



RESOLUTION NO. U-11320

1 A RESOLUTION related to granting a new 5-year Land Use Permit to DF
2 Holdings, LLC.

3
4 WHEREAS the City of Tacoma, Department of Public Utilities, Light
5 Division (dba "Tacoma Power") requests approval to grant a new five (5) year
6 Land Use Permit to DF Holdings, LLC, for its use of 49,012 square feet (1.12
7 acres), which includes the construction of a new 20-stall parking lot expansion
8 connecting to the south end of the existing improvements, of the Cushman
9 Transmission line right-of-way, located on the east side of Highway 16, south of
10 the Pioneer Way exit in Gig Harbor, WA in conjunction with the company's
11 adjacent commercial operations located at 6908 and 6820 Kimball Drive, and
12

13 WHEREAS the current permit expires June 21, 2022, and Tacoma
14 Power desires to grant a new 5-year Land Use Permit, and

15
16 WHEREAS the annual use fee will be \$36,170.86, with a 3% annual
17 escalator, which is based upon a market value analysis by Real Property
18 Services and approved by Tacoma Power, and

19
20 WHEREAS the permit form contains standard legal provisions, including
21 revocability with ninety (90) days' written notice, and indemnity and insurance
22 provisions to address liability, and

23
24 WHEREAS this matter is before the Board pursuant to Public Utility
25 Board Resolution No. U-10777, Section 7, which states, "in the event the
26 proposed use fee to be imposed exceeds \$25,000 annually, the underlying use



1 permit shall be brought before the Board for approval of the proposed use and
2 fee,” and

3 WHEREAS Tacoma Power has reviewed the proposed permit and has
4 determined the fees to be reasonable and fair; Now, therefore,
5

6 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

7 That the grant for a five (5) year Land Use Permit to DF Holdings, LLC is
8 approved, for a fee in the annual amount of \$36,170.86, with a 3% annual
9 escalator, for its use of 49,012 square feet (1.12 acres) of the Cushman
10 Transmission line right-of-way.
11

12 Approved as to form:

13 _____
14 */s/*
15 Chief Deputy City Attorney

Chair

Secretary

16 _____
17 Clerk

Adopted _____

26



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Tacoma Power Superintendent
Joe Wilson, Tacoma Power - T&D Section Manager
Dori Bishop, Sr. Real Estate Specialist, Real Property Services

MEETING DATE: May 11, 2022
DATE: April 26, 2022

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- | | |
|--|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion | <input type="checkbox"/> SD8 – Telecom |
| <input checked="" type="checkbox"/> SD2 – Financial Sustainability | <input checked="" type="checkbox"/> SD9 – Economic Development |
| <input type="checkbox"/> SD3 – Rates | <input type="checkbox"/> SD10 – Government Relations |
| <input type="checkbox"/> SD4 – Stakeholder Engagement | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations |
| <input type="checkbox"/> SD6 – Innovation | <input type="checkbox"/> SD13 – Customer Service |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning |

SUMMARY: Authorize the grant of a 5-year new Land Use Permit to DF Holdings, LLC for its use of 49,012 square feet (1.12 acres) of the Cushman Transmission line right-of-way located on the east side of Highway 16, south of the Pioneer Way exit in Gig Harbor, WA in conjunction with the company's adjacent commercial operations located at 6908 and 6820 Kimball Drive. This square footage includes the construction of a new 20-stall parking lot expansion connecting to the south end of the existing improvements.

BACKGROUND: DF Holdings, LLC's current Permit expires June 21, 2022 and Tacoma Power desires to grant a new 5-year Land Use Permit.

The annual use fee will be \$36,170.86, which is based upon fair market value, and includes a 3% annual escalator. The Permit contains standard legal provisions, including revocability with ninety (90) days' written notice, indemnity, and insurance provisions to address liability. The Land Use Permit was reviewed by the City Attorney's Office and approved by Tacoma Power management and Real Property Services.

Pursuant to Resolution U-10777, adopted May 20, 2015, Section 7, states *"in the event the proposed use fee to be imposed exceeds \$25,000 annually, the underlying use permit shall be brought before the Board for approval of the proposed use and fee"*.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: New Land Use Permit No. 2564, Resolution U-10777, Tacoma Power Permit No. 2400 (current permit expiring 6/21/22); Map of Permit Area

CONTACT: Primary: Dori Bishop, Senior Real Estate Specialist, ext 8873, dbishop@cityoftacoma.org
Supervisor: Patrick Sullivan, Real Estate Officer, ext 8979, PSullivan@cityoftacoma.org

MAP OF PERMIT AREA
DF HOLDINGS, LLC



WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2564**

Reference No.:	P2019-199/P2564
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	DF Holdings LLC, a Washington limited liability company
Legal Description:	Portion of the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M.
Tax Parcel No.(s):	Portion of 0221083025
County:	Pierce
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. 2400 recorded under Pierce County Auditor's File No. 201706230774
Permit Expiration Date:	June 22, 2027

CONTACT INFORMATION

LICENSEE:

Bill Driscoll
DF Holdings LLC
1145 Broadway Plaza, Suite 1500
Tacoma, WA 98402
(253) 272 - 8336

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into this June 22, 2022 ("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and DF Holdings LLC, a Washington limited liability company, hereinafter referred to as "Licensee."

RECITALS

A. Licensor owns, operates, and maintains the Premises defined below as part of and in relation to its utility operations.

B. Licensee desires to use a specified portion of said Premises for the use specified in this Permit.

C. Licensor is willing to grant permission to Licensee to access and use a portion of its real property strictly for the use specified in this Permit and issue Licensee a real property license to use said real property per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensor grants to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

THAT PORTION OF THAT CERTAIN 100 FOOT WIDE RIGHT-OF-WAY CONVEYED TO THE CITY OF TACOMA BY QUIT CLAIM DEED RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NO. 8205070163 FOR THE POTLATCH TRANSMISSION LINE WITHIN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., LYING SOUTHERLY OF THE SOUTHERLY MARGIN OF PIONEER WAY AND WESTERLY OF THE NORTHERLY LINE OF THE KIMBALL DRIVE PARK-AND-RIDE AS PERMITTED TO THE PIERCE COUNTY PUBLIC TRANSPORTATION BENEFIT AREA AUTHORITY CORPORATION, A MUNICIPAL CORPORATION, BY TACOMA POWER AGREEMENT NO. 2597 AND AMENDMENTS THERETO, RECORDED UNDER AUDITOR'S FILE NO. 9708280684, 200008020348, 200109070500 & 201702230362, ALL RECORDS OF PIERCE COUNTY, WASHINGTON.

(hereinafter "Premises")

Map of Premises herein described is Exhibit A.

B. Purpose.

i. Permitted Use. Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the express purpose of:

- Construction, operation, and maintenance of asphalted and landscaped secondary patron and employee (overflow) parking lots and drive-thru accesses for food and beverage retailers. Licensee's improvements include associated signs, lights, communication systems, irrigation systems, and storm drainage conveyance and infiltration infrastructure.

Licensee's improvements and uses shall be consistent with any approved plans on file with the Licensor and consistent with the construction requirements in Exhibit C "Construction Requirements" attached hereto and incorporated herein.

(hereinafter "Permitted Use")

ii. No Other Use Is Permitted. Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this Permit is a license in real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions.

Special Conditions are attached to this Permit as Exhibit B "Special Conditions".

2. PERMIT PERIOD

A. Term. The term of this Permit and the permission and license granted herein shall be effective for a five (5) year period beginning on the Effective Date.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensor no later than sixty (60) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensor may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the original Permit was granted and/or any permitted structures or improvements are not in compliance with the terms and conditions of this Permit.

C. Permit Re-Issuance. In the event this Permit is terminated and Licensor thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit C "Land Use Permit Fees" attached.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensor for any costs (including reasonable attorney's fees) that Licensor may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensor for all damages to Licensor's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensor:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,
- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

A. Maintenance Requirements. The Premises, including any improvements, structures, facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.

B. Assumption of Risk. Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensor's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.

C. Maintenance Notice. Licensee shall notify Licensor four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensor's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensor's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensor as soon as reasonably practical.

5. NO WARRANTY

Licensor does not warrant its authority to permit the above described Permitted Use and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. Exclusive Control. Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. Hold Harmless. Licensee agrees to hold Licensor harmless against any claims, demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. Other Permits. This Permit is nonexclusive and shall not prohibit Licensor from granting permits or licenses to the same Premises to others.

B. Other Agreements. The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. Regulation. Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. City of Tacoma Policy. Licensor and the City of Tacoma reserves the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and the City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses

under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. Notice of Termination. This Permit may be terminated by the Licensee or Licensor upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at PO Box 258, Mt. Angel, Oregon 97362 OR to Licensor at P.O. Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at PO Box 258, Mt. Angel, Oregon 97362 and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensor may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensor in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensor in a condition that is satisfactory to the Licensor. Satisfactory condition of the returned Premises shall be determined at the Licensor's sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

- A. Entire Agreement.** This Permit constitutes the entire agreement and understanding of the parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.
- B. Amendments.** Any amendments to this Permit must be in writing and executed by both Parties.
- C. Governing Law.** This Permit shall be construed in accordance with the laws of the State of Washington.
- D. Enforceability.** Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.
- E. Exhibits.** All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.
- F. Mutual Negotiation.** Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Licensor as the drafter of this Permit.
- G. Recording.** This Permit or a memorandum hereof shall, at the Licensor's sole discretion, be recorded in any public office.
- H. No Waiver.** Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- I. Section Headings.** The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

J. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C, 7, 12, 13, 15, 17.C and 17.D.

ACCEPTED:

Subject to the Terms and Conditions herein:

William L. Driscoll, Manager Date
DF Holdings, LLC

Authorized by Public Utility Board Resolution No. _____, adopted _____.

APPROVED:

Chris Robinson Date
Power Superintendent

ACCEPTED:

Joseph Wilson
T & D Manager

REVIEWED:

John Nierenberg
T & D Assistant Manager

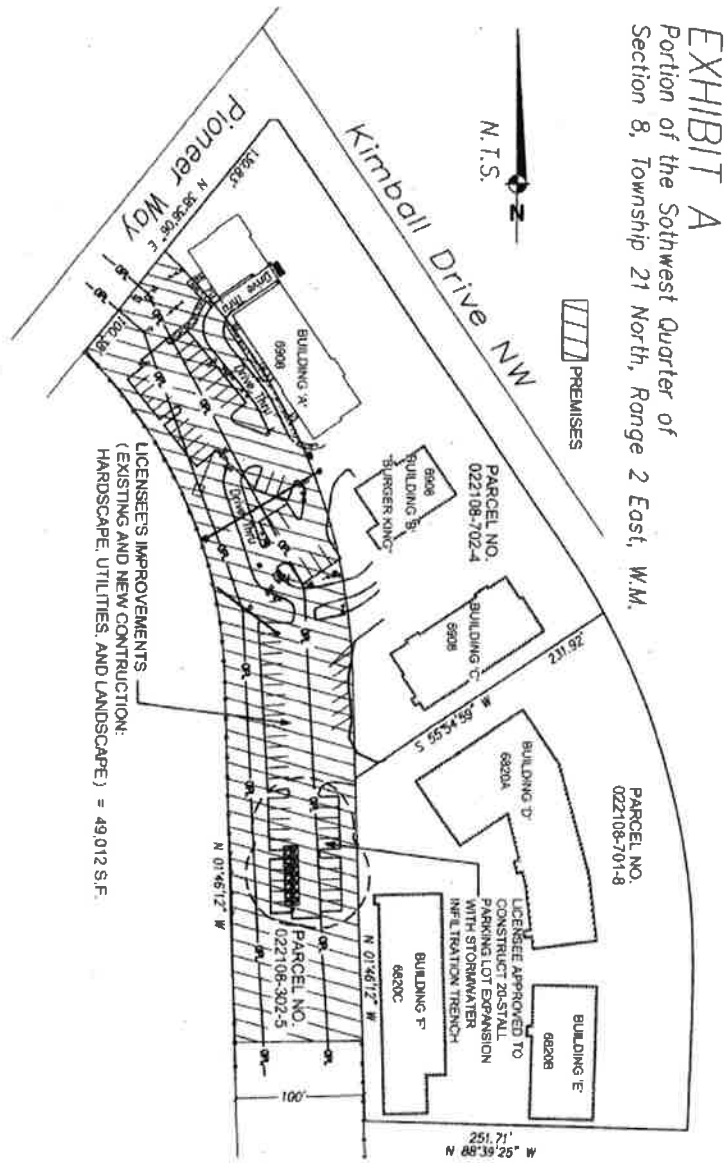
APPROVED AS TO FORM:

Deputy City Attorney

**City of Tacoma - Department of Public Utilities
Light Division Permit No. 2564**

Portion of the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M.,
in Pierce County, Washington.

MAP OF PREMISES



REAL PROPERTY SERVICES ILLUSTRATION

**Reference No.
P2019-199 DJB**

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

Exhibit A

**EXHIBIT B
SPECIAL CONDITIONS**

1. LICENSEE TO PAY ALL STORMWATER ASSESSMENTS.

Pursuant to Section 3.B of this Permit, Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use. Said responsibility includes, but is not limited to, payment of any stormwater assessments levied by any regulatory agency. Licensor will invoice Licensee for reimbursement of any stormwater assessments. Payment is due upon receipt of invoice and reimbursement shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

2. MAXIMUM IMPROVEMENT HEIGHT

No improvements authorized herein shall exceed twelve and one-half (12.5) in height.

3. ACCESS

Licensee shall at all times provide Licensor unconditional and unrestricted access over and across Licensee's abutting property to and from the Premises for any purposes deemed necessary by the Licensor.

4. LANDSCAPING/TREES

A. Licensee shall not install any landscaping or plant any trees or shrubs on the Premises that are not included on Licensor's approved tree list ("Right Tree in the Right Place") unless and until approved in writing by Licensor.

B. Licensor, at its sole discretion, may remove any and all vegetation, trees or landscaping and Licensee agrees to compensate Licensor for any costs associated with said removal.

C. Licensee shall keep the lawn within the Premises mowed at all times.

5. ECONOMIC LOSS

Licensor shall not be liable to the Licensee or to any third parties for any losses whatsoever that are associated with the termination of this Permit.

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the City of Tacoma, its officers and employees, from any and all claims or litigation arising in connection with reduced parking or drive thru area upon termination of this Permit.

6. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines

over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to all applicable safety codes and laws, including but not limited to, National Electric Safety Code, Washington Administrative Codes, WAC 296-24-960, "Working on or Near Energized Parts" and WAC 296-155-53408, "Power Line Safety", and Licensor's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular travel, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.

7. INSPECTION

A. Upon termination of the Permit/License, the Licensee agrees to meet with Licensor at the Premises to allow inspection of the property and ensure that all conditions of the Permit/Licensee have been fulfilled. Licensor at Real Property Services, P.O. Box 11007, Tacoma, Washington 98411 and (253) 396-3060.

B. The Licensee shall allow access to Licensor, its officers, employees and agents to enter the Licensee's property adjacent to the Premises for inspection and assessment of the Premises and that of the Licensor's use and operation of the Premises.

8. INSPECTIONS AND APPROVALS

A. Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans

are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

B. Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

9. ENVIRONMENTAL

A. Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.

B. Runoff from Licensee's Permitted Use shall not be directed onto Licensor's property. Licensee shall prevent pooling of water on the Premises and adjacent Licensor's lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.

C. Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensor's land or facilities.

D. No blasting shall be done on the Premises.

E. Licensor may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

10. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

11. INSURANCE

A. During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:

- i.** A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensor's property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensor as an additional insured.
- ii.** The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensor's property, a policy of Commercial Automobile Liability coverage, with the Licensor named as an additional insured.

B. For all insurance policies required by this section:

- i. Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensor reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.
- ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensor.
- iii. Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensor's prior written approval. To assure that the Licensor receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensor, notwithstanding any negligence or liability on the part of the Licensor.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensor, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensor to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

City of Tacoma
TPU - Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

F. Self-Insurance Provision. An entity that is wholly or partially self-insured may, with the approval of the City of Tacoma, provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein. By executing this License, Licensee agrees that it will pay any deductible or self-insured portions of the insurance or self-insurance provided.

**EXHIBIT C
CONSTRUCTION REQUIREMENTS**

1. RESPONSIBILITY FOR CONSTRUCTION COSTS

Licensee is solely responsible for all costs, expenses, and responsibilities for the construction, installation, operation and maintenance of any permitted structure(s) and/or improvement(s), including the expense of obtaining all necessary federal, state and local permits or approvals. Licensor shall not be responsible for any such costs, whether or not presently known or contemplated.

2. INSPECTIONS AND APPROVALS

Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

3. CONSTRUCTION REQUIREMENTS

A. Licensee shall design and construct facilities to minimize use of the Premises and ensure safe conditions.

B. Licensee shall maintain a safe distance between construction equipment and Licensor's towers and/or conductors in accordance with National Electric Safety Code, Washington Administrative Code, and Licensor's standards.

C. Licensee shall submit construction plans and drawings to Licensor for review and approval at least four (4) weeks prior to planned construction. Licensee shall not begin construction until all plans and drawings are approved by Licensor and written notice has been delivered to Licensee.

D. Upon request, Licensee shall submit a cathodic protection plan to Licensor for initial approval. The plan will show the proposed method to ensure stray currents do not affect Licensor's facilities and/or structures. In addition, the plan will include test stations and a testing plan for Licensor to ensure the system is operating as intended. The cost of all bonding, test stations, and other construction required to ensure protection of Licensor's facilities and/or structures shall be borne by Licensee. A final construction report from Licensee indicating "as built" construction conditions, photographs of cathodic protection and Licensor installations, and final electrical readings to ensure the system is operating as intended, shall be forwarded to Licensor upon project completion. Report and inspection shall be conducted by an approved testing or consulting firm knowledgeable in cathodic protection and construction management. Licensee shall ensure that the cathodic protection system operates effectively at all times and shall bear all costs associated with necessary repairs and modifications.

E. Inspection of the Premises may be performed by the Licensor before, during and after construction to ensure that Permit/License requirements, including restoration of the Licensor's property are met. If such inspections are required, Licensor will provide an inspection schedule and estimated fees. Licensee agrees to pay for all required inspections.

F. No blasting shall be done during construction.

G. The limits of any underground utilities shall be marked with four (4) inch diameter white PVC pipe extending two (2) feet above and below grade so they can be recognized. The four (4) inch diameter marks should be clearly labeled with the specific utility type and shall be placed every 100 feet along the utility route. Alternate marker types must be approved, in writing, by Licensor.

H. Licensee shall notify Licensor at Real Property Services, P.O. Box 11007, Tacoma, Washington 98411 and (253) 396-3060 at least four (4) weeks prior to the commencement of construction activities, and the parties agree that if construction or use conflicts exist, Licensor's schedule shall prevail.

I. All road crossing and all utility construction, including compaction and backfill, shall be done in accordance with the current edition of the standard specifications for Road, Bridge, and Municipal Construction as published by the Washington State Department of Transportation. All crossings of existing utility line roadways shall be compacted to 95 percent of maximum density using approved backfill materials in accordance with these specifications. All roadways must be left passable overnight for Licensor's vehicular access.

J. Licensee warrants that no hazardous substances, toxic waste, or other toxic substance will be produced, disposed of or kept on the Premises which, if found on the property, would subject Licensor to any damages, penalty or liability under any applicable local, state or federal law or regulation. Licensee shall indemnify and hold harmless Licensor with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of such substances on the Premises, except for such substances as may be placed on the Premises by Licensor.

K. Upon completion of construction activities, Licensee will mulch and seed the Premises disturbed by Licensee's activities in a manner consistent with and approved by Licensor. If required at the discretion of Licensor, vegetation will be monitored for a two (2) year period to insure successful establishment. All costs associated with the seeding, fertilizing, monitoring and re-establishment shall be the responsibility of Licensee.

4. OWNERSHIP OF IMPROVEMENTS

The Licensee agrees and covenants that any improvements and/or structures that the Licensor permits to be installed by said Licensee or its agents on the Premises shall NOT belong to the Licensor upon the termination (or expiration) of this Permit/License. Said improvements shall be owned by and be the sole responsibility of the Licensee and/or Licensee's successors and assigns.

**EXHIBIT D
LAND USE PERMIT FEES**

1. FEES

A. Processing / Administrative Fees. Licensee shall pay the sum of FIVE HUNDRED DOLLARS (\$500.00) for Permit processing and administration.

B. Use Fee. A Use Fee in the sum of THIRTY-SIX THOUSAND ONE HUNDRED SEVENTY DOLLARS AND EIGHTY-SIX CENTS (\$36,170.86) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter for as long as the Permit shall remain in effect. Licensor will provide an invoice for the property Use Fee due each year.

C. Payment. Payment of all Fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

2. CHARGE FOR LATE PAYMENTS

A. Licensee hereby acknowledges that the late payment of any Use Fee, or other sums due hereunder, will cause Licensor to incur costs not contemplated by this Permit/License, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid within 30 days of the initial invoice date, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to Licensor.

B. Acceptance by Licensor of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder or by any provision of law.

3. FEE ADJUSTMENTS

The Use Fee specified in paragraph 1 above shall automatically increase by 3% per year on the anniversary of the Effective Date for as long as the Permit shall remain in effect.



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AUDITOR, Pierce County, WASHINGTON

WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2400

Reference No.:	P2015-172
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	DF Holdings LLC, a Washington limited liability company
Legal Description:	Portion of the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M.
Tax Parcel No.(s):	0221083025
County:	Pierce
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. 2299 recorded under Pierce County Auditor's File No. 201509230624
Permit Expiration Date:	June 21, 2022

CONTACT INFORMATION

LICENSEE:

Bill Driscoll
DF Holdings LLC
P.O. Box 1278
Tacoma, WA 98401
(253) 272-8336

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into this 21st day of June, 2017
("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC

UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and DF Holdings LLC, a Washington limited liability company, hereinafter referred to as "Licensee."

RECITALS

A. Licensor owns, operates, and maintains the Premises defined below as part of and in relation to its utility operations.

B. Licensee desires to use a specified portion of said Premises for the use specified in this Permit.

C. Licensor is willing to grant permission to Licensee to access and use a portion of its real property strictly for the use specified in this Permit and issue Licensee a real property license to use said real property per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensor grants to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

That portion of that certain 100 foot wide right-of-way conveyed to the City of Tacoma by Quit Claim Deed recorded under Pierce County Auditor's File No. 8205070163 for the Potlatch transmission line within the Southwest Quarter of Section 8, Township 21 North, Range 2 East, W.M., lying Southerly of the Southerly margin of Pioneer Way and Northerly of the Northerly line of the Kimball Drive Park-and-Ride as permitted to the Pierce County Public Transportation Benefit Area Authority Corporation, a municipal corporation, by Tacoma Power Agreement No. 2597 and amendments thereto, recorded under Auditor's File No. 9708280684, 200008020348, 200109070500 & 201702230362, all records of Pierce County, Washington.

(hereinafter "Premises")

B. Purpose.

i. Permitted Use. Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the express purpose of:

Operating and maintaining three asphalt and landscaped secondary patron and employee (overflow) parking lots and limited associated irrigation system and drainage conveyance infrastructure (storage and treatment systems are not allowed).

And

Operating and maintaining a landscaped fast food restaurant drive thru access, a landscaped coffee shop drive thru access and limited associated signs, lights, communication system, irrigation system and drainage conveyance infrastructure (storage and treatment systems are not allowed).

And

Landscaping and vegetation control on those undeveloped portions of the Premises.

Licensee shall design and construct the permitted facilities or improvements in accordance with the construction requirements in Exhibit C "Construction Requirements" attached hereto and incorporated herein.

(hereinafter "Permitted Use")

Map of Premises is attached to this Permit as Exhibit A.

ii. No Other Use Is Permitted. Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this Permit is a license in real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions.

Special Conditions are attached to this Permit as Exhibit B "Special Conditions"

2. PERMIT PERIOD

A. Term. This Permit and the license granted herein shall be effective for five (5) years commencing on the Effective Date.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensor no later than sixty (60) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensor may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the original Permit was granted and/or any permitted structures or improvements are not in

compliance with the terms and conditions of this Permit.

C. Permit Re-issuance. In the event this Permit is terminated and Licensor thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit D "Land Use Permit Fees" attached.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensor for any costs (including reasonable attorney's fees) that Licensor may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensor for all damages to Licensor's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensor:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,
- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

A. Maintenance Requirements. The Premises, including any improvements, structures, facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.

B. Assumption of Risk. Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensor's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.

C. Maintenance Notice. Licensee shall notify Licensor four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensor's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensor's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensor as soon as reasonably practical.

5. NO WARRANTY

Licensor does not warrant its authority to permit the above described Permitted Use and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. Exclusive Control. Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. Hold Harmless. Licensee agrees to hold Licensor harmless against any claims, demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. Other Permits. This Permit is nonexclusive and shall not prohibit Licensor from granting permits or licenses to the same Premises to others.

B. Other Agreements. The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. Regulation. Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. City of Tacoma Policy. Licensor and the City of Tacoma reserves the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel, contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and

the City of Tacoma agrees to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. Notice of Termination. This Permit may be terminated by the Licensee or Licensor upon ninety (90) days written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at P.O. Box 1278, Tacoma, WA 98401, OR to Licensor at P.O. Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at P.O. Box 1278, Tacoma, WA 98401, and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensor may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises

and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensor in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensor in a condition that is satisfactory to the Licensor. Satisfactory condition of the returned Premises shall be determined at the Licensor's sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

A. Entire Agreement. This Permit constitutes the entire agreement and understanding of the parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

B. Amendments. Any amendments to this Permit must be in writing and executed by both Parties.

C. Governing Law. This Permit shall be construed in accordance with the laws of the State of Washington.

D. Enforceability. Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

E. Exhibits. All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

F. Mutual Negotiation. Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Licensor as the drafter of this Permit.

G. Recording. This Permit or a memorandum hereof shall, at the Licensor's sole discretion, be recorded in any public office.

H. No Waiver. Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

I. Section Headings. The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

J. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C, 7, 12, 13, 15, 17.C and 17D.

IN WITNESS WHEREOF, I have executed this instrument at Pierce County, State of Washington, on behalf of DF Holdings LLC, said company having caused its company name to be hereunto subscribed and affixed and these presents to be executed by its Member thereunto duly authorized, this 9th day of June, 2017.

DF Holdings LLC

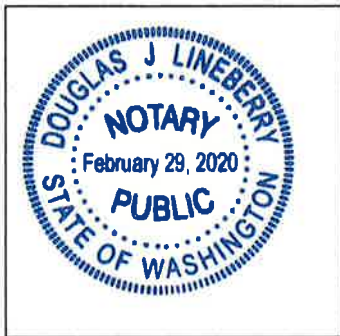
William L Driscoll
William Driscoll, Member

STATE OF Washington)
COUNTY OF Pierce) SS

I certify that I know or have satisfactory evidence that William Driscoll is the person who appeared before me, and said person acknowledged that he signed this instrument, and on oath stated that he is authorized to execute the instrument and acknowledged it as the Members of DF Holdings LLC to be the free and voluntary act and deed of such company for the uses and purposes mentioned in the instrument.

Dated this 9th day of June, 2017

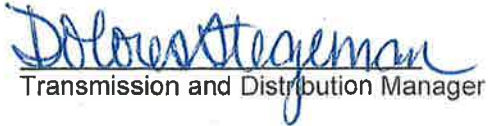
Place Notary Seal in Box




Douglas Lineberry
Notary Public in and for the State
Of Washington
Residing in City Harbor
My Commission Expires 2/29/2020

Dated this 21st day of June, 2017.

Approved:


Transmission and Distribution Manager

Form Approved:


Deputy City Attorney

Reviewed

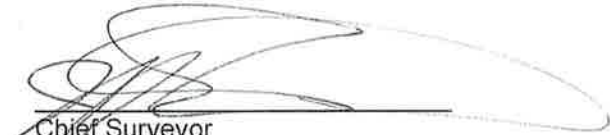
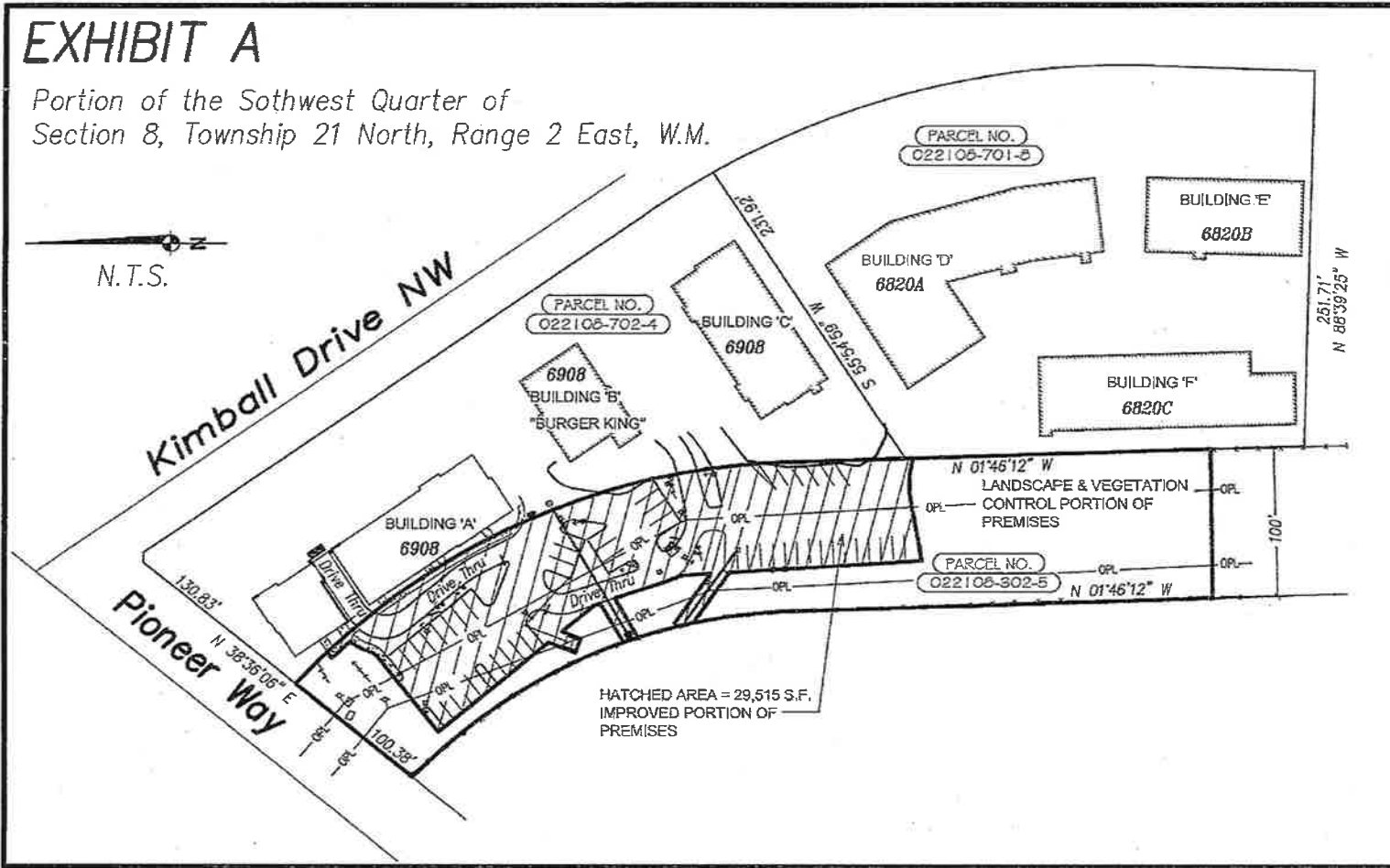

Chief Surveyor

EXHIBIT A

Portion of the Southwest Quarter of
Section 8, Township 21 North, Range 2 East, W.M.



**EXHIBIT B
SPECIAL CONDITIONS**

1. MAXIMUM IMPROVEMENT HEIGHT

No improvements authorized herein shall exceed twelve and one-half (12.5) in height.

2. ACCESS

Licensee shall at all times provide Licensor unconditional and unrestricted access over and across Licensee's abutting property to and from the Premises for any purposes deemed necessary by the Licensor.

3. LANDSCAPING/TREES

A. Licensee shall not install any landscaping or plant any trees or shrubs on the Premises that are not included on Licensor's approved tree list ("Right Tree in the Right Place") unless and until approved in writing by Licensor.

B. Licensor, at its sole discretion, may remove any and all vegetation, trees or landscaping and Licensee agrees to compensate Licensor for any costs associated with said removal.

C. Licensee shall keep the lawn within the Premises mowed at all times.

3. ECONOMIC LOSS

Licensor shall not be liable to the Licensee or to any third parties for any losses whatsoever that are associated with the termination of this Permit.

To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the City of Tacoma, its officers and employees, from any and all claims or litigation arising in connection with reduced parking or drive thru area upon termination of this Permit.

4. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to all applicable safety codes and laws, including but not limited to, National Electric Safety Code, Washington Administrative Codes, WAC 296-24-960, "Working on or Near Energized Parts" and WAC 296-155-53408, "Power Line Safety", and Tacoma's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's

wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular travel, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.

5. INSPECTION

A. Upon termination of the Permit/License, the Licensee agrees to meet with Licensor at the Premises to allow inspection of the property and ensure that all conditions of the Permit/Licensee have been fulfilled. Licensor at Real Property Services, P.O. Box 11007, Tacoma, Washington 98411 and (253) 396-3060.

B. The Licensee shall allow access to Licensor, its officers, employees and agents to enter the Licensee's property adjacent to the Premises for inspection and assessment of the Premises and that of the Licensor's use and operation of the Premises.

6. INSPECTIONS AND APPROVALS

A. Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

B. Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

7. ENVIRONMENTAL

- A. Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.
- B. Runoff from Licensee's Permitted Use shall not be directed onto Licensor's property. Licensee shall prevent pooling of water on the Premises and adjacent Licensor's lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.
- C. Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensor's land or facilities.
- D. No blasting shall be done on the Premises.
- E. Licensor may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

8. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

9. INSURANCE

- A. During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:
 - i. A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensor's property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensor as an additional insured.
 - ii. The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensor's property, a policy of Commercial Automobile Liability coverage, with the Licensor named as an additional insured.
- B. For all insurance policies required by this section:
 - i. Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensor reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.
 - ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensor.

- iii. Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensor's prior written approval. To assure that the Licensor receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensor, notwithstanding any negligence or liability on the part of the Licensor.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensor, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensor to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

F. Self-Insurance Provision. An entity that is wholly or partially self-insured may, with the approval of the City of Tacoma, provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein. By executing this License, Licensee agrees that it will pay any deductible or self-insured portions of the insurance or self-insurance provided.

**EXHIBIT C
CONSTRUCTION REQUIREMENTS**

1. RESPONSIBILITY FOR CONSTRUCTION COSTS

Licensee is solely responsible for all costs, expenses, and responsibilities for the construction, installation, operation and maintenance of any permitted structure(s) and/or improvement(s), including the expense of obtaining all necessary federal, state and local permits or approvals. Licensor shall not be responsible for any such costs, whether or not presently known or contemplated.

2. INSPECTIONS AND APPROVALS

Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards.

Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

3. CONSTRUCTION REQUIREMENTS

- A.** Licensee shall design and construct facilities to minimize use of the Premises and ensure safe conditions.
- B.** Licensee shall maintain a safe distance between construction equipment and Licensor's towers and/or conductors in accordance with National Electric Safety Code, Washington Administrative Code, and Licensor's standards.
- C.** Licensee shall submit construction plans and drawings to Licensor for review and approval at least four (4) weeks prior to planned construction. Licensee shall not begin construction until all plans and drawings are approved by Licensor and written notice has been delivered to Licensee.
- D.** Upon request, Licensee shall submit a cathodic protection plan to Licensor for initial approval. The plan will show the proposed method to ensure stray currents do not affect Licensor's facilities and/or structures. In addition, the plan will include test stations and a testing plan for Licensor to ensure the system is operating as intended. The cost of all bonding, test stations, and other construction required to ensure protection of Licensor's facilities and/or structures shall be borne by Licensee. A final construction report from Licensee indicating "as built" construction conditions, photographs of cathodic protection and Licensor installations, and final electrical readings to ensure the system is operating as intended, shall be forwarded to Licensor upon project completion. Report and inspection shall be conducted by an approved testing or consulting firm knowledgeable in cathodic protection and construction management. Licensee shall ensure that the cathodic protection system operates effectively at all times and shall bear all costs associated with necessary repairs and modifications.

E. Inspection of the Premises may be performed by the Licensor before, during and after construction to ensure that Permit/License requirements, including restoration of the Licensor's property are met. If such inspections are required, Licensor will provide an inspection schedule and estimated fees. Licensee agrees to pay for all required inspections.

F. No blasting shall be done during construction.

G. The limits of any underground utilities shall be marked with four (4) inch diameter white PVC pipe extending two (2) feet above and below grade so they can be recognized. The four (4) inch diameter marks should be clearly labeled with the specific utility type and shall be placed every 100 feet along the utility route. Alternate marker types must be approved, in writing, by Licensor.

H. Licensee shall notify Licensor at Real Property Services, P.O. Box 11007, Tacoma, Washington 98411 and (253) 396-3060 at least four (4) weeks prior to the commencement of construction activities, and the parties agree that if construction or use conflicts exist, Licensor's schedule shall prevail.

I. All road crossing and all utility construction, including compaction and backfill, shall be done in accordance with the current edition of the standard specifications for Road, Bridge, and Municipal Construction as published by the Washington State Department of Transportation. All crossings of existing utility line roadways shall be compacted to 95 percent of maximum density using approved backfill materials in accordance with these specifications. All roadways must be left passable overnight for Licensor's vehicular access.

J. Licensee warrants that no hazardous substances, toxic waste, or other toxic substance will be produced, disposed of or kept on the Premises which, if found on the property, would subject Licensor to any damages, penalty or liability under any applicable local, state or federal law or regulation. Licensee shall indemnify and hold harmless Licensor with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of such substances on the Premises, except for such substances as may be placed on the Premises by Licensor.

K. Upon completion of construction activities, Licensee will mulch and seed the Premises disturbed by Licensee's activities in a manner consistent with and approved by Licensor. If required at the discretion of Licensor, vegetation will be monitored for a two (2) year period to insure successful establishment. All costs associated with the seeding, fertilizing, monitoring and re-establishment shall be the responsibility of Licensee.

4. OWNERSHIP OF IMPROVEMENTS

The Licensee agrees and covenants that any improvements and/or structures that the Licensor permits to be installed by said Licensee or its agents on the Premises shall NOT belong to the Licensor upon the termination (or expiration) of this Permit/License. Said improvements shall be owned by and be the sole responsibility of the Licensee and/or Licensee's successors and assigns.

**EXHIBIT D
PERMIT/LICENSE FEES**

1. FEES

A. Processing / Administrative Fees. Licensee shall pay the sum of FIVE HUNDRED DOLLARS (\$500.00) for Permit processing and administration.

B. Use Fee. A Use Fee in the sum of ONE THOUSAND FIVE HUNDRED SIXTY-FIVE DOLLARS AND FIFTY-EIGHT CENTS (\$1,565.58) per month shall be payable by Licensee to Licensor in advance on or before the Effective Date and each month thereafter for as long as the Permit shall remain in effect. Licensor will provide an invoice for the property Use Fee due each year.

C. Payment. Payment of all Fees shall be made payable to City of Tacoma Treasurer and delivered to City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, Washington 98411, or such other address as the Department of Public Utilities may hereafter designate.

2. CHARGE FOR LATE PAYMENTS

A. Licensee hereby acknowledges that the late payment of any Use Fee, or other sums due hereunder, will cause Licensor to incur costs not contemplated by this Permit/License, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment of fees due hereunder is not paid within 30 days of the initial invoice date, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to Licensor.

B. Acceptance by Licensor of such late charges and/or any portion of the overdue payment shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder or by any provision of law.

3. FEE ADJUSTMENTS

The Use Fee specified in paragraph 1 above shall automatically increase by 3% per year on the anniversary of the Effective Date for as long as the Permit shall remain in effect.



RESOLUTION NO. U-10777

1
2 A RESOLUTION to provide policy guidance and delegate authority to the
3 Director of Utilities to approve use fees associated with the use of real
4 property owned or controlled by the Department of Public Utilities
5 ("TPU").

6 WHEREAS the Tacoma City Charter § 4.10 grants to the Public Utility
7 Board ("Board") the authority to "construct, condemn and purchase, acquire,
8 add to, maintain, and operate the electric, water, and belt line railway utility
9 systems[.]", and

10 WHEREAS the Board may delegate its authority to the Director of
11 Utilities ("Director") subject only to the limitations imposed by the City Charter
12 and state law, and

13 WHEREAS, through its adoption of U-10604 on February 27, 2013, the
14 Board delegated to the Director the authority to: (1) adopt a policy describing
15 the acceptable secondary uses of TPU owned or controlled real property
16 ("Policy"), and (2) upon adoption of the Policy, the Director and his/her
17 designees are given the right to approve land use permits for uses of TPU
18 owned or controlled real property in accordance with such Policy, and

19 WHEREAS fees associated with the permitted use of TPU owned or
20 controlled real property ("Permit Fees") have historically been administered by
21 the Department of Public Works, Real Property Services Section, providing real
22 property services to TPU's operating divisions ("TPU Real Property Services"),
23 and
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WHEREAS the current Permit Fees have generally been set to recover costs associated with processing, issuing, and administering the land use permits from the party using TPU real property; however, in instances where the proposed uses may involve significant impacts to TPU real property, are complex to administer, or are for commercial gain, TPU Real Property Services may recommend that the fair market value be used to determine the appropriate consideration to be paid to TPU for such use of TPU Real Property, and

WHEREAS, because there are a number of significant, complex, and commercial use requests of TPU real property, it is recommended that the Board provide policy guidance on the establishment of Permit Fees and recognize the authority of the Director to approve such Permit Fees within said policy guidance; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. In conjunction with the authority delegated by the adoption of U-10604, the Director of Utilities is authorized to adopt fee schedules associated with the permitted uses of TPU owned or controlled real property ("Schedules") and to amend such Schedules as needed.

Sec. 2. The fees charged under such Schedules shall be designed to:
(a) recover the general costs associated with processing, issuing and administering of land use permits and minimize the impact of such costs to TPU and the City for processing, issuing, and administering said land use permits, and



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(b) recover the fair market value associated with proposed uses that significantly impact real property, involve complex uses, or is done for commercial gain, and

(c) recover other identified costs or burdens associated with allowing use of TPU owned or controlled real property.

Sec. 3. The fees charged may take into account the benefits provided to TPU by the user (including, but not limited to: maintenance and upkeep, security, and improvements), which may be the basis for reducing or waiving fees.

Sec. 4. All use fees established shall have a documented rational basis, and shall not grant an undue or unreasonable preference or advantage to any person, corporation, or locality.

Sec. 5. All proposed use fees shall be provided to the operating divisions for review and input prior to adoption.

Sec. 6. All use fees shall be published and made available to the public.

Sec. 7. Notwithstanding the delegation of the authority approved pursuant to Board Resolution U-10604, in the event the proposed use fee to be imposed exceeds \$25,000 annually, the underlying use permit shall be brought before the Board for approval of the proposed use and fee.

Sec. 8. The Director shall cause to be prepared, and submitted to the Board during the month of January, an annual report summarizing the number



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of use applications filed, use permits issued, use permits renewed, and use fees collected.

Sec. 9. All prior acts performed by staff in conformity with this delegation are hereby ratified and approved.

Approved as to form and legality:

William C. Joshe
Chief Deputy City Attorney

Charlene Jacobs
Clerk

[Signature]
Fax Chair

[Signature]
Secretary

Adopted 5-20-15

May 13, 2015

REQUEST FOR RESOLUTION

Date: May 1, 2015

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion Instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Provide policy guidance and delegate authority to the Director to approve fee schedules for land use permits for Utility owned real property.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Provide policy guidance on use fees and delegate authority to the Director to approve use fee schedules associated with the secondary use of real property owned or controlled by TPU as authorized in U-10604.

3. Summarized reason for resolution:

Pursuant to U-10604 adopted February 27, 2013, the Board delegated to the Director the authority to adopt a policy describing the acceptable secondary uses of TPU owned or controlled real property, and upon adoption of the policy, gave the Director and his/her designees the right to approve limited revocable permits for uses of said property. The fees associated with the permitted uses have historically been established via a combination of published schedules, staff analysis, and/or fair market value of the real property. Most of the charges are administered by the Department of Public Works, Real Property Section ("RPS"), providing services to TPU's operating divisions.

The fees have generally been set to recover costs associated with processing, issuing, and administering the permits; however, in certain instances, where the proposed uses may significantly impact TPU real property, and they are complex to administer, or are for commercial gain, a greater fee is charged that takes into consideration the fair market value associated with the use of the real property. Recently, RPS has been working with TPU's operating divisions to update the existing permits, and this effort has identified a number of significant, complex, and commercial uses. Further, there is an ongoing effort to establish consistent parameters for determining appropriate land use fees. Therefore, it is recommended that the Board provide policy guidance on the establishment of permit fees and recognize the authority of the Director to approve such permit fees within said policy guidance.

4. Attachments:

5. Funds available Proposed action has no budgetary impact

6. Deviations requiring special waivers: None

Originated by:

Requested by:

Approved:

TPU BOARD REQUESTED

Section Head

Division Head

Director of Utilities