



Catherine R. Gerali, District Manager

January 14, 2015

City of Aurora  
City of Brighton  
City and County of Denver  
South Adams County Water and Sanitation District

Dear Sirs/Madames:

The City of Aurora (AURORA), the City of Brighton (BRIGHTON), the City and County of Denver (DENVER) and the South Adams County Water and Sanitation District (SACWSD) (together, "the MEMBERS") all own and operate wastewater conveyance and treatment infrastructure and are member municipalities of the Metro Wastewater Reclamation District (METRO DISTRICT) (together the MEMBERS and the METRO DISTRICT are referred to as "the PARTIES"). After discussions among the PARTIES, it has been determined that they desire to cooperate in the study of options for wastewater conveyance and treatment of wastewater within the Sand Creek and Second Creek Basins ("Project") and to issue a report on the findings and conclusions of the study ("Master Plan"). The Project will develop short and long-term plans to address the PARTIES' wastewater conveyance and treatment objectives. Further, the PARTIES intend the Project to evaluate the effects of various factors on the capacity of the METRO DISTRICT'S Robert W. Hite Treatment Facility ("RWHTF") and its related conveyance infrastructure, the METRO DISTRICT's Northern Treatment Plant ("NTP") and its related conveyance infrastructure as well as the conveyance and treatment infrastructure of the MEMBERS. The METRO DISTRICT is willing to complete the Project and prepare the Master Plan with cooperation with the other MEMBERS pursuant to the terms of this Letter Agreement ("Agreement").

The PARTIES hereto agree as follows:

1. **PURPOSE:** The Project's purpose is to develop a Master Plan with conclusions, recommendations, and a proposed implementation plan for treating and conveying wastewater flows tributary to the Sand Creek and Second Creek Basins. The Master Plan will include alternatives that may affect treatment capacity at the RWHTF and the transmission capacity of its related conveyance infrastructure, the treatment capacity of the NTP and its related conveyance infrastructure, and the capacity of certain treatment and conveyance infrastructure of the MEMBERS. The participation by the Members in the development of the Master Plan is not intended to bind the Members to future construction obligations nor shall it be implied by such participation that any Member accepts all aspects of the Master Plan.

2. **PROJECT COSTS:** The Project costs shall consist of, and be limited to, the costs of a study produced by a consulting engineer (hereinafter referred to as the "Consultant") and directly related services and contingencies. The METRO DISTRICT assumes sole responsibility for the payment of all costs associated with the Project, subject to approval of the Project and an appropriation by the METRO DISTRICT Board of Directors. No Member shall

have any financial obligation associated with the Project, nor shall any Member's participation in the Project imply or otherwise bind said Member to any future financial obligation.

3. **RESPONSIBILITIES OF THE MEMBERS:** Each MEMBER shall designate and assign a project representative to act on the behalf of that MEMBER in all matters related to the Project and notify the METRO DISTRICT of same within ten (10) days of the date of this Agreement. The assigned project representatives shall coordinate all planning-related issues between and among the PARTIES, participate in the Consultant selection process as provided for in Section 5 herein, approve of the scope of the Consultant Contract as provided for in Section 6 herein; attend kickoff, team and progress meetings; provide all available project-related information to the Consultant upon request of the METRO DISTRICT; review and comment on draft reports; and review and approve the final report setting forth the Master Plan. Said representative shall have the authority for all approvals, authorizations, notices or concurrences on behalf of the MEMBER represented required under this Agreement.

4. **RESPONSIBILITIES OF METRO DISTRICT:** Notwithstanding any of the provisions of this Agreement, the METRO DISTRICT, shall designate and assign a project representative to act on behalf of the METRO DISTRICT in all matters related to the Project. The representative will be responsible to negotiate the scope and fee terms of the Consultant Contract, schedule and attend kickoff, team and progress meetings, provide all available Project related information to the Consultant and coordinate with the MEMBERS to provide the information required by the Consultant and for obtaining all concurrence from the PARTIES needed to complete the Project study in a timely manner. Said representative shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement with the exception of the authority to execute this Agreement, the Consulting Contract or any amendment hereto.

5. **SELECTION OF THE CONSULTANT.**

a. **RFQ Process.** Following the execution of this Agreement, the METRO DISTRICT shall submit to the MEMBERS a draft of a Request for Qualifications (RFQ) to be sent to consultant candidates ("Initial Candidates"), a draft of a Request for Proposals (RFP) and a draft Proposal Evaluation Matrix for the RFP. The Initial Candidates will be chosen by the PARTIES. Upon agreement by all PARTIES as to the form and terms of the RFQ, the RFQ shall be issued to prospective Initial Candidates, who shall be directed to send their responses to the METRO DISTRICT. Responses to RFQs shall be reviewed by the PARTIES and the PARTIES shall agree on no more than 8 consultant candidates (the "Preliminary Consultant Candidates") to which to send an RFP as set forth in Section 5(b) herein.

b. **RFP Process.** Upon agreement by all PARTIES as to the form and terms of the RFP, it shall be issued to the Preliminary Consultant Candidates, who shall be directed to send their responses to the METRO DISTRICT. Responses to RFP's shall be reviewed by the PARTIES and the PARTIES shall agree on three (3) final candidates (the "Final Consultant Candidates").

c. **Selection Committee Presentations.** The Final Consultant Candidates shall make presentations at the METRO DISTRICT before a Selection Committee consisting of a representative from each PARTY (Selection Committee Representative). Each PARTY may have up to two (2) additional persons (other than the Selection Committee Representative) attend the presentation, but only the Selection Committee Representative of each PARTY shall be entitled to vote on the Selection Committee. After the presentations, upon majority

agreement of the Selection Committee, the Consultant shall be selected, and such selection shall be recommended to the METRO DISTRICT Board of Directors, which shall consider confirmation and authorization of the Consultant Contract referred to in Section 6, and appropriation of the necessary funds.

6. **CONSULTANT CONTRACT:** The METRO DISTRICT, in consultation with the MEMBERS, shall negotiate and enter into a contract with the Consultant (the "Consultant Contract") in a form substantially similar to the METRO DISTRICT'S Professional Study Services Agreement to complete the Master Plan. The scope of work of the Consultant Contract shall be approved by the PARTIES. Once the Consultant Contract is executed, the METRO DISTRICT, through its normal accounting practices, shall be authorized to make payments to the Consultant as the work progresses. In the event that in the execution of the work under the Consultant Contract it becomes necessary and advisable to change the scope of work, the need for such changes will first be discussed by the PARTIES and written concurrence received from each Party before issuance of any amendment.

7. **PUBLISHED REPORTS:** METRO DISTRICT will provide to each PARTY five (5) copies of all Consultant reports, whether preliminary or final.

8. **TERM OF THE AGREEMENT:** The term of this Agreement shall commence upon final execution by the PARTIES and shall terminate one (1) year after receipt of the approved final version of the Master Plan by the METRO DISTRICT from the Consultant.

9. **AMENDMENTS:** This Agreement contains all of the terms agreed upon by the PARTIES. Any amendments or modifications to the Agreement must be reduced to writing and executed by the PARTIES hereto to be valid and binding.

10. **SEVERABILITY:** If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect to the extent performance remains possible given the original intent of the PARTIES.

11. **APPLICABLE LAWS:** This Agreement shall be construed and enforced in accordance with the Constitution and laws of the State of Colorado. The PARTIES agree that venue for any legal action relating to this Agreement shall lie in the District Court for Jefferson County, Colorado.

12. **ASSIGNABILITY:** Neither PARTY shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other nonassigning PARTIES.

13. **BINDING EFFECT:** The provisions of the Agreement shall bind and shall inure to the benefit of the PARTIES hereto and to the respective successors and permitted assigns. To succeed any PARTY hereto, any successor must expressly accept all of the terms and obligation of this Agreement.

14. **ENFORCEABILITY:** The PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

15. NO THIRD PARTY BENEFICIARIES: It is expressly understood and agreed that this Agreement is solely intended for the benefit of the PARTIES hereto and that enforcement of the terms and condition of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the PARTIES. Nothing contained in this Agreement shall give or allow any such claim or right of action by any person not a PARTY to this Agreement. It is the expressed intention of the PARTIES that any person or party other than the PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. CONSTRUCTION OF AGREEMENT: The paragraph headings are inserted herein 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 of intent of the Agreement or the particular paragraphs hereof to which they refer. Works in the masculine gender include the feminine and the neuter; works in the feminine gender include the masculine and the neuter; and, when the sense so indicates, words in the neuter gender refer to any gender.

17. NOTICES: Unless otherwise provided herein, all notices, approvals, consents, requests, opinions and other communication hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first-class registered or certified mail, postage prepaid, and addressed as follows:

To AURORA: Director of Utilities  
City of Aurora  
15151 East Alameda Pkwy  
Aurora, CO 80012

To BRIGHTON: Director of Utilities  
City of Brighton  
500 South 4<sup>th</sup> Avenue  
Brighton, Colorado 80601

To DENVER: Executive Director of Public Works  
201 West Colfax Avenue, Dept. 608  
Denver, CO 80202

To SACWSD: District Manager  
South Adams County Water and Sanitation District  
P.O. Box 597  
6595 E. 70th Avenue  
Commerce City, CO 80037

To METRO DISTRICT District Manager  
Metro Wastewater Reclamation District  
6450 York Street  
Denver, Colorado 80229

18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the PARTIES hereto pertaining to the subject matter hereof.

19. NO SEPARATE ENTITY. This Agreement is not intended to create a separate governmental entity as that term is defined in Article I, Title 29, of the Colorado Revised Statutes.

20. DEFAULT/WAIVER: Any PARTY may assert a breach of this Agreement against any other PARTY by giving written notice pursuant to Section 17 above to the breaching PARTY with copies to all other PARTIES. A waiver by any PARTY of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition of this Agreement. Failure to act or subsequent acceptance of performance hereunder by any PARTY shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Agreement, regardless of a non-breaching PARTY'S knowledge of such preceding breach at the time of acceptance thereof, nor shall any failure on the part of a non-breaching PARTY to require or exact full and complete compliance with any of the covenants or conditions of this Agreement be construed as changing in any manner the terms hereof or preventing a non-breaching PARTY from enforcing the full provisions hereof.

21. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall, together, constitute one and the same document.

22. AUTHORITY. The PARTIES represent and affirm that the signers below have the requisite authority to execute this document and bind the PARTIES on their behalf. The parties hereto agree to the above and the officers thereof set forth their acknowledgement of same of the date and year written above.

Sincerely,

Catherine R. Gerali  
District Manager

THE ENTITIES ACKNOWLEDGE AND AGREE TO THE ABOVE AS EVIDENCED BY THE EXECUTION OF THE SEPARATELY PAGED ACKNOWLEDGMENTS ATTACHED HERETO

AGREED TO BY:

CITY OF AURORA

By \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED TO BY:

CITY OF BRIGHTON

\_\_\_\_\_ Date: \_\_\_\_\_  
Richard N. McLean, Mayor

Attest:

\_\_\_\_\_  
Natalie Hoel, City Clerk

Approved as to form:

\_\_\_\_\_  
Margaret R. Brubaker, Esq., City Attorney

AGREED TO BY:

CITY AND COUNTY OF DENVER

By \_\_\_\_\_ Date: \_\_\_\_\_  
Title: Executive Director of Public Works

AGREED TO BY:

SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT

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

Title: \_\_\_\_\_

AGREED TO BY:

METRO WASTEWATER  
RECLAMATION DISTRICT

By \_\_\_\_\_  
District Manager

APPROVED AS TO FORM

By \_\_\_\_\_  
Metro District General Counsel