CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:	)	
	)	
GSA ENGINEERING, INC.	)	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER**
	)	
Alleged misrepresentations submitted to the Underground Storage Tank Cleanup Fund	)	
	)	**PROPOSED ORDER WQ 2019-XXXX-EXEC**
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Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order, Stipulation, or Stipulation and Order) is entered into by and between the State Water Resources Control Board (State Water Board), on behalf of the Underground Storage Tank Cleanup Fund (Cleanup Fund), with GSA Engineering, Inc. (GSA) and its principal Daniel Louks (Settling Respondents), and is presented to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation resolves the violations alleged herein by the imposition of administrative civil liability against GSA in the amount of **$90,000.00**.

Section II: RECITALS

2. The GSA investigation arose out of the conviction of environmental laboratory owner and director, Roobik Yaghoubi, for fraud related to environmental sample analysis. Mr. Yaghoubi pled guilty to submitting false data to the State Water Board in Los Angeles County Superior Court in Case No. BA450757. GSA and Mr. Louks were clients of Mr. Yaghoubi.

3. On November 17, 2017, the Office of Enforcement's Fraud, Waste, and Abuse Prevention Unit (Fraud Prevention Unit) issued a request for information and investigative subpoena to GSA. The request notified GSA that the Fraud Prevention Unit was in the process of conducting an audit of invoices and report documents submitted, either directly or through claimants, by GSA to the Cleanup Fund.

4. On August 17, 2018, Mr. Louks sat for a recorded interview with Fraud Prevention Unit staff. Mr. Louks admitted in the interview with Fraud Prevention Unit staff to directing Cal Tech Environmental Laboratories (CTEL) to falsify laboratory report results. In addition, Mr. Louks confirmed that he engaged in the alleged kickback scheme described below.

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5. The Fraud Prevention Unit alleges Mr. Louks received kickbacks from CTEL and its affiliate, Pine Crest, Inc., in exchange for submitting inflated invoices to GSA's clients, with the inflated costs ultimately to be paid by the Cleanup Fund. CTEL and Pine Crest made kickback payments to Mr. Louks which he described as a "commission ... paid as a percentage of sales to GSA." Mr. Louks confirmed in the August 17, 2018 interview that he received "kickbacks" from Mr. Yaghoubi. Mr. Yaghoubi's portion of illicit proceeds from the scheme was sixty-five percent (65%). Mr. Louks' portion of illicit proceeds from the scheme was thirty-five percent (35%). The costs reported to the Cleanup Fund include the costs for Mr. Louks "commissions," but that element of the cost was not disclosed to the Cleanup Fund. Rather, the invoice to the Cleanup Fund presented those costs as environmental analysis costs, thus causing the Cleanup Fund to reimburse Mr. Louks for fraudulent costs that were not reasonable and necessary or actually incurred.

6. On September 25, 2014, Senate Bill 445 amended the Health and Safety Code, adding section 25299.80 that allows the State Water Board to impose civil liability administratively for misrepresentations made to the Cleanup Fund.

7. On December 20, 2018, the Fraud Prevention Unit issued GSA a letter offering to enter into settlement negotiations related to the alleged misrepresentations to the Cleanup Fund.

8. Mr. Louks, on behalf of GSA, and the State Water Board (collectively "Parties") have engaged in settlement negotiations and agree to fully and finally settle the alleged violations for **$90,000.00** without administrative or civil litigation and by presenting this Stipulation to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80.

9. The Cleanup Fund believes that the resolution of the alleged matter set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action against GSA is warranted concerning invoices and report documents GSA submitted to the Cleanup Fund, either directly or through claimants, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Administrative Civil Liability:** The Settling Respondents hereby agree to pay the administrative civil liability totaling **$90,000.00** by check made payable to the *State Water Resources Control Board*, no later than 30 days following execution of this Order by the State Water Board or its delegee. The memo line of the check shall reference *UST Cleanup Fund*. The original signed check shall be sent to the following address, and notification of payment shall be sent to nickolaus.knight@waterboards.ca.gov.

State Water Resources Control Board
Office of Enforcement
801 "K" Street, Suite 2300
Sacramento, CA 95814
Attn: Amantha Henkel

11. **Injunctive Relief/ Prohibitions:**

a. Settling Respondents agree that as of August 17, 2018, GSA, and its principal, Daniel Louks, are prohibited from performing any work for or in connection with any program administered, funded, or directed in any manner by the State Water Board. The prohibition in this paragraph includes, but is not limited to, any program, fund, or account authorized under division 20, chapters 6.75 and 6.76 of the Health and Safety Code.

b. Settling Respondents are specifically disqualified from participation in any fund or account authorized under division 20, chapter 6.75 of the Health and Safety Code pursuant to this Order and section 25299.71.

c. Settling Respondents agree to waive all rights to appeal or petition, administratively or judicially, or in any forum or venue, any and all determinations of eligibility made by the Cleanup Fund with respect to reimbursement of costs and work performed at any site. All determinations regarding whether costs invoiced to the Cleanup Fund are eligible reasonable and necessary costs are final.

d. Settling Respondents agree to waive and/or abandon all appeals or petitions related to any reimbursement requests for costs incurred on claims within the meaning of division 20, chapter 6.75, of the Health and Safety Code presently before the State Water Board and/or any court in California or anywhere in the United States of America.

e. Settling Respondents agree that after August 17, 2018, any and all work performed, supervised by, and/or directed by Settling Respondents and/or its principals that has not been submitted for reimbursement by the Cleanup Fund is not eligible reasonable and necessary costs and, therefore, not subject to reimbursement from the Cleanup Fund. This includes, but is not limited to, work performed by a third party or subcontractor to Settling Respondents not submitted as part of a reimbursement request by February 5, 2019.

f. Settling Respondents agree they are not entitled to any further payment from Cleanup Fund claimants based upon any reimbursement request submitted to the State Water Board's Cleanup Fund, including costs submitted or pending appeal or petition before the State Water Board, submitted but determined ineligible, or for work completed but not yet submitted, or appeals or petitions not yet submitted.

g. Settling Respondents agree they will seek no further payment from any claimants, grantees, or borrowers for any work performed on a claim, grant, or loan within the meaning of division 20, chapters 6.75 and 6.76 that was or will be reimbursed by the State Water Board after the effective date of this order.

h. Settling Respondents will provide written notice to all clients of GSA and Mr. Louks, including those clients who are existing site claimants, that they are no longer doing any work for any claims, grants, or loans within the meaning of division 20, chapters 6.75 and 6.76 of the Health and Safety Code. Copies of the written notice shall be submitted to the contacts in paragraph 15 within 30 days of the effective date of this order.

12. **Covered Matters**: This agreement covers all the administrative actions the State Water Board alleged in relation to the conduct described in paragraphs 2 through 5, inclusive, under Health and Safety Code section 25299.80. This agreement is a full and complete Settlement of those matters against GSA and its principals except for the obligations imposed herein.

13. **State Water Board is Not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondents, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

14. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Stipulation and Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval required by this Order.

15. **Party Contacts for Communications related to this Stipulation and Order:**

For the Cleanup Fund:

Nickolaus Knight
Senior Counsel
State Water Resources Control Board
Office of Enforcement
801 "K" St., Suite 2300
Sacramento, CA 95814
nickolaus.knight@waterboards.ca.gov
916.327.0169

For Settling Respondents:

Daniel Louks
GSA Engineering, Inc.
16950 Avenida de Santa Ynez
Pacific Palisades, CA 90272
dan@gsaengineering.net
310.567.5743

16. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

17. **Matters Addressed by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein. The provisions of this paragraph are expressly conditioned on Settling Respondents' full payment of the Stipulated Administrative Civil Liability by the deadline specified above.

18. **Public Notice:** The Parties understand that this Order may, in the discretion of the State Water Board, be noticed for a 30-day public review period prior to consideration by the State Water Board. In the event objections are raised during the public comment period for the Order, the State Water Board or Executive Director may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Order as necessary or advisable under the circumstances. If the State Water Board does not elect to notice this settlement, the Order will be effective upon execution by the Executive Director.

19. **Addressing Objections Raised During Public Comment Period:** If the Order is noticed for public comment, the Parties agree that the procedure contemplated for adopting the Order by the State Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

20. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The State Water Board was represented by counsel in this matter. Settling Respondents were *in propia personae.*

21. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the State Water Board or its delegee.

22. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

23. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the State Water Board, or its delegee, or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The

Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

24. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their rights, if any, to petition the adoption of this order to the State Water Board, petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level Court.

25. **Covenant Not to Sue:** Settling Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

26. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

27. **No Third-Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, or claimants, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

28. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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29. **Effective Date**: This Stipulation is effective and binding on the Parties upon the entry of this Order by the State Water Board, or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

Date: 2/6/19

By: Leslie S. Laudon
Leslie S. Laudon, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

Settling Respondents

Date: 2/5/19

By: Daniel Louks
Daniel Louks

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ORDER OF THE STATE WATER BOARD

1. This Order incorporates the foregoing Stipulation.

2. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle this matter, the Settling Respondent agrees to comply with the terms and conditions of this Order.

3. The Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

4. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under the Stipulation and Order.

PURSUANT to Government code section 11415.60 and Health and Safety code section 25299.80, IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

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Eileen Sobeck, Executive Director Date

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