

FIRST AMENDMENT TO THE ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES

THIS FIRST AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES (the “**First Amendment**”) is made and entered into as of the date stated on the City’s signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **SMITH ENVIRONMENTAL AND ENGINEERING, INC.**, a Colorado corporation authorized to do business in the State of Colorado (“**Consultant**”) (collectively the “**Parties**”).

WITNESSETH:

WHEREAS, the Parties entered into the On-Call Agreement for Professional Services on July 13, 2022 (Contract No. 202157834-00) (the “**Agreement**”); and

WHEREAS, through this First Amendment, the Parties wish to amend the Agreement to adjust the required SBE participation goal and update the SBE provision.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

1. The title of Article VI is hereby deleted and replaced with the following title: “**SBE, WAGES AND PROMPT PAYMENT**”.
2. Article VI., Section A. in the Agreement is hereby deleted in its entirety and replaced with the following:

A. Small Business Enterprise.

1. This Agreement is subject to Article VII of Chapter 28, D.R.M.C., designated as §§ 28-201 to 28-236 (the “**SBE Ordinance**”), and the Rules and Regulations promulgated pursuant thereto. This Agreement is also subject to the defined selection pool requirements of the SBE Ordinance. The Consultant is a certified Small Business Enterprise (“**SBE**”) and pursuant to § 28-208, D.R.M.C., the Consultant is required to self-perform a minimum of 45% of the contract work.

2. Under § 28-222, D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the SBE defined selection pool requirements and with the SBE self-performance requirements upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting this Agreement through change order, contract amendment, force account, or other modification under § 28-223, D.R.M.C. The Consultant acknowledges that:

- a. It must establish and maintain records and submit regular reports, as required, which will allow the City to assess the Consultant’s compliance with the defined selection pool requirements and SBE self-performance requirements.

b. Consultant shall have a continuing obligation to promptly inform the DSBO in writing of any agreed upon increase or decrease in the scope of work of this Agreement, upon any of the bases under § 28-223, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change to the City. Any increase in the scope of services of this Agreement, whether by amendment or other modification, which increases the dollar value of the Agreement, if such change is within the scope of work designated for performance by the Consultant at the time of award of this Agreement, shall be promptly submitted to the DSBO.

c. The Consultant shall achieve defined selection pool requirements and self-performance requirements with respect to such changed scope of work by performing such work.

d. The Consultant shall supply to the DSBO Director documentation required by ordinance with respect to the increased dollar value of this Agreement. The Consultant shall not, during the term of this Agreement:

- (i) Fail to in fact perform as an SBE to achieve the work scope originally listed at proposal submission in order to achieve defined selection pool and self-performance requirements; or
- (ii) Modify or eliminate all or any portion of the scope of work upon which self-performance is based and the contract was awarded, unless directed by the City.

e. Failure to comply with these provisions may subject the Consultant to sanctions set forth in § 28-229 of the SBE Ordinance.

f. Should any questions arise regarding SBE and DSBO requirements the Consultant should consult the SBE Ordinance or may contact the DSBO representative at (720) 913-1999.

3. In Article VI. Section C, the language commencing with “**Prompt Pay.**” through to the end of Article VI is hereby deleted and replaced with the following:

D. Prompt Pay.

1. The City will make monthly progress payments to the Consultant for all services performed under this Agreement based upon the Consultant’s monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by the Consultant's own personnel, billings from subcontractors/subconsultants, and all other information necessary to assess the Consultant’s progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

2. Final Payment to the Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by the Consultant. The

City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from the Consultant's compensation because of penalty, liquidated damages or other sums withheld from payments to consultants.

3. For contracts of one million dollars (\$1,000,000.00) and over to which the SBE Ordinance applies, the Consultant is required to comply with the Prompt Payment provisions under § 28-224, D.R.M.C., with regard to payments by the Consultant to SBE subcontractors. The Consultant shall make payment by no later than thirty-five (35) days from receipt by the Consultant of the subcontractor's invoice.

4. All other terms and conditions set forth in the Agreement remain unchanged.

[SIGNATURE PAGES FOLLOW]

Contract Control Number
Contractor Name:

PLANE 202264306-01/202157834-01
SMITH ENVIRONMENTAL & ENGINEERING INC

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:

Attorney for the City and County of Denver

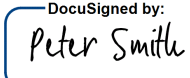
By:

By:

By:

Contract Control Number: PLANE 202264306-01/202157834-01

Contractor Name: SMITH ENVIRONMENTAL & ENGINEERING INC

By: 
07CCDE4785B445D...

Name: Peter Smith
(please print)

Title: Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)