

When Recorded Return To:

City of Tacoma
Planning and Development Services
747 Market Street, Room 345
Tacoma WA 98402-3701

Document Title: RIGHT OF WAY OCCUPANCY PERMIT
Permit Number: ROCC20-XXXX
Grantor: CITY OF TACOMA
Grantee: OWNER OR COMPANY NAME
Adjacent Property: ADDRESS / PARCEL# XXXXXXXXX

RIGHT-OF-WAY OCCUPANCY PERMIT AND LICENSE GROUNDWATER MONITORING WELL

THIS PERMIT, made and entered into this _____ day of _____, 20_____, (“Effective Date”), by and between the **CITY OF TACOMA, WASHINGTON**, a municipal corporation existing under the laws of the State of Washington, hereinafter referred to as “City” and **OWNER OR COMPANY NAME**, hereinafter referred to as the “Responsible Party”.

W I T N E S S E T H:

WHEREAS, the Responsible Party desires to drill, construct, operate, and maintain (3) groundwater monitoring wells (MW-1, MW-2, MW-3) in the City right-of-way adjacent to the properties addressed as 123 Main Street and 125 Main Street in the Main Street right-of-way, in order to observe hydrogeologic conditions; and

WHEREAS, the City, under Chapter 9.08, Tacoma Municipal Code, may grant the use of street right-of-way for private purposes subject to appropriate terms and conditions; and

WHEREAS, the City is willing to grant the Responsible Party a non-exclusive permit and license (“Permit”) to accomplish the aforementioned purpose in accordance with the terms and conditions of this Permit and as shown on Exhibits "A"; and

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, terms and conditions set forth herein, the City does hereby grant to the Responsible Party a Permit for use of the right-of-way adjacent to the Property described above:

The City and the Responsible Party agree that this Permit shall be subject to the following terms and conditions:

1. There shall be a minimum clearance of 10 feet between the City's utilities and the ground monitoring well sites, unless otherwise approved by the City. *A utility locate is required prior to excavation to confirm that no conflicts exist.* Call 811 for underground utility locates 48hrs before construction to identify additional conflicts. Further, the activities permitted by this Section shall be subject to the following restrictions:

a. The borings will not be installed outside of the improved right-of-way or on private property. Responsible party will coordinate with area inspector for final approval of location prior to work.

b. The wells shall not be located in the sidewalk, unless approved by the City, and must comply with City standards. Responsible Party must replace damaged channelization/stripping, notify the businesses that may be affected by the work, and coordinate work and barricades with existing special events.

c. All well covers in the right-of-way shall have a skid resistant surface.

d. For large diameter steel water mains (24 inch and larger) the proposed facilities shall have a minimum horizontal separation of ten (10) feet and vertical separation of two (2) feet from Tacoma Water facilities. Crossing of steel water main with proposed steel facilities may require the addition of cathodic protection. Contact Michael Duffy at (253) 502-8903 for additional information.

e. For large diameter non-steel water mains (24 inch and larger) the proposed facilities shall have a minimum horizontal separation of ten (10) feet and vertical separation of 12 (twelve) inches from Tacoma Water facilities.

f. For utilities other than sanitary sewer and large diameter water mains, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.

g. If existing water facilities need to be relocated or adjusted due to street improvements for this proposal they will be relocated by Tacoma Water at the owners' expense.

h. If any Tacoma Water facilities are damaged as result of the proposed work, Tacoma Water crews will repair the damage at the developer and contractors expense.

i. Additional site specific comments.

j. Additional site specific comments.

2. The use of Bentonite is prohibited, unless it is approved by the City of Tacoma's Site Development section of the Environmental Services Division, and the Permittee must comply with the City's Restoration Policy.

3. A Traffic Control plan and barricade permit will be required during well installation. The traffic control plan shall be submitted for approval to Traffic Engineering. Traffic control shall be provided for in accordance to the "Manual on Uniform Traffic Control Devices", and guidelines provided for within the Department of Public Work's 2008 "Traffic Control Handbook" for the City of Tacoma, as amended.

4. The term of this Permit shall be for a period of one (1) year from the date of full execution of this Permit with an option to renew for an additional year. The permit must be renewed annually if the Responsible Party wishes to continue the use which renewal payment is subject to applicable fees for such renewal pursuant to Paragraph 5 herein. The City agrees that the Responsible Party shall have the right and privilege to specially use that portion of the City's right-of-way as currently anticipated and generally as described in Exhibit "A" attached hereto, and by this reference made a part hereof, to carry out the purposes of this Permit.

5. This occupancy is subsurface and subject to an **annual renewal fee of \$90.00 plus an annual use fee of \$475.00 (3 wells)**. The City of Tacoma reserves the right to adjust the fee rate to reflect an updated rate schedule as set by City Council Resolution. The fee shall also be subject to leasehold excise taxes as applicable.

6. The City does not warrant any portion of the right-of-way; however, the City does warrant that it has the power and authority to grant this Permit and the use granted herein. The Responsible Party takes this Permit subject to the restrictions and conditions of record, both public and private. The City does not represent the suitability of that portion of the fee owned right-of-way for a monitoring well and the Responsible Party hereby represents that it has not relied on the City's representations, statements, information, or otherwise and accepts the condition of that portion of the right-of-way "as is" and with all defects patent or latent.

7. The Responsible Party is granted a non-exclusive permit to occupy and specially use the right-of-way only for the drilling, construction, operation, maintenance, repair, alteration, and decommissioning, and/or abandonment of a groundwater monitoring wells for the routine monitoring and observation of hydrogeologic conditions. All costs incurred or required for construction, operation, maintenance, alteration, repair, decommissioning, and/or abandonment of the well shall be at the sole expense and responsibility of the Responsible Party. Further, the activities permitted by this Section shall be subject to the following restrictions:

a. The Responsible Party shall drill, construct, operate, maintain, repair, alter, decommission and/or abandon the groundwater monitoring well(s) in accordance with Chapter 18.104 RCW, and Chapter 173-160 WAC requirements, and in accordance with any applicable local governmental regulations that may apply, and pursuant to plans and specifications approved in advance by the City. The Responsible Party shall submit the plans and specifications in such detail as may be reasonably acceptable to the City regarding the proposed project. Prior to commencing any well construction work, the Responsible Party shall notify the Department of Ecology or, if so delegated, the Department of Health, and provide any required documentation in accordance with Chapter 173-160 WAC. The Responsible Party shall provide the City as-built well construction drawings showing in detail the exact location of the well and appurtenances which shall then become part of this Agreement. Persons hired by the Responsible Party to construct, abandon and/or decommission the groundwater monitoring well(s) shall be

properly licensed for such work in accordance with Chapter 173-162 WAC, and shall secure all necessary permits from the City's Public Works Department for the actual construction, abandonment and/or decommissioning work to be done in the right of way. In performing work under this Permit, the Responsible Party, including anyone performing work on its behalf, shall take whatever measures are necessary to guard against waste and contamination of the ground water resource.

b. The drilling and construction of the proposed project shall not take place during public events on or near the site and the Responsible Party shall be required to coordinate activities in this respect with other affected abutting property owners and such other Departments of the City having responsibility for public utilities and facilities over and underneath the right-of-way, as well as any other utility with facilities within the City right-of-way.

c. The Responsible Party's drilling, construction, operation, maintenance, and repair activities shall not unreasonably interfere with other City or non-City/public activities, including but not limited to, drainage or irrigation wells, surrounding public parking or public access, any Tacoma Water supply wells or other observation wells. The Responsible Party shall secure, restore the area surrounding, and landscape, if appropriate, the site(s) of the monitoring well(s) in accordance with a plan which shall be mutually agreed upon in advance between the parties and shall be in conformance with City Code concerning maintenance and landscaping of the right-of-way as set forth in TMC Chapters 9.16 through 9.20, as may be applicable, and employ standard patching procedures to restore any paving per the City of Tacoma's Right of Way Restoration Policy adopted June 2, 2009 and as amended. The plan shall be implemented and maintained by the Responsible Party at its sole responsibility and expense. If the enclosure and landscaping, if any, are not properly and reasonably maintained by the Responsible Party so as to cause a condition deemed dangerous or hazardous by the City Engineer, the City shall notify the Responsible Party in writing of such deficiencies and the Responsible Party shall be given thirty (30) days in which to take remedial action. If no corrective action has been taken by the Responsible Party within said thirty (30) days, the City may undertake to perform the work necessary to abate the danger or hazard, either directly or by contracting for such work. The City shall invoice the Responsible Party for any such work performed, which the Responsible Party hereby agrees to pay, for such expenses as may be incurred by the City to restore the right-of-way to acceptable standards within the limits of the original security, restoration, and/or landscaping plan.

d. Any power or utilities needed to service the Responsible Party's use of the right-of-way permitted hereunder shall be obtained at the expense of the Responsible Party, and any required license or permit for power lines shall be submitted to and approved by the City in advance of any initial construction on the right-of-way. Any plans for a self-contained or generated power source must be reviewed and approved in advance by the City. Any power-generation equipment utilized on the right-of-way must meet all applicable noise level standards and must, in any case, not be unreasonably noisy.

e. Upon request, the Responsible Party shall provide the City at no cost, copies of all monitoring and sampling data collected from the monitoring well(s), including any

reports interpreting or analyzing such data, as well as copies of well reports submitted to the Department of Ecology and/or Department of Health.

8. The Responsible Party, its officers, employees, consultants, independent contractors and others working on behalf of the Responsible Party shall comply with all applicable laws, regulations, ordinances, and policies regarding the granting, or use of the right-of-way as set out herein including, but not limited to, the security, safety, zoning and environmental laws. The granting of this Permit by the City is not an automatic grant of other required approvals for the use of the right-of-way for any particular purpose. The Responsible Party shall, as necessary, make all required applications in this regard and approval shall be obtained before any construction commences. The City agrees to cooperate with the Responsible Party in applying for zoning changes, special exceptions, variances, etc., if needed, but at Responsible Party's sole expense. The Responsible Party agrees to provide copies of this permit to all contractors, consultants, and agents. A copy of this permit shall be available for inspection at any time construction or well monitoring is taking place.

9. All information obtained from the monitoring well(s) by the Responsible Party shall be shared with the City, and the City shall have the opportunity to visit and inspect the monitoring well(s) with the Responsible Party's representative to observe measurement techniques and other actions, upon reasonable request to the Responsible Party.

10. The City shall be allowed to inspect the well to ensure compliance with this Permit and to determine compliance with all other laws, regulations and policies.

11. The Responsible Party shall pay all lawful debts incurred by the Responsible Party with respect to the special use made of the right-of-way and shall satisfy all liens of contractors, sub-contractors, mechanics, laborers, and materialmen with respect to any construction, alteration and/or repair in and on the right-of-way and improvements thereon authorized by the Responsible Party, its agents or employees for work performed pursuant to this permit. Responsible Party shall indemnify and hold the City harmless against all costs and charges, including but not limited to attorneys' fees (and attorneys' fees and costs on appeal) reasonably incurred in any suit involving any claims, liens, judgments or encumbrances suffered by the City as a result of the use or occupancy of the right-of-way or any part thereof by the Responsible Party, its agents or employees. Furthermore, the Responsible Party shall have no authority to create any liens for labor or material on or against the City's interest, and all persons contracting with the Responsible Party for the construction or removal of any structure, or for the erection, installation, alteration, maintenance or repair of any structure or improvement, including all materialmen, contractors, mechanics and laborers involved in such work, shall be required by Responsible Party to agree, before starting their contractual obligation, that they must look to the Responsible Party only to secure the payment of any bill or account for any material furnished during the term of this Permit.

12. The City reserves the right to require relocation of the well (to a site in reasonable proximity as agreed upon by Responsible Party) without cause and at no cost to the City upon written notice to the Responsible Party, reserving unto Responsible Party the right of termination pursuant to Paragraph 17 herein. Any such written notice will be given 60 days in advance, unless the City determines an emergency exists that requires removal sooner than 60 days. If the responsible party is unable or unwilling to take proper action, the City will undertake to perform

the work necessary either directly or by contracting for such work. The City shall invoice the Responsible Party for any work performed for the relocation.

13. The Responsible Party must start construction and make (and continue to make) reasonable progress toward completion of the project within ninety (90) days from the date of this Permit, unless otherwise agreed to by the parties. Failure to comply with this requirement shall be deemed to be a termination by the Responsible Party.

14. The Responsible Party agrees to join in any application for permit, license, or other regulatory type action, or contract, agreement or other document to enable the City to more fully utilize the right-of-way.

15. Any destruction, damage, impairment, or other diminution by Responsible Party's employees, its contractors, subcontractors and those working for them, to the right-of-way that result from well-construction, monitoring-related activities, or other activities carried out under this Permit, improvements thereto, or other appurtenances, shall be repaired and/or restored within a 30 days written notice by City at the Responsible Party's sole expense.

16. The City is granting this Permit on a non-exclusive basis and the City reserves the right to use or authorize others to use the right-of-way. It is recognized, however, that the City cannot guarantee or warrant and does not represent the security of the well, equipment, or improvements to the right-of-way, and hereby disclaims liability or responsibility, if any.

17. In the event the Responsible Party determines that the right-of-way is no longer needed for the purposes set forth herein, the Responsible Party may terminate this Permit by notifying the City, in writing, at least sixty (60) days prior to the date of such termination. Upon termination in this manner or any other termination or expiration of this Permit, the Responsible Party shall, at its own expense, decommission and/or abandon the monitor well(s) in accordance with Chapter 173-160 WAC, and Chapter 173-162 WAC and in accordance with applicable rules of the City of Tacoma, and any other local governmental entity with jurisdiction over the activity governing the abandonment of wells. The Responsible Party shall submit a plan for approval to the City in advance of such decommissioning and/or abandonment. In addition, the Responsible Party, at its sole expense, shall restore the right-of-way to its condition prior to the granting of this permit. Responsible Party shall obtain and keep in force a bond with the City in the amount of \$10,000.00 dollars United States Currency, for each well authorized, to assure performance of said party's responsibilities herein. The City by giving notice in writing to Responsible Party at least thirty (30) days prior to the date of such termination, shall retain the option to require the improvements to remain in their then-current condition (including but not limited to, the well, well casing, and any and all improvements or appurtenances utilized in any manner previously on or in connection with the monitor well) in lieu of the removal and restoration requirements contained herein; in which event, upon receipt of such notification by Responsible Party, all responsibilities and liabilities of Responsible Party contained herein (except those in Section 18) shall cease and such improvements shall become the sole responsibility of City.

18. To the extent permitted by law, the Responsible Party shall and shall cause its contractors to, release, indemnify, defend and hold harmless the City and its successors against all claims, demands, causes of action, suits, judgments, including expenses incurred in connection therewith, whether arising in tort, contract, or otherwise, for loss or damages to the

right-of-way or injury to persons, or for loss or injury to any persons or property located abutting the site arising out of or in connection with the use and occupancy of the right-of-way by the Responsible Party, its agents, employees, consultants, independent contractors or invitees, even if such liabilities arise from or are attributed to, in whole or in part, any act of any the City. In the event of any such claims made or filed, the City shall give the Responsible Party prompt written notice thereof and the Responsible Party shall defend or settle to the extent of its interest and responsibility hereunder. The Responsible Party shall obtain and maintain general liability insurance with limits in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) bodily injury and property damage (combined single limit). The policy shall include a "cross liability" (severability of interest) clause, and shall be primary insurance as to the City, irrespective of what other insurance the City may have. The City shall be named as Additional Insured on a primary basis using ISO Additional Insured endorsement Form B, (CG 20 10 11 85), adopted 1986, or equivalent, under such policies insofar as the work and obligations performed under this Permit are concerned.

a. To the extent permitted by law, the Responsible Party shall hereby indemnify, defend and hold harmless the City against all claims, loss, damages, expenses, including federal, state or local agency enforcement orders, civil penalties, or judicial fines or penalties, arising out of any failure of the Responsible Party, or anyone performing work on its behalf , to comply with or perform the requirements of this Permit, including the statutory and regulatory requirements which are referenced herein. The Responsible Party shall also indemnify, defend and hold harmless the City against all claims, loss, damages, expenses, including federal, state or local regulatory enforcement orders, civil penalties, or judicial fines or penalties and response costs arising out of waste and contamination of the ground water resource, and/or surrounding soils, resulting from the construction, operation, repair, alteration, decommissioning and/or abandonment of the groundwater well, regardless of whether the harm was caused by the Responsible Party or someone performing work on its behalf. The Responsible Party shall furnish evidence of such insurance with a copy of the endorsement naming the City as an Additional Insured within ten (10) days after issuance of this Permit. Such policy or policies shall provide for not less than thirty (30) days advance notice to the City in the event of termination of the insurance policy or policies. Failure of the Responsible Party to provide and maintain any required insurance under this Permit shall be considered a material breach.

b. All personal property, structures or improvements placed upon or moved in or upon the right-of-way shall be at the risk of the Responsible Party and the City shall not be liable for any damage to said personal property, structures or improvements, except in the case of negligence or intentional acts by the City, its agents, employees or contractors resulting in damage to said personal property, structures or improvements, except as set out herein.

c. If the Responsible Party shall obtain or require its contractors, consultants, agents or others to obtain or maintain insurance as part of its proposed project under this Permit, then all such insurance certificates shall name the City as an additional insured, except as to any worker's compensation insurance certificates.

d. Upon written notice from the City, Responsible Party agrees to assume the defense of any lawsuit or other proceeding brought against any the City by any entity relating to any matter covered by this Permit for which Responsible Party has an obligation to assume liability for, and/or save and hold harmless the City. Responsible Party shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

e. RESPONSIBLE PARTY WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND RESPONSIBLE PARTY HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

f. The rights and responsibilities of Responsible Party under the provisions of this paragraph 18 shall survive termination or expiration of this Permit.

19. If Responsible Party is a public entity authorized by statute to self-insure, the bond and insurance requirements of paragraphs 17 and 18 may be satisfied by proof of such self-insurance program. In such case, there will be no additional insured endorsement except under any contractor's insurance policies. Responsible Party shall not waive its immunity under RCW 4.24.115, but shall require its contracts to do so.

20. As to all rights and obligations under this Permit, the parties hereby agree that time is of the essence.

21. All heavy equipment, tools, machinery, and other items utilized in the drilling of the well for construction of any improvements shall, if stored on the construction site, be safely enclosed and secured so as not to present a public health, safety or welfare threat. Responsible Party shall not store, or allow to be stored, any hazardous, toxic or unreasonably dangerous substances on the right-of-way and shall promptly remove, or have removed and legally disposed of, any hazardous, toxic or unreasonably dangerous substances withdrawn from the well(s).

22. This Permit does not constitute a waiver of the City's regulatory and police powers and is entered into pursuant to its proprietary powers only.

23. It shall be the responsibility of the Responsible Party, at its sole cost and expense, to obtain or renew any and all permits, licenses, or approvals which may be required by the City or any other federal, regional, state or local governmental agency or regulatory body. The City agrees to cooperate with the Responsible Party to obtain any such permits related to the said party's special use of the right-of-way, but at Responsible Party's expense.

24. In the event Responsible Party shall breach, fail to observe, or be in default with respect to any of the provisions of this Permit or fail to comply with or observe a lawful order by the City or other entity with jurisdiction and such breach, failure, default or violation is not remedied by Responsible Party within thirty (30) days after written notice of same is given by the City (or the appropriate entity), then this Permit and the rights herein shall terminate immediately and the City shall not be liable for any damages caused by such termination and the well will be

abandoned and decommissioned by Responsible Party in accordance with the provisions of Paragraph 17 herein.

25. The parties hereto agree that a memorandum of this Permit in a form mutually acceptable to the parties may be recorded in the Public Records of Pierce County, WASHINGTON. If so, closing or recording costs shall be borne by the Responsible Party.

26. All notices, consents, approvals, waivers and elections which any party shall be required or shall desire to make or give under this Permit shall be in writing and shall be sufficiently made or given when delivered personally or by courier service or, if mailed, by certified mail, postage prepaid, return receipt requested, addressed as follows to the parties listed below or such other address as any party hereto shall designate by like notice given to the other party hereto:

Owner or Company Name.
12345 Example Avenue
Example, WA XXXXX

City of Tacoma
Planning and Development Services
747 Market Street Room 345
Tacoma WA 98402-3701

27. Notices, consents, approvals, waivers and elections given or made aforesaid shall be deemed to have been given and received on the date of the mailing or delivery thereof. An immaterial failure to comply precisely with the foregoing requirements shall not affect the validity of a default or termination notice if the defaulted or terminated party was not prejudiced by such failure.

28. This Permit may not be assigned or transferred by the Responsible Party without the advance written consent of the City, which consent may be granted or withheld in the City's sole discretion, and any such attempted assignment or transfer without the City's consent shall be null, void, and of no legal effect.

29. This Permit constitutes the entire agreement of the parties, and there are no understandings or dealings with the subject matter of this Permit other than those contained herein. This Permit may not be modified, changed or amended, except in writing, signed by the parties hereto, or their authorized representatives.

30. This Permit shall be construed and interpreted according to the laws of the State of WASHINGTON and any suit filed shall be in Pierce County, WASHINGTON.

31. Except as specifically set out herein, there are no third-party beneficiaries of this Permit.

32. Responsible Party, in acting under this permit, will be acting in its individual capacity and not as the agent, employee, partner, joint venture or associate of the City. No

employee or agent of the Responsible Party or the City shall be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

33. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

EXAMPLE

IN WITNESS WHEREOF the parties hereto have executed this document as of the day and year first written above.

CITY OF TACOMA

**PLANNING AND DEVELOPMENT SERVICES
DEPARTMENT**

By:

Peter Huffman
Director

Saada Gegoux
Risk Manager

Approved as to form:

Deputy City Attorney

EXAMPLE

ACCEPTED subject to said
Terms and Conditions:

COMPANY NAME

AUTHORIZED SIGNATORY
TITLE

State of Washington
County of _____

I certify that I know or have satisfactory evidence that **AUTHORIZED SIGNATORY** is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the **TITLE** of **COMPANY NAME** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

L.S.

Signature
Notary Public, State of Washington

Printed Name

My appointment expires: _____

Exhibit "A"

Site Plan or Drawing

Exhibit "A" (cont.)

EXAMPLE

Site Plan or Drawing