

AGREEMENT REGARDING
"On-Call" CONSULTANT SERVICES

Agreement No. _____

THIS AGREEMENT, made this _____ day of _____, 2018, by and between SOUTHEAST METRO STORMWATER AUTHORITY acting by and through SEMSWA WATER ACTIVITY ENTERPRISE (hereinafter called "SEMSWA") and _____ (hereinafter called "CONSULTANT") and collectively known as PARTIES;

WITNESSETH:

WHEREAS, SEMSWA's Board of Directors has authorized expenditures for On-Call services for the calendar year 2018; and

WHEREAS, SEMSWA has deemed it necessary to select a consultant to provide SEMSWA with consultation services within SEMSWA boundaries (hereinafter called "PROJECT"); and

WHEREAS, SEMSWA's Board of Directors has authorized the Executive Director to contract for those services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES agree as follows:

1. EMPLOYMENT OF CONSULTANT

SEMSWA shall engage CONSULTANT and CONSULTANT hereby agrees to perform the services hereinafter set forth.

2. PROJECT LIMITS

CONSULTANT shall perform and/or supply all necessary services as specified in this Agreement within the boundaries of SEMSWA or as otherwise directed in writing by SEMSWA.

3. SCOPE OF SERVICES

CONSULTANT, at SEMSWA's request, shall provide Services as follows: As described in Exhibit A.

4. BASIS OF PAYMENT

SEMSWA agrees to compensate CONSULTANT for consulting services authorized by SEMSWA in writing and performed on an actual hourly and materials basis in accordance with the General Schedule of Rates attached hereto as Exhibit B, dated 20___. The General Schedule of Rates shall be binding until December 31, 2018.

Total cost for the work that may be authorized hereunder shall not exceed \$30,000.00 without prior approval of the SEMSWA Board of Directors.

5. METHOD OF PAYMENT

SEMSWA shall make payment for services accepted and completed in the preceding pay period based on the submittal of an invoice from CONSULTANT referencing each amendment(s) issued under this Agreement. CONSULTANT shall keep work and cost records that shall permit easy

comparison with work performed as specified in each invoice. If invoices are received by the 25th of the month, payment shall be by the 25th of the following month.

6. PERSONNEL

- A. All of the services required hereunder, except where specified, shall be performed by CONSULTANT's personnel or CONSULTANT's subcontractors and all personnel engaged in the services shall be fully qualified and shall be authorized under applicable state or local law to perform such services.
- B. None of the services covered by this Agreement, except where specified, shall be subcontracted without the prior written approval of SEMSWA.

7. DIRECTION OF EFFORT AND COORDINATION

Notwithstanding any of the provisions of this Agreement, the Executive Director of SEMSWA shall be the only individual authorized to redirect the effort or in any way amend or modify the terms of this Agreement. SEMSWA may appoint a Project Manager who shall represent the Executive Director in matters related to PROJECT. All such redirection shall be transmitted in writing and directed to CONSULTANT's Project Manager, and shall be subject to the provisions of Paragraph 11.

8. OWNERSHIP OF DATA

Ownership, in paper and electronic form, of all data; maps; drawings; details, documents; special software; spreadsheets and templates; photographs; and information collected, acquired, developed, and documented under this Agreement (hereinafter called "DATA") shall be vested with SEMSWA, except for any intellectual property rights owned or created by CONSULTANT prior to the execution of this Agreement; and/or created outside the scope of work of this Agreement. CONSULTANT may retain a record copy of such DATA. Should SEMSWA see fit to make use of DATA assembled under this Agreement for a use not included under the scope of this Agreement, SEMSWA shall assume all liability for such use and CONSULTANT shall not make claims of liability against SEMSWA for such use.

9. DURATION OF AGREEMENT

The duration of this Agreement shall be from date of execution of this Agreement through December 31, 2018, unless changed by amendment(s) to this Agreement.

10. TERMINATION OF AGREEMENT

This Agreement may be terminated by SEMSWA and/or CONSULTANT upon seven (7) days written notice. In the event of termination, CONSULTANT shall be paid for services performed to termination date as determined by SEMSWA. This payment shall be full satisfaction of all obligations to CONSULTANT under this Agreement.

All DATA shall be surrendered to SEMSWA by CONSULTANT before payment is made.

11. CHANGES IN AGREEMENT

SEMSWA may request changes in the scope of services of CONSULTANT. Such changes, including any increase or decrease in the amount of CONSULTANT's compensation and/or time of

performance, which are mutually agreed upon by and among PARTIES shall be incorporated in written amendments to this Agreement. Total cost for consultant services that may be authorized hereunder shall not exceed \$30,000 without prior approval of the SEMSWA Board of Directors.

12. INSURANCE

During the performance of the work defined by this Agreement, CONSULTANT, acting as an independent contractor, shall be solely responsible for procuring and keeping in full force and effect the insurance listed below:

Insurance	Minimum Limits
A. Commercial General Liability	\$1,000,000 each occurrence and in the aggregate in combined single limit coverage for bodily injury and property damage
B. Professional Liability	\$1,000,000 each claim and in the aggregate
C. Automobile Liability	\$1,000,000 each occurrence in combined single limit coverage for bodily injury and property damage
D. Workers' Compensation	
1. Workers' Compensation	statutory limits required by law
2. Employer's Liability	statutory limits required by law

The limits of coverage listed above are as required by SEMSWA. CONSULTANT shall evaluate individual needs regarding higher levels of insurance.

Except for Professional Liability insurance, each type of insurance procured by CONSULTANT shall provide coverage for all claims arising out of, or in connection with, any operations, work, or services performed under this Agreement by CONSULTANT, CONSULTANT's employees, subconsultants, subcontractors, agents, or representatives. CONSULTANT's Professional Liability insurance shall provide coverage for claims arising out of the negligent acts, errors and omissions of CONSULTANT in the performance of services under this Agreement. CONSULTANT may elect not to provide the above-specified coverage for the subconsultants or subcontractors. In that event, CONSULTANT shall require that the subconsultants or subcontractors procure and maintain the same insurance coverage as set forth above.

SEMSWA shall be listed as "additionally insured" on all commercial liability insurance policy/certificates and all automobile liability insurance policy/certificates.

Certificates of Insurance showing CONSULTANT is carrying the above-described insurance shall be provided to SEMSWA at the time of execution of this Agreement. As necessary, Certificates of Insurance showing the subconsultants and subcontractors are carrying the above described insurance shall be provided to SEMSWA prior to the beginning of any work by the subconsultant or subcontractor pertaining to this Agreement. Subconsultant shall not begin any work unless and until that subconsultant provides proof of the above described insurance to SEMSWA. If CONSULTANT permits subconsultant to begin any work without the insurance coverage required

above, the CONSULTANT shall be liable for any and all negligent acts of subconsultant. All the Certificates of Insurance shall include language stating that, should the insurance policy be canceled before its expiration date, the insurance company shall provide thirty (30) days written notice to SEMSWA except for ten (10) days notice for cancellation due to non-payment of premium. The costs of insurance shall be considered a part of the overhead costs of CONSULTANT

13. INDEMNIFICATION

CONSULTANT shall defend, indemnify and save SEMSWA harmless from and against claims, demands, liabilities, damages, suits, actions, or causes of action including reasonable attorney's fees and costs which may be brought or asserted against any or all of the above named on account of, by reason of, or caused by the negligent acts, errors, or omissions in the performance of the work under this Agreement by CONSULTANT, CONSULTANT's employees, subconsultants, subcontractors, agents, or representatives together with any liability accrued by any or all of the above-named on account thereof.

14. ASSIGNABILITY

This Agreement is for the expert professional services by the personnel of CONSULTANT, and is not assignable, save and except with the consent of SEMSWA, who may withhold consent at its option with or without cause.

15. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any and all legal actions regarding the transaction covered herein shall lie in District Court in and for the County of Arapahoe, State of Colorado.

16. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, CONSULTANT agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder. CONSULTANT shall provide a list of subcontractors and which of those subcontractors are Disadvantaged Business Enterprises (DBE) and the basis for determining or defining the subcontractor as a DBE. The list shall be submitted prior to final payment.

17. STANDARD OF CARE

CONSULTANT shall perform the services, as set forth in Exhibit A, in a manner consistent with the standard of care normally employed in metropolitan Denver, Colorado by professional engineers or consultants performing the same or similar services at the time such services are performed.

18. OTHER PROVISIONS

PARTIES also agree to the terms and provisions contained in the following documents which are made a part of this Agreement:

- A. Exhibit A, Scope of Services
- B. Exhibit B, 2018 Schedule of Hourly Rates
- C. Exhibit C, Special Conditions, Illegal Aliens

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first written above.

FIRM

By _____

Title _____

Date _____

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

By _____

Title Executive Director _____

Date _____

EXHIBIT C - SPECIAL CONDITIONS

Illegal Aliens.

1. Consultant shall not:
 - a) Knowingly employ or contract with an illegal alien to perform work under this Contractor
 - b) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
2. Consultant has verified or attempted to verify through participation in The Employment Eligibility Verification Program (E-Verify) previously known as the Basic Pilot Program (created in Public Law 208, 104th Congress, As Amended, and expanded in Public Law 156, 108th Congress, As Amended, that is administered by the United States Department of Homeland Security) that Contractor does not employ any illegal aliens.
3. Consultant shall not use the E-Verify procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
4. Consultant, if it obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Consultant shall be required to:
 - a) Notify the subcontractor and SEMSWA within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien and
 - b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required in Paragraph 4.a. the subcontractor does not stop employing or contracting with the illegal alien. Except the Consultant shall not terminate the contract with the subcontractor, if during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
5. Consultant shall comply with any reasonable request by the Department of Labor and Employment (Department) made in the course of an investigation that the Department is undertaking pursuant to 8-17.5-102 (5) C.R.S.
6. SEMSWA may terminate this Contract for a breach of contract if Consultant does not fully and completely comply with these Special Conditions. If this Contract is so terminated, the Consultant shall be liable for actual and consequential damages to SEMSWA.

CERTIFICATION BY CONTRACTOR
EMPLOYMENT OF ILLEGAL ALIENS

_____, Consultant hereby certifies to SEMSWA that, as of the date of execution of this Certification, it does not knowingly employ or contract with an illegal alien and that the Consultant has participated in The Employment Eligibility Verification Program (E-Verify) previously known as the Basic Pilot Program (created in Public Law 208, 104th Congress, As Amended, and expanded in Public Law 156, 108th Congress, As Amended, that is administered by the United States Department of Homeland Security) in order to verify that it does not employ illegal aliens.

Dated: _____

_____, Consultant

By _____

Title: _____

Certification to be executed and provided to SEMSWA prior to execution of a contract with Contractor.