

**BEVERLY HILLS UNIFIED SCHOOL
DISTRICT**

Shut-Out Well Monitoring Agreement

MONITORING AGREEMENT

THIS MONITORING AGREEMENT ("Agreement") is made and entered into as of 25th of May, 2017 by and between the Beverly Hills Unified School District ("BHUSD") whose address is 255 South Lasky Drive, Beverly Hills, CA 90212-3697 and ARB, Inc. ("ARB"), a California corporation whose address is 26000 Commercentre Drive, Lake Forest, CA 92630, for the monitoring of the existing shut out oil wells on the property of BHUSD ("Work"),

WHEREAS, ARB provides monitoring services for shut out oil wells and has agreed to provide those services for the Work on the terms and conditions set forth in this Agreement,

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in the sections captioned by numbered article designations ("Articles") and the following appendices, which are incorporated and made part this Agreement by this reference and are included in any reference to this Agreement.

- Appendix A - Scope of Services
- Appendix B - Compensation
- Appendix C - Communication Protocols

If the terms and conditions of the Articles of this Agreement vary or are inconsistent with any portion of the Appendices, the terms of the Articles of this Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms and conditions of the Articles. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

Section 1.2 - *Effective Date and Term*. This Agreement shall be effective and shall govern the rights and obligations of the parties from and after the date of this Agreement for a period of not less than six (6) months.

Section 1.3 - *Relationship of the Parties*. ARB has been retained by BHUSD, to monitor the wells under the direction of BHUSD's independent engineering firm WZI in accordance with the requirements of this Agreement.

Section 1.4 - *Representatives*. BHUSD and ARB may each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. BHUSD and ARB may change their respective Designated Representatives upon written notice to the other party given as provided in

this Agreement. Designated Representatives shall be the primary means for communication and all other interactions required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2 DEFINITIONS

Section 2.1 - *Definitions*. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 2. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

"Bankruptcy" means a situation in which (i) a party's actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party's creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close.

"Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 (*Force Majeure*). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Work, which events were not pending on the date of this Agreement.

"Reimbursable Costs" has the meaning set forth in Section 5.3.

"Services" has the meaning set forth in Article 3.1.

"Well Facility" means 19 Shut-Out Oil Wells located on property owned by BHUSD.

ARTICLE 3 SERVICES

Section 3.1 - *Scope of Services*. ARB shall (i) monitor the Well Facility on behalf of BHUSD ("Services") and (ii) also perform the specific duties set forth in this Agreement if they are not otherwise required by the standards defined in Section 3.2.

Section 3.2 - *Standards for Performance of the Services*. ARB shall perform the Services required under this Agreement, including those set forth in Appendix A, in a prudent, reasonable, and efficient manner and in accordance with (i) all applicable Laws, (ii) the Agreement, (iii) the requirements of BHUSD and its independent engineering firm, WZI and (vii) all insurance policies specified in Article 9 of this Agreement.

Section 3.3 - *ARB's Personnel Standards*. ARB shall provide as reasonably necessary personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Work personnel under the Agreement. All individuals employed by ARB to perform the Services shall be employees of ARB, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by ARB. With respect to labor matters, hiring personnel, and employment policies, ARB shall comply with all applicable Laws. ARB also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with ARB's acknowledgment (hereby given) that ARB has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate BHUSD.

Section 3.4 - *Compliance*. ARB shall comply with all Laws applicable to the performance of the Services.

Section 3.5 - *Monitoring Records and Reports*. ARB shall maintain, at a location acceptable to BHUSD, the logs, records, and reports that document the monitoring of the shut-out oil wells, all in form and substance sufficient to meet BHUSD's reporting requirements. ARB shall provide BHUSD with all reasonably necessary assistance in connection with BHUSD's compliance with reporting requirements or applicable Laws. Such assistance shall include providing reports, records, logs and other information that BHUSD may reasonably request as to the Well Facility or its condition in connection with ARB's monitoring obligations. Upon initiation of the monitoring work an ARB administrative representative will participate in biweekly meetings with the District representative to provide updates on the monitoring work and reporting set forth in section 6.2.

Section 3.6 - *No Liens or Encumbrances*. ARB shall maintain the Work free and clear of all liens and encumbrances resulting from any action of ARB or work done at the request of BHUSD, except for such liens or encumbrances that result directly from nonpayment by BHUSD of amounts due and owing to ARB under this Agreement.

Section 3.7 - *No Action*. Except where such action is expressly permitted by this Agreement, ARB shall not take any action that would cause a default under this Agreement.

Section 3.8 - *Emergency Action*. If an emergency endangering the safety or protection of persons, or property located near the Well Facility occurs, ARB shall

promptly notify BHUSD and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. ARB shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

ARTICLE 4 BHUSD RESPONSIBILITIES

Section 4.1 - *Information*. BHUSD shall provide ARB with all manuals, spare parts lists (if any) data and drawings which are relevant to the monitoring of the existing oil Wells or any part thereof within the BHUSD's possession and control. Subject to the standards of performance set forth in Section 3.2, ARB shall be entitled to rely upon such information in performance of its Services. BHUSD shall also provide ARB with copies of all Agreements and any amendments thereto and any other documents that define the operating requirements of the shut-out well system.

Section 4.2 - *Repair*. The cost of any modifications or repair to the Well Facility and any capital improvements shall be the responsibility of BHUSD. ARB shall promptly notify BHUSD in writing of any modification or repair of existing systems which ARB reasonably believes are necessary or advisable provided however that ARB shall not be liable for any failure to make such recommendation.

Section 4.3 - *Permits, Licenses and Approvals*. BHUSD shall apply for and obtain, all necessary permits, licenses and approvals (and renewals of the same) required to allow ARB to perform the Services in the jurisdiction where the Services are to be performed.

ARTICLE 5 COMPENSATION AND PAYMENT

Section 5.1 - *Payments*. As compensation to ARB for performance of the Services hereunder, BHUSD shall pay ARB a weekly Monitoring Fee as set forth in Appendix B (or a pro rata portion thereof in the case of a Contract term of less than 1 week). In addition, BHUSD shall reimburse ARB, in the manner and at the times specified in this Article 5 and Appendix B, as modified from time to time, for all Reimbursable Costs.

Section 5.2 - *Reserved*

Section 5.3 - *Reimbursable Costs*. BHUSD shall reimburse ARB for all costs incurred by ARB in performing additional services other than monitoring services. BHUSD's obligation under this provision is subject to (i) BHUSD's express approval of the costs, or (ii) ARB incurring costs in accordance with Section 3.8 (*Emergency*). BHUSD shall pay Reimbursable Costs as follows:

(a) ARB shall not incur Reimbursable Costs unless they are permitted by Sections 3.8 (*Emergency*) or otherwise approved by BHUSD.

Section 5.4 - *Adjustments and Conditions*. Notwithstanding the payment of any amount pursuant to the foregoing provisions, BHUSD shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred and paid by BHUSD and of any supporting documentation for a period of 2 years after termination of this Agreement. If such audit and review shows that any amount previously paid by BHUSD

to ARB did not constitute a Reimbursable Cost, BHUSD may (a) recover such amount from ARB, plus interest at the Reference Rate, calculated from the date the payment was made , or (b) deduct such amount from any payment that thereafter may become due to ARB.

Section 5.5 - *Billing and Payment*. ARB will bill once per month and shall submit an invoice for the weekly monitoring fees plus any Reimbursable Costs incurred during that month and as well for two week's of monitoring fees for the following month (two weeks advanced billing). The purpose of the advanced billing established in this contract is to help keep ARB cash neutral throughout the course of the monitoring period. With respect to Reimbursable Costs, ARB shall submit receipts and disbursements showing Reimbursable Costs (expenditures) in accordance with Subsection 5.2(a) (if any). Within 30 days after receipt of any such invoice, BHUSD shall:

(a) Pay ARB the sum specified in such invoice, less (i) any amounts previously deposited with ARB relating to such invoice, and (ii) any portion of such invoice amount that BHUSD disputes in good faith or is permitted to offset under this Agreement; and

(b) With respect to any disputed portion of such invoice, provide BHUSD with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 14.

(c) Upon termination or expiration of the contract a reconciliation of the two weeks advance billing of monitoring fees will be performed and if any amounts are found to be overbilled those amounts will be credited to the account of BHUSD.

Section 5.6 - *Interest*. Any amount owed to either party under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first day after such due date.

ARTICLE 6 MONITORING AND REPORTING

Section 6.1 - ARB shall notify BHUSD as soon as reasonably possible of any extra costs incurred by ARB as a result of Emergency.

Section 6.2 - *Monitoring Data and Records*. ARB shall monitor and record all monitoring data and information relative to the Shut Out Wells that (i) BHUSD must report to any government agency or other person or entity under applicable Laws and (ii) BHUSD reasonably requests. ARB shall report required or requested monitoring data and information to BHUSD as specified by BHUSD to support monthly invoicing under the Agreement, and within 15 Business Days following a request by BHUSD.

Section 6.3 - *Accounts and Reports*. ARB shall cooperate with BHUSD in complying with reporting requirements set forth in the Agreement

ARTICLE 7
LIMITATIONS ON AUTHORITY

Section 7.1 - *General Limitations*. Notwithstanding any provision in this Agreement to the contrary, unless previously approved by BHUSD in writing, ARB and any employee, representative, contractor or other agent of ARB are prohibited from taking the specified actions with respect to the matters indicated below.

(a) Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of BHUSD, including any property or assets purchased by ARB where the purchase cost is a Reimbursable Cost;

(b) Contract. Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind BHUSD or (ii) that prohibits or otherwise restricts ARB's right to assign such contract or agreement to BHUSD at any time;

(c) Expenditures. Make or consent or agree to make any expenditure for equipment, materials, assets or other items which would be a Reimbursable Cost; provided, however, that solely in connection with actions taken by ARB pursuant to Section 3.8 (*Emergency*), ARB may, without prior approval from BHUSD, make limited expenditures outside monthly monitoring;

(d) Reserved

(e) Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, BHUSD or ARB, the cost of which, in the case of ARB, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(f) Liens. Create, incur or assume any lien upon the Well Facility except those arising out of BHUSD's failure to make payment when due;

(g) Transactions on Behalf of Others. Engage in any other transaction on behalf of BHUSD or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement; or

(h) Agreements. Enter into any agreement to do any of the foregoing.

Section 7.2 - *Execution Of Documents*. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of BHUSD) to be executed by ARB shall be executed by the authorized representative of ARB or, subject to prior written notice to BHUSD, by such other representative of ARB who is authorized and empowered by ARB to execute such documents.

ARTICLE 8
TERM AND TERMINATION

Section 8.1 - *Term*. The term of this Agreement shall be from and including the date of this Agreement to and including six months following execution of this

Agreement. This Agreement is subject to earlier termination pursuant to Sections 8.2, 8.3, 8.4 or 8.5.

Section 8.2 - *Immediate Termination By BHUSD*. Subject to the terms of any Agreement, BHUSD may terminate this Agreement immediately (i) upon the Bankruptcy of ARB or (ii) upon the occurrence of a Force Majeure Event that is not remedied within 60 days of its initial occurrence. If the Agreement is terminated by BHUSD pursuant to Section 8.2(i) or 8.2(ii), ARB shall be compensated for all Services performed and unpaid including any Reimbursable Costs incurred by ARB to and including the date of termination. In addition, if the Agreement is terminated by BHUSD pursuant to Section 8.2(ii), ARB shall be paid all unpaid Monitoring Fee(s) to and including the date of termination.

Section 8.3 - *Termination Upon Notice By BHUSD*. Subject to the terms of any Agreement, BHUSD may terminate this Agreement upon 90 days prior written notice to ARB in the event (i) that ARB violates, or consents to a violation of, any Laws applicable to the Services or the Well Facility, where the violation has or may have a material adverse effect on the Well Facility or BHUSD's interest, and ARB does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided ARB diligently commences and pursues such cure and indemnifies BHUSD for all related costs, of whatever kind), or (ii) of a material breach by ARB in the performance of the Services, if ARB does not cure such breach within 30 days from the date of ARB's receipt of notice from BHUSD demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided ARB diligently commences and pursues such cure and indemnifies BHUSD for all related costs, of whatever kind). If the Agreement is terminated by BHUSD pursuant to this Section 8.3, ARB shall be compensated for all Reimbursable Costs incurred by ARB and all unpaid Monitoring Fee(s) to and including the date of termination.

Section 8.4 – *Termination by Failure to Abandon*

The monitoring work shall begin on the date the current/existing operator abandons the drill site. Should the current/existing operator not abandon the drill site, the Agreement shall terminate. BHUSD shall compensate ARB for all administrative and reimbursable costs from the effective date of the Agreement to the point in which it is then determined by BHUSD that the current/existing operator shall not vacate the drill site. BHUSD and ARB retain the right to discuss further engagement as the circumstances may demand.

Section 8.5 - *Termination By ARB*. Subject to the terms of any Agreement, ARB may terminate this Agreement for cause upon 15 days prior written notice to BHUSD in the event of BHUSD's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of BHUSD's receipt of a notice from ARB demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that BHUSD diligently commences and continues to pursue such cure).

Section 8.6 – *End Of Term*. ARB shall use commercially reasonable efforts to cooperate with BHUSD or a succeeding contractor to assure that the monitoring of the Well Facility are not disrupted.

Section 8.7 - *Termination Payment. Defined Terminations.* In the event of a termination of this Agreement pursuant to the above Sections 8.2 (ii), 8.4 (a), 8.4 (c), 8.4 (d) or 8.5, ARB shall be entitled, in addition to all other amounts due under this Agreement as of the date of termination.

ARTICLE 9 INSURANCE

Section 9.1 - *Coverage.*

(a) Obligation to Obtain. BHUSD and ARB shall obtain and maintain the insurance set forth in Sections 9.1(b) and 9.1(c). Such insurance may be maintained under individual or blanket insurance policies.

(b) ARB Coverage. ARB shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to BHUSD and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

- 1) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate.
- 2) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable of not less than \$2,000,000.
- 3) Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employer's liability insurance for all employees of ARB in accordance with the statutory requirements of the state of California.
- 4) Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii) in an amount not less than \$5,000,000.

The amounts of insurance required in the foregoing subsections (i), (ii), (iii) and (iv) may be satisfied by ARB purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of BHUSD, ARB may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

- 1) All policies of liability insurance to be maintained by ARB shall provide for waivers of subrogation in favor of BHUSD or such other persons as may be required by the Agreement. These policies shall include the following:
 - a) a severability of interests or cross liability clause;
 - b) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by BHUSD; and

- c) BHUSD and such other persons or entities as may be required by the Agreement named as additional insured's.
- d) On or before the date on which insurance must be provided, ARB shall furnish certificates of insurance to BHUSD evidencing the insurance required pursuant to this Agreement.

All policies of insurance required to be maintained pursuant to Section 9.1 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of BHUSD, without 30 days prior written notice to BHUSD, except for termination for non-payment of premium which shall require 10 days prior written notice to BHUSD. BHUSD has the option in placing the coverages listed above and naming ARB as an additional insured.

- 1) *BHUSD Coverage.* BHUSD shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

- a) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage in an amount not less than \$2,000,000 per occurrence or in the aggregate.

- b) Property insurance covering the full replacement cost of all of BHUSD's real and personal property constituting the property which is the subject of this Agreement, which insurance shall be subject to deductibles that are commercially available at a reasonable cost.

- c) No later than the commencement of the Services Term, BHUSD shall deliver to ARB certificates of insurance evidencing such coverage. These certificates shall name ARB as an additional insured and specify that the insurance will not be cancelled, changed or not renewed until the expiration of at least thirty (30) days (or ten (10) days in the case of cancellation due to non-payment of premiums) after written notice of such cancellation, change or non-renewal has been received by ARB. Such insurance shall be primary coverage with respect to incidents occurring at the Site without right of contribution from any insurance of ARB.

- d) Payment of Deductible. The payment of any deductible under BHUSD's property insurance shall be the responsibility of BHUSD, unless the loss covered by such insurance is caused by the negligence or willful misconduct of ARB, in which case the deductible would be paid by ARB not to exceed an amount of \$50,000.

- e) Waiver of Subrogation; Mutual Release. BHUSD and ARB intend that the property insurance to be obtained and maintained by BHUSD pursuant to subsection (b) above, will protect BHUSD and all other persons having an interest in the property including ARB and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against ARB, its Affiliates or any of their respective subcontractors (collectively, "Released Parties"). BHUSD waives, and shall cause its insurers, its Affiliates and their respective insurers to waive, all rights against the Released Parties and their

respective partners, members, shareholders, directors, officers, employees and agents (collectively, "Representatives") for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the property. In addition, BHUSD shall require that its insurers release and waive all rights of subrogation against the Released Parties and the Representatives with respect to any other property insurance carried by BHUSD that applies to the property, whether or not required by this Agreement. For avoidance of doubt, the release and covenant to obtain waivers of subrogation under this subsection (e) applies only to the property insurance policies applicable to the property and shall not apply to general liability policies carried or required by the respective Parties.

Section 9.2 - *Cooperation*. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

ARTICLE 10 INDEMNIFICATION AND LIABILITIES

Section 10.1 - *Indemnification*.

- (1) Indemnification by ARB. ARB shall indemnify, defend and hold harmless BHUSD, the members thereof, and their respective officers, directors, employees, agents, Affiliates and representatives (the "BHUSD Indemnified Parties"), from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of, but only to the extent of, any negligence, fraud or willful misconduct of ARB or anyone acting on ARB's behalf or under its instructions, in connection with this Agreement and ARB's obligations thereunder. Any costs or expenses incurred by ARB pursuant to its indemnity obligations under this Section 10.1(a), including the cost of deductibles with respect to the insurance maintained by ARB or BHUSD pursuant to Article 9 or losses in excess of such insurance coverage, shall not constitute a Reimbursable Cost under this Agreement.
- (2) Indemnification by BHUSD. BHUSD shall indemnify, defend and hold harmless ARB, its officers, directors, employees, agents, Affiliates and representatives (the "ARB Indemnified Parties") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of, but only to the extent of, any negligence, fraud or willful misconduct of BHUSD or anyone acting on BHUSD's behalf or under its instructions including but not limited to WZI (other than ARB and its suppliers, subcontractors, vendors, and their subcontractors and vendors and any employee or agent of the foregoing), in connection with this Agreement and BHUSD's obligations thereunder.

Section 10.2 - *Environmental Liability*.

- (1) ARB Liability. ARB shall not be responsible for claims directly or indirectly related to hazardous materials present at the Well Facility. BHUSD shall defend, indemnify and hold ARB harmless against such claims.
- (2) BHUSD Liability. BHUSD shall be responsible for claims related to or arising out of hazardous materials at the Well Facility.

- (3) Governmental Actions. If action is required at the Well Facility to comply with any applicable environmental laws during the term of this Agreement, BHUSD (with ARB's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by ARB only with BHUSD's prior written consent, unless a governmental authority requires ARB to incur such costs and expenses prior to obtaining such written consent.

ARTICLE 11 LIMITATIONS OF LIABILITY

Section 11.1 - *Limitations Of Liability*.

- 1) Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, ARB and BHUSD each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.
- 2) Damages Limited to Monitoring Fee. The aggregate liability of ARB with respect to claims of BHUSD arising out of the performance or nonperformance of obligations under this Agreement shall in no event exceed, the Monitoring Fee payable to ARB.
- 3) Personal Liability Limited. ARB and BHUSD each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of BHUSD or ARB for the payment of any amounts due hereunder, or performance of any obligations hereunder. ARB shall look solely to the assets of BHUSD for the satisfaction of each and every remedy of ARB in the event of any breach by BHUSD. BHUSD shall look solely to the assets of ARB for the satisfaction of each and every remedy of BHUSD in the event of any breach by ARB.
- 4) Survival. The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.
- 5) Exclusivity. The provisions of this Agreement constitute ARB's and BHUSD's exclusive liability, respectively, to each other, and ARB's and BHUSD's exclusive remedy, respectively, with respect to the Services to be performed hereunder and BHUSD hereby releases ARB performing Services hereunder, and ARB hereby releases BHUSD performing its obligations hereunder, from any further liability.

ARTICLE 12

CONFIDENTIALITY

Section 12.1 - *ARB*. ARB agrees to hold in confidence for a period of thirty-six (36) months from the date of disclosure, any information supplied to ARB by BHUSD or others acting on its behalf. ARB further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

Section 12.2 - *BHUSD*. BHUSD agrees to hold in confidence for a period of thirty-six (36) months from the date of disclosure, any information supplied to BHUSD by ARB or others acting on its behalf, provided that BHUSD may disclose such information as is required by other parties to Agreement (including their agents and advisors), provided such parties enter into appropriate nondisclosure agreements. BHUSD further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

Section 12.3 - *Exceptions*. The provisions of this Article shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

Section 12.4 - *Required Disclosure*. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

ARTICLE 13

TITLE, DOCUMENTS AND DATA

Section 13.1 – *Reserved*.

Section 13.2 - *Documents*. All materials and documents prepared or developed by ARB, its employees, representatives or contractors in connection with the Well Facility or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become BHUSD's property when prepared, and ARB, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without BHUSD's prior written approval. All such materials and documents, together with any materials and documents furnished to ARB, its agents, employees, representatives, or contractors by BHUSD, shall be delivered to BHUSD upon expiration or termination of this Agreement and before final payment is made to ARB.

Section 13.3 - *Review by BHUSD*. All materials and documents referred to in Section 13.2 hereof shall be available for review by BHUSD (including BHUSD's agents or advisors) at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for approval by BHUSD shall be prepared and processed in accordance with the requirements and specifications set forth in the Administrative Procedures Manual. However, BHUSD's approval of materials and documents submitted by ARB shall not relieve ARB of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.

Section 13.4 - *Proprietary Information*. Where materials or documents prepared or developed by ARB or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by ARB or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that BHUSD shall have the right to the same to the extent necessary for operation or maintenance of the Well Facility.

ARTICLE 14 RESOLUTION OF DISPUTES

Section 14.1 - *Resolution Through Discussions*. If any dispute or difference of any kind (a Dispute") arises between BHUSD and ARB in connection with, or arising out of, this Agreement, BHUSD and ARB within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of BHUSD and ARB shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of BHUSD and ARB have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

Section 14.2 - *Arbitration*. Any Dispute arising out of, or in connection with, this Agreement and not settled by the procedure prescribed in Section 14.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with AAA Rules of Arbitration for a single arbitrator.

Section 14.3 - *Continued Performance*. During the pendency of any arbitration, ARB and BHUSD shall continue to perform their obligations under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

Section 15.1 - *Assignment*. ARB may not assign its rights or obligations under this Agreement without the prior written consent of BHUSD.

Section 15.2 - *Access to Well Facility*.

(a) BHUSD. BHUSD, BHUSD's respective agents and representatives shall have access at all times to the Well Facility and any documents, materials and records and accounts relating to Well Facility operations for purposes of inspection and review. Upon the request of BHUSD, or BHUSD's respective agents and representatives, ARB shall make available to such persons or entities and provide them with access to any monitoring data and logs.

(b) Cooperation. During any such inspection or review of the Well Facility, each of BHUSD, or BHUSD's respective agents and representatives shall use its reasonable commercial efforts to cause authorized visitors to comply with ARB's safety and security

procedures and to conduct such inspection and review in a manner which causes minimal interference with ARB's activities. ARB agrees to cooperate fully with BHUSD, or BHUSD's respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with the Well Facility.

Section 15.3 - *Force Majeure*. If either or ARB is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

Section 15.5 - *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 15.6 - *Survival*. Notwithstanding any provisions herein to the contrary, the obligations set forth in Articles 7, 10, 12 and 14, and the limitations of liabilities set forth in Article 11, shall survive in full force despite the expiration or termination of this Agreement.

Section 15.7 - *No Waiver*. It is understood and agreed that any delay, waiver or omission by BHUSD or ARB with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by BHUSD or ARB of any subsequent breach or default of the same or other required performance on the part of BHUSD or ARB.

Section 15.8 - *Notices*. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Section 15.8 or at such other address or fax number as hereafter specified as provided in this Section 15.8. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to have been given (A) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To ARB:
ARB, Inc.
3500 Pegasus Drive
Bakersfield, CA 93308

ATTN: Larry Jansen, VP
(661) 396-4309

FAX (661) 833-4400
ljansen@prim.com

To BHUSD:

La Tanya Kirk-Carter
Chief Administrative Officer
Beverly Hills Unified School District
255 South Lasky Drive
Beverly Hills, CA 90212

(310) 555-5100 ext. 2222

Section 15.9 - *Fines And Penalties*. If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against ARB or BHUSD arising from ARB's failure to operate and maintain the Well Facility in accordance with applicable Laws without BHUSD's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 11, be the sole responsibility of ARB and shall not be deemed a Reimbursable Cost.

Section 15.10 - *Representations And Warranties*. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

(c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 15.11- *Counterparts*. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 15.12 - *Governing Law*. This Agreement is executed and intended to be performed in Los Angeles County and the laws of California shall govern its construction, interpretation and effect.

Section 15.13 - *Partial Invalidity*. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 15.14 - *Captions*. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 15.15 - *Dollar Amounts*. All amounts of money in this Agreement are denominated in the United States currency.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Beverly Hills Unified School District

By: _____
Name: Charles Nickerson
Title: Chief Admin Officer
5/30/17

ARB, Inc.

By: _____
Name: HARRY JANSEN
Title: VP
5-30-17

Section 15.15 - *Dollar Amounts*. All amounts of money in this Agreement are denominated in the United States currency.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Beverly Hills Unified School District

By: _____
Name: Ralph Kirk Gault
Title: Chief Admin Officer
5/30/17

ARB, Inc.

By: _____
Name: _____
Title: _____

APPENDIX A
SCOPE OF SERVICES

ARB SHALL PERFORM EACH OF THE SERVICES LISTED IN THIS APPENDIX A IN ACCORDANCE WITH THE STANDARDS REQUIRED UNDER SECTION 3.2 OF THE AGREEMENT.

Provide manned monitoring of the site twenty-four (24) hours per day, seven (7) days per week. Specifically this consists of one qualified operator on duty at all times.

II. Specific Requirements

ARB's scope of Services is based on the monitoring of shut out oils wells and any information and data supplied by BHUSD. ARB, as part of the Services, is responsible for providing such trained personnel as is reasonably necessary to monitor the wells and provide the Services set forth in this Agreement.

APPENDIX B **COMPENSATION**

MONITORING FEE

For the scope of services set forth in Appendix A, ARB will charge a fixed amount of \$17,587.00 as weekly monitoring costs "Monitoring Fee" effective as of 6/1/17. Monitoring Fee will be subject to annual increase due to escalation in labor and other costs. ARB will submit the proposed increase to Monitoring Fee at least 30 days prior to June 30th of each year for BHUSD's review and approval.

REIMBURSABLE COSTS

Any required preventative maintenance work or other additional cost expenditure, excluding any emergency work which can be performed based on written or verbal direction by BHUSD, will be performed in compliance with the following protocol and will be reimbursed to ARB on a weekly basis in compliance with the attached labor and equipment rate sheets (Exhibit 1):

- ARB will give BHUSD notice that preventative maintenance and or additional cost expenditure is required. This notice will also provide the degree of urgency, reasoning, required time table and as well provide approximate estimated costs for such services, materials or third party costs.
- BHUSD will respond to ARB's request within seven (7) days to either acknowledge their agreement to proceed with the required work or reject the request.
- Upon approval of an additional expenditure ARB will perform the work with our craftsmen at the labor and equipment rates included in Exhibit 1. Should ARB incur third party costs, ARB will provide proof of those costs and bill for costs plus allowable mark-up of 15%.

One time only costs:

In order to secure the key individuals required to help streamline the transition from Venoco to ARB monitoring the site, the cost for 60 days of COBRA health insurance coverage for the four employees will be reimbursed to ARB at bare cost and no mark-up.

APPENDIX C
NOTICE AND COMMUNICATION PROTOCOLS

This Appendix of notification and communication protocols will incorporate any processes beyond those defined in Section 15.8 for Notices required by the Agreement and for other communications between BHUSD and ARB. This should include Primary and alternate contact information. The protocols should also define the procedures for ARB's communication and dealings with certain third parties on BHUSD's behalf, as may be required under various other Agreement or if ARB is required to act as agent for BHUSD.

ARB contact information for legal notice:

Larry Jansen
ARB, Inc.
3500 Pegasus Drive
Bakersfield, CA 93308
Office: (661) 396-4309
Mobile: (949) 246-5635
ljansen@prim.com

ARB contact for day to day operations:

Shane Brandon
ARB, Inc.
3500 Pegasus Drive
Bakersfield, CA 93308
Office: (661) 396-4322
Mobile: (661) 303-0054
sbrandon@prim.com

Beverly Hills Unified School District Minutes

Special Board Meeting

June 09, 2017, 9:00 AM

Administrative Office/Board Room

255 South Lasky Drive

Beverly Hills, CA 90212

Attendance Taken at 11:00 AM:

Present:

Howard Goldstein

Isabel Hacker

Lisa Korbatov

Noah Margo

Mel Spitz

I. OPEN SESSION-9:00 A.M.

II. AGENDA HEARING PERIOD-PUBLIC COMMENT

III. CLOSED SESSION-9:00 A.M.

III.A. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) & (d)(2) of Section 54956.9:
(1 Case)

III.B. PUBLIC EMPLOYEE APPOINTMENT

III.C. CONFERENCE WITH LABOR NEGOTIATORS: Agency Representative:
Yolanda Mendoza Employee Organizations: CSEA, BHEA-Certificated, BHEA-IA,
BHEA-OTBS Unrepresented Employees

III.D. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

IV. OPEN SESSION-CALL TO ORDER-FLAG SALUTE-9:30 A.M.

Minutes:

Board President Mel Spitz called the meeting to order at 11:00 a.m.

V. APPROVAL OF THE AGENDA

Motion Passed: A motion was made to approve the Agenda. Passed with a motion by Noah Margo and a second by Howard Goldstein.

Yes **Howard Goldstein**
Yes **Isabel Hacker**
Yes **Lisa Korbatov**
Yes **Noah Margo**
Yes **Mel Spitz**

VI. AGENDA HEARING PERIOD-PUBLIC COMMENT

Minutes:

No public comment.

VII. CONSENT CALENDAR

Motion Passed: A motion was made to approve the Consent Calendar. Passed with a motion by Noah Margo and a second by Howard Goldstein.

Yes **Howard Goldstein**
Yes **Isabel Hacker**
Yes **Lisa Korbatov**
Yes **Noah Margo**
Yes **Mel Spitz**

VII.A. Certificated Personnel Report

VIII. HUMAN RESOURCES

VIII.A. Approval of the Supplemental Early Retirement Program (SERP)

Motion Passed: A motion was made for Approval of the Supplemental Early Retirement Program (SERP). Passed with a motion by Noah Margo and a second by Howard Goldstein.

Yes **Howard Goldstein**
Yes **Isabel Hacker**
Yes **Lisa Korbatov**
Yes **Noah Margo**
Yes **Mel Spitz**

IX. BUSINESS AND FINANCE

IX.A. Approval of Ratification of Monitoring Agreement with ARB, Inc.

Motion Passed: A motion was made for Approval of Ratification of Monitoring Agreement with ARB, Inc. Passed with a motion by Noah Margo and a second by Howard Goldstein.

Yes **Howard Goldstein**
Yes **Isabel Hacker**
Absent **Lisa Korbatov**
Yes **Noah Margo**
Yes **Mel Spitz**

IX.B. Approval of Technology Budget: Years 2017-2018 and 2018-2019

Motion Passed: A motion was made for Approval of Technology Budget: Years 2017-2018 and 2018-2019. Passed with a motion by Noah Margo and a second by Howard Goldstein.

Yes **Howard Goldstein**
Yes **Isabel Hacker**
Yes **Lisa Korbatov**
Yes **Noah Margo**
Yes **Mel Spitz**

X. ADJOURNMENT

Minutes:

Mr. Spitz adjourned the meeting back to Closed Session at 11:35 a.m.