



AGREEMENT FOR SERVICES

Project Number or Name: **District Consultant Services**

THIS AGREEMENT is entered into as of the _____ day of _____, 2008, by and between Southeast Metro Stormwater Authority acting by and through SEMSWA Water Activity Enterprise (hereinafter referred to as "SEMSWA WAE") and Muller Engineering Company, Inc. (hereinafter referred to as the "Engineer").

WHEREAS, SEMSWA WAE desires to engage the Engineer to provide the services described in Exhibit A.

NOW, THEREFORE, the parties mutually agree as follows:

1. **Scope of Services.** The Engineer agrees to perform the services described in Section 1 of Exhibit A, which document is attached hereto and incorporated herein in its entirety.
2. **Standard of Care.** The standard of care applicable to Engineer's Services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar Services in the Denver, Colorado metropolitan area, at the time said services are performed.
3. **Time of Performance.** The services of the Engineer are to commence and be completed (or end) by the dates set forth in Section 2 of Exhibit A, unless this Agreement is sooner terminated pursuant to paragraph 4.A below. All time limits are of the essence in this Agreement.
4. **Method of Payment.** SEMSWA WAE will compensate the Engineer for services rendered in accordance with Section 3 of Exhibit A, subject to the availability of appropriated funds within the annual budget. The Engineer is responsible for paying all applicable income, Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act, or other taxes owed on compensation paid under this Agreement. The Engineer shall submit requests for payment in a form acceptable to SEMSWA WAE and in conformance with SEMSWA WAE's policies. The Engineer shall provide such backup information for its payment requests as may be reasonably requested by SEMSWA WAE. SEMSWA WAE shall have forty-five (45) days from receipt of any payment request to make payment to the Engineer.

5. **General Terms and Conditions.**

A. **Termination of Agreement.** SEMSWA WAE or the Engineer shall have the right to terminate this Agreement, with or without cause, by giving written notice to the other party of such termination and specifying the effective date thereof, which notice shall be given at least the number of days set forth in Section 4 of Exhibit A prior to the effective date of such termination. In such event, all finished or unfinished documents, data, studies and reports prepared by the Engineer pursuant to this Agreement shall become the property of SEMSWA WAE. Unless expressly stated otherwise in the notice, Engineer shall provide no further services in connection with this Agreement after receipt of a notice of termination, and the Engineer shall proceed to cancel all existing orders and contracts that are chargeable to SEMSWA WAE under this Agreement. The Engineer shall be entitled to receive compensation in accordance with this Agreement for any satisfactory services completed pursuant to the terms of this Agreement prior to the date of receipt of the notice of termination, or such other stop-work date as may be specified in the notice. Notwithstanding the above, the Engineer shall not be relieved of liability to SEMSWA WAE for damages sustained by virtue of any breach of this Agreement by the Engineer.

B. **Changes.** SEMSWA WAE may, from time to time, request changes in the scope of services or compensation of the Engineer. Such changes that are mutually agreed upon between SEMSWA WAE and Engineer shall be in writing, and upon execution shall become part of this Agreement. To be effective, all changes must be signed by the Engineer and SEMSWA WAE, or by a person authorized by resolution to sign on behalf of SEMSWA WAE.

C. **Assignability or Subcontracting.** Any assignment, transfer or subcontracting of this Agreement is prohibited, unless prior written consent is obtained from SEMSWA WAE.

D. Audit. SEMSWA WAE or any of its duly authorized representatives shall have reasonable access to any books, documents, papers and records of the Engineer which are pertinent to the Engineer's performance under this Agreement for the purpose of making an audit, examination, or excerpts. The Engineer shall provide any documentation necessary to prepare all reporting required of or by SEMSWA WAE, and shall keep all books, documents, papers and records which are pertinent to the Engineer's performance for a minimum period of three years, or such longer time as may be set forth in any Special Conditions or addendums to this Agreement.

E. Equal Employment Opportunity. While performing this Agreement, the Engineer shall not discriminate against any employee, subEngineer, or applicant for employment because of race, creed, color, national origin, religion, sex, mental or physical disability, or age.

F. Ownership of Documents. All drawings, specifications, guidelines and other documents prepared or received by the Engineer in connection with this Agreement shall be the property of SEMSWA WAE.

G. Assignment of Copyrights. The Engineer assigns to SEMSWA WAE the copyrights to all works prepared, developed, or created pursuant to this Agreement, including the rights to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public by sale, rental, lease, or lending; 4) perform the works publicly; and 5) to display the work publicly. The Engineer waives its rights to claim authorship of the works, to prevent its name from being used in connection with the works, and to prevent distortion of the works.

H. Reuse of Documents. Any modification of the documents by SEMSWA WAE will be at SEMSWA WAE's sole risk.

I. Governing Law/Forum/Interpretation. This Agreement has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Colorado. Venue for any civil action relating to this Agreement shall be in Arapahoe County. To reduce the cost of and to expedite the resolution of disputes under this Agreement, the parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. Both parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

J. Compliance with Laws/Licenses and Permits. The Engineer shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. The Engineer shall be responsible for obtaining all licenses and permits necessary to perform the scope of services, at the Engineer's expense, unless specifically stated otherwise in this Agreement.

K. No Waiver of Rights. SEMSWA WAE's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by SEMSWA WAE except in writing signed by SEMSWA WAE or person authorized to sign by resolution of SEMSWA WAE, and any waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver, unless specifically so stated.

L. Non-appropriation. Pursuant to C.R.S. §29-1-110, as amended, the financial obligations of SEMSWA WAE as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated. SEMSWA WAE shall give the Engineer written notice of such non-appropriation.

M. Conflict of Interest. The Engineer shall refrain from providing services to other persons, firms or entities that would create a conflict of interest for Engineer with regard to providing services pursuant to this Agreement. The Engineer shall not offer or provide anything of benefit to any SEMSWA WAE official or employee that would place the official or employee in a position of violating the public trust in violation of C.R.S. §24-18-109, as amended, or SEMSWA WAE's Ethical Principles and Guidelines.

N. Remedies. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, SEMSWA WAE may exercise the following remedial actions if the Engineer substantially fails to satisfy the duties and obligations in this Agreement. Substantial failure to satisfy the duties and obligations shall mean significant insufficient, incorrect or improper performance, activities or inactions by the Engineer. These remedial actions are as follows:

- (1) Suspend Engineer's performance pending necessary corrective action as specified by SEMSWA WAE without the Engineer's entitlement to adjustment in price/cost or schedule; and/or
- (2) Withhold payment to the Engineer until the necessary services or corrections in performance are satisfactorily completed; and/or
- (3) Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Engineer, cannot be performed, or if performed would be of no value to SEMSWA WAE; and/or
- (4) Terminate the Agreement.

The foregoing remedies are cumulative and SEMSWA WAE, in its sole discretion, may exercise any or all of them individually or simultaneously.

O. Force Majeure. Neither the Engineer nor SEMSWA WAE shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

P. Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to SEMSWA WAE and the named Engineer. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

Q. Survival of Terms and Conditions. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

6. Insurance. In part to assure SEMSWA WAE that the Engineer is always capable of fulfilling the specified indemnification obligations, the Engineer must purchase and maintain insurance of the kind and in the minimum amounts specified below, unless indicated otherwise in Section 7 of Exhibit A.

A. The Engineer agrees to procure and maintain, at its own expense, for all services covered by this Agreement, the following policies of insurance:

- (1) Worker's Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement:

Worker's Compensation

Each accident Statutory

Each employee for disease Statutory

The Engineer shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide Worker's Compensation Insurance to protect the Engineer from and against any and all Worker's Compensation claims arising from the performance of services under this Agreement. The requirements of this provision shall apply to the Engineer and to all subEngineers.

(2) Commercial General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Engineers, products, and completed operations. The policy shall contain a severability of interests provision. Coverage must be on an "occurrence" basis as opposed to a "claims made" basis. This insurance must pay on behalf of the Engineer all sums which the Engineer shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence.

(3) Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence with respect to each of the Engineer's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Commercial Automobile Liability insurance must cover the Engineer for all sums which the Engineer shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence up to the specified limits of liability for each occurrence. This insurance coverage must extend to all levels of subEngineers. Such coverage must include all automotive equipment used in the performance of the Agreement, both on and off the work site, and must include non-ownership and hired cars coverage.

(4) If indicated in Section 5 of Exhibit A, Errors and Omissions or Professional Liability Insurance with a minimum coverage amount as specified in Section 5 of Exhibit A, and for two years beyond the completion of all services under this Agreement.

B. The above-mentioned coverages shall be procured and maintained with insurers with an A- or better rating, as determined by Best's Key Rating Guide. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Engineer.

C. The policies required above shall be primary insurance, and any insurance carried by SEMSWA WAE, its officers, or its employees shall be excess and not contributory insurance to that provided by the Engineer. No additional insured endorsement to the policies required above shall contain any exclusion for bodily injury or property damage arising from completed operations. The Engineer shall be solely responsible for any deductible losses under any policy required above.

D. The required Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name SEMSWA WAE as Certificate Holder and name SEMSWA WAE, and its elected officials, officers, employees and agents as additional insureds. The required Worker's Compensation and Professional Liability (where applicable) policies shall be endorsed to include SEMSWA WAE as a Certificate Holder. The policies shall provide that SEMSWA WAE will receive notice no less than 30 days prior to cancellation, termination or a material change to the policies.

E. The Engineer shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

F. Failure on the part of the Engineer to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which SEMSWA WAE may immediately terminate this Agreement, or, at its discretion, SEMSWA WAE may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by SEMSWA WAE shall be repaid by Engineer to SEMSWA WAE upon demand, or SEMSWA WAE may offset the cost of the premiums against any monies due to the Engineer from SEMSWA WAE.

G. SEMSWA reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

7. **Insurance Certificates.**

A. The Engineer shall, prior to commencing services, deliver to SEMSWA WAE Certificates of insurance as evidence that policies providing any and all required coverages and limits are in full force and effect.

B. These certificates will serve as an indication to SEMSWA WAE that the Engineer has acquired all necessary insurance;

C. Insurance limits must be indicated on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by SEMSWA WAE prior to commencement of services under the Agreement. The certificates shall identify this Agreement and shall state the project number where applicable.

8. **Indemnification.** The Engineer shall indemnify and hold harmless SEMSWA WAE and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, actions or awards, including costs, expenses and attorneys fees, incurred or occasioned as a result of the negligent acts or omissions of the Engineer, or its principals, employees, agents or subEngineers, to the proportionate extent, arising out of or in any way connected with the negligent performance of services under this Agreement. The Engineer's obligation to indemnify pursuant to this paragraph, and to provide any extended insurance coverage where applicable, shall survive the completion of the scope of services, and shall survive the termination of this Agreement.

9. **Independent Engineer.** The Engineer is an independent Engineer. AN INDEPENDENT ENGINEER IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP. Notwithstanding any provision appearing in this Agreement, all personnel assigned by the Engineer to perform work under the terms of this Agreement shall be and remain at all times employees of the Engineer or employees of their respective employers for all purposes.

10. **Notices.** Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth in Section 6 of Exhibit A.

11. **Extent of Agreement.** This Agreement represents the entire and integrated agreement between SEMSWA WAE and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this must be in writing and be signed by both SEMSWA WAE and the Engineer. If any portion of this Agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the parties that the remaining portions of this Agreement shall be of full force and effect.

ENGINEER: Muller Engineering Company, Inc.

By: _____

Title: _____

Signed this ____ day of _____, 2007

State of Colorado) ss

County of _____)

Subscribed and sworn to before me this _____ day of 2007, _____ by _____.

My commission expires: _____, _____.

Notary Public

SEAL

ATTEST:

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

By: _____

Majed M. Lugod, PE

Date: _____

Title: Executive Director

EXHIBIT A to Agreement between SEMSWA WAE and Muller Engineering Company, Inc.

Project Number or Name: **District Consultant Services**

1. **Scope of Services.** The Engineer hereby agrees to and accepts responsibility to perform the following services:

See **Attachment A.**

2. **Time of Performance.** The services of the Engineer shall commence (choose one):

☒ As of the date of this Agreement

☐ As specified in a Notice to Proceed to be provided by the SEMSWA WAE

☐ As of the following date:

This is an annual contract, and as such, shall end by **December 31, 2008.** If the parties agree to continue this contract in yearly increments, annual addendums to the Agreement may be used..

Sixty days prior to termination of this Agreement, Muller Engineering Company, Inc. shall provide to SEMSWA WAE its cost proposal for its future performance of the services described in Attachment A.

3. **Compensation.** SEMSWA WAE agrees to compensate the Engineer for the performance of services detailed in Section 1 above, Scope of Services, as follows:

☐ Lump sum due upon completion:

☐ Hourly rate of (to be billed monthly).

☒ Other: Time and Materials per the rates on the fee estimate (Attachment A).

It is expressly understood and agreed that the total compensation to be paid to the Engineer under this Agreement shall not exceed **\$20,000**

4. **Notices of Termination.** Notices of termination shall be given at least thirty (30) days before the effective date of termination.

5. **Professional Liability Insurance.** Errors and Omissions or Professional Liability Insurance is ☒ or is not ☐ required. The required minimum amount of coverage is \$1 million.

The defense costs coverage referred in Attachment A, page 8 under **Indemnity** shall be included in the liability coverage provided to SEMSWA WAE, its officers, officials, and employees as additional insured's.

6. **Addresses for Notices.** The addresses for Notices are as follows:

To: SEMSWA WAE, Steve Gardner, Director of Technical Operations
76 Inverness Drive East, Suite A
Englewood, CO 80112

To: Muller Engineering Company Mr. Mike Dungan, PE
777 S. Wadsworth, Suite 4-100
Lakewood, CO 80226

7. **Special Conditions.**

☐ No special conditions

☒ Special Conditions are as follows: Illegal Aliens

Attachment A

Scope of Services. Services are to be provided in two areas – development reviews and general consultation. A description of services in each area follows.

Development Reviews. These services include reviewing development plans as requested by SEMSWA WAE. The development plans will be reviewed for conformance to the Master Plans existing for each basin. Specifically, impervious ratios will be compared to original estimates to determine availability of runoff volume in regional ponds. Additional comments will be made concerning capacity of storm sewers, floodplain issues, water quality planning and availability, and any special issues applicable to individual developments. A comment review letter shall be included to document basin identification, regional facility serving the property, and any special issues regarding fees, maintenance, operation, and/or access.

General Consultation. These services include answering questions and providing information as requested by SEMSWA WAE. The information areas include, but are not limited to, maintenance questions, permitting issues, regulatory information, property transfers, and management questions.

Attachment A

MULLER ENGINEERING COMPANY, INC.

2008
SCHEDULE OF HOURLY RATES

<u>Professional Staff</u>	<u>Hourly Rates</u>
Principal Engineer IX	\$142.00
Principal Engineer VIII	137.00
Project Manager VII	132.00
Project Manager VI	120.00, 113.00
Project Engineer V	105.00
Project Engineer IV	97.00
Design Engineer III	91.00
Design Engineer II	85.00
Design Engineer I	78.00
Senior Designer	88.00
Designer	84.00
Technician/CADD Operator IV	82.00
Technician/CADD Operator III	75.00
Technician/CADD Operator II	69.00
Technician/CADD Operator I	60.00
Administrative Support	60.00
Intern	46.00

Other Direct Costs

Vehicle Mileage (or approved IRS rate).....	\$ 0.485 / mile
Photocopies	0.10 / copy
22" x 34" Prints	1.00 / sheet

When large print jobs are required for a project, they are sent out to printing shops and billed at actual cost.

Subconsultants, messenger delivery, overnight delivery, equipment rental, long distance telephone, outside computer, reproduction, out-of-town living expenses, travel costs, and other miscellaneous direct project expenses, will be charged at actual cost.

Use of computers and computer software is included in the hourly rates of personnel.

Rates shown will be revised in January of each calendar year.