

**AGREEMENT RE: FUEL SPILL CLEAN-UP
MANAGEMENT SERVICES**

THIS AGREEMENT RE: FUEL SPILL MANAGEMENT SERVICES (hereinafter "Agreement") is made this 28th day of August, 2012, by and between the Monterey County Water Resources Agency (hereinafter "Agency") and the County of Monterey (hereinafter "County") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Agency owns real property in and around the Lake Nacimiento and Lake San Antonio Reservoirs in the Counties of Monterey and San Luis Obispo; and,

WHEREAS, County and the Agency entered into an operational agreement under which the County would provide recreational services in and around Nacimiento and San Antonio Reservoirs; and,

WHEREAS, the County entered into a concessionaire agreement with Water World Resorts, Inc. dated December 14, 1972 which was subsequently amended three times, through which Water World Resorts, Inc. would provide recreational uses at Nacimiento Reservoir in the county of San Luis Obispo; and,

WHEREAS, the County entered into a concessionaire agreement with Lake San Antonio Resorts, Inc., an affiliate of Water World Resorts, Inc., dated January 29, 1992 through which Lake San Antonio Resorts, Inc. would provide recreational uses at San Antonio Reservoir in the County of Monterey; and,

WHEREAS, during the term of its agreement with the County, Water World Resorts, Inc. caused fuel spills to occur on Nacimiento Reservoir lands, and Lake San Antonio Resort, Inc. caused fuel spills to occur on San Antonio Reservoir lands in 2005 and 1997, respectively, from faulty underground storage tanks; and,

WHEREAS, mitigation and monitoring of the fuel spills caused by faulty underground storage tanks at the two fuel product dispensing sites is mandated by the Central Coast Regional Water Quality Control Board under the authority of the State Water Resources Control Board pursuant to Wat. Code sections 13267 and 13268"; and,

WHEREAS, prior to entering into a *Settlement Agreement* dated July 31, 2007 (hereinafter the "Settlement Agreement") with County, Water World Resorts, Inc. and its affiliate paid for all spill clean-up costs, and was fully reimbursed by the State Water Resources Control Board Underground Storage Tank Clean-up Fund ("State UST Fund") in the amount of \$126,669 for Nacimiento Reservoir and \$1,233,239 for San Antonio Reservoir; and,

WHEREAS, also pursuant to the Settlement Agreement and the associated *Agreement of Purchase and Sale of Assets* between the County and Water World Resorts, Inc. dated July 31, 2007 (hereinafter the “Water World Purchase/Sale Agreement”) and the *Agreement of Purchase and Sale of Assets* between the County and Lake San Antonio Resort, Inc. dated July 31, 2007 (hereinafter the “Lake San Antonio Purchase/Sale Agreement”) County assumed liability for all costs related to the fuel spill clean-up at Nacimiento and San Antonio Reservoirs; and,

WHEREAS, subsequent to October 1, 2007, the Agency expended \$793,712 for fuel spill clean-up project management services, clean-up Consultant (GeoRestoration, Inc.) monitoring and fuel extraction expenses, and regulatory reporting activities, all as shown on Attachment “A”; and,

WHEREAS, Agency has been reimbursed by the County in the amount of \$151,087, and by the State UST Fund in the amount of \$307,069; and,

WHEREAS, Agency suspended fuel spill clean-up activities on June 12, 2012, due to unavailability of funds for that purpose and the expenditure of the maximum authorized amount in the Professional Services Agreement with GeoRestoration, Inc., and has so notified the State Water Resources Control Board; and,

WHEREAS, County desires Agency to continue to provide fuel spill clean-up project management services and regulatory reporting, and to engage a fuel spill clean-up Consultant for monitoring and fuel extraction.

NOW, THEREFORE, for and in consideration of the foregoing, the County and Agency hereby agree as follows;

1. County shall reimburse Agency \$335,557 for net expenditures of Agency funds for fuel spill clean-up expenses prior to June 30, 2012. County Counsel, County Risk Management, Auditor’s Office and CAO’s office will work together with Monterey County Water Resources Agency to identify the appropriate funding source, which may include the GL-ISF. Said reimbursement shall occur within 30 days of the date of approval of this Agreement by the Monterey County Board of Supervisors and the Board of Supervisors of the Monterey County Water Resources Agency.
2. Agency will provide Project Management Services to County for clean-up of fuel spills caused by faulty underground storage tanks located at the two former product dispensing sites, one at Nacimiento Reservoir and one at San Antonio Reservoir. Project Management Services shall be as delineated in paragraph 3 below. Project Management Services by the Agency at additional sites will only be performed upon execution of an amendment to this Agreement or through a new agreement.
3. Project Management Services to be performed by the Agency shall include, but not be limited to the following:
 - (a) Negotiation and execution of amendment(s) to the January 1, 2010 Professional Services Agreement with GeoRestoration, Inc. for services to include, in accordance with Regional Water Quality Control Board requirements, all items listed below.

- 1) Ground water sampling;
- 2) Monitoring and sampling for TPH, BTEX, oxygenates, lead scavengers, and breakdown products, among others;
- 3) Provision of assessment and remedial action measures including high vacuum/high volume extraction, site assessment, and verification monitoring;
- 4) Submission of an Annual Summary Report to the Agency. The Annual Summary Report shall include
 - o Detect/no detect plume status (is the product moving)
 - o Amount of product removed
 - o Overview and effectiveness of current methods
 - o Recommendations for changes to clean-up methodologies (if any);
- 5) Interface with the Central Coast Regional Water Quality Control Board;
- 6) Download of monitoring data and reports to GeoTracker.

The aforesaid amendment shall require Monterey County Water Resources Agency Board of Supervisors approval.

An estimate of Professional Services Agreement charges through June 30, 2017 is shown on Attachment "B".

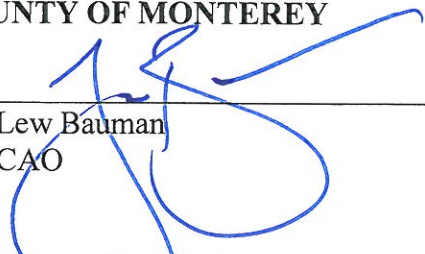
- (b) Inspection and review of services provided by GeoRestoration, Inc. Included are a minimum of two site visits per year and two project progress meetings per year to review GeoRestoration, Inc. progress on completing site closure.
- (c) Administration of Professional Services Agreement, as amended, includes the processing of invoices.
- (d) Submission to the State of requests for reimbursement of expenses for the fuel spill clean-up from the State UST Fund. The Agency General Manager, or designee, is the authorized signature for reimbursement requests. Any reimbursement for fuel spill clean-up costs incurred subsequent to June 30, 2012, shall be forwarded to County by Agency within five business days of receipt.

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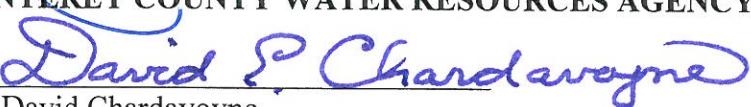
4. County shall reimburse the Agency, on the basis of quarterly invoices by Agency, all direct and indirect labor costs, travel (as allowed by County policies and guidelines), and equipment charges incurred in the Agency's provision of Project Management Services set forth in Paragraph 3 above. An estimate of Agency expenses through June 30, 2017 is shown on Attachment "C". Agency reimbursements shall not exceed \$35,000 per FY and shall not exceed a cumulative total of \$175,000 for the term of this Agreement without and amendment to this Agreement.
5. Agency shall submit to County, within five business days of receipt, approved quarterly invoices from GeoRestoration, Inc. for services provided pursuant to the Professional Services Agreement, as amended. County shall pay said invoices directly to GeoRestoration, Inc. The amounts payable to GeoRestoration, Inc. shall not exceed \$330,000 for FY 2012-2013; \$335,000 for FY 2013-2014; \$340,000 for FY 2014-2015; \$350,000 for FY 2015-2016; and \$360,000 for FY 2016-2017 without an amendment to this Agreement. The total amount payable under this Agreement shall not exceed \$1,715,000 without an amendment to this Agreement.
6. This Agreement shall terminate on June 30, 2017, unless otherwise renewed, extended or superseded by both parties in writing. The termination of this Agreement shall not alter liabilities or obligations the County has under the Settlement Agreement, the Water World Purchase/ Sale Agreement and the Lake San Antonio Purchase/Sale Agreement for fuel spill clean-up subsequent to June 30, 2017.

IN WITNESS WHEREOF, the Monterey County Water Resources Agency and County of Monterey execute this Agreement as follows:

COUNTY OF MONTEREY

By: 
Lew Bauman
Its: CAO

MONTEREY COUNTY WATER RESOURCES AGENCY

By: 
David Chardavoyne
Its: Interim General Manager

ATTACHMENT "A"
TO AGREEMENT RE: FUEL SPILL
CLEAN-UP MANAGEMENT SERVICES

MONTEREY COUNTY WATER RESOURCES AGENCY
SAN ANTONIO & NACIMIENTO RESERVOIRS FUEL CLEAN-UP COSTS
AND REIMBURSEMENTS

Monterey County Water Resources Agency
San Antonio & Nacimiento Reservoirs Fuel Clean-up Costs
6/30/2012

	<u>Total</u>	<u>SA</u>	<u>Naci</u>
<u>FY 2007-08</u>			
TRC Solutions (Paid thru Downey Brands 10/2/07)	\$5,629.66		\$5,629.66
TRC Solutions (Paid thru Downey Brands 1/3/08)	6,629.95		6,629.95
Downey Brands legal fees (Oct 07 - March 08)	6,831.50	\$ 3,415.75	3,415.75
County Counsel Charges (Nov 07 - March 08)	2,523.41	1,261.71	1,261.70
Geo Restoration	9,552.25	9,552.25	
Water Resources Applied Labor (11/24/07 - 6/20/08)			
Direct labor charge	\$22,788.79		
Admin salary allocation 26.216%	<u>5,974.31</u>	28,763.10	14,330.84
			14,432.26
Total FY 2007-08 Costs	<u>\$59,929.87</u>	<u>\$28,560.55</u>	<u>\$31,369.32</u>
<u>FY 2008-09</u>			
Geo Restoration	\$27,114.95	\$ 15,814.95	\$ 11,300.00
Water Resources Applied Labor (6/21/08 - 6/19/09)			
Direct labor charge	24,135.07		
Admin salary allocation 28.444%	<u>6,864.98</u>	31,000.05	13,739.92
			17,260.13
Total FY 2008-09 Costs	<u>\$58,115.00</u>	<u>\$29,554.87</u>	<u>\$28,560.13</u>
<u>YTD FY 2009-10</u>			
Geo Restoration	\$145,112.51	\$122,262.63	\$22,849.88
Water Resources Applied Labor (6/20-09 - 6/18/10)			
Direct labor charge	27,145.72		
Admin salary allocation 25.291%	<u>6,865.42</u>	34,011.14	17,286.26
			16,724.88
Total FY 2009-10 Costs	<u>\$179,123.65</u>	<u>\$139,548.89</u>	<u>\$39,574.76</u>
<u>YTD FY 2010-11</u>			
Geo Restoration	\$285,866.24	\$184,018.85	\$101,847.39
Water Resources Applied Labor (6/19-10 -6/17/11)			
Direct labor charge	21,870.45		
Admin salary allocation 25.302%	<u>5,533.65</u>	27,404.10	10,312.34
			17,091.76
Total YTD FY 2010-11 Costs	<u>\$313,270.34</u>	<u>\$194,331.19</u>	<u>\$118,939.15</u>
<u>YTD FY 2011-12</u>			
Geo Restoration Paid	\$144,724.37	\$120,018.13	\$24,706.24
Geo Restoration Unpaid	12,299.34	4,326.48	7,972.86
Water Resources Applied Labor (6/18/11 - 6/15/12)			
Direct labor charge	21,908.60		
Admin salary allocation 19.815%	<u>4,341.19</u>	26,249.79	14,640.34
			11,609.45
Total Fiscal YTD June 15, 2012 Costs	<u>\$183,273.50</u>	<u>\$138,984.95</u>	<u>\$44,288.55</u>
Total Costs thru 6/15/2012	<u>\$793,712.36</u>	<u>\$530,980.45</u>	<u>\$262,731.91</u>
Reimbursed by Park Dept in FY 2009-10	(\$80,015.38)		
Reimbursed by Park Dept in FY 2010-11	(71,071.43)		
Reimbursement - State UST Fund Lake San Antonio <i>Partial Payment</i>	(167,334.00)		
Reimbursement - State UST Fund Lake Nacimiento <i>Partial Payment</i>	(139,735.00)		
Balance Unreimbursed Thru 6/15/12	<u>\$335,556.55</u>		

**Monterey County Water Resources Agency
San Antonio & Nacimiento Reservoirs Fuel Clean-up Costs**

Summary	
TRC Consultant costs	\$12,259.61
Georestorement Consultant costs	624,669.66
Downey Brands legal costs	6,831.50
County Counsel costs	2,523.41
Applied labor costs	<u>147,428.18</u>
Total costs through 2/28/11	<u>\$793,712.36</u>
Reimbursed from Parks FYs 9-10 & 10-11	(151,086.81)
State reimbursement	<u>(307,069.00)</u>
FY 2011-12 Estimate due from County	<u><u>\$335,556.55</u></u>

ATTACHMENT "B"
TO AGREEMENT RE: FUEL SPILL
CLEAN-UP MANAGEMENT SERVICES

**ESTIMATE OF PROFESSIONAL SERVICES
AGREEMENT CHARGES**

	Nacimiento	Task	San Antonio	Task	Total
FY 2012-2013	\$17,665	Monitoring*	\$307,204	M & R*	\$324,869
FY 2013-2014	\$18,019	Monitoring*	\$313,348	M & R*	\$331,366
FY 2014-2015	\$18,379	Monitoring*	\$319,615	M & R*	\$337,994
FY 2015-2016	\$18,747	Monitoring*	\$326,007	M & R*	\$344,754
FY 2016-2017	\$19,122	Monitoring*	\$332,527	M & R*	\$351,649
Total =	\$91,932		\$1,598,700		\$1,690,632

***Monitoring & Remediation (M&R) Costs Are Variable Based on Stage of Site Remediation**

(costs are based on average monthly cleanup costs from FY 2011-2012, with an estimated 2% CPI increase built in for budgeting purposes)

ATTACHMENT "C"
TO AGREEMENT RE: FUEL SPILL
CLEAN-UP MANAGEMENT SERVICES

ESTIMATE OF AGENCY CHARGES

STAFF RATE		\$130/hr.
	HOURS	
		Field Work
	32	Field Site Visits
		Technical Review
	32	Semi-Annual Technical Report Review & Comment
	25	Site Remediation Action Plans
	25	Annual Progress Reports
	25	Modification(s) and Remediation Action Plan Document Review
	25	Quarterly Invoicing
		Contract Management
	32	Project Consultation and Discussion
	32	Board Reports
TOTAL STAFF HOURS	228	
TOTAL STAFF COSTS (2012-13)	\$30,000	
TOTAL STAFF COSTS (2013-14)	\$30,600	Includes estimated 2% CPI increase for budgeting purposes
TOTAL STAFF COSTS (2014-15)	\$31,212	Includes estimated 2% CPI increase for budgeting purposes
TOTAL STAFF COSTS (2015-16)	\$31,836	Includes estimated 2% CPI increase for budgeting purposes
TOTAL STAFF COSTS (2016-17)	\$32,473	Includes estimated 2% CPI increase for budgeting purposes
TOTAL STAFF COSTS	\$156,121	Total Estimated Agency Staff Costs for this agreement