

Nowell, Keith, Env. Health

From: Dennis Dettloff <Dennis.Dettloff@anteagroup.com>
Sent: Friday, November 21, 2014 7:41 AM
To: Nowell, Keith, Env. Health
Cc: Roe, Dilan, Env. Health
Subject: Fuel leak case RO219 - 499 Hegenberger Rd., Oakland -Re Wells MW-7 and MW-8
Attachments: 20100316 2705191 License Agreement.pdf

Keith:

Please see the correspondence that I sent to Mr. Beretta this morning. Don't hesitate to contact me if you have any questions.

Best Regards,

Dennis S. Dettloff, P.G. | Senior Project Manager | Antea Group
Direct + 916 503 1261 | USA Toll Free 800 477 7411
Dennis.Dettloff@anteagroup.com | www.anteagroup.com

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From: Dennis Dettloff
Sent: Friday, November 21, 2014 7:37 AM
To: 'David Beretta'; Steve Moriarty
Cc: 'Walter T. Sprague'
Subject: 449 Hegenberger Road, Oakland, CA

Good Morning Mr. Beretta:

On the way to work this morning I was trying to think of a way that we could break through on the access agreement issues and work together to come to some kind of agreement that would allow Antea Group and our subcontractors access to the two monitoring wells, MW-7 and MW-8, on your properties located at 405-433 Hegenberger Road Oakland, California. As you know we previous had an agreement dated March 15, 2010 allowing Antea Group (formally Delta Consultants) access to the two monitoring wells; however, as you also know this agreement has expired. A copy of this agreement is attached. You previously indicated that you were going to prepare a license agreement and send it to Antea Group for our consideration. So what I was thinking is why don't you take the attached license agreement, use it as a template and make any changes that you would like to see made and then send it back to me. I will then review this document with Antea Groups legal counsel and see if it is acceptable. If so, we can move forward with an executable license agreement that is acceptable to both parties. This should not take too much time and effort as the attached agreement worked well for us before.

I'm certain that you would like to put this issue behind you as would Antea Group so that all parties involved can move forward and get back to working on other items the need our attention. Your attention to this matter would be greatly appreciated.

Best Regards,

Dennis S. Dettloff, P.G. | Senior Project Manager | Antea Group

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BERETTA PROPERTY MANAGEMENT

March 15, 2010
Via Fed Ex

Dennis Detloff
Delta Consultants
11050 White Rock Road
Rancho Cordova, CA 95670

RE: 433 Hegenberger Rd., Oakland CA
Monitoring Wells – Fully Executed License Agreement

Attn: Dennis Detloff;

Enclosed please find one fully executed original License Agreement related to the monitoring wells at the above referenced property.

Please note that no entry or access to the property shall be allowed until our office has received proof of insurance in accordance with the Owner's requirements.

Please feel free to contact our office with any questions regarding this matter.

Best Regards,

Steve Moriarty
Leasing Manager

enclosures

cc: Joe Pexioto – Facilities Manager

LICENSE AGREEMENT

THIS AGREEMENT, is made on February 19, 2010 by and between **BERETTA INVESTMENT GROUP**, a general partnership, (hereinafter "Licensor"), and **DELTA ENVIRONMENTAL CONSULTANTS, INC.**, a Minnesota corporation, (hereinafter "Licensee"); Licensor and Licensee shall sometimes hereinafter be referred to as the "Parties"

RECITALS

A. Licensor is the owner of a certain parcel, or parcels, of real property located at 433 Hegenberger Road, Oakland, California and further identified as County Assessor's Parcel 42-4425-12-7 (the "Property") adjacent to Union 76 Station No. 5043, located at 449 Hegenberger Road, Oakland, California.

B. Licensee now desires to enter the Property to continue the monitoring of two (2) groundwater monitoring wells approximately at the locations marked as MW7 and MW8 on Figure "1" attached hereto and made part hereof; to conduct certain monitoring well sampling and testing activities on quarterly basis.

C. Licensor and Licensee desire to enter into this License Agreement so that the soil and/or groundwater can continue to be assessed in relation to environmental laws and regulations.

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual premises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. **Grant of License** – Subject to the terms and conditions hereof, Licensor hereby grants to Licensee, and its employees, representative and contractors a non-exclusive license (hereinafter the "License") to enter upon the Property from time to time to conduct the activities described in Recitals Paragraph B and C above. This License shall commence on February 1, 2010, and shall end on January 31, 2013, unless the parties agree in writing to extend the term of the License. Prior to the expiration of the License, Licensee shall, at its sole cost and expense, (a) cause any excavations to be returned to the original gradient, (b) remove all equipment and casings placed on the Property or in the monitoring wells, (c) fill and plug monitoring wells, level all ditches, ruts and depressions, if any, caused by the closure of the Licensee's excavation operations on the Property, (d) remove all debris resulting therefrom and (e) repair any damage to the Property and improvements thereon caused by Licensee or caused as the result of the installation, monitoring or removal of the monitoring wells and equipment. All of the above shall be conducted in accordance with Industry standards.

2. **Compliance with Laws** – Licensee shall conduct all operations which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders and directives now exist or hereafter provide.

3. **Permits** – Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals with which may be necessary for it to conduct any work or activities under this License Agreement. Licensor shall reasonably cooperate with Licensee in Licensee’s activities to obtain all necessary government permits and permissions. Licensee shall reimburse Licensor for all costs and expenses incurred by the Licensor in such cooperation.

4. **Liens and Claims** – Licensee will not permit any mechanics’ materialmen’s, or similar liens or claims to stand against the Property for labor or material furnished in connection with any work performed by Licensee under this License Agreement. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

5. **Cooperation** – Licensee agrees to coordinate all its activities with Licensor (or Licensor’s tenant, if so directed by Licensor) to minimize any impairment of access to or interference with the use of the Property by Licensor, Licensor’s tenants and customer or their invitees of Licensor and its tenants. Upon request, Licensee will provide Licensor with copies of all material produced pertaining to activities on the Property as soon as reasonably possible. The drilling and equipping and plugging of the monitoring wells will be done between the hours and 9:00 a.m. and 6:00 p.m., and the monitoring activities of Licensee shall be done in such a way as to minimize any inconvenience to or disruption of business on the use of the Property by Licensor and its tenants.

6. **Indemnity** – Licensee agrees that it will indemnify and hold Licensor harmless from and against any liability, claims, demands, actions, suits, judgments, losses, damages, costs or expenses incurred by or asserted against Licensor arising out of or in connection with, in whole or in part, by any act or omissions of Licensee or its contractors, employees and agents in conducting, or relating to, its activities under this License Agreement or the existence of the monitoring wells on the Property or (b) with regard to third party claims for which Licensee might be found strictly liable the acts or omissions of Licensee or its contractors, employees and agents in conducting, or relating to, the activities under this License agreement or the existence of monitoring wells on the Property. This indemnity is expressly conditioned on the following:

(a) In the event Licensor shall indemnify any matter to which this indemnity may apply or receive a notice or claim from any third party of such matter, it shall immediately, and in every case within thirty (30) days of said notice or claim, notify

Licensee in writing of such matter; provided however that Licensor's failure to give such notice shall not relieve Licensee of its indemnity obligations herein except to the extent that Licensee is prejudice by such failure.

(b) Licensor shall cooperate with Licensee by allowing Licensee, its agents, representatives, contractors and consultants, prompt and ready access to the Property for the purpose of investigating any matter to which this indemnity may apply. Licensor and/or Licensee shall provide the other party with copies of all investigative reports, data or other information in any form which Licensor and/or Licensee, its consultants, agents or attorneys may have pertaining to any such matter, on request of the other party.

(c) This indemnity shall not extend to any liability for any claim to the extent caused by the negligent acts or omissions of Licensor, its agents, its predecessor, successors or assigns, or any third party not acting for or on behalf of Licensee.

7. **Insurance** – During the term of this License, Licensee, before entering the Property, and at its own expense, shall procure and maintain during the performance of its obligations under this Agreement policies of liability insurance, issued by insurance companies duly qualified or licensed to issue policies of insurance, insuring Licensor against loss or liability caused by or in connection with Licensee's (or its agents', invitees', guests', contractors', or subcontractors') activities under this License, in amounts no less than Commercial General Liability Insurance Occurrence Form, or the equivalent, with combined single limit coverage of at least ONE MILLION DOLLARS (\$1,000,000) each occurrence, TWO MILLION DOLLARS (\$2,000,000) aggregate, for Bodily Injury and Property Damage, including personal injury. Workers Compensation Insurance required by law, and Employers' Liability Insurance with a minimum limit of at least ONE MILLION DOLLARS (\$1,000,000) each occurrence. The policies of liability insurance above shall name Licensor as an additional insured and shall not include or restrict coverage based upon alleged or actual negligence of an additional insure. Licensee shall also carry Professional Liability and Pollution Liability policies in the amount of at least TWO MILLION DOLLARS (\$2,000,000) per claim and TWO MILLION DOLLARS (\$2,000,000) in the aggregate.

8. **Severability** – In case any one or more the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

9. **Notices** – Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine, with transmission and receipt confirmed, or by overnight delivery service, or similar courier service, addressed as follows:

To Licensor: Beretta Investment Group
39560 Stevenson Place, Suite 118
Fremont, CA 94539
Attention: Property Owner
Facsimile: (510) 797-1703
Phone: (510) 797-5880

To Licensee: Delta Environmental Consultants, Inc.
11050 White Rock Road
Suite 110
Rancho Cordova, CA 95670
Attention: Dennis Detloff
Facsimile: (916) 638-8385
Telephone: (800) 477-7411

With Optional Copy to: Eric R. Heiberg, Esq.
Coleman, Hull & van Vliet, PLLP
8500 Normandale Lake Boulevard
Suite 2110
Minneapolis, MN 55437
Facsimile: 952-841-0041
Telephone: 952-841-0207

The person and the place to which notices are to be mailed may be changed by either party by providing written notice of same to the other.

10. Assignment Successors and Assigns – This Agreement may not be assigned by either party without the express written consent of the other party, and in such event shall be binding upon and inure to the benefit of the Parties' respective representatives, successors and assigns.

11. Termination – This License may be revoked by Licensor, at Licensor's sole discretion, at any time by giving Licensee ninety (90) days prior written notice of such termination.

12. Entire Agreement – This License Agreement represents the full, complete and entire agreement between the parties with respect to the subject matter hereof, and the rights and remedies of the Parties shall be solely and exclusively those herein contained, and in lieu of any remedies otherwise available at law or in equity.


13. Governing Law – This Agreement shall be construed and interpreted and governed by and in accordance with the local law of the State of California without reference to any choice of law, rules or policies which may refer the resolution of any dispute arising hereunder to the laws of any other jurisdiction.

14. **Counterparts** – This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this License Agreement by their duly authorized representative on the date first above written.

LICENSOR

BERETTA INVESTMENT GROUP

By: 

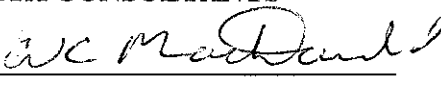
Name: DAVID BERETTA

Title: GENERAL PARTNER

Date: 3-15-2010.

LICENSEE

DELTA CONSULTANTS

By: 

Name: William C. MacDonald

Title: VP

Date: 3-11-10