

EKI Environment & Water, Inc.

TERMS AND CONDITIONS

CONSULTANT: EKI Environment & Water, Inc.

CLIENT: Western Management Area Groundwater Sustainability Agency (WMA GSA)

Proposal/Agreement Date: 22 07 2024 Proposal/Project Number: EKI C3-183

1. SCOPE OF SERVICES

The CLIENT hereby employs CONSULTANT to perform the professional services work (“Services”) specified in this Agreement. The CONSULTANT’s Services will commence on the date of execution of this Agreement and to continue until completion of the Services described herein or termination as described in Article 12. CONSULTANT agrees to furnish the necessary personnel, materials, equipment, and facilities to perform the Services stated in this Agreement or attached thereto. CONSULTANT’s Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project.

The CLIENT agrees that CONSULTANT shall be responsible to provide only for the Services expressly specified in this Agreement. Additional Services, which result in an adjustment in CONSULTANT’s schedule for its Services or originally estimated budget or lump sum fee for its Services, may be provided at CLIENT’s request.

All of CONSULTANT’s plans, specifications, tracings, survey notes, writings, reports, documents, designs, instruments of service, computer programs, electronic data deliverables, and other original documents, and any other Services or work products generated electronically or in hardcopy as a result of this Agreement (collectively “Work Product”) are intended for the sole use and benefit only of CLIENT and may not be relied on or used by any other party or entity without the express written consent of CONSULTANT and subject to execution of an agreement between such third party and CONSULTANT in form and content approved by CONSULTANT defining the terms, provisions, and limitations of the use of Work Product.

2. COMPENSATION

The CLIENT agrees to pay CONSULTANT’s invoices for the Services specified in this Agreement in accordance with the Schedule of Charges attached to the Agreement, and such payment shall be full compensation for all personnel, materials, equipment, and facilities used in performing the Services.

CONSULTANT will invoice CLIENT at the end of each billing period. Payment in full must be received by CONSULTANT within thirty (30) days of the date of such invoice. Any amounts overdue will incur a service charge of one percent (1%) per month, compounded monthly, beginning sixty (60) days after the invoice date and until full payment is received. Failure of CLIENT to submit full payment of an invoice within thirty (30) days of the invoice date may be considered substantial nonperformance and cause for suspension or termination of Services, at CONSULTANT’s discretion. CONSULTANT, without any liability to CLIENT, may withhold any Services and Work Product pending payment by CLIENT of any outstanding amounts owed.

For Services provided on a time and material basis, the budget may be increased by amendment to complete the Scope of Work. CONSULTANT is not obligated to provide Services in excess of the authorized budget. The Services performed by CONSULTANT shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within fifteen (15) days of invoice date by written notice specifically stating in detail which Services CLIENT believes are incomplete or defective, and the invoice amount(s) in dispute. CLIENT shall pay undisputed amounts as specified herein.

3. INSURANCE

CONSULTANT, at its own expense, will maintain in force the following policies of insurance during the period of performance of this Agreement:

- (a) Workers’ Compensation at statutory limits and Employer’s Liability Insurance with a limit of \$1,000,000.
- (b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, including death, and property damage,
- (c) Automobile Liability Insurance with a combined single limit for bodily injury and property damage of \$1,000,000 per accident, and
- (d) Professional Liability Insurance with a limit of \$1,000,000 per claim and in the annual aggregate per policy year.

If requested by CLIENT, CONSULTANT will furnish CLIENT with satisfactory evidence of the above insurance. CONSULTANT will provide at least thirty (30) days prior written notice to the CLIENT in the event of cancellation of insurance coverage.

If CLIENT retains any construction contractor or subcontractor whose scope of work relates in any way to the Services provided by CONSULTANT, CLIENT shall require each contractor and subcontractor to: (1) defend, indemnify, and hold harmless CLIENT and CONSULTANT from any and all claims, suits, losses, damages, attorney's fees, and costs arising from such contractor or subcontractor's work or services; (2) obtain insurance of types and amounts appropriate for the services and work provided by such contractor or subcontractor, including but not limited to Commercial General Liability, Auto Liability, Workers' Compensation and Employer's Liability and Contractor's Pollution Liability; (3) require naming CONSULTANT as an additional insured under Commercial General Liability and Automobile Liability policies, and (4) require that all contractor's and subcontractor's policies be endorsed to provide a waiver of subrogation in favor of CLIENT and CONSULTANT related in any way to the Services provided by CONSULTANT.

4. STANDARD OF CARE

CONSULTANT agrees that, in connection with its Services to be performed under this Agreement, such services are performed with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or a similar locality. CLIENT recognizes that the state of practice, particularly with respect to hazardous waste conditions, is changing and evolving. While CONSULTANT will perform in reasonable accordance with standards in effect at the time its Services are performed, it is recognized that such standards may subsequently change because of improvements in the state of practice. No warranty or guarantee, express or implied, is made or intended by providing any of the Services or by furnishing oral or written reports of the findings made by CONSULTANT.

5. LIMITATION ON LIABILITY

CLIENT agrees that to the fullest extent allowed by law, CLIENT shall limit CONSULTANT's liability to CLIENT, CLIENT's contractors, subcontractors, agents, employees and consultants, and to all other third parties for any or all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related this Agreement from any cause or causes including but not limited to the negligent acts, errors, or omissions, breach of contract, or breach of warranty by CONSULTANT, its directors, officers, employees, agents, subconsultants, and subcontractors to a maximum of \$100,000. This limitation of liability shall apply to the CLIENT's claims for damages only. CLIENT shall give written notice to CONSULTANT of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by CONSULTANT. Failure to give notice herein required shall constitute a waiver of said claim by CLIENT.

6. CONSEQUENTIAL DAMAGES

The CONSULTANT and CLIENT waive consequential damages, including but not limited to loss of use, profits, anticipated profits, and like losses, for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is also applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

7. INDEMNITY

CLIENT understands that, in seeking the professional services of CONSULTANT, CLIENT may be requesting CONSULTANT to undertake uninsurable obligations for CLIENT's benefit involving the presence or potential presence of hazardous, toxic or pollutant substances. Therefore, CLIENT agrees to defend, indemnify, and hold harmless CONSULTANT from any and all claims, suits, losses, attorney fees, costs, and liability for property damage, personal injury including death, consequential, or any other damages from any cause whatsoever, arising out of the CONSULTANT's Services, including but not limited to the presence (or failure to detect the presence), discharge, release or escape of toxic or hazardous materials or contaminants of any kind, and from any and all claims for damages by third parties, excepting only to the extent resulting from the willful misconduct or negligence of CONSULTANT in the performance of its Services under this Agreement.

8. SERVICES DURING CONSTRUCTION

Any Services, including testing or construction observation, provided by CONSULTANT, during construction of facilities designed by the CONSULTANT or others, is for the purpose of reviewing the construction contractor's general compliance only with the functional provisions of the construction documents including project specifications and drawings. The CONSULTANT shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with any construction contractors' work, nor shall the CONSULTANT be responsible for a contractor's failure to perform the work in accordance with the requirements of the construction documents. The CONSULTANT shall be only responsible for the CONSULTANT's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of contractors or of any other persons or entities performing portions of the work. CLIENT agrees that in accordance with generally accepted construction practices, the independent construction contractor(s) selected by CLIENT will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property, and that this

responsibility shall be continuous and not be limited to normal working hours. CONSULTANT's Services during construction shall not be construed to waive or otherwise relieve any contractor or subcontractor of their contractual obligations.

9. COST ESTIMATES

Any statements of estimated construction costs or future operation and maintenance costs furnished by CONSULTANT represent the CONSULTANT's judgment as a design professional. However, neither CLIENT nor CONSULTANT has control over the fluctuations in construction costs, a contractor's methods of determining bid prices, market and bidding conditions, and other factors. Accordingly, CONSULTANT does not guarantee or warrant that the bids or negotiated prices, or future operation and maintenance costs, will not vary from any estimated costs provided by CONSULTANT or from CLIENT's budget for the project.

10. DATA

Any Work Product stored or reduced to computer tapes, disks, CDs, electronic files or CAD files (collectively "Data") is and shall remain CONSULTANT's property. The transfer of Data to CLIENT or others is not and shall not be deemed a sale. CONSULTANT reserves the right to retain an archival copy of the Data delivered to CLIENT, which shall be referred to and shall be conclusive proof and govern in all disputes over the form or content of the Data furnished to CLIENT. The Data are instruments of service, and as such, CONSULTANT makes no representations or warranties, expressed or implied, of the Data's merchantability or fitness for a particular purpose with respect to its quality, adequacy, completeness or sufficiency as to any results to be or intended to be achieved as to its use.

The Data are furnished "as is". CLIENT acknowledges that anomalies and errors can be introduced into the Data when it is transferred or used in an incompatible computer environment or modified by others. CLIENT acknowledges and solely accepts the risks associated with and/or the responsibility for any damages to hardware, software or computer systems or networks related to any use of the Data.

Use by CLIENT of any Data prepared by CONSULTANT for any purpose or project other than the project subject to this Agreement shall be at CLIENT's sole risk. CLIENT agrees to indemnify and hold CONSULTANT harmless from any claims, suits, damages, liabilities or costs, including attorneys' fees and costs of defense, arising from any reuse or modification of any Data prepared by CONSULTANT without the prior written consent of CONSULTANT.

11. CONFIDENTIALITY

When business or technical information is identified as "confidential" by CLIENT, CONSULTANT shall hold such business or technical information as confidential. CONSULTANT shall not disclose such confidential information without CLIENT's consent except to the extent required for (1) performance of services under this Agreement; (2) compliance with professional standards of conduct for preservation of the public safety, health and welfare; (3) compliance with any law, court order or other governmental directive; or (4) protection of CONSULTANT against claims or liabilities arising from performance of Services under this Agreement. In the event that CONSULTANT is requested to disclose any confidential information under the above conditions, CONSULTANT will contact CLIENT to provide an opportunity for CLIENT's defense of any confidentiality claim at its expense, including the cost of any required CONSULTANT services at CONSULTANT's then current Schedule of Charges. CONSULTANT's obligation hereunder shall not apply to information in the public domain, previously known by CONSULTANT, or lawfully acquired on a non-confidential basis from others. CLIENT acknowledges that CONSULTANT may provide similar services to other individuals or entities that operate within the same industry as CLIENT. So long as CONSULTANT does not share or make use of any of CLIENT's confidential information in providing such services, nothing in this Agreement shall be interpreted as limiting or prohibiting CONSULTANT from providing such services.

12. TERMINATION OF AGREEMENT

(a) WITH CAUSE

This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the party initiating the termination.

(b) WITHOUT CAUSE

This Agreement may be terminated by CLIENT or CONSULTANT upon at least fourteen (14) days written notice to the other party.

(c) TERMINATION ADJUSTMENT PAYMENT

If this Agreement is terminated through no fault of the CONSULTANT, CONSULTANT shall be paid for Services performed and expenses incurred to the termination notice date, including Reimbursable Expenses due, plus any additional direct expenses incurred by CONSULTANT including, but not limited to, cancellation fees or charges imposed by subcontractors ("Termination Expenses"). Termination Expenses, which may not exceed ten percent (10%) of charges incurred to the termination notice date, may be charged to CLIENT to cover such services to orderly close-out the Services and to prepare project files and documentation. CONSULTANT will use reasonable efforts to minimize such Termination Expenses.

13. DISPUTE RESOLUTION

- (a) The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted for mediation to Judicial Arbitration and Mediation Services (“JAMS”), or other third-party mediation service acceptable to the parties. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with JAMS. If a party deems it necessary in order to protect or preserve a legal right, the request for mediation may be made concurrently with the filing of a lawsuit or other binding dispute resolution proceeding but, in such event, mediation shall proceed in advance of the binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- (b) The mediation fees and costs, if any, shall be divided equally among the parties involved. Each party shall bare its own attorney’s fees and other costs, except as provided in subparagraph (c) below.
- (c) If any party commences a lawsuit or other binding dispute resolution proceeding to which this paragraph applies without previously or concurrently initiating mediation, said party shall not be entitled to recover attorneys’ fees even if they would otherwise be available to that party in any such proceeding.
- (d) The following matters are excluded from mediation hereunder: (1) injunctive relief; and (2) any unlawful detainer.

14. GENERAL PROVISIONS

- (a) **APPLICABLE LAW**
This Agreement shall be interpreted and enforced according to the laws of the State of California, excepting those provisions of California law that would require the application of the laws of another state or country.
- (b) **PRECEDENCE OF CONDITIONS**
Any terms or conditions incorporated into a purchase order, confirmation, or other similar document issued by CLIENT shall have no force and effect. If there is any conflict between these Terms and Conditions and the Agreement or any other Exhibits, or documents that are attached or make up a part of this Agreement, these Terms and Conditions shall control, in the absence of CONSULTANT’s express written agreement to the contrary.
- (c) **ASSIGNMENT OR SUBCONTRACTING**
Neither CLIENT nor CONSULTANT shall assign its interest or any rights in this Agreement without the written consent of the other. CONSULTANT may subcontract any portion of the work to be performed hereunder without such consent.
- (d) **OWNERSHIP OF DOCUMENTS**
All Work Product are instruments of CONSULTANT’s Services and shall not be used on other projects without CONSULTANT’s prior written consent; however, if used on other projects, such use shall be at CLIENT’s sole risk. CONSULTANT’s Work Product may not be altered or modified except by CONSULTANT. CONSULTANT shall be deemed the author of the Work Product and shall retain all common law, statutory and other reserved rights, including the copyright, trademark, and patent. The CLIENT may retain copies, including reproducible copies, of these documents for information and reference in connection with the CLIENT’s use for this project. Submission or distribution of CONSULTANT’s Work Product to meet official regulatory requirements or for similar purposes in connection with this project are not to be construed as publication in derogation of CONSULTANT’s reserved rights.
- (e) **FORCE MAJEURE**
Any delay or default in the performance of any obligation of CONSULTANT under this Agreement resulting from any cause(s) beyond CONSULTANT’s reasonable control, shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby. Upon the resumption of Services, the schedule for performance of CONSULTANT’s Services and the fees due hereunder shall be equitably adjusted.
- (f) **TIME BAR**
All legal actions by either party against the other arising out of or in any way connected with this Agreement or the Services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after one year from the date of substantial completion of the Services, unless this Agreement shall be terminated earlier, in which case the date of termination of this Agreement shall be the date on which such period shall commence.
- (g) **INTERPRETATION**
The parties have had an opportunity to review and negotiate the provisions of this Agreement. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any party because such party or its legal counsel was the drafter thereof. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- (h) **MERGER: WAIVER: SURVIVAL**
This Agreement constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, and/or agreements, written or oral. This Agreement may not be amended or altered except in a writing signed by both parties. One or more waiver of any term, condition or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision. Any provision hereof which is legally deemed void or unenforceable shall not void the entire Agreement, and all remaining provisions shall survive and be enforceable.

(i) CLIENT OBLIGATIONS

CLIENT shall furnish full information regarding requirements for the project, including a plan or program that shall set forth CLIENT's objectives, schedule, constraints and criteria, including, as applicable, budget, space requirements, and relationships, flexibility, expandability, special equipment, systems and site requirements. CLIENT will provide access to the project site, obtain all permits, provide all legal services in connection with the project, and provide environmental impact reports or any other reports or filings required of the site owner, unless specifically included in CONSULTANT's scope of Services. CLIENT shall pay the costs of plan checking and inspection fees, zoning applications fees, soil engineering fees, testing fees, surveying fees, permits, bond premiums, and all other charges not specifically covered by the terms of this Agreement.

CLIENT will provide to CONSULTANT all documents and information regarding the site and the Project that is reasonably necessary for CONSULTANT to provide its Services under this Agreement. CONSULTANT shall be entitled to rely upon the adequacy and accuracy of documents and information provided by CLIENT, CLIENT's other consultants and contractors, and other third-parties (collectively "CLIENT Information") in performing the Services. CONSULTANT assumes no responsibility or liability for the accuracy or completeness of CLIENT Information; however, CONSULTANT will advise CLIENT if it becomes aware of an error or omission in the CLIENT Information. CLIENT Information will remain the property of the CLIENT; however, CONSULTANT may keep a copy of all CLIENT Information for the completion of its records.

(j) THIRD PARTIES

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or CONSULTANT.

15. UTILITIES AND SUBSURFACE CONFLICTS

Prior to initiation of subsurface investigations, including but not limited to boreholes, probes, trenches, or subsurface sample collection, CLIENT will provide CONSULTANT with available information, drawings, and maps regarding potential underground utilities, other potential subsurface conflicts, and overhead conflicts in the proposed areas of investigation. If CLIENT is not the property owner, CLIENT will contact the property owner and request such information. CONSULTANT will clear the proposed investigation locations for buried utilities by obtaining the services of a utility locating company. CONSULTANT will make reasonable efforts to identify and to avoid damage to disclosed or visually identified utilities that may exist within the areas of investigation. CONSULTANT, its subconsultants and subcontractors shall have no liability for damages to persons or property, including the cost to repair, which occur during investigative activities performed by CONSULTANT, its subconsultants and subcontractors, and arise out of, or relate to, undisclosed, unknown, or inaccurately specified utilities or other structures.

16. ARTIFICIAL INTELLIGENCE

CONSULTANT may use Artificial Intelligence (AI) technology in providing services under this Agreement. AI technology is a rapidly changing field and includes tools provided by third parties that may be pre-trained and/or pretrain with supplementary training by CONSULTANT. CONSULTANT makes efforts to identify and remove CLIENT-identifying data and any bias that is contained in data that is used for supplementary training.

CONSULTANT is aware that the output from AI is not a substitute for human judgement. CONSULTANT's engineers, scientists, and other professional staff will continue to provide professional services, and make decisions based on their experience, knowledge, and analysis, consistent with the Standard of Care.