

MASTER SERVICES AGREEMENT FOR EROSION CONTROL SERVICES

This **MASTER SERVICES AGREEMENT** (“Agreement”) is made and entered into this 1st day of January, 2017, by and between **WATERFALL METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **SWPPP COLORADO, LLC** (“Contractor”), collectively, the “Parties.”

RECITALS

WHEREAS, the District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities, improvements, and infrastructure in accordance with its approved service plan; and

WHEREAS, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts affecting the affairs of the District; and

WHEREAS, the District desires to procure Storm Water Management Services relating to the operation and maintenance of certain District facilities, improvements and infrastructure; and

WHEREAS, Contractor has experience and resources to provide such services and is willing and able to provide such services to the District for reasonable consideration; and

WHEREAS, the District desires to engage Contractor to render such services as are needed by the District; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions by which Contractor shall provide such services to the District.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Appointment of Contractor. The District hereby retains Contractor for purposes of performing such Services (as such term is defined in Section 2 hereof), subject to the terms and conditions of this Agreement. Contractor hereby agrees to perform such Services pursuant to the terms and conditions set forth herein.

2. Scope of Services. Contractor shall perform the services for the District as outlined in the Scope of Services and Payment for Services in **Exhibit A** attached hereto and incorporated herein for reference (“Base Services”). The District may, from time to time, request modified and/or supplemental services (“Work Order Services”) to be performed hereunder. Such modified and/or supplemental services, including any adjustments of Contractor’s compensation, shall be

mutually agreed upon by the Parties and set forth in a Work Order (“Work Order”) to this Agreement. The form of Work Order is set forth in **Exhibit B** attached hereto and incorporated herein by reference. In the event the District or the Parties need to modify the Work Order Services set forth in the Work Order, the Parties shall execute a Change Order, as set forth in **Exhibit C** attached hereto and incorporated herein by reference, describing the specific changes to the Work Order Services and any changes to compensation to be paid to Contractor by the District. No Work Order or Change Order shall be authorized and executed by the District unless sufficient funds have been appropriated by the District for payment of the Contractor’s compensation, as provided in Section 13 hereof. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement. Contractor shall at all times conform to the stated policies established and approved by the District.

A. General Duties. In connection with performing the Base Services and any approved Work Order Services and Change Order Services (collectively, the “Services”), Contractor agrees to:

(1) Provide all Services in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor’s proposal to provide such Services to the District;

(2) Furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services;

(3) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 7 hereof;

(4) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District’s staff and Contractors to assure that the District has the most complete information available for the exercise of the District’s powers and discretionary authority; and

(5) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by Contractor shall be the obligations of Contractor whom shall hold the District harmless therefrom.

B. Compliance with Applicable Law. Contractor shall provide the Services as set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. Contractor declares that Contractor has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Services to be provided pursuant to this Agreement.

C. Subcontractors. Contractor is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement, including all acts and omissions of subcontractors and persons employed by them. Contractor will require any subcontractors to obtain the required insurance coverage pursuant to Section 7 hereof and to agree to indemnify the District in the same manner as Contractor pursuant to Section 10 hereof.

D. No Right or Interest in District's Assets. Contractor shall have no right or interest in any assets of the District, or in any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

E. Responsibility for Errors. Contractor shall be responsible for all Services performed pursuant to this Agreement, including any Work Orders and Change Orders issued hereunder. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the District, regarding any Services rendered pursuant to this Agreement, and any Work Orders and Change Orders issued hereunder, at no additional cost to the District. In the event of an error or omission attributable to Contractor occurs, Contractor shall, at no cost to the District, provide all necessary design drawings, estimates and other services necessary to rectify and correct the matter to the satisfaction of the District and participate in any meeting required with regard to the correction at no cost to the District.

3. Compensation. Contractor shall be paid an amount not to exceed \$700.00 for the Base Services, as set forth in **Exhibit A** attached hereto and incorporated herein by reference. This amount has been budgeted and appropriated by the District for the current year of performance of the Base Services. Contractor shall be paid for Work Order Services and Change Order Services pursuant to the terms of this Agreement and the terms of the executed Work Order and Change Order, respectively. Contractor shall not receive additional compensation for any changes to a Work Order unless the District and Contractor have executed a Change Order authorizing the change in Work Order Services and the payment of additional compensation to Contractor. Any and all Work Orders and Change Orders resulting in additional compensation to be paid to Contractor by the District beyond the amount originally appropriated by the District, shall require the appropriation of additional funds by the District, as set forth in Section 13 hereof, prior to the execution of any such Work Order or Change Order. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to ensure that the costs for Services provided and charged to the District do not include sales and use taxes.

A. Monthly Reports and Invoices. Contractor shall submit to the District monthly reports in a form acceptable to the District which describe the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District no later than the 3rd day of each month for Services completed in the preceding month. The District shall pay Contractor's invoice within forty-five (45) days from the 3rd day of each month. The District reserves the right to inspect all Services completed and invoiced prior to payment as set forth in Section 3.B. herein. In the event inspected services are not accepted for payment by the District, the terms of Section 3.B. herein shall apply.

B. Inspection of Services. The District may inspect the Services provided at any time throughout the term of this Agreement and shall notify Contractor if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by Contractor to properly provide the Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to Contractor. Contractor shall have two (2) days to cure the default unless otherwise agreed to by the Parties. If Contractor fails to cure the default within the time period provided, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorney fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by Contractor, the District may hire a third party to complete the Services and Contractor agrees to pay all additional costs incurred for the completion of the Services by a third party.

C. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 5 hereof, the District shall pay Contractor for all of the Services satisfactorily performed prior to the designated termination date. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the Services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the Services contemplated herein.

4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall terminate on December 31, 2017 or upon the completion of all MSA Services. In the event the completion of Services occurs in a fiscal year following the effective date of this Agreement, such Services to be performed in the following fiscal year shall be subject to annual appropriations by the District as set forth in Section 13 hereof. The term of this Agreement may be extended in writing upon mutual agreement of the Parties, and such writing shall become an amendment to and part of this Agreement. Any extension of this Agreement shall be subject to annual appropriations by the District as set forth in Section 13 hereof.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination thereof. Contractor shall be entitled to receive compensation in accordance with Section 3.C. of this Agreement for any Services satisfactory completed pursuant to the terms of this Agreement prior to the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering Services pursuant to this Agreement upon the effective date of termination. Upon any termination and payment of all undisputed amounts owed to Contractor, Contractor shall transfer title and deliver to the District all Work Product, as defined and described in Section 6 hereof, which shall be deemed from and after the effective date of this Agreement to be the property of the District.

6. Ownership of Work Product. Any and all Work Product, as such term is defined herein, created, prepared, and/or produced by Contractor pursuant to this Agreement shall become the sole and exclusive property of the District under all circumstances, whether or not Contractor completes the Services set forth hereunder or the Agreement is terminated. Upon request by the District, all Work Product shall be delivered to the District in hard copy and in an electronic format compatible to the District's computer applications at Contractor's expense. Upon payment to Contractor for its Services, the District shall have the right to use and re-use all Work Product resulting from Contractor's efforts performed pursuant to this Agreement in any way or manner deemed appropriate by the District. Any modification of the documents, without written verification, completion, or adaptation by Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to Contractor or to its officers, directors, members, partners, agents, employees, and subcontractors. The District's use of any or all such Work Product for its own purposes shall not be a violation of any patent or copyright thereof. Contractor agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product, are hereby assigned and shall belong exclusively to the District. Upon request by the District, Contractor shall promptly execute whatever legal documents or other materials that the District deems necessary to secure, perfect, or substantiate the District's exclusive rights and interest in any Work Product created pursuant to this Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which Contractor prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by the District or others on extensions of the work or on any other project.

7. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Section 7(A), to provide protection from claims that may arise out of or result from Contractor's performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

- (1) Commercial General Liability Insurance:
- | | |
|-----------------------------------|--------------|
| General Aggregate | \$ 2,000,000 |
| Products and Completed Operations | \$ 1,000,000 |
| Personal and Advertising Injury | \$ 1,000,000 |
| Each Occurrence | \$ 1,000,000 |
| Damage to Rented Premises | \$ 100,000 |
| Medical Expenses (Any one person) | \$ 5,000 |

(2) Comprehensive Automobile Liability Insurance shall include all motor vehicles owned, hired, leased, or borrowed, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence.

- (3) Workmen's Compensation and Employer Liability Insurance

Worker's Compensation	Per Colorado Statutes
Employers' Liability	\$ 1,000,000 each accident

- (4) Umbrella Policy: \$ 1,000,000

In addition, unless otherwise marked "No", the following coverage shall be obtained by Contractor, on an occurrence basis:

- (5) Performance Bond

Included: Yes [] No [X]

(6) Builder's Risk Insurance. A blanket builder's risk insurance policy with coverage on an "all risk" basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) policy is to include as insured the District, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Services. Such insurance shall be on a "completed value" form insuring probable maximum loss, all on a replacement cost basis.

Included: Yes [] No [X]

(7) General Professional Liability. Professional Liability insurance with coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts, errors, or omissions of the Contractor and/or its subcontractors in the performance of the Services.

Included: Yes [] No [X]

Unless otherwise indicated, all policies listed herein shall be on an occurrence basis.

B. Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the District and its directors, officers, employees, and agents.

C. Additional Insured Parties. The District shall be named as an additional insured on all policies (with the exception of workers' compensation insurance). The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available insurance sources.

D. Certificates of Insurance. Contractor shall provide to the District certificates of insurance showing the insurance coverages and required endorsements described above, prior to performing any Services pursuant to this Agreement.

E. Notice. Contractor agrees to provide the District with a minimum 10-day notice for the cancellation of any insurance policies required by this Agreement due to the non-payment of a premium and with a minimum of a 30-day notice for any change to or cancellation of an insurance policy other than for non-payment of a premium. Any failure on the part of the Contractor to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the Contractor to provide the required coverage to the District and its directors, officers, employees, and agents.

F. Subcontractor Insurance. If Contractor subcontracts any portion(s) of the Services, Contractor shall require that each subcontractor retained by Contractor to acquire and maintain insurance coverage as set forth in this Section 7. Contractor shall require each subcontractor to provide to Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. Contractor shall, upon District request, submit them to the District for review. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 7 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 10 hereof, or any rights, immunities and protections provided to the District by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which Contractor may be held responsible for payments of damages to persons or property.

8. Illegal Aliens.

A. Certification. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit D**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Section 8.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

(1) Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(2) Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

(i) Notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply With Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department")

made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Section 8 of the Agreement.

E. Breach. If Contractor violates a provision of this Section 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Section 8 of the Agreement and the District terminates the Agreement.

F. Department Program. If Contractor participates in the Department Program in lieu of the E-Verify Program, Contractor shall notify the Department and the District of such participation. Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and has not altered or falsified the identification documents for such employees. Contractor shall provide a written, notarized copy of the affirmation to the District.

9. Independent Contractor. Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and any of the Contractor's employees. Neither the Contractor nor any of Contractor's employees are or shall be deemed employees of the District. Contractor is not, and shall not act as, the agent of the District. The employees who assist Contractor in the performance of the Services shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the District. Contractor shall pay all wages, salaries, and other amounts due Contractor's employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees including, without limitation social security tax, income tax withholding, unemployment compensation, worker's compensation, employee benefits and similar matters. Further, Contractor has sole authority and responsibility to employ, discharge, and otherwise control Contractor's employees. Contractor has sole authority and responsibility as principal for Contractor's agents, employees, subcontractors and all others Contractor hires to perform or assist in performing the Services.

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor's performance, duties, and obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. If Contractor is providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the District may be determined only after Contractor's liability or fault

has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor and the District. The obligations of the indemnifications extended by Contractor to the District under this Section 10 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, Contractor shall provide the District with a copy of Contractor's IRS Form W-9, Request for Taxpayer Identification Number.

11. Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the District or its directors, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

12. Liability of the District. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

13. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder for any and all Services authorized pursuant to Section 2 of this Agreement are subject to annual appropriations of funds by the District. Any extension of this Agreement, including any Work Orders or Change Orders, resulting in additional compensation beyond amounts originally appropriated, if any, shall be subject to annual appropriations of funds by the District prior to any extensions or the execution of any Work Order or Change Order and performance of Work Order Services or Change Order Services by Contractor.

14. Bidding. The District shall be entitled to bid for any Services described in this Agreement as it deems necessary to comply with current law regarding contracts for such services. Contractor shall have no claim against the District if this Agreement is not extended for any fiscal year or if Contractor is not selected to perform such Services as may be needed by the District throughout the fiscal year.

15. Notices. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by electronic mail, delivery receipt requested; or sent by a nationally recognized receipted overnight delivery service for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by electronic mail, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for mailing, transmitting, or delivering notices shall be as follows:

If to the District: Waterfall Metropolitan District No. 1
c/o Pinnacle Consulting Group, Inc.
Attention: Shana Morgan
550 W. Eisenhower Blvd.
Loveland, CO 80537
Email: shanam@pinnacleconsultinggroupinc.com

With a Copy to: Icenogle Seaver Pogue, PC.
Attn: Alan D. Pogue
4725 S. Monaco St., Suite 360
Denver, Colorado 80237
Email: APogue@ISP-law.com

If to the Contractor: SWPPP Colorado, LLC
Attention: Shane McCoy
P.O. Box 189
Windsor, CO, 80550
(970) 472-0690
Email: swpppcolorado@comcast.net

16. Modification. This Agreement may not be amended modified, or changed, in whole or in part, without a written agreement executed by both the District and Contractor.

17. Assignment. Contractor shall not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part, without the prior written consent of the District. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release Contractor from Contractor's obligation to perform all other obligations required to be performed by Contractor hereunder for the term of the Agreement. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

18. No Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

21. Attorneys' Fees. In the event that litigation is brought by either party hereto in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any terms, conditions, or provisions hereof.

22. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

23. Conflicts. The terms of this Agreement may be used to construe the intent of the Parties in connection with any exhibits, addendums, amendments, Work Orders, or Change Orders attached hereto, and shall be read as nearly as possible to make the provisions of this Agreement, and any such exhibits, addendums, amendments, Work Orders, and Change Orders fully effective. Should any irreconcilable conflict arise between the terms and provisions of this Agreement and the terms and provisions set forth in any exhibit, addendum, amendment, Work Order, and/or Change Order attached hereto, the terms and provisions of this Agreement shall prevail.

24. Headings. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

25. Binding Agreement. This Agreement shall inure to and be binding upon the respective Parties hereto and their successors and permitted assigns.


26. Entire Agreement. This Agreement, including all Work Orders and Change Orders executed hereunder, and any other exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

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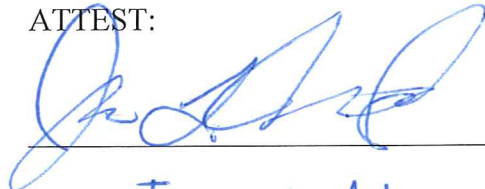
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**WATERFALL METROPOLITAN DISTRICT
NO. 1:**



By: Kim Perry
Its: President

ATTEST:



By: JAMES L. NIEMCZEK
Its: SECRETARY

SWPPP COLORADO, LLC:

Shane McCoy


By: 
Its: CO-OWNER

EXHIBIT A
(To Master Services Agreement)

BASE SCOPE OF SERVICES AND PAYMENT FOR SERVICES



EROSION CONTROL

Pricing 2017

MATERIALS:

Gravel Bags

- 6' Gravel Bag- \$2.50 per LF
- 8' Gravel Bag- \$2.70 per LF

Straw Wattle

- 9' Straw Wattle- \$2.75 per LF
- Heavy Weight Wattle-\$4.30 per LF

Straw Bales

- Replace/install straw bale- \$15.00-18.00 per bale

Silt Fence

- Install- \$1.35 per LF installed
- Repair - \$60 per man hour plus materials

Construction/Safety Fence

- With T-Posts- \$1.50 LF

Erosion control matting

- Call with specifications for estimate

TRM

- Call with specifications for estimate

MAINTENANCE:

Trash Pick-up/Labor Rate

- Waste removal/labor- \$60 hour/+dump fee

Weed spraying

- Weed spraying \$75-\$125 per man hour

Mowing

- \$85 per hour small mower
- \$125 per hour large mower

Berm maintenance/Skid work

- \$85 per hour

Mag spraying

- \$3.00 per gallon

Drill Seeding/Hydro-mulching:

- \$1050 per acre (drill)
- \$1600 per acre (hydro)

*Mobilization fees will vary SWPPP Colorado will provide bids for any job if necessary. Please contact us if we can be of any assistance. Pricing may vary depending upon amount of material and labor. We offer many other services that are not listed; do not hesitate to call and ask.

SWPPP Colorado, LLC

EXHIBIT B
(To Master Services Agreement)
FORM OF WORK ORDER

WORK ORDER #201_ -__
TO
MASTER SERVICES AGREEMENT FOR
_____ SERVICES

This Work Order is made and entered into this ____ day of _____, 201__, by and between **WATERFALL METROPOLITAN DISTRICT NO. 1**, (the "District"), and **SWPPP COLORADO, LLC** ("Contractor"), collectively, the "Parties." Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in that certain Master Services Agreement for _____ Services between the District and Contractor, dated _____, 201__ (the "Agreement").

1. Work Order Services. The Work Order Services to be provided by Contractor are set forth in **Exhibit A** attached hereto and further described as follows:

2. Compensation. Contractor hereby agrees to perform such Work Order Services as set forth in Paragraph 1 to this Work Order and the District hereby agrees to pay Contractor for the satisfactory performance of the Work Order Services [in an amount not to exceed \$ _____ -OR- based on established unit prices [as set forth in Exhibit A to the Agreement], not to exceed a total cost of \$ _____ -OR- a lump sum amount of \$ _____ -OR- on a time and materials basis, not to exceed a total cost of \$ _____], as set forth in **Exhibit A** attached hereto. The District's payment obligation set forth in this Paragraph 2 is subject to the appropriation of funds by the District. The District has appropriated sufficient funds for the Work Order Services for the current fiscal year. Any performance of Services in the subsequent fiscal year shall be subject to annual appropriations by the District.

3. Term. The term of this Work Order shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire [on December 31, 201_ -OR- on a specific date -OR- upon completion of the Work Order Services].

4. Modification. This Work Order may not be amended, modified or changed, in whole or in part, except by a Change Order executed by the District and the Contractor. Any Change Order resulting in an increase in compensation shall be subject to the appropriation of funds by the District prior to the execution of a Change Order.

5. This Work Order has been issued pursuant to, and is hereby made a part of, the Agreement. Except as otherwise provided herein, the terms and conditions of the Agreement remain in full force and effect and shall apply to this Work Order.

IN WITNESS WHEREOF, the Parties have executed this Work Order as of the ____ day
of _____, 201__.

**WATERFALL METROPOLITAN DISTRICT
NO. 1:**

By: _____

Its: _____

SWPPP COLORADO, LLC:

By: _____

Its: _____

EXHIBIT A TO WORK ORDER #201_ -__
SCOPE OF SERVICES AND PAYMENT FOR SERVICES

EXHIBIT C
(To Master Services Agreement)
FORM OF CHANGE ORDER

CHANGE ORDER #201_ - ___
TO
WORK ORDER #201_ - ___

This Change Order is made and entered into this ___ day of _____, 201__, by and between **WATERFALL METROPOLITAN DISTRICT NO. 1**, (the "District"), and **SWPPP COLORADO, LLC** ("Contractor"), collectively, the "Parties," and is hereby issued to modify the terms of that certain Work Order #201_ - ___ executed by the Parties pursuant to the terms of the Agreement (as defined herein). Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in that certain Master Services Agreement for _____ Services, dated _____, 201__ between the District and Contractor, (the "Agreement").

1. Change Order Services. The Change Order Services to be provided by Contractor are set forth in **Exhibit A** attached hereto and further described as follows: (describe specific changes to the Work Order Services that are being modified or removed from the original Work Order)

2. Compensation. Contractor hereby agrees to perform the Change Order Services as set forth in Paragraph 1 to this Change Order and the District hereby agrees to pay Contractor for the satisfactory performance of the Change Order Services. The total amount of compensation to be paid to Contractor for Work Order Services set forth in Work Order #201_ - ___, as modified by this Change Order, is [an amount not to exceed \$_____ -OR- based on established unit prices [as set forth in Exhibit A to the Agreement], not to exceed a total cost of \$_____ -OR- a lump sum amount of \$_____ -OR- on a time and materials basis, not to exceed a total cost of \$_____], as set forth in **Exhibit A** attached hereto. Such Compensation hereby supersedes and replaces the amount of compensation set forth in Work Order #201_ - ___. The District's payment obligation set forth in this Paragraph 2 is subject to the appropriation of funds by the District. The District has appropriated sufficient funds for the Work Order Services, as modified by this Change Order for the current fiscal year. Any performance of Services in the subsequent fiscal year shall be subject to annual appropriations by the District.

3. Term. The term of this Change Order shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire [on December 31, 201_ -OR- on a specific date -OR- upon completion of the Change Order Services].

4. Modification. This Change Order may not be amended, modified or changed, in whole or in part, except by a new Change Order executed by the District and the Contractor.

5. Integrated Agreement. This Change Order has been issued pursuant to, and is hereby made a part of, the Agreement and Work Order #201__-____. Except as otherwise provided herein, the terms and conditions of the Agreement and Work Order #201__-____ remain in full force and effect and shall apply to this Change Order.

IN WITNESS WHEREOF, the Parties have executed this Change Order as of the ____ day of _____, 201__.

**WATERFALL METROPOLITAN DISTRICT
NO. 1:**

By: _____

Its: _____

SWPPP COLORADO, LLC:

By: _____

Its: _____

EXHIBIT A TO CHANGE ORDER #201 - ____
SCOPE OF CHANGE ORDER SERVICES
AND PAYMENT FOR ALL SERVICES

EXHIBIT D
(To Master Services Agreement)

CERTIFICATION REGARDING ILLEGAL ALIENS

**CERTIFICATION
REGARDING ILLEGAL ALIENS**

To: **WATERFALL METROPOLITAN DISTRICT NO. 1**

I, Shane McCoy, as co-owner of SWPPP Colorado, LLC, the prospective "Contractor" for that certain contract for Erosion Control services ("Agreement") to be entered into with Waterfall Metropolitan District No. 1, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the 22 day of November, 2017.

SWPPP COLORADO, LLC

Shane McCoy
By: [Signature]
Its: co-owner