

P - 00179

RIGHT-OF-ENTRY PERMIT

THIS RIGHT-OF-ENTRY PERMIT ("Permit") is made this 15th day of March, 2018 by and between the CITY OF LONG BEACH, a municipal corporation ("City") and SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD), a California public agency ("Permittee").

WHEREAS, Permittee has an immediate need to occupy certain real property owned by City consisting of approximately 7,900 square feet and comprising that parcel (APN 7216-013-911) more particularly depicted on Exhibit "A" attached hereto (the "Premises").

WHEREAS, City is willing to grant Permittee the temporary right to occupy the Premises in exchange for the payment of a fee and upon the terms and conditions described in this Permit.

NOW THEREFORE, City and Permittee, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, agree as follows:

1. Use and Access. City hereby authorizes Permittee to use and occupy the Premises, for the express purpose of installing and operating a full air-quality monitoring site, including without limitation the operation of criteria pollutant monitors, in connection with Permittee's South Coast Air Basin Study. Permittee shall not use the Premises for any other purpose other than as described in this Section. Permittee shall not store vehicles or other personal property at the Premises which are not necessary to the South Coast Air Basin Study. Permittee shall not bring any hazardous materials upon the Premises. City reserves the right to access the Premises upon reasonable advance notice to Permittee, or without notice in the case of emergency.

2. Term. Permittee may occupy the Premises beginning on March 15, 2018, and continuing until September 15, 2018, subject to a 6-month extension option exercisable upon the mutual agreement of City and Permittee. At any time during the term hereof, either party may terminate this Permit upon thirty (30) days' advance written notice for any reason or no reason, and in such event Permittee shall thereafter completely vacate the Premises and return the Premises to City in the same condition as delivered to Permittee (including without limitation the removal of any personal property or temporary improvements).

3. Premises and Improvements. Permittee accepts the Premises "as is", and City makes no warranty or representation whatsoever with respect to the Premises, including without limitation as to suitability for Permittee's proposed use. Any improvements necessary for Permittee's use of the Premises shall be temporary in nature, installed solely at Permittee's expense, and shall be removed upon termination of this Permit (unless directed otherwise by City in its sole and absolute discretion). Permittee shall install (if necessary) and maintain a perimeter fence around the Premises (screened or constructed with slats), and shall promptly remove and dispose of graffiti and illegally dumped materials at the Premises.

4. Occupancy Fee. Beginning on the first day of the term, and continuing monthly thereafter, Permittee shall pay, in advance, an occupancy fee to City in the amount of Eight

Hundred Thirty-Three Dollars (\$833) per month, pro-rated daily for any partial occupancy month.

5. Insurance. Permittee shall procure and maintain the following insurance at Permittee's sole expense for the duration of this Permit, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or from non-admitted insurers that are on California's List of Eligible Surplus Lines Insurers (LESLI) and that have ratings of or equivalent to an A:VIII by A.M. Best Company:

a. Commercial general liability insurance equivalent in coverage scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but is not limited to broad form contractual liability, cross liability protection, products and completed operations liability, and garage-keepers legal liability. The City of Long Beach, and its boards, officials, employees, and agents shall be added as additional insureds by endorsement (equivalent in coverage scope to ISO form CG 20 26 11 85) and this coverage shall contain no special limitations on the scope of protection afforded to City, and its boards, officials, employees, and agents.

b. Workers' compensation insurance as required by the California Labor Code and Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness.

Any self-insurance program, self-insured retention or deductible must be approved separately in writing by the City Risk Manager or designee and shall protect City, and its boards, officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance or deductible provisions.

Each insurance required hereunder shall be endorsed to provide that coverage shall not be canceled, nonrenewed, or materially changed in coverage or limits (other than by reduction of limits by payment of claims) except after thirty (30) days prior written notice to City, and that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by City, or its boards, employees, or agents.

Prior to the commencement of this Permit, Permittee shall deliver to City certificates of insurance and the endorsements required hereunder for approval as to sufficiency and form, including the certificates of insurance and endorsements of any subpermittee. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at least thirty (30) days prior to expiration of such policies, furnish City with evidence of renewals. Agency reserves the right to require complete certified copies of all said policies at any time.

Such insurance as required herein shall not be deemed to limit Permittee's liability under this Permit. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.

6. Waiver. This Permit confers no rights upon Permittee other than expressly stated herein.

7. Release and Indemnity.

A. Permittee shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Permittee's breach or failure to comply with any of its obligations contained in this Permit, or (2) Permittee's, its officers, employees, agents, subcontractors, or anyone under Permittee's control, use of the Premises (collectively "Claims" or individually "Claim").

B. In addition to Permittee's duty to indemnify, Permittee shall have a separate and wholly independent duty to defend Indemnified Parties at Permittee's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Permittee shall be required for the duty to defend to arise. City shall notify Permittee of any Claim, shall tender the defense of the Claim to Permittee, and shall assist Permittee, as may be reasonably requested, in the defense.

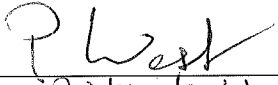
C. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Permittee's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

D. The provisions of this Section shall survive the expiration or termination of this Permit.

[signatures on subsequent page]

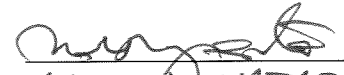
Please contact Bob Livingstone at (562) 570-3122 to arrange access to the Premises.

CITY OF LONG BEACH,

By: 
Name: Patrick West
Title: City Manager


Agreed and Accepted:

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD),
a California public agency

By: 
Name: Mutsu Miyasato
Title: DEO/STA

APPROVED AS TO FORM

BAYRON T. GILCHRIST, GENERAL COUNSEL

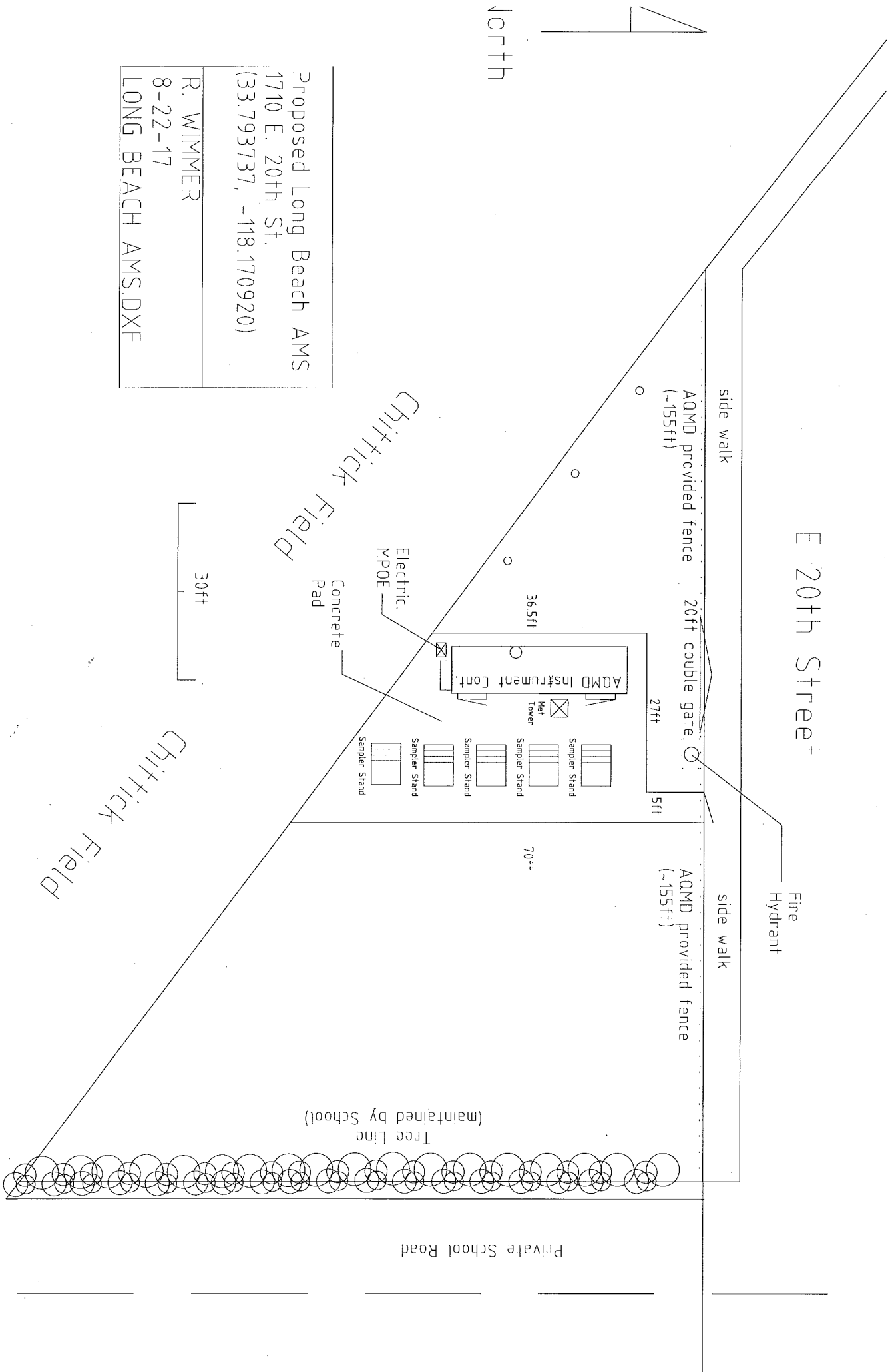
By: 
Date: 3/29/18

APPROVED AS TO FORM

4-5-2018
CHARLES PARKIN, City Attorney

By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

Exhibit A



Proposed Long Beach AMS
 1710 E. 20th St.
 (33.793737, -118.170920)

R. WIMMER
 8-22-17
 LONG BEACH AMS.DXF