

ENCROACHMENT PERMIT AND AGREEMENT  
(Monitoring Well)

The City of National City hereby grants an Encroachment Permit to the undersigned, \_\_\_\_\_ (hereinafter referred to as "PERMITTEE") in accordance with and pursuant to the terms and conditions set forth in Chapter 13.12 of the National City Municipal Code to install monitoring wells. The term "PERMITTEE" includes all successors in interest and assigns of the PERMITTEE.

The PERMITTEE, in consideration of this grant of permission by the City of National City (hereinafter referred to as "CITY") to install and maintain MONITORING WELLS (all hereafter designated from time to time as an "encroachment") within or upon a CITY easement, property, or right-of-way for the use and benefit of PERMITTEE'S property and adjacent lands, now covenants and agrees as follows:

The site of installation and any description of PERMITTEE'S encroachment are described in EXHIBIT A, attached.

The terms and conditions under which the encroachment is to be installed and maintained are as follows:

1. This Encroachment Permit and Agreement (collectively hereafter, AGREEMENT) is made for the direct benefit of PERMITTEE and PERMITTEE'S property described above, and the covenants herein contained shall be binding on the PERMITTEE and its assigns and successors. This AGREEMENT is issued pursuant to Chapter 13.12 of the National City Municipal Code, the terms of which PERMITTEE hereby specifically acknowledges, accepts, and agrees to. PERMITTEE also acknowledges that those terms and conditions include, without limitation, the CITY'S right to require the removal, relocation, or undergrounding of the encroachment when deemed necessary and feasible by and in the sole discretion of the City Engineer, at PERMITTEE'S expense. The terms and conditions of Chapter 13.12 shall govern the interpretation and application of this Encroachment Permit, the maintenance of the encroachment, and the PERMITTEE'S duties and obligations. In the event of litigation to enforce any of the terms and conditions of this permit, the CITY shall be entitled to its attorney'S fees and costs of enforcement. A copy of this Encroachment Agreement may be recorded against the PERMITTEE'S real property that may be benefited by the installation and maintenance of the encroachment. Upon request by CITY, PERMITTEE shall record this Encroachment Agreement with the County of San Diego, County Recorder'S Office, and upon recordation shall return the original to the CITY.

2. The encroachment shall be maintained in a safe and sanitary condition at all times at the sole cost, risk, and responsibility of PERMITTEE and all successors in interest, so long as the encroachment exists.

3. Upon notification in writing by CITY'S City Engineer, the above described encroachment shall be abandoned, removed, or relocated by PERMITTEE at the PERMITTEE'S sole expense. If PERMITTEE fails to remove or relocate the encroachment herein permitted within thirty (30) days after notice of removal or relocation from the CITY, CITY may cause such removal or relocation to be done at PERMITTEE'S sole cost and expense, which cost shall be a lien upon the land benefited by the encroachment and the personal liability of the PERMITTEE.

4. PERMITTEE shall furnish the CITY with a faithful performance bond as security for the prompt completion of the installation, removal, abandonment, and all appurtenant operations, including any necessary subsequent street resurfacing or restriping required for installing or maintaining the encroachment, which bond shall be maintained so long as the encroachment exists.

5. CITY shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of PERMITTEE's construction, installation, maintenance, repair, use, operation, condition, or dismantling of the monitoring wells or the encroachment except to the extent caused by CITY's sole negligence or willful misconduct.

6. PERMITTEE shall indemnify, defend, and hold harmless CITY and its officers, agents, and employees from all liability, loss, costs, claims, demands, suits, and defense costs, including attorneys' fees, arising out of PERMITTEE's entry upon and use of CITY's easement or right-of-way for the installation, maintenance, removal, and use of the PERMITTEE's encroachment. PERMITTEE shall indemnify, defend, and hold harmless CITY and its officers, agents, and employees from all liability, loss, costs, claims, demands, suits, clean-up costs, and defense costs, including attorneys' fees and expert witness fees, arising out of or related to PERMITTEE's monitoring wells subject to this Agreement, except for those claims which arise out of the sole negligence or willful misconduct of the CITY.

7. Insurance.

PERMITTEE shall take out and maintain, during the time the encroachment remains on CITY's easement or right-of-way, commercial general liability insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, and Four Million Dollars (\$4,000,000) aggregate, covering all claims of bodily injury, including death, and property damage arising out of this Agreement.

PERMITTEE shall take out and maintain, during the time the encroachment remains on CITY's easement or right-of-way, pollution liability coverage with minimum limits of Three Million Dollars (\$3,000,000) per occurrence covering all claims of bodily injury, including death, and property damage arising out of this Agreement.

PERMITTEE shall take out and maintain workers' compensation insurance covering all of PERMITTEE's employees, with limits sufficient to satisfy California statutory requirements. In addition, PERMITTEE shall take out and maintain employer's liability coverage with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall be endorsed with a waiver of subrogation as to the CITY.

All policies required by this Agreement shall be written by insurers licensed to do business in the State of California, which are rated at least "A, VII" by the current A.M Best Ratings Guide and otherwise approved by CITY's Risk Manager. Coverage written by non-admitted, surplus lines carriers may be acceptable provided the insurer is included in the most recent California List of Eligible Surplus Lines Carriers (LESLI list) and otherwise meets CITY insurance requirements. Coverage shall be written on occurrence forms; in the event coverage is written on a claims made form, the retro date must be on or before commencement of this Agreement, and coverage must be maintained for a period of at least three (3) years following the termination of this Agreement. All deductibles and/or self-insured retentions must be disclosed on the certificate of insurance. These policies shall name CITY and its officers, agents, and employees as additional insureds, and shall constitute primary insurance as to CITY and its officers, agents, and employees, so that any other policies held by CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to CITY of cancellation or material change. Prior to commencement of this Agreement, PERMITTEE shall furnish CITY a certificate of insurance with all required endorsements evidencing the coverage required by this section. Should PERMITTEE fail to do so, CITY may elect to obtain such coverage at PERMITTEE'S expense or immediately terminate this Agreement, and require removal of the encroachment.

8. PERMITTEE is further responsible for obtaining any required construction, excavation, or building permits; for notification to Underground Service Alert, when applicable; and for the safe installation and maintenance of the encroachment at all times.

9. This Encroachment Permit shall not be valid nor confer any rights to install and maintain an encroachment until it is approved by the CITY, and accepted and acknowledged by the PERMITTEE, and if determined necessary by the CITY, recorded.

10. PERMITTEE shall within 48 hours upon written notification by the CITY adjust, or cause to adjust the top of the well on \_\_\_\_\_ (street name/s), if and when such adjustment will become necessary as a result of CITY's street resurfacing, or other construction operations.

11. PERMITTEE shall provide and maintain adequate traffic control at the sole cost, risk and responsibility of PERMITTEE and successor in interest, during the course of the construction of the well, and the monitoring and sampling periods or any other operation within the CITY right-of-way. PERMITTEE shall hold CITY harmless with respect thereto.

12. PERMITTEE shall notify the CITY in writing of any proposed change in the location of the well prior to installation. PERMITTEE shall obtain additional permits for any such changes from the CITY prior to the commencement of work.

13. PERMITTEE shall apply to the City Engineer for a construction permit prior to the installation of the well on \_\_\_\_\_ (street name/s), and for subsequent adjustments.

14. All operations conducted by the PERMITTEE on the CITY premises, including monitoring and sampling of the well and running of equipment shall be limited to the hours set by the City Engineer, and there shall be no deviations from these hours.

15. PERMITTEE shall notify all adjacent residential and commercial developments as to the intended construction, and shall post notices indicating the type and the hours of construction and all other subsequent work. The PERMITTEE shall diligently proceed to complete all work with a minimum of inconvenience to the public.

16. At least 48 hours prior to start of construction, PERMITTEE shall contact Underground Service Alert for all underground utility mark-out. It shall be the responsibility of the PERMITTEE to locate all substructures and protect them from damage. The expense of repair or replacement of said substructures shall be solely borne by the PERMITTEE, and the CITY shall be held harmless with respect thereto.

17. The PERMITTEE shall be responsible for the prevention of damage to the adjacent property. No person shall excavate on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any other public or private property without supporting and protecting such property from settling, cracking, erosion, silting, scour, or the damage which might result from the PERMITTEE's operations.

18. The PERMITTEE shall design, construct, and maintain all safety devices, including shoring, and shall be solely responsible for conforming to all local, state, and federal safety and health standards, laws, and regulations.

19. The proposed well may exist in the public right-of-way for a maximum of two years. The PERMITTEE shall inform the CITY if additional time will be required for groundwater monitoring, and shall obtain the CITY's written approval for any time extension.

20. PERMITTEE shall notify the CITY in writing at least 48 hours prior of any intended monitoring of the well to be conducted during the length of this encroachment. Such notification shall contain the time and date of the intended sampling, and shall be subject to the approval of the CITY.

21. PERMITTEE shall deposit a sum equal to \$2,000.00 in the CITY's account, to be used only for emergency purposes, prior to the approval of this Encroachment Agreement.

22. The well cap installed under this permit shall have information printed giving the name and phone number of the responsible entity in charge of the installation and maintenance of the well.

23. The PERMITTEE shall provide the CITY with a copy of the site assessment and remediation report; a copy of the Department of Health Services, County of San Diego response; and the site remediation completion report. The report shall show the extent of ground water and/or soil contamination, if any.

Dated:

CITY OF NATIONAL CITY

PERMITTEE:

\_\_\_\_\_  
Ron Morrison, Mayor

\_\_\_\_\_  
Entity/Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title

**ATTACH NOTARY CERTIFICATION FOR THE NAME OF PERMITTEE SHOWN ABOVE.  
USE CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT NOTARY ONLY.**

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PERMITTEE/APPLICANT INFORMATION:

\_\_\_\_\_  
Person in Responsible Charge

Mailing Address:

\_\_\_\_\_  
24/7 Phone Number

\_\_\_\_\_  
Firm Name

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PLAT SHOWING LOCATION OF WELL HEADS OR OTHER STRUCTURES, EASEMENT, OR RIGHT-OF-WAY, AND SEWER AND/OR DRAINAGE FACILITIES: SEE EXHIBIT "A", ATTACHED

**MONITORING WELL INSTALLATION QUESTIONS**

- 1) **What is the time of completion of the drilling and well construction?**  
\_\_\_\_\_
- 2) **What is the time required to install each well?** \_\_\_\_\_
- 3) **How long will the wells remain in the street?** \_\_\_\_\_
- 4) **How long will the abandonment of the wells be? (time frame)** \_\_\_\_\_
- 5) **How often will the wells be monitored and sampled?** \_\_\_\_\_
- 6) **How long will it take to purge and sample each well?** \_\_\_\_\_
- 7) **Who will be responsible for removing the wells from the public right-of-way and restoring the street?**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8) **Who will be responsible for top of well head adjustments?**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_