Parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the Parties’ conduct.

b. In accordance with §24-71.3-107, C.R.S., an electronic record, including contracts, or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a law requires a record to be in writing, an electronic record satisfies the law. If a law requires a signature, an electronic signature satisfies the law.

c. If the Parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

d. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

e. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person

authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

f. For records required to be retained as set forth in the Special District Records Retention Schedule attached hereto as Exhibit A and adopted herein, the requirement is satisfied by retaining an electronic record of the information in the record that:

- (1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
- (2) Remains accessible for later reference.

Such requirement shall not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained as provided herein. For the retention of checks, an electronic record of the information on the front and back of the check shall satisfy the retention requirement. A record retained as an electronic record as provided herein satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes unless a law enacted after May 30, 2002, specifically prohibits the use of an electronic record for the specified purpose.

g. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it (i) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; (ii) is in a form capable of being processed by that system, and (iii) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

h. Unless otherwise agreed between a sender and the recipient, an electronic record is received when (i) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and (ii) it is in a form capable of being processed by that system.

3. Electronic Mail Policy. Pursuant to §24-72-204.5, C.R.S., the Boards of Directors promulgate the following electronic mail policy in order to establish guidelines for the responsible and efficient use of electronic mail, hereinafter "E-mail," services and to clearly set forth the rights and responsibilities of the Districts' current and/or future employees, regarding their use of E-mail.

a. E-Mail Defined. *E-Mail* means an electronic message transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored

for later retrieval. *E-mail* includes electronic messages that are transmitted through a local, regional, or global computer network.

b. Scope of Policy. All E-mail communications and associated attachments transmitted or received over the Districts' network are subject to the provisions of this policy. Additionally, since Colorado law provides that E-mail communications written in the conduct of public business are generally considered to be public records, all E-mail communications written and sent in the conduct of public business by employees of the Districts are subject to applicable provisions of this policy, regardless of whether the communication was sent or received on a public or privately owned personal computer.

c. Application of Public Records Statute to E-Mail. E-mail messages are subject to many of the same statutes and legal requirements as other forms of communication, such as the Colorado Open Records Act, §24-72-201, *et seq.*, C.R.S., which governs public access to the Districts' records. The Open Records Act treats electronic documents and files in the same manner as paper documents. All such documents are generally considered to be public records and are subject to public inspection unless such documents are covered by a specific statutory exception. E-mail messages which are public records must be retained in either paper or electronic format in accordance with the Special District Records Retention Schedule set forth in Exhibit A attached hereto and adopted herein. E-mail messages which are not public records should be deleted after viewing.

d. Monitoring of E-Mail Communications by the Districts. The Districts do not intend to monitor E-mail usage by its employees in a regular or systematic fashion; however, it does reserve the right to monitor such usage from time to time and without prior notice. Such monitoring may include tracking addresses of E-mails sent and received, accessing in-box messages, accessing messages in folders, and accessing archived messages. Furthermore, the Districts may disclose E-mail communications sent to, received by, or relating to an employee to law enforcement officials without giving prior notice to the employee.

4. Retention and Disposal of Public Records.

a. Special District Records Retention Schedule. The Districts shall request approval from the State Archives to follow the Special District Records Retention Schedule attached hereto as Exhibit A, which approval shall be attached hereto as Exhibit B upon receipt from the State Archives. Pending approval from the State Archives, the Districts hereby adopt the "Special District Records Retention Schedule" attached hereto as Exhibit A for purposes of identifying all public records to be retained by the Districts for a specified time period as provided therein.


b. Destruction of Public Records. Public records of the Districts shall be destroyed in accordance with the Special District Records Retention Schedule by shredding, recycling, or disposing of such public records in a landfill; provided, however, that those public records of the Districts deemed to be confidential in nature shall be destroyed by shredding or destroyed professionally by a company that can certify to the security of the destruction. Furthermore, no public records of the Districts shall be destroyed pursuant to the Special District

Records Retention Schedule so long as such public records pertain to any pending legal case, claim, action or audit involving the Districts or if the Districts' legal counsel determines such documents should be retained for other purposes. The Districts hereby agree to report yearly record destruction statistics to the State Archives as required by the State Archives.

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ADOPTED AND APPROVED this 9th day of December, 2009.

**WATERFALL METROPOLITAN
DISTRICTS NOS. 1 & 2**


By: Kirk Dando
Its: President

ATTEST:



By: James A. Martell
Its: Secretary

EXHIBIT A

SPECIAL DISTRICT RECORDS RETENTION SCHEDULE

EXHIBIT B
STATE ARCHIVES APPROVAL

NAME OF DISTRICTS: WATERFALL METROPOLITAN DISTRICTS NOS. 1 & 2

CONTACT PERSON/TITLE: ALAN D. POGUE, GENERAL COUNSEL

MAILING ADDRESS: C/O ICENOGLA, NORTON SMITH, GILIDA & POGUE, P.C.
1331 SEVENTEENTH STREET, SUITE 500
DENVER, COLORADO 80202

TELEPHONE: (303) 292-6400

E-MAIL: APOGUE@INSBCOLORADO.COM

LOCAL EXCEPTIONS:

(List and provide basis and description of any local exceptions for records retention periods that are specified by formal direction of the governing body, etc., that differ from those set out in the Special District Records Retention Schedule. Use additional pages if needed.)

THE ABOVE SPECIAL DISTRICTS HEREBY REQUEST APPROVAL FROM THE COLORADO STATE ARCHIVES TO FOLLOW THE *SPECIAL DISTRICT RECORDS RETENTION SCHEDULE*, WITH THE LOCAL EXCEPTIONS INDICATED.



SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE

DATE OF SUBMITTAL OF REQUEST FOR APPROVAL

MAIL APPROVAL REQUEST FORM TO: MR. TERRY KETELSEN, COLORADO STATE ARCHIVIST,
1313 SHERMAN STREET, ROOM 1B-20, DENVER, CO 80203. FOR FURTHER INFORMATION,
CONTACT THE COLORADO STATE ARCHIVES AT (303) 866-2550.

COLORADO STATE ARCHIVES APPROVAL

APPROVED BY: _____

DATE OF APPROVAL: _____