

# WESTERN NATURAL RESOURCES, LLC

11455 El Camino Real, Suite 160, San Diego, CA 9213

June \_\_, 2023

Elizabeth Gibbs, City Manager  
City of Beaumont  
550 E. 6<sup>th</sup> Street  
Beaumont, CA 92223

**Re: Payment Letter for Temporary Construction Easement Agreement dated concurrently herewith (“Easement Agreement”) by and between [City of Beaumont] (“Owner”), and Western Natural Resources, LLC, a Delaware limited liability company (“Company”)**

Dear Ms. Gibbs:

Owner and Company have entered into the above-referenced Easement Agreement (a copy of which is attached hereto as Attachment No. 1), which provides Company, among other things, a temporary construction easement on, over and across not more than four and a half (4.5) acres of the real property of Owner. Capitalized terms used and not defined in this letter agreement have the meanings given to them in the Easement Agreement.

Company shall make an initial payment to Owner in the amount of Twenty-Two Thousand Five Hundred Dollars (\$22,500) within five (5) business days of the mutual execution of the Easement Agreement and this letter agreement (the “Execution Payment”) which is consideration for entering into the Easement Agreement and is not rent or a security deposit.

Thereafter, on the Commencement Date and continuing until the Termination Date, Company shall pay to Owner a monthly payment in the amount of Five Thousand Dollars (\$5,000) per acre per month, payable in advance and due by the fifth (5<sup>th</sup>) business day of each month during the Term (the “Easement Payments”).

The initial term of the agreement is ten (10) months beginning at the time in which the Company began to occupy the site. The Company began occupancy of the site prior to the execution of this letter agreement on June \_\_, 2023 pursuant to the terms of the letter agreement executed by Michael Binder of Terra-Gen dated May 24, 2023 and rent is due from the date of initial occupancy. Company shall have the right to extend the Termination Date on a month-to-month basis for a period not to exceed eight (8) months subject to City Manager approval as set forth in the Easement Agreement by continuing to pay Easement Payments to Owner as provided in the preceding paragraph; provided that during such extended Term the Easement Payments shall be Five Thousand Dollars (\$5,000) per acre per month.

Prior to the disbursement of the Execution Payment, Owner shall provide a completed Request for Taxpayer Identification Number and Certification (Form W-9) to Company.

*[signatures on the following page]*

Very truly yours,

**COMPANY:**

**Western Natural Resources, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**ACCEPTED AND AGREED:**

**[ Property Owner]**

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_, 2023

## Attachment No. 1

### TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”) is executed to be effective as of \_\_\_\_\_, 2023 (the “Effective Date”), and is voluntarily entered into by and between **City of Beaumont**, a general law city (“Owner”), and **Western Natural Resources, LLC**, a Delaware limited liability company (“Company”), with reference to the following facts and objectives:

- A. Owner owns that certain parcel of land located in the City of Beaumont, County of Riverside, California, as more particularly described on Exhibit A attached hereto (the “Property”).
- B. Owner has agreed to give to Company, and Company has agreed to receive from Owner, a temporary construction easement with respect to the Property on the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Temporary Construction Easements. Owner hereby grants, conveys and confirms unto Company, its successors, and assigns, the following temporary construction easements (collectively, the “Easements”):

(a) A temporary easement on, over and across the area of the Property within the “Project Boundary” as provided on Exhibit B hereto (the “Easement Area”), to be enclosed and confined with a temporary fence as provided in Section 1(c) below, for the purpose of, among other things, staging, storage, preparation, assembly, deployment and transportation of machinery, equipment, improvements, vehicles, equipment and other property (including, but not limited to, transmission line poles, wires, cables, energy storage related equipment, cranes, heavy construction and/or transport vehicles and related equipment and property) and other uses in connection with construction on adjacent and nearby properties. The foregoing rights shall include rights to construct, maintain, improve or rebuild relocate fences, temporary structures (such as office and/or storage trailers), road access ways and other improvements, and to perform minor temporary earthmoving only to level and flatten the surface dirt (e.g., with rock infill), with no excavation or trenching to take place on the property and to make full use of its rights, under this Section 1(a) subject to compliance with Section 1(b).

(b) There shall be no environmentally hazardous substances, liquids, chemicals or materials of any nature stored on the Property by Company in violation of any applicable Environmental Laws. Any energy storage batteries on the Property shall be safely stored and elevated 3 feet off the ground. All vehicles, cranes, heavy construction and/or transport vehicles and any equipment which are motorized and operate with a combustion engine, must be properly maintained and inspected for oil leaks prior to being parked and stored on the Property; any vehicle which is observed to leak oil, transmission fluid, coolant, gasoline, or any other vehicle fluid shall not be permitted to enter on, through and across the Property. Failure to comply with this Section 1(b) shall be grounds for Owner requiring the prompt removal of such property and cleanup of the Property to its “current As-Is-As-Found Condition. Owner shall have the right to access and enter upon the storage/staging yard upon not less than 1 business day’s prior written notice, during regular business hours, for inspection and compliance with this Section 1(b).

As used herein, the term “Environmental Laws” includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the date of this Agreement together with their implementing regulations and guidelines as of the date of this Agreement, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials. As used herein, the term “Hazardous Materials” includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas-liquids, liquidated natural gas, or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), and any substance, material waste, pollutant or contaminate listed or defined as hazardous or toxins under any Environmental Law.

(c) Company is not entitled to and shall not use more than 4.5 acres of the Property for the Easement Area; and shall place a temporary fence around the Easement Area promptly following the commencement of the Term and such fence shall remain in place for the remainder of the Term so long as the Easements are being used by Company. Company is not entitled to drive on, store equipment, vehicles, cranes, heavy equipment, material on any portion of the Property, outside of the confined Easement Area.

(d) An easement, right, permission, and authority to trim, cut, clear or remove, from time to time and by any means, from and around the Property any and all obstructions now or identified in the future of whatsoever kind or character, with the prior approval of Owner (not to be unreasonably withheld, conditioned or delayed), which, in the Company’s judgment, may endanger the safety of, or otherwise interfere with Company’s exercise of the rights herein conveyed. For avoidance of doubt, Company may not remove the existing well, water tank, power line or trees on the Easement Area, but may remove brush and debris without Owner’s consent.

2. Term. The term of the Easements (the “Term”) shall commence on the Commencement Date and shall terminate on the Termination Date. For purposes of this Agreement, (A) “Commencement Date” means June \_\_\_\_, 2023 and (B) “Termination Date” means the earlier of the following: (x) the date that is ten (10) months after the Commencement Date, subject to extension as set forth below, or (y) upon written notice from Company to Owner electing to terminate this Agreement. The Easements and rights granted to Company under this Agreement are “*in gross*”, which means that they are an interest personal to Company and its successors and assignees and are not tied to any ownership by Company or its successors and assignees of any adjacent or other land.

(a) Company shall have the right to extend the Termination Date by eight (8) successive one (1) month periods (i.e., up to eight (8) total months of extensions) subject to Owner approval which may be provide by the City Manager.

3. Restoration and Damages; Required Phase I Report. Prior to the expiration of the Term, Company shall (a) remove all of its equipment, property, installations on, and remove any trash or debris resulting from Company’s activities from, the Property, and (b) restore the Property to its “As-Is-As-Found Condition” as of the Commencement Date so as to repair any damage thereto caused by Company. At Company’s expense, upon expiration of the Term, Company shall conduct a Phase I on the Easement Area, to determine if the Property has been environmentally contaminated by Company’s occupancy and use of the thereof and shall provide a copy of the same to Owner along with a reliance letter from the preparer. If Company fails to provide the Phase 1 to Owner within sixty days of the expiration of the term City may obtain a Phase 1 and Company shall reimburse the City from the cost thereof upon demand. Any environmental contamination resulting on the Property, as a result of Company’s use and occupancy thereof shall be remediated and cleaned by the Company, at the Company’s cost and expense.

4. INSURANCE Prior to entering the Property and during the term of this Agreement, Company and its subcontractors shall maintain insurance in conformance with the requirements set forth below. Company acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Company or its subcontractors in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to Owner. Without limiting COMPANY's indemnification of Owner, and prior to commencement of work, COMPANY shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to CITY:

General liability insurance. COMPANY shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. COMPANY shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the COMPANY arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella Coverage. COMPANY shall obtain and maintain an umbrella or excess liability insurance in excess of \$5,000,000 that will provide bodily injury, personal injury, completed operations and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;

Pay on behalf of wording as opposed to reimbursement;

Concurrency of effective dates with primary policies;

Policies shall "follow form" to the underlying primary policies; and

Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Workers' compensation insurance. COMPANY shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for COMPANY's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, COMPANY shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

COMPANY shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers. Company shall maintain on file with owner current Certificates of Insurance naming Owner as an additional insured at all time prior to entering the Property and at all times during the term of this Agreement.

COMPANY shall cause to be maintained during the course of construction Pollution liability insurance. Environmental Impairment Liability Insurance shall be written on a contractor's Pollution Liability form

or other form acceptable to Owner providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. Policy shall specifically provide for a duty to defend on the part of the insurer. The CITY, its officials, officers, agents, and employees, shall be included as insureds under the policy.

5. Indemnity. Company agrees, to the maximum extent permitted by law, to indemnify, defend and hold harmless Owner (the "Indemnified Party"), at Company's sole expense and with legal counsel acceptable to Owner) from and against any and all claims for bodily injury, death, damage to property, demands, damages (including consequential and incidental damages), losses, obligations, liabilities, debts, judgments, costs (including costs of suit, expenses, attorneys' fees, expert witness fees, investigative and repair costs), suit, actions, causes of actions of every nature, character, type and description, at law or in equity, which arise out of or are in any way connected with Company's use of the rights granted in the Easements. This indemnification, defense and hold harmless obligation shall not apply to losses, damages, claims, expenses and other liabilities or to preexisting conditions on the Property or those otherwise caused by any negligent or deliberate act or omission on the part of the Indemnified Party.

6. Exclusions for Company Liability. Notwithstanding anything to the contrary in this Agreement, Company shall not be responsible for (and shall have no obligation to pay Owner for any cost or liability in connection with) any indirect, consequential or punitive damages, or otherwise be responsible for any costs, expenses, damages, claims or liabilities to the extent related to the negligence or willful misconduct of Owner, its agents, employees, contractors, invitees or any other third party or any pre-existing condition related to the Property.

7. Payments to Owner and Default. Company agrees to pay Owner compensation for this Agreement provided in the separate Payment Letter executed concurrently herewith (the "Payment Letter"). In the event that the Company fails to pay any amount due under this Agreement or the Payment Letter or fails to maintain the insurance required by this Agreement, Owner may terminate this Agreement unless Contractor has cured such default within five (5) business days of receipt of written notice of such default. If Company breaches or defaults under any other provision of this Agreement and if Company has not cured such breach or default within fifteen days after receipt of written notice from Owner, Owner may terminate this Agreement.

8. Notices. All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) email or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service or if sent via registered or certified mail, (ii) upon transmission by email (confirmed delivery), and (iii) on the next business day if sent via an overnight delivery service, if sent to each party at the addresses set forth below.

Notice address for Owner:  
Elizabeth Gibbs, City Manager

City of Beaumont  
550 E. 6th Street  
Beaumont, CA 92223  
Email: egibbs@beaumontca.gov

Notice address for Company:  
Western Natural Resources, LLC  
11455 El Camino Real, Suite 160  
San Diego, CA 92130  
Attn: Vice President – Real Estate  
Email: kwagner@terragen.com

9. [Intentionally Omitted]

10. Governing Law / Venue. This Agreement shall be governed by and construed according to the laws of the State of California, and venue and jurisdiction shall be in the County in which the Property is located.

11. Intent to Contract and Sign by Electronic Means and Counterparts. Counterparts may be delivered by fax, electronic mail (including pdf or any electronic signature complying with the U.S. ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Civil Code §§ 1633.1, et seq.), or other transmission method; and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. All electronic signatures on this Agreement are adopted by the Parties with the intent to sign this Agreement electronically. This Agreement may be executed electronically in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. With respect to signatures delivered by fax or electronically, each Party shall deliver their original ink signature to the other Party within 30 days following the mutual execution of this Agreement, provided that the failure to deliver such original ink signatures shall not affect the validity of the electronic signatures on the Agreement that were delivered.

12. Miscellaneous. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, legal representatives, successors and assigns. Company shall have the right to permit any of its affiliates, its and their respective employees, agents, consultants, contractors and subcontractors and any party acting on behalf of or at the direction of any of the foregoing parties to use the Easements. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each of the parties hereto agrees (for no additional consideration) to perform all such acts (including but not limited to, executing and delivering such instruments and documents) as reasonably may be necessary to fully effectuate each and all of the purposes and intent of this Agreement. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the State of California. This Agreement (together with the Payment Letter) contains the entire agreement between the parties hereto with respect to the Easements and any prior agreements, discussions or understandings, written or oral, are superseded hereby and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by the authorized representatives of the parties hereto.

*[Balance of page intentionally left blank – signature pages follow]*

IN WITNESS WHEREOF, Owner and Company have executed this Temporary Construction Easement Agreement on the dates set forth in the acknowledgements below, but to be effective as of the Effective Date.

THIS AGREEMENT SHALL NOT BE RECORDED IN THE REAL PROPERTY RECORDS OF THE COUNTY OF RIVERSIDE.

**OWNER:**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 2023

**COMPANY:**

**Western Natural Resources, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 2023