

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. CB12-0803
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Agreement between the City and County of Denver and Metro Wastewater Reclamation District., regarding for the discharge of glycol-contaminated stormwater from five detention ponds at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Agreement between the City and County of Denver and Metro Wastewater Reclamation District., in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0869, is hereby approved.

COMMITTEE APPROVAL DATE: November 1, 2012

MAYOR-COUNCIL DATE: November 6, 2012

PASSED BY THE COUNCIL _____ 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2012

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2012; _____ 2012

PREPARED BY: Debra Overn; Assistant City Attorney  DATE: November 8, 2012

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, _____ City Attorney DATE: November 8, 2012

INTERGOVERNMENTAL AGREEMENT FOR PURCHASE OF TREATMENT CAPACITY

This Agreement is made and entered into as of the date stated on the City signature page below ("Effective Date"), by and between the City and County of Denver, a municipal corporation and political subdivision of the state of Colorado ("City"), on behalf of its Department of Aviation ("DIA"), and the Metro Wastewater Reclamation District, a metropolitan sewage disposal district organized and existing pursuant to Part 5 of Article 4 of Title 32 of the Revised Statutes of the State of Colorado ("Metro District"), (hereinafter individually referred to as "Party" or collectively as "the Parties").

WHEREAS, in 1994, the Metro District approved and the City paid a Sewer Connection Charge for the discharge of glycol-contaminated stormwater from five detention ponds at Denver International Airport . The purchase was for a monthly average of 7 tons/day of biological oxygen demand ("BOD"), and 27 million gallons per peak month flow volume ("Discharge"); and

WHEREAS, since 1995 DIA has held a Wastewater Discharge Permit (Permit) for operations at DIA, which establishes limits on the quantity and quality of glycol contaminated stormwater discharged from DIA; and

WHEREAS, in August 2001, the Board of Directors of the Metro District (the "Board") approved DIA's request to permanently increase Discharge volume by 28.6 million gallons per peak month of glycol-contaminated stormwater from new detention ponds at DIA under specific terms, including payment of the applicable Capital Recovery Charge and conditioned on that there be no increase in the allowable BOD discharge. However, DIA only paid a Capital Recovery Charge for an additional 20 million gallons peak month flow at a price of \$3,183,125.00. Additional Capital Recovery Charges will be due when DIA requests to purchase the additional 8.6 million gallons per month approved by the Board in August 2001. This additional charge will be calculated based on the prevailing charge rate at the time DIA's request is made; and

WHEREAS, each year since October 2001, DIA has requested and the Board has approved a limited waiver of the prohibition on the discharge of stormwater to the Sewer System, and has approved DIA's request to increase the allowable discharge of BOD in its glycol-contaminated stormwater for the November 1 through October 31 deicing season; and

WHEREAS, DIA made annual payments for such limited waivers and BOD increases, in the form of Capital Recovery Rental Charges. Such Capital Recovery Rental Charges were to apply, in whole or in part, to a later purchase by DIA of permanent additional BOD capacity;

WHEREAS, in 2012 DIA requested, and in October 2012, the Board approved, the purchase of additional permanent BOD capacity for glycol contaminated stormwater from DIA, by the amount of 4 tons/day on a monthly average with no change in the amount of allowable flow; and

WHEREAS, staff of the Metro District determined that there is adequate treatment capacity for the additional glycol-contaminated stormwater and has calculated the applicable Capital Recovery Charge in accordance with the Metro District's Miscellaneous Charge Guidelines; and

NOW, THEREFORE, in consideration of the covenants and mutual promises herein contained and for other good and valuable consideration, the Parties agree as follows:

1. The recitals stated above are incorporated into this Agreement by this reference.
2. The Metro District approves DIA's request for a permanent additional 4 tons/day on a monthly average of BOD capacity for its glycol-contaminated stormwater. Such purchase shall be subject to the terms and conditions of the Permit, the Metro District's Rules and Regulations and the Parties' *Sewage Treatment and Disposal Agreement* ("Service Contract").
3. The current price for this additional BOD capacity is Sixteen Million Two Hundred Twenty Five Thousand and Eighteen Dollars (\$16,225,018.00) (the "Purchase Price").
4. Annually since 2001, the Metro District allowed DIA to rent additional BOD capacity in return for payment of a Capital Recovery Rental Charge. The District acknowledges that DIA has paid the following Capital Recovery Rental Charges for the following years:

2001 - \$309,915.00
2002 - \$338,625.00
2003 - \$313,470.00
2004 - \$362,025.00
2005 - \$368,460.00
2006 - \$405,315.00
2007 - \$428,670.00
2008 - \$493,425.00
2009 - \$479,205.00
2010 - \$505,890.00
2011 - \$524,835.00

Total: \$4,529,835.00

5. The Metro District will apply Three Million Eight Hundred Twenty Five Thousand One Hundred Ninety Four Dollars (\$3,825,194.00) of these Capital Recovery Rental Charges to the Purchase Price. Accordingly, after deducting this allowed amount from the Purchase Price, DIA shall pay the Metro District a Capital Recovery Charge of Twelve Million Three Hundred Ninety-Nine Thousand Eight Hundred Twenty-Four dollars (\$12,399,824.00), in accordance with the Metro District's Miscellaneous Charge Guidelines. Payment shall be made on or before December 31, 2012. DIA acknowledges that the purchase price of \$12,399,824.00 is valid only through December 31, 2012. If payment is not received by that date, DIA agrees to the rental of the additional capacity beginning November 1, 2012 in accordance with the Resolution passed by the Board on October 16, 2012.
6. This purchase shall increase the maximum allowable discharge of DIA's BOD glycol-contaminated stormwater to 11 tons/day monthly average; the current maximum allowable flow of 47 mgd per peak month remains unchanged.

7. The Metro District acknowledges that Seven Hundred and Four Thousand Six Hundred Forty One Dollars (\$ 704,641.00) of DIA's Capital Recovery Rental Charges have not been applied to this purchase and shall be applied to a future Capital Recovery Charge should DIA request to purchase additional capacity at a future date, provided the time period for the purchase of additional capacity includes the months April through October.
8. DIA shall pay Annual Charges for Service unit costs for all discharges from DIA. Emergency purchases of BOD capacity are no longer allowed, and any requested emergency services will be provided pursuant to the Metro District's Rules and Regulations.
9. The City hereby acknowledges this is not a blanket waiver of the prohibitions and protections granted to the Metro District in the *Service Contract*, and DIA may not rely on this purchase as authorization or as a precedent for additional stormwater or BOD capacity purchases or rentals in the future. DIA and the Metro District agree to meet as needed to discuss DIA's treatment needs and the Metro District's capacity to treat the glycol contaminated stormwater.
10. The City hereby acknowledges that the Capital Recovery Charge and Annual Charges for Service calculations used in this Agreement were based on charge parameters in place in 2012, including flow, BOD, SS, and TKN (the "Parameters"). If the Metro District's member municipalities and the Board approve an amendment to the Service Contract that adds to or changes the Parameters used for calculating Sewer Connection Charges or Annual Charges for Service, or the City's Discharge changes, the City may be required to pay additional amounts for all added or changed Parameters for any discharge purchased using the Metro District's Miscellaneous Charge Guidelines.
11. Nothing contained herein shall otherwise alter or amend the rights and obligations of the Parties under the Service Contract.
12. This Agreement shall be construed and enforced in accordance with the laws of the state of Colorado. The Parties consent to venue for any legal action relating to the Agreement being in the District Court in and for the City and County of Denver.
13. The enforcement of the terms and conditions of this Agreement and all rights of action relating to enforcement shall be strictly reserved to the Parties. No third party beneficiary rights shall be created by this Agreement in favor of any person not a Party to this Agreement.
14. This Agreement represents the entire Agreement between the Parties and there are no collateral or oral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by both parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.
15. In the event any provision of this Agreement is found to be invalid, void, or otherwise unenforceable by a court of competent jurisdiction or by operation of applicable law, such invalid, void, or unenforceable provision shall not affect the validity of the Agreement as a whole and the remainder of the Agreement shall be given full force and effect.

16. Notwithstanding any other term, condition, or provision herein, each and every obligation of the City and the Metro District stated in this Agreement is subject to the requirement of a prior appropriation of funds therefor by the appropriate governing body of each Party.
17. This Agreement is in all respects subject and subordinate to any and all bond ordinances applicable to Denver International Airport and any other bond ordinances which should amend, supplement, or replace such bond ordinances.

[END OF CONTRACT]
[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-201207199-00

Contractor Name: METRO WASTEWATER RECLAMATION DISTRICT

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



IN WITNESS WHEREOF, the parties hereunto set their hands and affixed their seals at Denver, Colorado as of the day on the City's signature page.

Contract Control Number: 201207199

Vendor Name: Metro Wastewater Reclamation District

By: Catherine R. Cerali

Name: Catherine R. Cerali
(please print)

Title: District Manager
(please print)

Approved as to Form

By: Robert J. Thomas

Name: Robert J. Thomas
(please print)

Title: Director of Legal Services
(please print)

