

CONFORMED COPY

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12/26/2013 03:57:48 PM \$80.00
AUDITOR, Pierce County, WASHINGTON

When Recorded, Return To:

City of Tacoma
Real Property Services
747 Market Street, Room 737
Tacoma, WA 98402

AUDITOR'S NOTE
LEGIBILITY FOR RECORDING AND COPYING UN-
SATISFACTORY IN A PORTION OF THIS INSTRU-
MENT WHEN RECEIVED

DOCUMENT TITLE ENVIRONMENTAL COVENANT No. A-406	COPY
Grantors City of Tacoma	
Grantees State of Washington, Department of Ecology	
Legal Description - Portion of SW1/4 of Section 4 and NW1/4 of Section 9, Township 20 North, Range 3 East, W.M.	
Reference Number	
Assessor's Parcel Number 2021080011	

RECEIVED

DEC 12 2013

WA State Department
of Ecology (SWRO)

After Recording Return
Original Signed Covenant to:
Scott Rose
Toxics Cleanup Program
Department of Ecology
P.O. Box 47775
Olympia, WA 98504-7775

Environmental Covenant

Grantor: City of Tacoma, Washington

Grantee: State of Washington, Department of Ecology

Brief Legal Description: A portion of the SW1/4 of Section 04 and NW1/4 of Section 09, Township 20 North, Range 03 East, W.M.

Tax Parcel Nos.: a portion of 2021080011

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part of a site commonly known as **Jefferson Avenue Site (aka City Properties Cleanup), Facility Site No. 1277004, VCP Project No. SW1315**. The Property within the Jefferson Avenue Site that is subject to this Covenant is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c. The Property was the subject of remedial action under MTCA. This Covenant is required because residual contamination remains on the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	
Groundwater	Arsenic
Surface Water/Sediment	

- d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through the Washington State Department of Ecology. **This includes the following document: Jefferson Avenue Site Targeted Brownfields Assessment, Technical Direction Document: 12-01-0013 (January 2013) Prepared by Ecology and Environment for the U.S. Environmental Protection Agency.**

e. This Covenant grants the Washington State Department of Ecology, as holder of this Covenant, certain rights specified in this Covenant. The right of the Washington State Department of Ecology as a holder is not an ownership interest under MTCA, Chapter 70.105D RCW or the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) 42 USC Chapter 103.

COVENANT

The City of Tacoma, Washington, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, (hereafter “Ecology”) the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the completed results of the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Amendment to the Covenant.** Grantor must notify and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. Before approving any proposal, Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal. If Ecology approves the proposal, the Covenant will be amended to reflect the change.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. **Groundwater Use.** The groundwater beneath **the Property** remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted **from the Property** for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:

i. Notify Ecology at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE PIERCE COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood, fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor

must notify Ecology of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Any required written notice, approval, or communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant.

Ellen Walkowiak Business Development Manager City of Tacoma – Community & Economic Development Department 747 Market Street, Room 900 Tacoma, WA 98422 (253) 591-5209	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000
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As an alternative to providing written notice and change in contact information by mail, these documents may be provided electronically in an agreed upon format at the time of submittal.

Section 5. Modification or Termination.

a. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in Chapter 64.70 RCW and Chapter 70.105D RCW and any rules promulgated under these chapters.

b. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Grantor shall provide Ecology with an original signed Covenant and proof of recording within ten (10) days of execution of this Covenant.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including Chapter 70.105D RCW and Chapter 64.70 RCW. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of the Model Toxics Control Act, chapter 70.105D RCW and Uniform Environmental Covenants Act, chapter 64.70 RCW.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

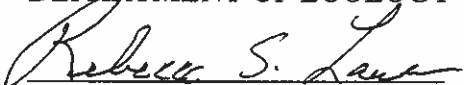
EXECUTED this 6th day of December, 2013.

CITY OF TACOMA, WASHINGTON

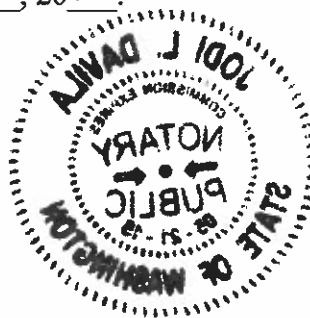

T.C. Broadnax
City Manager

Dated: 12/6/2013

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office

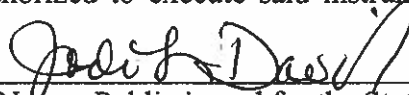
Dated: 12/16/2013



GRANTOR CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON
COUNTY OF PIERCE

On this 16th day of December, 2013, I certify that T.C. Broadnax
_____ personally appeared before me, acknowledged that he/she is the City Manager
of the corporation that executed the within and foregoing instrument, and signed said instrument
by free and voluntary act and deed of said corporation, for the uses and purposes therein
mentioned, and on oath stated that he/she was authorized to execute said instrument for said
corporation.



Notary Public in and for the State of
Washington, residing at Puyallup.
My appointment expires 5-21-15.



Exhibit A -- LEGAL DESCRIPTION

Monitoring Well Area Property Description:

A portion of the Southwest quarter of the Southwest quarter of Section 04 and the Northwest quarter of the Northwest quarter of Section 09, all in Township 20 North, Range 03 East, W.M., more particularly described as follows:

Beginning at the Northeast corner of Block 2108, BURNS AND BLINN MAP OF A PART OF THE CITY OF TACOMA as recorded in Volume 1 of Plats at Page 28, records of Pierce County Auditor, said point being the intersection of the West right of way margin of Jefferson Avenue and the South right of way margin of South 21st Street;

Thence South 0°39'37"East, along said West margin, a distance of 100.69 feet;

Thence South 82°37'47"West, parallel with said South margin, a distance of 81.35 feet more or less to the face of a retaining wall;

Thence North 03°14'58"West, along the face of said wall, a distance of 100.26 feet to the South margin of South 21st Street;

Thence North 82°37'47"East, along said South margin, a distance of 85.91 feet to the Point of Beginning.

Containing 8,363 Square Feet

Situate in the City of Tacoma, County of Pierce, State of Washington

Exhibit B -- PROPERTY MAP

