

Name of Project: **Aquatic Pesticide Compliance**

SOLANO COUNTY WATER AGENCY

AGREEMENT FOR PROFESSIONAL SERVICES *(Professional Services/Contractor)*

THIS AGREEMENT, **effective July 1, 2022**, is between SOLANO COUNTY WATER AGENCY, a public agency existing under and by virtue of Chapter 573 of the 1989 statutes of the State of California, hereinafter referred to as "Agency," and **Blankinship and Associates**, hereinafter referred to as "Contractor."

The Agency requires services for **Aquatic Pesticide Compliance**; and the Contractor is willing to perform these services pursuant to the terms and conditions set out in this Agreement.

IT IS MUTUALLY AGREED, as follows:

1. SCOPE OF SERVICES

The Agency hereby engages the Contractor, and the Contractor agrees to perform the services for **Aquatic Pesticide Compliance**, as described in Exhibit A, in accordance with the terms of this Agreement and any applicable laws, codes, ordinances, rules or regulations. In case of conflict between any part of this Agreement, this Agreement shall control over any Exhibit.

2. COMPENSATION

Compensation for services shall be as follows: Hourly rate of personnel plus any allowed reimbursable expenses based on unit costs as indicated on any allowed reimbursable expense in Exhibit B **not to exceed \$90,600** for all work contemplated by this Agreement.

3. METHOD OF PAYMENT

Payment for services will be approved by the Agency's representative only if all contract requirements have been met.

Invoices must be submitted monthly, and upon approval of the Agency's representative, the Agency shall pay the Contractor monthly in arrears for fees and allowed expenses incurred the prior month. Invoices that are over 6 months old will not be approved or paid by the Agency. **In no event shall the cumulative total paid pursuant to this agreement exceed the maximum amount provided for in paragraph 2 of this Agreement.**

Every invoice shall specify hours worked for each task identified in Exhibit A undertaken. To be approved by payment, any allowed reimbursable expenses will need supporting written documentation such as receipts and mileage logs.

Each invoice shall be accompanied by a spreadsheet showing, by month, costs incurred to date for the project broken down by the Tasks identified in Exhibit A. The spreadsheet shall show, for each task, budget amounts, total expended and remaining amounts. The spreadsheet shall show a subtotal for each fiscal year covered by the contract. Any amendments to the contract shall be listed and incorporated into spreadsheet. An example of a typical spreadsheet shall be provided by the Agency.

4. **TIME OF PERFORMANCE**

This Agreement shall become effective as of the date it is executed and said services will take place between this date and **June 30, 2024** as directed by the Agency.

5. **MODIFICATION AND TERMINATION**

This Agreement may be modified or amended only by written instrument signed by the parties hereto, and the Contractor's compensation and time of performance of this Agreement shall be adjusted if they are materially affected by such modification or amendment.

This Agreement may be terminated by the Agency at any time, without cause, upon written notification to the Contractor. The Contractor may terminate this Agreement upon 30 days written notice to Agency.

Following termination by the Agency or the Contractor, the Contractor shall be reimbursed for all expenditures made in good faith in accordance with the terms of this Agreement that are unpaid at the time of termination.

6. **PERMITS**

Permits required by governmental authorities will be obtained at the Contractor's expense, and the Contractor will comply with local, state and federal regulations and statutes including Cal/OSHA requirements.

7. **INDEMNIFY AND HOLD HARMLESS**

To the extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify Solano County Water Agency, its directors, officers, employees, and authorized volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees and costs, arising from all acts or omissions of Contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising Solano County Water Agency's sole negligence or willful acts.

8. **INSURANCE**

Minimum Insurance Requirements: Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or sub-contractors.

Coverage - Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Solano County Water Agency) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability** – (if necessary) Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Contractor has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation:** The insurer(s) named above agree to waive all rights of subrogation against the Solano County Water Agency, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not the Solano County Water Agency has received a waiver of subrogation from the insurer.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Solano County Water Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Solano County Water Agency.

Other Required Provisions - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Solano County Water Agency, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
2. **Primary Coverage:** For any claims related to this project, the Contractor's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Solano County Water Agency, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Solano County Water Agency its directors, officers, employees and authorized volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Solano County Water Agency.

Self-Insured Retentions - Self-insured retentions must be declared to and approved by the Solano County Water Agency. The Solano County Water Agency require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Solano County Water Agency.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by Solano County Water Agency.

Verification of Coverage – Contractor shall furnish the Solano County Water Agency with certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Solano County Water Agency before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Solano County Water Agency reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

Sub-contractors - Contractor shall require and verify that all sub-contractor maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Solano County Water Agency its directors, officers, employees, and authorized volunteers are an additional insured are an additional insured on Commercial General Liability Coverage.

9. **COMPLIANCE WITH LAW**

The Contractor shall be subject to and comply with all federal, state and local laws and regulations applicable with respect to its performance under this Agreement, including but not limited to, licensing, employment and purchasing practices; and wages, hours and conditions of employment.

10. **RECORD RETENTION**

Except for materials and records, delivered to the Agency, the Contractor shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least three years after the Contractor's receipt of the final payment under this Agreement. Upon request by the Agency, the Contractor shall make such materials and records available to the Agency at no additional charge and without restriction or limitation to State and federal governments at no additional charge.

11. **OWNERSHIP OF DOCUMENTS**

All materials and records of a finished nature, such as final plans, specifications, reports and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of the Agency. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to the Agency at no additional charge and without restriction or limitation on their use.

12. **SUBCONTRACT AND ASSIGNMENT**

This Agreement binds the heirs, successors, assigns and representatives of the Contractor. The Contractor shall not enter into subcontracts for any work contemplated under this Agreement and shall not assign this Agreement or monies due or to become due, without the prior written consent of the General Manager of the Agency or his designee, subject to any required state or federal approval.

13. **NONRENEWAL**

The Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by the Contractor under this Agreement will be purchased by the Agency under a new agreement following expiration or termination of this Agreement, and waives all rights or claims to notice or hearing respecting any failure to continue purchase of all or any such services from the Contractor.

14. **NOTICE**

Any notice provided for herein are necessary to the performance of this Agreement and shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

AGENCY

Roland Sanford, General Manager
Solano County Water Agency
810 Vaca Valley Parkway, Suite 203
Vacaville, CA 95688

CONTRACTOR

Mike Blankinship, President
Blankinship and Associates, Inc.
1590 Drew Ave., Suite 120
Davis, CA 956018

The parties have executed this Agreement the day and year first above written. If the Contractor is a corporation, documentation must be provided that the person signing below for the Contractor has the authority to do so.

Solano County Water Agency
a Public Agency

By: _____
Roland Sanford
General Manager

By: _____
Mike Blankinship,
President

FOR SCWA USE ONLY

Contract Period: July 1, 2022 to June 30, 2024
File Number: AG-B-2
Account Manager: Justin Pascual
G/L Account #: 6115AC
Job Cost #: _____
Contract Type: Agreement for Professional Services

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

RATE OF COMPENSATION

Alex Rabidoux
Solano County Water Agency
810 Vaca Valley Parkway, Suite 203
Vacaville, CA 95688

Via Email: ARabidoux@scwa2.com

May 13, 2022

CC: Justin Pascual (jpascual@scwa2.com)

RE: Compliance with the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications

Dear Alex and Justin,

Attached please find our proposal for the above-referenced scope of work. Our scope reflects the anticipated work required to comply with the aquatic pesticide general permit adopted by the State Water Resources Control Board (SWRCB) (Order No. 2013-0002-DWQ).

We understand that, to the extent possible, Solano County Water Agency, Dixon Resource Conservation District, Reclamation District 2068, and Maine Prairie Water District wish to continue to act together to achieve compliance with the aforementioned permit. These entities will be permitted separately to achieve this objective.

After you review the attached scope of work, please call me or Stephen Burkholder to discuss any questions you may have. We look forward to assisting you with pesticide and water quality-related permit compliance.

Sincerely,

BLANKINSHIP & ASSOCIATES, INC.



Michael S. Blankinship, P.E.
Project Manager

Attachment: Scope of Work and Terms of Agreement

Scope of Work

Solano County Water Agency Group

Compliance with the STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR RESIDUAL AQUATIC PESTICIDE DISCHARGES TO WATERS OF THE UNITED STATES FROM ALGAE AND AQUATIC WEED CONTROL APPLICATIONS

WATER QUALITY ORDER NO. 2013-0002-DWQ GENERAL PERMIT NO. CAG990005

Solano County Water Agency (SCWA), Dixon Resource Conservation District (Dixon RCD), Reclamation District 2068 (RD 2068), and Maine Prairie Water District (MPWD) [herein referred to as “Agency” or “Agencies”] apply aquatic herbicides within their jurisdictions under the State Water Resources Control Board (SWRCB) Statewide General National Pollutant Discharge Elimination System (NPDES) Permit # 2013-0002-DWQ (“permit”).

As required by the permit, the Agencies individually completed a Notice of Intent (NOI), prepared and submitted an Aquatic Pesticide Application Plan (APAP), and have received a Notice of Applicability (NOA).

All Agencies can use the permit for the application of all aquatic herbicides currently registered for use in California, including copper and acrolein. If, however, copper or acrolein will exceed their respective California Toxics Rule (CTR) maximum values, this permit may not provide coverage. Under typical application scenarios and following product label instructions, it is highly likely that CTR maximum values for these aquatic herbicides will be exceeded. Therefore, we suggest that Agencies do use acrolein or copper-containing aquatic herbicides unless they first obtain a SIP Exception.

MPWD completed a California Environmental Quality Act (CEQA) process, obtained a State Implementation Plan (SIP) exception for California Toxics Rule (CTR) exceedance, and is listed on Appendix G of the permit. Accordingly, MPWD has permit coverage for short-term or seasonal exceedances of the CTR maximum values for copper and acrolein.

It is our understanding that the Agencies would like to enter into a two-year agreement for permit compliance support through the 2022 and 2023 aquatic weed control seasons. To achieve compliance with the permit and allow for applications to be made during 2022 and 2023, Blankinship and Associates, Inc. proposes to complete the following tasks:

Task 1: Sample Collection and Analysis

Based on the Agencies’ APAPs and NOIs and historic application data, we will collect and submit surface water samples for analysis according to permit requirements. During or shortly after sample collection, we will perform necessary field chemistry analysis (pH, electrical conductivity (EC), dissolved oxygen (DO) and turbidity) and submit properly preserved and labeled samples under chain of custody procedures to a qualified analytical laboratory for chemical analysis.

We will review and quality assure the data and prepare a brief summary of results for inclusion in the annual report to the SWRCB and the Regional Water Quality Control Board (RWQCB).

Note that the permit requires one (1) sample per environmental setting (i.e., static and flowing water) per year for glyphosate. In contrast, the permit requires that six (6) applications of all other herbicides are sampled if six (6) or more applications are made in a year; if less than six (6) applications are made, all applications must be sampled. The application of sodium carbonate peroxyhydrate only requires sampling for the field parameters and not for the active ingredient.

Further note that if event and post event samples from six (6) treatments in one (1) year or spanning multiple years report the concentration of an aquatic herbicide below its water quality objective, subsequent sampling is reduced to once per year per environmental setting for that herbicide.

RD 2068 has fulfilled the requirement of sampling six (6) consecutive applications of endothall with no compliance samples showing detections of endothall above applicable receiving water limitations. Since fulfilling this requirement, annual compliance sampling has been maintained with no receiving water limitation (RWL) exceedances for endothall. Therefore, sampling requirements for endothall in RD2068 conveyances remains at one (1) sampling event in 2022.

For purposes of cost estimation, we assume that the Agencies will make glyphosate, imazamox and endothall applications in 2022 and 2023. We assume that we will sample the following during each permit reporting year: Dixon RCD: one (1) glyphosate application and one (1) imazamox application; RD 2068: one (1) glyphosate and one (1) endothall application; SCWA: one (1) glyphosate application and one (1) imazamox application to a flowing water environmental setting (i.e. canal, drain, ditch). Not that if additional imazamox applications are made by Dixon RCD or SCWA, additional sampling may be requires, as these agencies have not yet qualified for reduced sampling frequency for imazamox.

MPWD has a SIP Section 5.3 exception for the use of acrolein and/or copper. We understand that MPWD does not intend to use copper or other aquatic herbicides for the control of nuisance aquatic vegetation in 2022 or 2023. As such, no sampling will be completed for MPWD.

Task 2: Field and Analytical Laboratory Data Compilation, Review, and Reporting (if necessary)

As described in the Agencies' APAP's, several time-specific reporting requirements exist in the event of non-compliance with the permit. We will perform a timely review of applicable data and documentation and inform you of a potential or an actual non-compliant circumstance, if any. If a potential or actual non-compliant circumstance arises, we will contact you as soon as possible to discuss options and reporting, if necessary.

Task 3: Herbicide Application Information Collection, Review, and Annual Report Preparation

Based on the activity from the above tasks, we will compile laboratory and field analytical data, compile observation and herbicide application data, and prepare the required tables and text for the Agencies' draft annual reports.

After the Agencies' review of the draft report and our incorporation of edits, we will submit a final annual report to the SWRCB and RWQCB on your behalf.

Task 4: Enrollment in New NPDES Permit (Anticipated 2023)

Upon the issuance of the new permit, we will draft permit documentation necessary to obtain coverage and allow for continued applications to each Agency's facilities. We anticipate preparing an Aquatic Pesticide Application Plan and Notice of Intent for each Agency. After review, we will submit this documentation to the SWRCB for the public comment period and enrollment in the permit. The cost for this task is estimated at \$5,000 per agency and will be billed on a time and materials basis.

Assumptions and Limitations

This proposal has been prepared by Blankinship & Associates for SCWA's use. Unauthorized editing, duplication, or transmission of this document is strictly prohibited unless express consent is obtained from us. The above scope of work assumes the following:

- 1.) This proposal is based on the requirements of the aquatic pesticide NPDES permit ("Permit") adopted by the State Board on March 5, 2013.
- 2.) Unless other arrangements are made, each Agency is responsible for contacting us prior to an herbicide application.
- 3.) **We are not responsible for and have no liability related to the each Agency's or their contractor's use of aquatic herbicides, or failure to comply with the Permit, requirements of this proposal or other applicable laws and regulations.**
- 4.) Each Agency is responsible for prompt and accurate completion and transmittal of Field Monitoring forms and Chain of Custody Records for each sampling event. Time sensitive reporting requirements necessary to demonstrate Permit compliance may not be met if data is not submitted to us in a timely manner.
- 5.) Each Agency is responsible for prompt and accurate completion and transmittal to us of the AHAL or equivalent form every time an aquatic herbicide application is made. Complete AHAL forms must be transmitted to us no later than the 5th of the month following aquatic herbicide application(s). If completed AHAL forms are not received by the 15th of the month, we will assume that no applications were made during the previous month.
- 6.) If AHAL or equivalent documentation is not sent as indicated above, we cannot evaluate Permit compliance status and advise you regarding the need for corrective action and/or reporting, if any.
- 7.) All provisions of California Civil Code Section 2782.8 are applicable to our scope of work.
- 8.) If additional sampling other than that described above is required, a cost estimate will be prepared and authorization obtained prior to performing work.
- 9.) Each Agency is responsible for paying their annual NPDES Permit fee, estimated at \$3,147/year, to the SWRCB. This fee is not included in this scope of work.
- 10.) We are not responsible for non-compliance or violations of the Permit resulting from application or monitoring activities performed by Agencies or their weed abatement contractor that do not follow the guidance provided by the APAP or Blankinship staff.
- 11.) This proposal does not cover any penalties, fines, licenses, or certifications or their associated fees.
- 12.) Our liability to the Agencies arising from services performed shall not exceed the total compensation received by us.
- 13.) Task budgets may be moved from task to task as necessary to complete project objectives.
- 14.) Our scope is of a technical nature and we do not offer legal advice.
- 15.) This proposal is good for 60 days.

Schedule

We will commence immediately upon receiving written authorization to proceed (See Authorization Summary below) and receipt of a project retainer in the amount of \$5,000.

Cost Estimate

Task 1 through Task 4 can be provided on a Not-to-Exceed basis estimated at \$35,300 for 2022 and \$55,300 for 2023. Refer to the Table below.

Member	Sampling Events	2022 Cost Estimate Amount	2023 Cost Estimate
SCWA	2	\$12,300	\$18,300
Dixon RCD	2	\$11,000	\$16,000
MPWD	0	\$0	\$5,000 ¹
RD 2068	2	\$12,000	\$18,000
Total		\$35,300	\$55,300

¹ If MPWD wishes to re-enroll in the newly issued permit, we estimate the cost to prepare Permitting documents to be \$5,000.

If costs in addition to this are anticipated, we will notify you and will not proceed without prior authorization.

Expenses

Expenses such as travel (tolls, per diem, etc.) and outside services (analytical laboratory, etc.) are charged at cost plus 15%. Mileage charges are at Internal Revenue Service (IRS) rates. Costs for field equipment and vehicle use will be charged according to our current fee schedule.

Invoice Terms

All invoices are due upon receipt. If full payment is not received within 30 days, the amounts due Blankinship & Associates will incur a late payment charge at the rate of 10% APR starting 30 days from the date on the invoice.

We will invoice you as work progresses based on the effort we expend that month until the project is complete.

Terms of Agreement

Refer to the attached Terms of Agreement (2 pages)

Agreement

The document entitled "Solano County Water Agency Group Scope of Work" and the attached "Terms of Agreement" together shall collectively constitute the entire Agreement between Blankinship & Associates, Inc. and the Client.

Authorization Summary

Client: Solano County Water Agency Group
Scope: NPDES Aquatic Weed Permit Compliance 2022 - 2023
Proposal Date: May 13, 2022
Estimated Cost: \$90,600
Retainer Amount: \$5,000
Billing Method: Time and Materials

If this Scope of Work and Terms of Agreement are acceptable, please sign and date below, initial as indicated on both pages of the Terms of Agreement and return the entire agreement to us. We will return a fully executed copy to you for your records.

Roland Sanford/General Manager

Client
Printed Name/Title

Client
Signed Name

Date

Michael Blankinship/President

Consultant
Printed Name/Title

Consultant
Signed Name

Date

Agreed & Accepted: Client Initials _____ / Consultant Initials _____

Terms of Agreement

These terms and conditions described herein represent the entire Agreement between Blankinship and Associates, Inc., a California Corporation ("Consultant") and Client (collectively referred to as "Parties"). Any negotiations, proposals or oral agreements are integrated herein and are superseded by this Agreement. This Agreement may not be modified, assigned or altered, except in writing and signed by authorized representatives of both Parties. If any portion of this Agreement is found to be void, such portion shall be stricken and the balance of the Agreement will remain.

Scope and Standards of Work. Consultant shall perform the services outlined in the proposal referencing this Agreement. All work performed by Consultant is subject to this Agreement. Because our services are those provided by a design professional, all provisions of California Civil Code Section 2782.8 are applicable to our scope of work. If Consultant provides Client with a written change in scope of services, these services shall be done subject to this Agreement unless Client objects in writing within 5 working days after receipt. Consultant shall perform services consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the services are performed. No warranty, express or implied, is included or intended by this Agreement.

Levels of Service. Consultant offers different levels of services to suit the needs of different clients. For additional fees, a more extensive level of services will provide more detailed information. Client must determine the level of service adequate for its purposes. Client warrants that it has reviewed the referenced proposal and has determined that it does not need or want a greater level of service than that being provided.

Payments. All work performed under this Agreement shall be on a time and materials basis unless otherwise stated. The estimate of fees and the fee rate in the proposal indicates that Consultant will not incur fees and expenses in excess of the estimate without first obtaining Client's authorization. All invoices are due within 10 days of date on invoice. If Client fails to make full payment to Consultant, the amounts due Consultant will incur a late payment charge at the annual rate of 10% starting on the 10th day from the date of the invoice.

Limitation of Liability. The total cumulative liability of Consultant, its shareholders, directors, officers, employees, and agents, to Client arising from services performed or to be performed by Consultant whether in contract, indemnity, contribution, tort, or otherwise, and including attorneys' fees due under this Agreement, shall not exceed the total compensation received by Consultant under this agreement. Higher limitations can be negotiated for additional fees. Consultant has no liability or obligation to Client for:

1. Any special, consequential, incidental, punitive or penal losses or damages including, but not limited to, losses, damages or claims related to the unavailability of Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers,
2. Any losses, damages or claims arising from damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant during the performance of services or which are not called to Consultant's attention by Client, or
3. For any failure or delay in performing due to circumstances beyond Consultant's control, including, but not limited to release of hazardous substances, riots, wars, fires, flood, explosion, "acts of God", adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market, or
4. Payment of any of Client's defense-related costs prior to a final determination of liability or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Client's Responsibilities. Unless otherwise agreed to, Client will:

1. Assist and cooperate with Consultant in any manner necessary and within its ability to facilitate Consultant's performance under this Agreement. The client will designate a representative who will have authority to receive information pertaining to this Agreement and who will assist as necessary in matters pertaining to the project and this Agreement,
2. Provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the services. Client recognizes that the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). Consultant will operate with reasonable care to minimize damage to the Project Site(s). The cost of repairing such damage will be borne by Client, and is not included in the fee unless otherwise stated,
3. Correctly designate on plans to be furnished to Consultant, the location of all subsurface structures, such as pipes, tanks, cables and utilities on the Project Site and shall be responsible for any damage inadvertently caused by Consultant to any such structure or utility not so designated. Client warrants the accuracy of any information supplied by it to Consultant, and acknowledges that Consultant is entitled to rely upon such information without verifying its accuracy,
4. Supply to Consultant all information and documents in its possession or knowledge which are relevant to the services to be provided by Consultant. Prior to the commencement of any services by Consultant, Client shall notify Consultant of any known potential or possible health or safety hazards existing on or near the Project Site, and
5. Provide all required notifications to Governmental Agencies or the public, related to the use, existence, discharge, release, disposal, or transportation of hazardous materials or waste, fertilizers, or pesticides.

Changed Conditions. If, during the course of performance of this Agreement, conditions are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client of the newly discovered conditions, and the Parties shall renegotiate in good faith a revised scope of work, and Agreement. If an amended scope or Agreement cannot be agreed upon within 30 days after notice, Consultant may terminate this agreement and Consultant will be compensated as described in "Payment on Termination".

Client Indemnification. Client shall indemnify and hold harmless Consultant, its agents, subcontractors, directors, officers and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss arising from:

1. Damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant,

Agreed & Accepted: Client Initials _____ / Consultant Initials _____

2. Liability arising from or related to Hazardous Materials existing at the Project Site prior to the commencement of Consultant's services under this Agreement, unless caused by the sole negligence or willful misconduct of Consultant,
3. Reliance upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without Consultant's written consent, or
4. The negligence or willful misconduct by Client or its agents, employees, principals, consultants and any third parties.

Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement shall survive the expiration or termination of this Agreement.

Consultant's Insurance. Consultant shall obtain and maintain: Statutory Workers' Compensation/Employers Liability coverage, Commercial General Liability coverage in policy amounts of not less than \$2,000,000, Automobile Liability coverage in policy amounts of not less than \$1,000,000, and Professional ("Errors and Omissions") Liability insurance coverage in policy amounts of not less than \$2,000,000.

Document Control. Drawings, specifications, and any other instruments of service to be provided by Consultant shall remain the property of Consultant and shall not be used by the Client on any other project or for completion of this project by others without Consultant's written authorization. Client shall not assign or otherwise transfer its rights to use the documents to any other party without Consultant's written consent. Upon termination of this agreement for any reason except Consultant's convenience or default, Client's rights to use the documents shall expire and Client shall refrain from making any further use of or reproductions of the documents and shall return to Consultant within seven days of termination all originals and copies in Client's possession or control.

Samples, and Monitoring Devices. If Consultant provides laboratory services, Consultant's subconsultant laboratory will hold project samples until the sample quality expires or until the analysis is complete, whichever is first. If directed by Consultant, Client shall take custody of all monitoring devices (lysimeters, wells, probes, or other devices installed during work by Consultant) and shall take any and all necessary steps for the proper maintenance, repair or closure of such at Client's expense.

Relationship of the Parties. Consultant shall perform services under this Agreement as an independent contractor, and its employees shall at all times be under its sole discretion and control. Consultant shall select the means, manner and method of completing services without detail, control, or direction from Client.

Use of Reports. All reports and information ("Documents") developed by Consultant are for the sole use of Client and are not intended to benefit any other person or entity. No other party other than Client may rely, and Client shall make no representations to any party that such party may rely, on Documents without Consultant's express written authorization. Neither Party shall disclose or otherwise provide reports or information except as required by government agencies.

Production of Information as Required by Law. Consultant may provide any information requested by subpoena, search warrant, or other legal process. Prior to delivery of information, Consultant will promptly notify Client.

Suspension and Delays. Client may, at any time, by 10 days written notice, suspend performance of all or any part of the services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's work for more than 60 days and be paid as described under Termination. In the event Consultant services is suspended by Client or interrupted due to delays other than delays caused by Consultant, the time for completion of the performance of the services shall be appropriately adjusted and Consultant shall be equitably compensated for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or at the option of Client, for such similar charges that are incurred by Consultant for demobilization and subsequent remobilization.

Termination for Convenience. Either Party may terminate this Agreement for convenience upon ten (10) days written notice to the other Party. Notice must be in hardcopy and delivered in a manner such that evidence of delivery can be demonstrated.

Payment on Termination. In the event of termination, other than caused by a material breach of this Agreement by Consultant, Client shall pay Consultant for the services performed prior to the termination notice date, and for any necessary services and expenses incurred in connection with the termination of the project, including but not limited to termination of subcontractor contracts and the costs of completing analysis and reports necessary to document project status at the time of termination.

Dispute Resolution. Any dispute or claim relating to or arising out of or under this agreement shall be decided by binding arbitration in accordance with the Commercial Rules and under the Administration of the American Arbitration Association. Such arbitration shall be conducted in Sacramento County, California. The Award or other determination of the arbitrator(s) shall be final and judgment thereon may be entered in any court of appropriate jurisdiction. Notwithstanding the foregoing, either party may bring a claim for injunctive relief in a court of appropriate jurisdiction.

Third Party Beneficiaries. Nothing in this agreement shall create any rights or any contractual relationship with or a cause of action in favor of a third party against either Client or Consultant.

Force Majeure. Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, accidents or other events or conditions (other than financial inability) beyond the other party's reasonable control.

Certificate of Merit. The Client shall make no claim for professional negligence or breach of contract either directly or in a third-party claim, against Consultant unless the Client has first provided Consultant with a written certification executed by an independent professional currently practicing in the same discipline as Consultant and licensed in the jurisdiction where the project is located. This certification shall be executed under penalty of perjury and, at a minimum, contain the following: a) the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a Consultant performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the initiation of any arbitration or judicial proceedings.