**STATE WATER RESOURCES CONTROL BOARD**

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| In the matter of: | ) | |
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| **Claimant City of Lincoln** | ) | **SETTLEMENT AGREEMENT** |
| | ) | **AND STIPULATION FOR ENTRY OF** |
| | ) | **ADMINISTRATIVE CIVIL LIABILITY** |
| | ) | |
| | ) | ORDER WQ 2016-0085-EXEC |
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**Section I:** **INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Order (Order, Stipulation, or Stipulation and Order) is entered into by and between the State Water Resources Control Board (State Water Board) on behalf of the Underground Storage Tank (UST) Cleanup Fund (Cleanup Fund) and Claimant City of Lincoln, (Claimant or Settling Respondent) (collectively Parties)), and is presented to the State Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This resolves all outstanding claims by the Cleanup Fund and the Claimant with respect to Claim #18952, located at 1404 Flightline Drive, Lincoln, CA 95648 .

**Section II:** **RECITALS**

2. On January 25, 2013, the Office of Enforcement's Fraud, Waste and Abuse Prevention Unit issued a request for information to Applied Engineering and Geology, Inc. (AEG). The request notified AEG that the Fraud, Waste, and Abuse Prevention Unit was in the process of conducting an audit of invoices submitted, either directly or through claimants, by AEG to the Cleanup Fund.

3. The audit identified misrepresentations made to the Cleanup Fund related to alleged unreasonable and unnecessary costs for AEG's professional services for conducting corrective action for cleaning up releases from petroleum underground storage tanks.

4. Prior to a complaint being issued, AEG engaged with the Fraud, Waste, and Abuse Prevention Unit to discuss resolution of any and all alleged violations or misrepresentations.

5. On April 5, 2016, a settlement agreement and stipulated order assessing administrative civil liability was executed between AEG and the State Water Board. The settlement agreement ordered AEG to pay the State Water Board's Cleanup Fund $200,000 and stated that any and all work performed, supervised and/or directed by AEG that has not been reimbursed by the Cleanup Fund or that has not been submitted to the Cleanup Fund as of October 15, 2015, is not reasonable and/or necessary corrective action and, therefore, not subject to reimbursement from the Cleanup Fund. This includes, but is not limited to, work performed by a third party or subcontractor.

6. As of April 1, 2016, the Claimant had work that AEG had performed, supervised and/or directed that had yet to be reimbursed by the Cleanup Fund. Under the terms of the settlement agreement, such work would be considered unreasonable and unnecessary, even if the Claimant had paid for this work in advance of receiving reimbursement from the Cleanup Fund.

7. The Parties have engaged in settlement negotiations and agree to fully resolve the matter for a payment of **$275,146.00** by the Cleanup Fund without administrative or civil litigation and by presenting this Stipulation to the State Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. In addition, the Claimant agrees to waive all rights to appeal costs for Claim #18952. This includes any and all work performed, supervised and/or directed by AEG and/or its principal(s).

8. The Cleanup Fund believes that the resolution of the alleged matter with the Claimant set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the claim, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

## Section III: STIPULATIONS

The Parties stipulate to the following:

9. **Monetary Relief:** The Claimant hereby agrees to accept payment totaling **$275,146.00** in resolution of all outstanding costs for Claim #18952, which includes all work performed, supervised and/or directed by AEG, AEG's principal(s), and/or AEG's subcontractors, known or unknown to the Claimant, related to Claim #18952. **Payment will be made within 90 days after execution of this Order by the State Water Board.**

10. **Injunctive Relief/Prohibitions:**

    a. The Claimant agrees to waive all rights to appeal costs related to Claim #18952. This includes any and all work performed, supervised by and/or directed by AEG and/or its principal(s).

b. The Claimant agrees that all work performed, supervised by and/or directed by AEG and/or its principal(s) after October 15, 2015 is not reasonable and necessary corrective action and, therefore, will not be reimbursed.
c. In exchange, the State Water Board agrees to forgo any enforcement action against the Claimant for any and all work performed, supervised, and/or directed by AEG submitted for reimbursement to the Fund prior to the date of entry of this Stipulation.
d. Nothing in this Stipulation limits or prohibits the State Water Board from taking civil, criminal and/or administrative enforcement against the Claimant for actions related to the site that occur and/or are related to activity after the date of entry of the Order.

11. **State Water Board is not Liable**
Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

12. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Stipulation and Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

13. **Compliance with Applicable Laws:** Settling Respondent understands that executing and fully complying with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that continuing and/or future violations of the type alleged herein may subject it to further enforcement. Future enforcement may include, but is not limited to, additional civil liability and/or disqualifying a claimant and/or site from the Cleanup Fund.

14. **Party Contacts for Communications related to this Stipulation and Order:**

**For the Cleanup Fund:**

Anna Kathryn Benedict
Senior Counsel
State Water Board, OE
1001 I Street, 16th Floor
Sacramento, CA 95814
Abenedict@waterboards.ca.gov
916.323.6848

**For Settling Respondent:**

Matthew Brower
City Manager
City of Lincoln
600 Sixth Street
Lincoln, CA 95648
mbrower@ci.lincoln.ca.us
(916) 434-2449

15. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

16. **Matters Addressed by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein.

17. **Public Comment Period:** The Claimant understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the State Water Board or its delegee, for adoption, the Stipulation and Order may be declared void. The Claimant agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulation and Order.

18. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

19. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the State Water Board or its delegee.

20. **If the Order Does Not Take Effect:** In the event that the Order does not take effect because it is not approved by the State Water Board or its delegee, the parties agree to meet to attempt to resolve any issues prior to this matter proceeding to a contested hearing.

21. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

22. **Covenant Not to Sue:** Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

23. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

24. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

25. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

26. **Effective Date**: This Stipulation is effective and binding on the Parties upon the entry of this Order by the State Water Board or its delegee, which incorporates the terms of this Stipulation.

**IT IS SO STIPULATED.**

Date: 3/15/16

By: _____
Darrin Polhemus, Deputy Director
Division of Financial Assistance
State Water Resources Control Board

**Claimant(s)**

Date: 8/2/16

By: _____
Mathew Brower
City Manager for the City of Lincoln

**ORDER OF THE STATE WATER BOARD**

27. This Order incorporates the foregoing Stipulation.

28. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle this matter, the Claimant agrees to comply with the terms and conditions of this Order.

29. The Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

30. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Claimant fails to perform any of its obligations under the Stipulation and Order.

**PURSUANT** to Government code section 11415.60, IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

Thomas Howard

Thomas Howard, Executive Director

10/11/2016

Date