

## Nowell, Keith, Env. Health

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**From:** Walter T. Sprague <wsprague@unitedpacific.com>  
**Sent:** Tuesday, October 06, 2015 5:21 PM  
**To:** Nowell, Keith, Env. Health  
**Cc:** Roe, Dilan, Env. Health  
**Subject:** RE: Fuel leak case RO219 and GeoTracker Global ID T0600101476 - Unocal #5043, 449 Hegenberger Rd., Oakland  
**Attachments:** Exhibit 1 with Right of Entry\_2015-August.pdf; Right of Entry\_2015-August.pdf

Keith,

Please review the attached documents. Please let me know if you are in agreement with the new document. If so we will move forward with obtaining signatures. Thank you.

### Walter T. Sprague

United Pacific  
7180 Koll Center Parkway #100  
Pleasanton, CA 94566  
P: (925) 931-5714  
C: (206) 979-1179



Exhibit 1

Exhibit 1

## RIGHT OF ENTRY

THIS RIGHT OF ENTRY ("Agreement") is made and entered into as of May 1, 2015 by and between Beretta Investment Group ("Owner" or "Licensor"), a general partnership, and Antea USA, Inc. ("Antea" or "Licensee"), a Minnesota corporation, and Pacific Convenience & Fuels (the "Responsible Party"), a Delaware Limited Liability Company.

## RECITALS

A. Owner 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 Number 42-4425-12-7 (the "Property"). The Property is adjacent to Union 76 Station No. 5043, located at 449 Hegenberger Road, Oakland, California (the "Adjacent Property"). ConocoPhillips was the former owner of the Adjacent Property. Antea is the Responsible Party's environmental contractor.

B. As a result of a gasoline spill on the Adjacent Property, the Responsible Party was required to remediate the spill, a part of which required installation of two groundwater monitoring wells on Owner's Property. Specifically, these are wells MW-7 and MW-8 as shown on "Figure 2" and "Figure 9" attached hereto as Exhibit A.

C. Governmental authorities with oversight for the cleanup of the spill, including the Alameda County Environmental Health Agency, have determined that MW-7 and MW-8 are no longer required and may be removed.

D. The Responsible Party, Antea and the Alameda County Environmental Health Agency now wish to remove MW-7 and MW-8 and the Responsible Party and Antea desire to enter into this Agreement so that Antea will have the right to enter onto the Property to remove the two monitoring wells.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of each made unto the other, and for further valuable consideration as hereinafter set forth, it is hereby agreed by and between the parties as follows:

1. **Grant of License.** Subject to the terms and conditions hereof, Owner grants to Antea, its agents and employees, the right to enter upon the Property ("License") to do the activities required to complete Antea's Work (as defined below). The License shall be valid from the date first appearing above ("Effective Date") and shall expire on the earlier to occur of the following: (i) the date of completion of Antea's Work; or (ii) 60 days from the Effective Date. 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 Licensee's removal of the monitoring wells. All of the above shall be conducted in accordance with Industry standards.

2. **Antea's Work.** The work to be performed by Antea is described on Exhibit B ("Antea's Work").

3. **Compliance with Laws.** Licensee and Responsible Party shall conduct all operations which are the subject of this Agreement in compliance with all federal, state and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies (including, but not limited to, the Alameda County Environmental Health Agency), as such statutes, ordinances, regulations, orders and directives now exist or hereinafter provide.

4. **Permits.** Licensee shall, at no cost or expense to Owner, be responsible for obtaining any and all governmental permits and approvals that may be necessary for it to conduct any of Antea's Work under this Agreement. Owner shall reasonably cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions. Licensee shall reimburse Owner for all costs and expenses incurred by the Owner in such cooperation.

5. **Liens and Claims.** Licensee shall 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 the License. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Owner, Licensee shall bond and contest the validity and 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.

6. **Scheduling; Cooperation.** Licensee shall, and shall cause any subcontractor or agent to, provide Owner with not less than 15 days' written notice prior to entering onto the Property or performing any of Antea's Work. In addition, Licensee shall coordinate all of its activities with Owner (or Owner's tenant(s), if so directed by Owner) to minimize any impairment of access to or interference with the use of the Property by Owner, Owner's tenant(s) and their customers and invitees. Upon request, Licensee shall provide Owner with copies of all material produced pertaining to activities on the Property as soon as reasonably possible but in no event more than ten (10) days from receipt of such request. Licensee shall, and shall cause any subcontract or agent to, perform all of Antea's Work between the hours of 9:00 a.m. and 6:00 p.m. and in such a way so as to minimize any inconvenience or disruption of business on the Property and ability of Owner or its agent(s) to monitor said activity.

7. **Waiver; Indemnity.** Antea and Responsible Party, as a material part of the consideration to be rendered to Owner under this Agreement, waive all claims against Owner and its agents, Bergam, Inc. and Vintaco, Inc., for damages to all personal property in, on, or about the Property, and for injuries to persons in or about the Property, from any cause arising at any time. Further, Antea and Responsible Party agree defend, indemnify and hold harmless Owner and its agents Bergam, Inc. and Vintaco, Inc. (the "Indemnified Parties") for and on account of any damage or injury to any person or personal property of any person, arising from

(i) Antea's and/or Responsible Party's use of the Property, or (ii) Antea's and/or Responsible Party's failure to keep the Property and surrounding areas clean and in good condition. The Indemnified Parties shall not be liable to Antea or Responsible Party for any damage by or from any act or negligence of any other occupant of the Property or any occupant of adjoining or contiguous property. Antea and Responsible Party agree to pay for all damages to the Property, as well as all damage to occupants of the Property and to the property of those occupants caused by Antea's or Responsible Party's misuse or neglect of the Property. This provision shall survive expiration or termination of this Agreement.

8. **Insurance.** During the term of this License, each of Licensee and Responsible Party, 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 Owner 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 and its agents, Bergam, Inc. and Vintaco, Inc., as additional insured and shall not include or restrict coverage based upon alleged or actual negligence of an additional insured. 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, the Pollution Liability policy shall name Licensor and its agents, Bergam, Inc. and Vintaco, Inc., as additional insured and shall not include or restrict coverage based upon alleged or actual negligence of an additional insured.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter contained herein and supersedes any previous agreement. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by a party or anyone acting on behalf of any party unless such representation, inducement, or promise of agreement is contained in this Agreement.

10. **Amendment.** No modification, amendment or waiver of the terms and conditions of this Agreement will be binding upon any party unless it is in writing and is executed by an authorized representative of that party.

11. **Assignment; Successors.** 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.

12. **Severability.** In the event any term or provision of this Agreement is found to be unenforceable or void, in whole or in part, as drafted, then the offending term or provision shall be construed as valid and enforceable to the maximum extent permitted by law, and the balance of this Agreement shall remain in full force and effect.

13. **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, with transmission and receipt confirmed, or by overnight delivery service, or similar courier service, addressed to the party at the address indicated under its respective signature. The person and place to which notices are to be mailed may be changed by either party by providing written notice of the same to the other.

14. **Controlling Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

15. **Dispute Resolution.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the City and County of San Francisco, Santa Clara County or Alameda County before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

16. **Jurisdiction; Service of Process.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties only in the courts of the State of California, County of Alameda, or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the Northern District of California, and each of the parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and irrevocably waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world. Notwithstanding the foregoing, nothing in this paragraph is intended to prevent either party from instituting an action in any jurisdiction for the sole and exclusive purpose of enforcing a judgment by a court in the jurisdictions referred to in the preceding sentence.

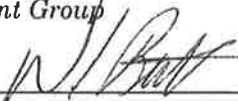
17. **Counterparts.** This Agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument. Delivery of an executed counterpart of a signature page by email or facsimile transmission shall be effective as delivery of a manually executed originally signed counterpart.

18. **Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first appearing above.

**OWNER**

*Beretta Investment Group*


By:   
Name: David Beretta  
Its: General Partner  
Dated: 5/11/2015

Address:

39560 Stevenson Place, Suite 118  
Fremont, CA 94539

**Licensee**

*Antea USA Inc.*


By:   
Name: Mark R. Mathias  
Its: Program Manager  
Dated: 5/14/15

Address:

11050 White Rock Road, Suite 110  
Rancho Cordova, CA 95670

**RESPONSIBLE PARTY**

*Pacific Convenience & Fuels LLC*

By:   
Name: HAMED ANDJ  
Its: LEGAL COUNSEL  
Dated: 5/11/15

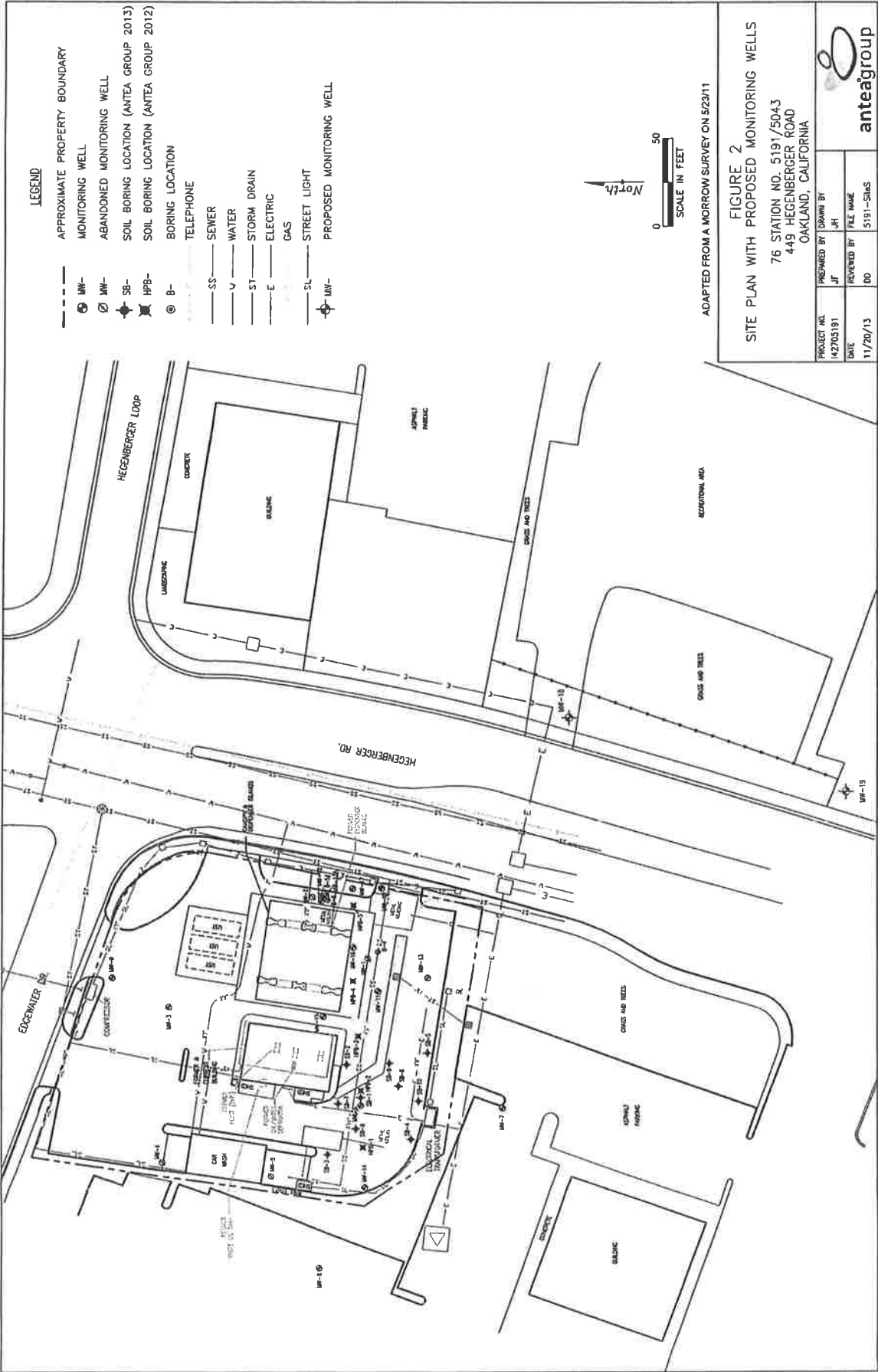
Address:

7180 KOLL CENTER PKWY, SUITE 100  
PLEASANTON CA 94566

**EXHIBIT A  
MONITORING WELLS**

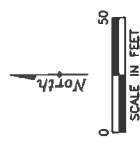
See attached.





**LEGEND**

- APPROXIMATE PROPERTY BOUNDARY
- ⊕ MW- MONITORING WELL
- ⊖ MW- ABANDONED MONITORING WELL
- ⊕ SB- SOIL BORING LOCATION (ANTEA GROUP 2013)
- ⊕ HPB- SOIL BORING LOCATION (ANTEA GROUP 2012)
- ⊕ B- BORING LOCATION
- TELEPHONE
- SS- SEWER
- V- WATER
- ST- STORM DRAIN
- E- ELECTRIC
- GAS
- SL- STREET LIGHT
- ⊕ MW- PROPOSED MONITORING WELL



ADAPTED FROM A MORROW SURVEY ON 5/23/11

**FIGURE 2**  
**SITE PLAN WITH PROPOSED MONITORING WELLS**  
 76 STATION NO. 5191/5043  
 449 HEGENBERGER ROAD  
 OAKLAND, CALIFORNIA

|             |           |             |          |
|-------------|-----------|-------------|----------|
| PROJECT NO. | 142705191 | PREPARED BY | DRAWN BY |
| DATE        | 11/20/13  | REVIEWED BY | JF       |
|             |           | FILE NAME   | 5191-SUS |



### BORING LOG

| <b>Project No.</b><br>KEI-P 91-1004.P8  |              | <b>Boring Diameter</b> 8.5"                    |                            | <b>Logged By</b> <i>J6C</i>                  |  |
|---|--------------|--|----------------------------|--|--|
|   |              | <b>Casing Diameter</b> 2"                      |                            | D.L. <i>CE6 1633</i>                         |  |
| <b>Project Name</b> Unocal S/S #5043<br>499 Hegenberger Road<br>Oakland, California |              | <b>Well Cover Elevation</b><br>N/A             |                            | <b>Date Drilled</b><br>4/21/97               |  |
| <b>Boring No.</b><br>MW7  |              | <b>Drilling Method</b><br>Hollow-stem<br>Auger |                            | <b>Drilling Company</b><br>Woodward Drilling |  |
| Pene-<br>tration<br>blows/6"  | G.W<br>level | O.V.M.<br>(P.P.M.)                             | Depth<br>(feet)<br>Samples | Stratigraphy<br>USCS                         | Description  |
|   |              |  | 0                          |  | A.C. pavement over sand and gravel base.   |
|   |              |  |                            | SP   | Poorly graded sand, predominantly medium-grained, loose, moist grading to saturated, brown (fill). |
|   |              |  | 5                          | SW   | Well graded sand with gravel, loose, saturated, very dark grayish brown (fill).                    |
|   |              |  |                            | ML   | Clayey silt, soft, wet, black and dark greenish gray, mottled.                                     |
| 1/1/1   |              |  |                            | Pt   | Peat, variable silt and clay content, soft, fibrous, wet, brown and black.                         |
|   |              |  |                            | ML   | Clayey silt, soft, wet, black, with abundant plant remains.  |
|   |              |  | 10                         |  |  |
| 6/7/9   |              |  |                            | CH   | Silty clay, stiff, moist, dark gray, with plant remains and root holes.                            |
|   |              |  |                            |  | TOTAL DEPTH: 13'   |
|   |              |  | 15                         |  |  |
|   |              |  | 20                         |  |  |

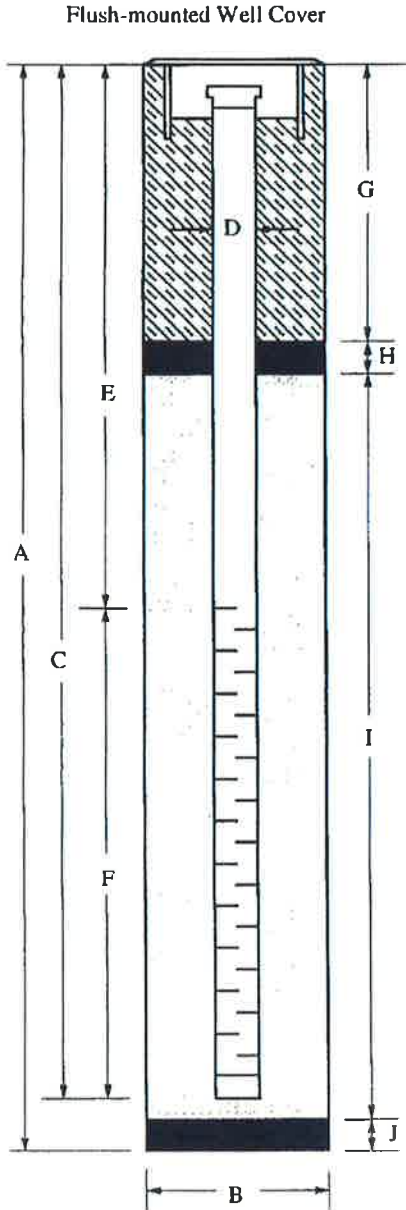
## WELL CONSTRUCTION DIAGRAM

**PROJECT NAME:** Unocal S/S #5043, 499 Hegenberger Road, Oakland

**WELL NO.:** MW7

**PROJECT NUMBER:** KEI-P91-1004.P8

**WELL PERMIT NO.:** ACFC & WCD #97187



- A. Total Depth : 13'
- B. Boring Diameter: 8.5"  
 Drilling Method: Hollow Stem Auger
- C. Casing Length: 13'  
 Material: Schedule 40 PVC
- D. Casing Diameter: OD = 2.375"  
ID = 2.067"
- E. Depth to Perforations: 3'
- F. Perforated Length: 10'  
 Perforation Type: Machine Slotted  
 Perforation Size: 0.010"
- G. Surface Seal: 2'  
 Seal Material: Neat Cement
- H. Seal: 0.5'  
 Seal Material: Bentonite
- I. Filter Pack: 10.5'  
 Pack Material: RMC Lonestar Sand  
 Size: #2/12
- J. Bottom Seal: None  
 Seal Material: N/A

### BORING LOG

| <b>Project No.</b><br>KEI-P 91-1004.P8  |               | <b>Boring Diameter</b> 8.5"                    |                                    | <b>Logged By</b> <i>JLG</i>                  |  |
|---|---------------|--|------------------------------------|--|--|
|   |               | <b>Casing Diameter</b> 2"                      |                                    | <b>D.L.</b> <i>CEG 1633</i>                  |  |
| <b>Project Name</b> Unocal S/S #5043<br>499 Hegenberger Road<br>Oakland, California |               |  | <b>Well Cover Elevation</b><br>N/A |  | <b>Date Drilled</b><br>4/21/97   |
| <b>Boring No.</b><br>MW8  |               | <b>Drilling Method</b><br>Hollow-stem<br>Auger |                                    | <b>Drilling Company</b><br>Woodward Drilling |  |
| Pene-<br>tration<br>blows/6"  | G.W.<br>level | O.V.M.<br>(P.P.M.)                             | Depth<br>(feet)<br>Samples         | Stratigraphy<br>USCS                         | Description  |
|   |               |  | 0                                  |  | A.C. pavement over sand and gravel base.   |
|   |               |  |                                    |  | Pocketed clay, silt and sand, firm to stiff, moist, dark olive gray and dark greenish gray (fill and or disturbed native soil).  |
|   |               |  |                                    |  | Silty gravel, medium dense, moist to very moist, (fill).   |
| 2/2/4   |               |  | 5                                  |  | Silty very fine to fine-grained sand, estimated at 20-30% silt, firm to stiff, very moist, dark gray.  |
| 2/2/2   | ▽             |  |                                    | ML   | Clayey silt, firm, very moist to wet, black and dark greenish gray, with abundant plant remains lensed with black sandy silt, wet.   |
| 2/5/6   |               |  | 10                                 | CL   | Silty clay, stiff, moist, black, with minor plant remains, root holes common.  |
| 6/12/24   |               |  | 15                                 | MH   | Clayey silt, estimated at 30-40% silt, trace fine-grained sand, stiff to very stiff, moist, dark greenish gray and olive, mottled, with occasional root holes and plant fibers, clay content increases with depth. |
|   |               |  | 20                                 |  | TOTAL DEPTH: 15'   |

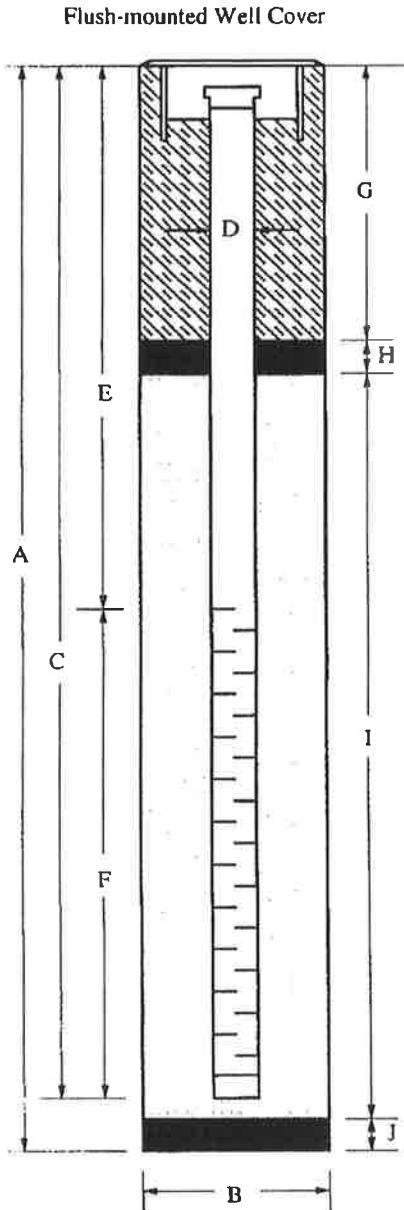
## WELL CONSTRUCTION DIAGRAM

**PROJECT NAME:** Unocal S/S #5043, 499 Hegenberger Road, Oakland

**WELL NO.:** MW8

**PROJECT NUMBER:** KEI-P91-1004.P8

**WELL PERMIT NO.:** ACFC & WCD #97187



- A. Total Depth : 15'
- B. Boring Diameter: 8.5"  
Drilling Method: Hollow Stem Auger
- C. Casing Length: 15'  
Material: Schedule 40 PVC
- D. Casing Diameter: OD = 2.375"  
ID = 2.067"
- E. Depth to Perforations: 3'
- F. Perforated Length: 12'  
Perforation Type: Machine Slotted  
Perforation Size: 0.010"
- G. Surface Seal: 2'  
Seal Material: Neat Cement
- H. Seal: 0.5'  
Seal Material: Bentonite
- I. Filter Pack: 12.5'  
Pack Material: RMC Lonestar Sand  
Size: #2/12
- J. Bottom Seal: None  
Seal Material: N/A

## **EXHIBIT B ANTEA'S WORK**

Antea shall destroy monitoring wells MW-7 and MW-8. Prior to the destruction of each of the monitoring wells, the total depth of each monitoring well will be measured to assess if any obstruction or sediment is present. Subsequent to measuring the depths of the wells, the wells will be cleared to 5 feet below ground surface (bgs) using an air-knife to clear for underground utilities. Subsequent to air-knifing, the monitoring well will be destroyed by over-drilling.

Over-drilling will consist of using a truck mounted drill rig equipped with 8-inch outside diameter hollowstem augers to drill out the well casing and annular material to the total constructed depths of the two monitoring wells. Subsequent to over-drilling, each borehole will be backfilled with neat cement and capped with asphalt dyed to match existing grade.

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 Licensee's removal of the monitoring wells. All of the above shall be conducted in accordance with Industry standards. Please see the work plan prepared by Antea Group and submitted to the Alameda County Health Care Services Agency on March 23, 2015 for a detailed description of the proposed monitoring well destruction activities.



## RIGHT OF ENTRY

THIS RIGHT OF ENTRY (“**ROE Agreement**”) is made and entered into as of August 11, 2015, by and between Beretta Investment Group, a general partnership (“**Owner**” or “**Licensor**”), Antea USA, Inc., a Minnesota corporation (“**Antea**” or “**Licensee**”), and Apro, LLC, a Delaware Limited Liability Company (“**Apro**”).

## RECITALS

A. Owner (aka 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 Number 42-4425-12-7 (“**Owner’s Property**”). The Property is adjacent to a gas station located at 449 Hegenberger Road, Oakland, California (**the “Adjacent Property”**). ConocoPhillips was the former owner of the Adjacent Property. Antea was retained as the environmental contractor for the Responsible Party’s (Pacific Convenience & Fuels, or “PCF”) remediation of the Spill.

B. As a result of a gasoline spill (**the “Spill”**) on the Adjacent Property, PCF, as Responsible Party, was required to remediate the Spill, a part of which required installation of two groundwater monitoring wells on Owner’s Property. Specifically, these are wells MW-7 and MW-8 as shown on “Figure 2” and “Figure 9” and attached hereto as Exhibit A (part of Exhibit 1).

C. Governmental authorities with oversight for the cleanup of the Spill, including the Alameda County Environmental Health Agency, have determined that MW-7 and MW-8 are no longer required and may be removed.

D. PCF, Antea and the Alameda County Environmental Health Agency desired to remove wells MW-7 and MW-8. Consequently, PCF, Licensee, and Licensor entered into a Right of Entry Agreement dated May 1, 2015 (the “**Original ROE**”, attached hereto as Exhibit 1), under which PCF is a Responsible Party, and under which Antea was given authorization to enter onto the Property and to remove the two monitoring wells. Apro is the existing operator of the Adjacent Property effective June 3, 2015. Apro is not a party to the Original ROE.

E. PCF, by and through one of its subsidiaries, sold the Adjacent Property on June 3, 2015. Apro and Antea desire to enter into this ROE Agreement with Licensor so that Antea will continue to have the right to enter onto the Property to remove the two monitoring wells.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of each made unto the other, and for further valuable consideration as hereinafter set forth, it is hereby agreed by and between the parties as follows:

1. **Grant of License.** Subject to the terms and conditions hereof, Owner grants to Antea, its agents and employees, the right to enter upon the Property (“**License**”) to do the activities required to complete Antea’s Work (as defined below). The License shall be valid from



the date first appearing above (“Effective Date”) and shall expire on the earlier to occur of the following: (i) the date of completion of Antea’s Work; or (ii) 60 days from the Effective Date. 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 Licensee’s removal of the monitoring wells. All of the above shall be conducted in accordance with Industry standards.

**2. Antea’s Work.** The work to be performed by Antea is described on Exhibit B (as part of Exhibit 1) (“Antea’s Work”).

**3. Compliance with Laws.** Licensee and Apro shall conduct all operations which are the subject of this ROE Agreement in compliance with all federal, state and municipal statutes and ordinances, and with all regulations, orders and directives of appropriate governmental agencies (including, but not limited to, the Alameda County Environmental Health Agency), as such statutes, ordinances, regulations, orders and directives now exist or hereinafter provide.

**4. Permits.** Licensee shall, at no cost or expense to Owner, be responsible for obtaining any and all governmental permits and approvals that may be necessary for it to conduct any of Antea’s Work under this Agreement. Owner shall reasonably cooperate with Licensee in Licensee’s activities to obtain all necessary government permits and permissions. Licensee shall reimburse Owner for all costs and expenses incurred by the Owner in such cooperation.

**5. Liens and Claims.** Licensee shall 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 the License. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Owner, Licensee shall bond and contest the validity and 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.

**6. Scheduling; Cooperation.** Licensee shall, and shall cause any subcontractor or agent to, provide Owner with not less than 15 days’ written notice prior to entering onto the Property or performing any of Antea’s Work. In addition, Licensee shall coordinate all of its activities with Owner (or Owner’s tenant(s), if so directed by Owner) to minimize any impairment of access to or interference with the use of the Property by Owner, Owner’s tenant(s) and their customers and invitees. Upon request, Licensee shall provide Owner with copies of all material produced pertaining to activities on the Property as soon as reasonably possible but in no event more than ten (10) days from receipt of such request. Licensee shall, and shall cause any subcontract or agent to, perform all of Antea’s Work between the hours of 9:00 a.m. and 6:00 p.m. and in such as way so as to minimize any inconvenience or disruption of business on the Property and ability of Owner or its agent(s) to monitor said activity.

**7. Waiver; Indemnity.** Antea and Apro, as a material part of the consideration to be rendered to Owner under this Agreement, waive all claims against Owner and its agents,

Bergam, Inc. and Vintaco, Inc., for damages to all personal property in, on, or about the Property, and for injuries to persons in or about the Property, from any cause arising at any time. Further, Antea and Apro agree to defend, indemnify and hold harmless Owner and its agents Bergam, Inc. and Vintaco, Inc. (the "Indemnified Parties") for and on account of any damage or injury to any person or personal property of any person, arising from (i) Antea's and/or Apro's use of the Property, or (ii) Antea's and/or Apro's failure to keep the Property and surrounding areas clean and in good condition. The Indemnified Parties shall not be liable to Antea or Apro for any damage by or from any act or negligence of any other occupant of the Property or any occupant of adjoining or contiguous property. Antea and Apro agree to pay for all damages to the Property, as well as all damage to occupants of the Property and to the property of those occupants caused by Antea's or Apro's misuse or neglect of the Property. This provision shall survive expiration or termination of this Agreement.

**8. Insurance.** During the term of this License, each of Licensee and Apro, 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 Owner 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 and its agents, Bergam, Inc. and Vintaco, Inc., as additional insured (and Licensee's policies also shall name Apro, LLC and Gty-Pacific Leasing, LLC as Additional Insureds) and shall not include or restrict coverage based upon alleged or actual negligence of an additional insured. 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, the Pollution Liability policy shall name Licensor and its agents, Bergam, Inc. and Vintaco, Inc., as additional insureds (and also shall name Apro, LLC and Gty-Pacific Leasing, LLC as Additional Insureds) and shall not include or restrict coverage based upon alleged or actual negligence of an additional insured.

**9. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter contained herein and supersedes any previous agreement. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by a party or anyone acting on behalf of any party unless such representation, inducement, or promise of agreement is contained in this Agreement.

**10. Amendment.** No modification, amendment or waiver of the terms and conditions of this Agreement will be binding upon any party unless it is in writing and is executed by an authorized representative of that party.

**11. Assignment; Successors.** 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.

**12. Severability.** In the event any term or provision of this Agreement is found to be unenforceable or void, in whole or in part, as drafted, then the offending term or provision shall be construed as valid and enforceable to the maximum extent permitted by law, and the balance of this Agreement shall remain in full force and effect.

**13. 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, with transmission and receipt confirmed, or by overnight delivery service, or similar courier service, addressed to the party at the address indicated under its respective signature. The person and place to which notices are to be mailed may be changed by either party by providing written notice of the same to the other.

**14. Controlling Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code or any similar successor provision) without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

**15. Dispute Resolution.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the City and County of San Francisco, Santa Clara County or Alameda County before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

**16. Jurisdiction; Service of Process.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties only in the courts of the State of California, County of Alameda, or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the Northern District of California, and each of the parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and irrevocably waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world. Notwithstanding the foregoing, nothing in this paragraph is intended to prevent either party from instituting an action in any jurisdiction for the sole and exclusive purpose of enforcing a judgment by a court in the jurisdictions referred to in the preceding sentence.

**17. Counterparts.** This Agreement may be signed and delivered in counterparts, with the same effect as if the signature on each counterpart were upon the same instrument.

Delivery of an executed counterpart of a signature page by email or facsimile transmission shall be effective as delivery of a manually executed originally signed counterpart.

**18. Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first appearing above.

**OWNER**

***Beretta Investment Group***

By: \_\_\_\_\_  
Name: David Beretta  
Title: General Partner  
Date: \_\_\_\_\_

Address:  
39560 Stevenson Place, Suite 118  
Fremont, CA 94539

**LICENSEE**

***Antea USA Inc.***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address:  
11050 White Rock Road, Suite 110  
Rancho Cordova, CA 95670

***APRO, LLC***

By: \_\_\_\_\_  
Name: Joe Juliano  
Title: President and CEO  
Date: \_\_\_\_\_

Address:  
17311 S. Main Street  
Gardena, CA 90248

**EXHIBIT A**  
**MONITORING WELLS**

See attached.

## **EXHIBIT B ANTEA'S WORK**

Antea shall destroy monitoring wells MW-7 and MW-8. Prior to the destruction of each of the monitoring wells, the total depth of each monitoring well will be measured to assess if any obstruction or sediment is present. Subsequent to measuring the depths of the wells, the wells will be cleared to 5 feet below ground surface (bgs) using an air-knife to clear for underground utilities. Subsequent to air-knifing, the monitoring well will be destroyed by over-drilling.

Over-drilling will consist of using a truck mounted drill rig equipped with 8-inch outside diameter hollowstem augers to drill out the well casing and annular material to the total constructed depths of the two monitoring wells. Subsequent to over-drilling, each borehole will be backfilled with neat cement and capped with asphalt dyed to match existing grade.

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 Licensee's removal of the monitoring wells. All of the above shall be conducted in accordance with Industry standards. Please see the work plan prepared by Antea Group and submitted to the Alameda County Health Care Services Agency on March 23, 2015, for a detailed description of the proposed monitoring well destruction activities.

