



JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS

County of Santa Cruz

DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060
(831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

AGENDA: NOVEMBER 24, 1998

November 12, 1998

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
701 Ocean Street
Santa Cruz, California 95060

**SUBJECT: ROY WILSON YARD - GROUNDWATER MONITORING AND
STOCKPILED SOIL INVESTIGATION AND REMEDIATION**

Members of the Board:

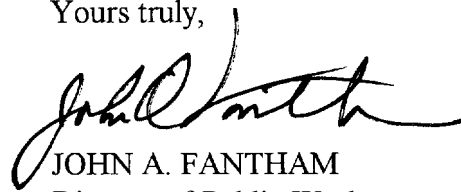
On April 14, 1998, your Board approved continued funding for three related contracts with Terratech, Inc., and AN/EN, Inc., in order to investigate the extent of the soil and groundwater contamination from two underground fuel tank leaks at the Roy Wilson Maintenance Yard. Although the associated projects are progressing according to schedule, an access agreement with the adjoining Braycovich property must be initiated to investigate the possible migration of potential contaminants. The migration investigation is one of the requirements of the State Regional Water Quality Control Board as stated in their letter dated October 10, 1997.

An agreement which describes the procedures for access to the property and when to perform the necessary water sampling was signed and approved by the landowners. County Counsel has reviewed and approved the agreement as to content and form.

It is therefore recommended that the Board of Supervisors take the following action:

1. Approve the attached agreement.
2. Authorize the Director of Public Works to sign said agreement on behalf of the County.

Yours truly,

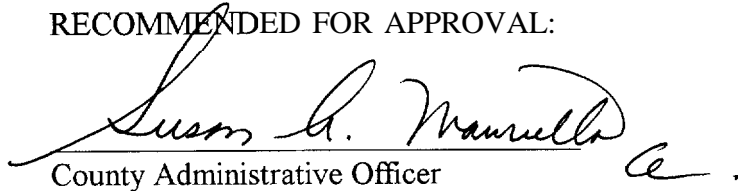


JOHN A. FANTHAM
Director of Public Works

RCB:mg

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: Public Works
 Terratech, Inc.

ACCESS AND INDEMNITY AGREEMENT

This Access, Indemnity and Tolling Agreement (the "Agreement") is made as of November 2 1998, by and between Clementine Braycovich as Trustee and Janet Banovac (collectively, the "Licensor") and the County of Santa Cruz ("Licensee"). Licensee's address is 701 Ocean Street, Room 410, Santa Cruz, California, 95060 and telephone number is (408) 454-2160. The Licensee contact person is Russ Bateson.

RECITALS

- A. Licensor is the owner of that certain real property commonly known as 118A Holohan Road in Watsonville, California, County of Santa Cruz Assessor's Parcel Number 051-101-24 (the "Licensor Property").
- B. Licensee is the owner of that certain real property commonly known as 198 Holohan Road in Watsonville, California, County of Santa Cruz Assessor's Parcel Number 051-101-59 (the "Licensee Property").
- C. Licensee has retained Terratech, Inc., to investigate the nature and extent of soil and shallow ground water petroleum hydrocarbon impact under and below the Licensee Property, and investigate possible methods of ground water remediation.
- D. The California Central Coast Regional Water Quality Control Board ("Regional Board") has directed Licensee to undertake certain investigative measures at the Licensee Property as a result of a discharge of various Detected Substances at Licensee's facility. The Regional Board directed Licensee to implement a quarterly ground water monitoring program, which includes monitoring ground water in a ground water monitoring well ("Monitoring Well") located on the Licensor Property. Additionally, the Regional Board has directed Licensee to develop a corrective action plan for impacted ground water, which includes collecting additional ground water data from the Licensor Property.
- E. Licensee wishes to obtain the right of access to the Licensor Property in order to accomplish the items said in Paragraph 1, and Licensor is prepared to convey to Licensee such right of access to the Licensor Property in accordance with this Agreement.

NOW **THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement and other consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Licensor and Licensee agree as follows:

1. ACCESS TO LICENSOR PROPERTY

- 1.1 Subject to the terms of this Agreement, Licensor hereby grants to Licensee, its authorized agents, employees, consultants, contractors and subcontractors a non-exclusive license to enter, use and occupy the Licensor Property for the purposes set forth in this

Paragraph 1.1. Such right of access shall be for a period of one (1) year with this Agreement to be reviewed annually, following the date as of which this Agreement is executed. Access shall include ingress and egress over such portion of the **Licensor** Property as may reasonably be required to perform the activities permitted by this Agreement. The activities permitted shall include:

- (a) Extracting ground water from the Monitoring Well in order to test for the presence of Detected Substances at, below or under the **Licensor** Property ("Ground Water Monitoring").
- (b) Collecting two grab ground water samples from the **Licensor** Property at the approximate locations on the access road shown on Exhibit A to this Agreement. The samples will be collected from the access road and not from areas of active cultivation. The **Licensor's** tenant will be consulted regarding scheduling of the sample collection. The samples will be collected from a maximum of two temporary borings using limited access direct-push equipment. After sampling, the temporary borings will be sealed to 6 feet below ground surface (bgs) with cement grout, and from 6 feet bgs to ground surface with native material.
- (c) Licensee shall use his best efforts to minimize any disruption or interference with **Licensor** or **Licensor's** tenant's business. In addition, Licensee will be required to provide **Licensor** and **Licensor's** tenant with prior written notice of when he plans to enter the property to maintain or monitor the Monitoring Well or collect the grab ground water samples and any such entry shall be only at reasonable times. Licensee will be required to enter and exit the **Licensor** Property via the eastern access road used by the **Licensor's** tenant.

2. LICENSEE'S OBLIGATIONS

- 2.1 Licensee shall promptly repair any damage to the **Licensor** Property caused by the exercise of Licensee's rights under this Agreement. Furthermore, Licensee shall, at its sole cost and expense, maintain Licensee's Improvements in good and working order, and promptly repair any damage thereto. Licensee shall remove all Licensee Improvements from the **Licensor** Property prior to the expiration of the term of this Agreement, including but not limited to taking all actions recommended or required by any governmental entity with authority over the **Licensor** Property as to filling, capping, sealing, or otherwise abandoning the Monitoring Well and temporary borings in a condition that is safe and leaves no evidence thereof on the surface of the **Licensor** Property. Immediately following the abandonment and removal of Licensee's Improvements, Licensee shall, as approved by **Licensor**, pave or otherwise landscape that portion of the **Licensor** Property where Licensee's Improvements were located in general conformance with the immediately adjacent area, at Licensee's sole cost and expense. In addition, Licensee shall exercise its rights hereunder in compliance with all applicable governmental laws, rules and regulations.

- 2.2 The costs associated with any and all of the activities, inspections, and tests conducted by Licensee under this Agreement shall be borne completely by Licensee, and the parties agree that **Licensors** shall have no obligation to pay for or reimburse Licensee for any such tests or inspections or preparation of any related reports.
- 2.3 Licensee shall, at its sole cost and expense, promptly and in compliance with all applicable governmental regulations, remove and dispose of any soil, ground water and other samples taken from the **Licensors** Property. Licensee shall be solely responsible for and bear all costs, fees, charges, impositions, fines or civil penalties (including, without limitation, reasonable costs of defense, settlement and/or attorneys' fees of **Licensors**) related to the removal and disposal (or failure to remove or dispose properly) of any such samples taken from the **Licensors** Property. It is expressly agreed that **Licensors** shall not be listed as a generator, handler, user, storer or discharger of any soil and/or ground water and other samples taken from the **Licensors** Property. Upon request by **Licensors**, Licensee shall, immediately upon taking any soil or ground water samples, split such samples and make these available to **Licensors**'s consultants prior to testing or disposal. Upon request from Licensee, **Licensors** shall provide the results of any tests, analyses or investigations performed from the split samples described herein. It is understood that the cost of performing any test, analyses of investigations performed by **Licensors** under this Paragraph 2.3 shall be borne by **Licensors**.
- 2.4 Licensee shall promptly deliver to **Licensors** copies of all reports or test data related to Licensee's activities concerning Licensee's Ground Water Monitoring, grab ground water sample collection, and the Detected Substances located at, on, below or under the **Licensors** Property or the Licensee Property.
- 2.5 Licensee shall not suffer or permit to be enforced against the **Licensors** Property, or any part thereof, any mechanic's, materialman's, contractor's, or subcontractor's or other lien arising from Licensee's activities at the **Licensors** Property. In the event that any such lien, claim, or demand is recorded against the **Licensors** Property, Licensee shall discharge such lien, claim or demand immediately upon **Licensors**'s request or prior to commencement of a foreclosure action, whichever is first with respect to such lien, either by paying such lien, claim or demand or by furnishing a bond as specified in California Civil Code Section 3143 or any successors statute thereto. If Licensee does not discharge any such lien, claim or demand, **Licensors** shall have the right, but not the duty, to post such bond or to pay or otherwise discharge, stay or prevent the enforcement or execution of any such lien. Upon demand, Licensee shall reimburse **Licensors** for all sums paid by **Licensors** pursuant to this Section 2.5, together with all **Licensors**'s reasonable attorneys' fees and costs related to such matter.
- 2.6 Licensee shall cause its contractors or subcontractors to maintain comprehensive general liability insurance, with endorsements covering environmental damage, for their acts or omissions in performing the Ground Water Monitoring and other actions permitted under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, for personal injuries,

death or property damage occurring on or about the **Licensor** Property. Such insurance shall be maintained throughout the term of this Agreement.

- 2.7 Licensee shall indemnify, protect, defend and hold harmless **Licensor** from any and all claims, demands, losses, liabilities, damages, fines, costs, fees and expenses, including without limitation attorneys' fees and consultants' fees, asserted or sustained in connection with any actual or alleged injuries to persons or damage to the **Licensor** or to the **Licensor** Property or any other real or personal property in any way arising out of or resulting from the exercise of any rights or the failure to fulfill any obligation under this Agreement by Licensee or by Licensee's agents, employees, consultants, contractors and subcontractors, except to the extent it is determined that the damage or injury was caused by the gross negligence of **Licensor**. All references to "**Licensor**" in this Agreement shall include any individual making up **Licensor**.

3. MISCELLANEOUS

3.1 This instrument contains the entire agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any amendments or modifications concerning this instrument shall be of no force or effect unless specified in a subsequent written modification signed by the party to be charged.

3.2 This instrument may be executed by Licensor in counterpart.

IN WITNESS WHEREOF, this Agreement has been executed by each of the parties as of the date set forth above.

LICENSOR:

Clementine Braycovich
Clementine Braycovich

Nov. 5, 1998
Date

Janet Banovac
Janet Banovac

November 2, 1998
Date

LICENSEE:

John A. Fantham
Director of Public Works

Date

Approved as to form:

D. McRae 11-9-98
County Counsel

Date



TERATECH, INC.

PROPOSED GRAB GROUND WATER SAMPLE LOCATIONS
COUNTY OF SANTA CRUZ PUBLIC WORKS
ROY WILSON YARD
SANTA CRUZ COUNTY, CALIFORNIA

EXHIBIT
A
PROJECT
218008.02

