

AGREEMENT FOR THE DELEGATION OF PRETREATMENT/INDUSTRIAL WASTE CONTROL PROGRAM RESPONSIBILITIES

This Agreement is made and entered into between the Metro Wastewater Reclamation District (Metro District), located at 6450 York Street, Denver, Colorado 80229-7499, and the City of Brighton (Brighton), located at 500 South 4th Avenue, Brighton, CO 80601. This agreement shall only apply once discharge from Brighton's service area to the Northern Treatment Plant (NTP) commences and only to those areas of Brighton whose flows are being treated at the NTP.

1. PURPOSE

Under Section 6 of the Metro District's *Rules and Regulations Governing the Operation, Use and Services of the System (Rules and Regulations)* and Article IV of the Metro District's *Sewage Treatment and Disposal Agreement (Service Contract)* with Brighton, the Metro District and Brighton enter into this Agreement whereby Brighton shall delegate, and the Metro District shall assume, the responsibility for conducting Brighton's Pretreatment Program obligations to the extent and in the manner hereinafter set forth.

2. RESPONSIBILITIES DELEGATED

Brighton hereby delegates, and the Metro District hereby assumes, responsibility for Brighton's Pretreatment Program obligations set forth in Section 6 of the Metro District's *Rules and Regulations* and Article IV of the *Service Contract* and in documents issued pursuant thereto including, among others, *Procedures for Implementing the Pretreatment/Industrial Waste Control Program of the Metro District*, subject to the following:

- (a). At least ninety (90) days prior to sending any flows to the NTP, Brighton shall submit current industrial waste survey information for those parts of its service area that will be sent to the NTP.
- (b). Brighton shall promptly notify the Metro District of any new dischargers connecting to the sewer system which may be subject to regulation as Significant Industrial Users under the Pretreatment Program.

Brighton shall submit to the Metro District, at least ninety (90) days prior to sending any flows to the NTP, current sanitary sewer service area plats and the names and phone numbers of the persons in Brighton's service area responsible for business licenses, building permits, sewer use permits, water use records, and the local fire department.

The Metro District shall be responsible for the performance of future??? Pretreatment Program responsibilities required by applicable law, including but not limited to those responsibilities and obligations set forth in the U.S. Code of Federal Regulations and Colorado Code of Regulations, except for those responsibilities directly related to the obligations reserved to Brighton in paragraph 2(a), 2(b), and 3 hereof. The Metro District shall provide Brighton with an annual update of the Metro District's Industrial Waste Survey Database for Brighton's service area.

3. NOTIFICATION OF NEED FOR PRETREATMENT SERVICES

Pursuant to Section 801.H and M of the *Service Contract* between Brighton and the Metro District, Brighton cannot send any flows to the NTP until all applicable Sewer Connection Charges have been paid. At least ninety (90) days prior to sending new flows to the NTP, Brighton shall provide the Metro District with a map of the additional service area to be treated at the NTP and the current industrial waste survey information for that area.

4. NOTIFICATION OF ENFORCEMENT ACTIONS

The Metro District shall notify Brighton when assessing penalties, terminating sewage service, or seeking criminal sanctions against any industrial discharger within Brighton's service area. The Metro District shall provide Brighton with an annual status report on the compliance of dischargers under the Pretreatment Program.

5. CHARGES AND FEES

The Metro District shall not charge Brighton under this Agreement any costs, fees, assessments, or charges associated with the Pretreatment Program responsibilities delegated to the Metro District herein. Brighton will remain subject to all Annual Charges for Service as provided in the *Service Contract*, as amended from time to time.

All general and special sewer service charges, permit fees, and other charges levied against the industrial users shall be determined, imposed, collected, and retained by Brighton, except as otherwise expressly provided herein or by the *Service Contract* or applicable law.

All penalty or other enforcement receipts arising from an enforcement action taken by the Metro District shall be collected and retained by the Metro District.

6. SEVERABILITY

If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall, for any reason, be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phrase, or other provision shall not affect any of the remaining provisions of this Agreement.

7. WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

8. REMEDIES

In addition to the remedies provided by law, this Agreement shall be specifically enforceable by the parties hereto.

9. TERM OF AGREEMENT

This Agreement shall be effective when discharge from the Brighton service area to the NTP commences, and shall continue thereafter until terminated by either party by the giving of a written notice to the other party not less than one year prior to the date of termination specified by such notice.

10. CONFORMANCE WITH LAWS

Both parties hereto agree to abide by and conform to all applicable laws of the United States, the State of Colorado, and any other body corporate and politic having any jurisdiction in the service area which is the subject matter of this Agreement. Nothing contained in this Agreement, however, shall require either party hereto to comply with any law, the validity or applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.

11. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligation hereunder due to causes or conditions beyond its control or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulation, order, or directive.

12. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof.

13. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Brighton and the Metro District, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of Brighton and the Metro District that any person other than Brighton or the Metro District receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. INDEMNIFICATION

Each party shall be responsible for its own negligence in performing its obligations under this agreement. Neither party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

15. ASSIGNMENT

Neither party to this agreement may assign any interest herein to any person or entity without the consent of the other party hereto expressed in writing. Nothing herein contained, however, shall be construed as preventing the reorganization of any party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities, and duties of either party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.

16. INTEGRATION OF UNDERSTANDINGS, AMENDMENTS, AGREEMENT BINDING

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the parties and signed by the signators of the original Agreement. This Agreement and any amendments shall be binding upon the parties, their successors, and assigns.

City of Brighton

Metro Wastewater Reclamation District

Mayor, Richard N. McLean

District Manager

Date signed _____

Date signed _____