

**SACRAMENTO GROUNDWATER AUTHORITY
CONSULTING AGREEMENT**

THIS AGREEMENT is made and entered into this [redacted] day of [redacted], 20 [redacted] by and between the Sacramento Groundwater Authority, a California joint exercise of powers authority ("SGA"), and [consulting firm name], a _____ ("Consultant"), concerning the Groundwater Quality Degradation Study (the "Services").

RECITALS:

- A. SGA has identified the need for the completion of _____; and
- B. Consultant was selected by SGA to provide the Services on the basis of its qualifications, experience, and facilities for performing the work contemplated; and
- C. Consultant, by reason of its qualifications, experience and facilities for performing the type of work contemplated herein, has proposed to provide the Services; and
- D. SGA desires to engage Consultant to perform the Services;

AGREEMENT:

1. RETENTION OF CONSULTANT

SGA hereby retains Consultant for performance of the Services, and Consultant hereby accepts such retention at the compensation described herein.

2. SCOPE OF SERVICES

The scope of the Services to be provided by Consultant under this Agreement, the schedule for performance and the compensation to be paid to Consultant will be set forth in written task orders ("Task Orders") agreed to in writing from time to time by SGA and Consultant. Consultant agrees to perform all services described in Task Orders to this Agreement for the compensation set forth therein. The services of the Task Order are severable, and not all of them may be required by SGA. Consultant will initiate Task Order items only with written authorization of SGA. The actual cost of each Task Order item may vary from the cost estimates set forth in the Task Order, and funds allocated for one item may be shifted to one or more other items under the Task Order, but within the Not-To-Exceed-Budget Amount for the Task Order. The scope of services, schedule for performance and compensation to be paid to Consultant under a Task Order can be revised if approved in writing by SGA and Consultant.

3. SCHEDULE

Consultant will perform the services in Task Orders in accordance with a schedule that is set forth in the Task Order or otherwise agreed to in writing by SGA and Consultant.

4. COMPENSATION AND NOT-TO-EXCEED-BUDGET AMOUNT

The compensation paid to Consultant will be based on Consultant's time and material necessarily and actually expended in performing and completing the Task Order on a time and expense basis

not to exceed the budget amount (“Not-To-Exceed-Budget Amount”) specified in a Task Order, at Consultant’s hourly rates set forth in the Task Order. Total compensation, including fees, expenses, and profit for services rendered by Consultant under a Task Order will not exceed the Not-To-Exceed-Budget Amount specified in the Task Order unless approved in writing by SGA. Consultant will identify in a Task Order the primary personnel to be assigned to perform the services under the Task Order. SGA will not be obligated to make a payment to Consultant under a Task Order in an amount greater than the Not-To-Exceed-Budget Amount for any additional services, unless such services and corresponding payment therefor have been agreed to in writing by SGA.

5. INVOICES, PAYMENTS, AND NOTICES

A. Consultant will submit periodic invoices to SGA for the services actually rendered during the preceding period. Invoices will be in sufficient detail to describe the services performed and expenses incurred. SGA may require reasonable documentation to support invoiced amounts. Consultant’s failure to furnish such supporting documentation will relieve SGA of the duty to make payment for the services unless and until such documentation is furnished. Consultant will submit invoices to SGA for work completed on all outstanding Task Orders, and SGA will approve the invoices. In cases where Task Order funding is provided by state or federal funds, SGA will forward all undisputed invoices to the appropriate state or federal agency for reimbursement. SGA will remit payment on said invoices within ten (10) days following the date on which SGA receives payment from the state or federal agency for those invoices. In cases where Task Order funding is provided directly through SGA funds, SGA will pay, within thirty (30) days of receipt and approval, all undisputed invoices. The source of funds will be clearly indicated on each new Task Order. The parties agree to exercise good faith and diligence in the resolution of any disputed invoiced amounts. If any amounts due Consultant under this Agreement are not paid within ninety days from the due date, Consultant will not be obligated to perform further services under this Agreement until all payments due Consultant for work performed have been paid.

B. Any invoice, payment, notice, demand, request, consent, approval or notification of change of address that either party hereto may or is required to give the other shall be in writing and signed for each party by an authorized officer. All such notices will be deemed to have been received on the date of delivery if either personally delivered or sent by recognized overnight courier service or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States post office for first-class delivery. Unless and until notified in writing as provided in this paragraph, all notices will be addressed as follows:

TO SGA:

Jim Peifer
Executive Director
Sacramento Groundwater Authority
2295 Gateway Oaks Drive Suite 100
Sacramento, CA 95833

TO CONSULTANT:

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless SGA, its directors, officials, officers and employees from and against any and all suits, actions,

judgments, legal or administrative proceedings, arbitrations, claims, demands, causes of action, damages, liabilities, interest, attorney’s fees, fines, penalties, losses, costs and expenses regardless of nature or type (“claims” or “claim”), arising out of, pertaining to or in any way connected with the negligence, recklessness or willful misconduct of Consultant or arising out of or in any way related to the negligence, recklessness or willful misconduct of Consultant’s employees, agents, or subcontractors or the agent, employee or subcontractors of any one of them in the performance of their duties or in their operations under this Agreement. The provisions of this section survive the completion of the services under or the termination of this Agreement. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. The obligations of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. GENERAL INSURANCE

Consultant, at its sole cost and expense, shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

<u>Type</u>	<u>Limits</u>	<u>Scope</u>
General liability	\$2,000,000 per occurrence	at least as broad as ISO CG00 01
Automobile liability	\$2,000,000 per occurrence	at least as broad as ISO CA00 01 (hired or non-owned)
Workers' compensation	Statutory limits	

The general and automobile policy(ies) shall be endorsed to name the SGA, its directors, officers, officials, employees and volunteers as additional insureds regarding liability arising out of the performance of the Work or the services rendered under this Agreement. Consultant shall provide SGA with ISO CG 2010 endorsement form or equivalent. The coverage shall contain no special limitations on the scope of protection afforded to SGA, its directors, officers, officials, employees or volunteers. Consultant's coverage shall be primary and shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. SGA's insurance, if any, shall be excess and shall not contribute with Consultant's insurance. The workers' compensation policy shall be endorsed to include a waiver of subrogation against SGA, its directors, officials, officers and employees.

The insurance is to be placed with insurers licensed to do business by and in good standing with the California Department of Insurance, with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to SGA. Prior to commencing the services provided for herein, Consultant shall provide to SGA original endorsements evidencing this insurance signed by a person authorized to bind coverage on behalf of the insurer(s). The certificates and policies shall provide that 30 days' written notice of any material change, reduction of coverage or cancellation of the insurance policies will be provided to SGA. The requirements as to the types, limits, and SGA's approval of insurance coverage to be maintained by the Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Consultant under this Agreement. In addition, in the event any change is made in the insurance carrier,

policies or nature of coverage required under this Agreement, Consultant shall notify SGA prior to making such changes.

8. ERRORS AND OMISSIONS INSURANCE

Consultant shall have such errors and omissions insurance for the benefit of SGA as shall protect SGA, its officers, officials, directors, employees, agents and volunteers from claims based on alleged errors or negligent acts or omissions which may arise from the Services or Consultant's operations or performance under this Agreement, whether any such claim is made during or subsequent to the term of this Agreement, and whether such operations or performance be by Consultant or its employees, consultants, agents or anyone else employed by any of the foregoing. The amount of this insurance shall not be less than \$1,000,000. Said policy shall be continued in full force and effect during the term of this Agreement and for a period of five years following the completion of the Work. In the event of termination of said policy, new coverage shall be obtained for the required period to insure for the prior acts of Consultant during the course of performing services under the terms of this Agreement. Consultant shall provide to SGA a certificate of insurance on a form acceptable to SGA indicating the deductible or self-retention amounts and the expiration date of said policy, and shall provide renewal certificates within 10 days after expiration of each policy term. The insurance is to be placed with insurers licensed to do business by and in good standing with the California Department of Insurance, with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to SGA.

9. INDEPENDENT CONTRACTOR

A. It is expressly understood and agreed by the parties that Consultant's relationship to SGA is that of an independent contractor. All persons hired by Consultant and performing the Services will be exclusively Consultant's employees, subcontractors and agents. SGA will not be obligated in any way to pay any wages, benefits or other claims by any such employees, subcontractors or agents or any other person by reason of this Agreement. Consultant shall be solely liable to such employees, subcontractors and agents for losses, costs, damages, or injuries by said employees, subcontractors or agents during the course of the Services. SGA will not be required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement.

B. It is further understood and agreed by SGA and Consultant that, subject to the provisions of this Agreement, Consultant, in the performance of its obligation hereunder, is subject to the control or direction of SGA as to the designation of tasks to be performed and the results to be accomplished by the Services, but that SGA is not responsible for directing the means, methods, or sequence used by Consultant for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons will be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, will be determined by Consultant.

D. It is further understood and agreed that Consultant must issue W-2 and 941 Forms for income and employment tax purposes for all of Consultant's employees, subcontractors and agents under the terms and conditions of this Agreement.

10. PROFESSIONAL SERVICES

A. Consultant agrees that the Services will be performed and completed in a professional manner as diligently and expeditiously as possible. All Services will be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and any subcontractors are engaged. Consultant will not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of SGA without the prior written consent of SGA. SGA representatives will, with reasonable notice, have access to Consultant's work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of the Agreement.

B. Consultant will perform each Task Order in compliance with all applicable federal, state and local laws and regulations, including applicable State Department of Industrial Relations regulations. Consultant will possess and maintain all permits, licenses and certificates that may be required for it to perform the work.

11. RESPONSIBILITY OF SGA

SGA will furnish to Consultant information and documents as may be reasonably required for Consultant to perform the Service or any Task Order thereunder. SGA will review all documents submitted by Consultant and render decisions pertaining thereto, as promptly as is reasonable under the circumstances at the time, in order to avoid unreasonable delay in Consultant's performance under this Agreement.

12. RESPONSIBILITY OF THE CONSULTANT

A. Consultant will produce work of a high quality for review by SGA. SGA will review Consultant's Task Order work that is prepared for publication for public dissemination for completeness, accuracy and compliance with the Task Order. If the work is found acceptable, SGA will so indicate in writing. SGA's approval will indicate its acceptance of all aspects of the material prepared for issuance to the public. Any SGA approval or failure to approve under this section will not affect Consultant's indemnification obligations.

B. Consultant will coordinate the activities of any subcontractors and will be responsible to ensure that all work and deliverables interface with the other applicable work and deliverables to produce a unified, workable and acceptable product.

13. AUTHORITY OF CONSULTANT

Consultant is retained to provide the Services and the specific Task Orders executed under this Agreement. SGA is responsible for and will make all policy and governmental decisions related to performance of a Task Order by Consultant. In so doing, Consultant will abide by position statements furnished to Consultant by SGA.

14. CONSULTANT'S RECORDS

During the entire term of this Agreement, and for not less than three years thereafter, Consultant will maintain all of its records pertaining to performance of each Task Order under this

Agreement relating to time and materials, including records of all reimbursable expenses incurred in connection therewith, which will be maintained in accordance with generally-accepted professional accounting principles consistently applied. Consultant will make such records available upon request by SGA or SGA’s authorized representative for purposes of examination, audit or copying.

15. PUBLICATION OF DOCUMENTS AND DATA

Consultant will not publish, or disclose to any third party, documents or data provided to or developed by Consultant in the performance of the Services without the prior written approval of SGA. Submission or distribution to meet official regulatory requirements or for purposes authorized by this Agreement, will not be construed as publication in violation of SGA’s rights.

16. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, reports, documents, images, photo ready copy, electronic media, or other work products of Consultant provided to SGA will become the exclusive property of SGA and will be delivered to SGA upon completion of the services authorized hereunder. Consultant may retain copies of its work products for its files and internal use. By this Agreement, Consultant transfers all of its right, title and interest in such documents to SGA. To the extent any document provided to SGA constitutes a copyrightable work, it shall be considered a work for hire and by this Agreement, Consultant shall be deemed to transfer all rights, title and interest in the copyrightable work to SGA, including the exclusive copyright. Consultant shall not provide any documents prepared under this Agreement to any other person without SGA's prior written approval. SGA may make such use of any item prepared by Consultant as it deems fit, including copying, reproducing, republishing and distributing such items without compensation to Consultant, but also without liability of Consultant for damages that may arise from the use of such items outside the scope of this Agreement.

17. PROJECT CONTACTS

Key contacts for the work to be performed under this Agreement will be as follows:

SGA: Jim Peifer

CONSULTANT: _____

18. ASSIGNMENT AND SUBCONTRACTING

Consultant's obligations authorized under this Agreement are not assignable or transferable, and Consultant agrees not to subcontract any work authorized hereunder, beyond that indicated in a Task Order, without the prior written approval of SGA. It is recognized, however, that Consultant may obtain services from suppliers such as printers, graphic designers, writers and other like entities without requiring such approval.

19. CONFLICT OF INTEREST

Consultant certifies that it has disclosed to SGA any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant hereby agrees to advise SGA of any actual, apparent, or potential conflicts of interest

that may develop subsequent to the date of execution of this Agreement. SGA reserves the right to require Consultant to submit a financial disclosure statement at the request of the SGA.

20. EMPLOYMENT PRACTICES

Consultant, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, gender, disability or marital status in its employment practices.

21. TERMINATION

This Agreement may be terminated at any time by either part upon ten days' advance written notice to the other party. In the event of any termination of this Agreement by either party:

A. Consultant will immediately cease rendering services pursuant to this Agreement;

B. Consultant will deliver to SGA copies of all writings prepared pursuant to this Agreement designed or intended for dissemination to the public, including preliminary drafts thereof. The term "writings" will be construed to mean and include: handwriting, typewriting, printing, photocopying, photography, storage in electronic media and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof; and

C. SGA will reimburse Consultant for services performed through the effective termination date at time and expense rates stated in the applicable Task Order. Compensation under this paragraph shall not include costs related to lost profit associated with the expected completion of the Services or other such payments relating to the benefit of the bargain.

22. TERM OF AGREEMENT

This Agreement will be effective as of the date executed and approved by all parties and will continue in effect until the Services provided for in this Agreement have been fully performed unless otherwise terminated as set forth in section 21 (Termination of this Agreement).

23. SUBCONTRACTORS

No subcontract shall be awarded nor any outside consultant engaged by Consultant without SGA's prior written approval. Any approved subcontractor shall be covered by Consultant's insurance in accordance with the insurance requirements of sections 7 and 8 of this Agreement or such subcontractor services will be subject to a separate agreement between SGA and the subcontractor.

24. ENTIRE AGREEMENT

This Agreement, all exhibits attached hereto, all other terms or provisions incorporated herein by reference, and any notice to proceed issued in accordance with the terms hereof, constitute the entire Agreement and understanding between the SGA and the Consultant as to the subject matter contained herein. No modification to this Agreement will be effective unless and until such modification is evidenced by a writing signed by both SGA and Consultant. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in or referred to in this Agreement.

25. ATTORNEY'S FEES.

In the event that any arbitration, litigation or other action or proceeding of any nature between SGA and Consultant becomes necessary to enforce or interpret all or any portion of this Agreement or because of an alleged breach by either party of any of the terms of this Agreement, it is mutually agreed that the losing or defaulting party shall pay the prevailing party's reasonable attorney's fees, expert witness fees and costs, and litigation costs and expenses incurred in connection with the prosecution or defense of such action or proceeding.

26. INTERPRETATION.

SGA and Consultant each had the opportunity to consult independent counsel in the negotiation and execution of this Agreement. For the purposes of interpretation of this Agreement, neither party will be deemed to have been its drafter.

27. GOVERNING LAW.

This Agreement will be governed by and construed in accordance with the laws of the State of California, and any action brought on this Agreement shall be filed and prosecuted to final judgment in Sacramento County.

28. NO WAIVER OF RIGHTS.

Any waiver at any time by either SGA or Consultant of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

29. LICENSING.

Consultant represents that it is licensed by the California Department of Consumer Affairs – Board for Professional Engineers, Land Surveyors, and Geologists, and that Consultant’s license is in good standing and will be kept in good standing during the term of this Agreement.

The foregoing is hereby approved by the parties and executed on the date first written above.

Sacramento Groundwater Authority		
By		By
Jim Peifer		
Date		Date