



RESOLUTION NO. U-11508

1 A RESOLUTION related to the Department of Public Utilities, Light Division;
2 requesting approval to grant a ten-year secondary use permit to WR
Holdings, LLC, and Purdy Topsoil & Gravel, LLC.

3 WHEREAS since 1989, the Department of Public Utilities, Light Division
4 (“Tacoma Power”) has agreed via permit to allow the operators of Purdy Topsoil
5 & Gravel to use, as a secondary purpose, a portion of its Potlatch transmission
6 line right-of-way located in Purdy, WA just north of the Gig Harbor city limits in
7 conjunction with the operators’ business operations, and

9 WHEREAS the current amended permit, originally approved by Public
10 Utility Board Resolution No. U-11134, adopted January 8, 2020, expires
11 February 28, 2025, or upon execution of a new permit, whichever is earlier, and
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13 WHEREAS Tacoma Power desires to grant a new secondary use permit
14 to the operators of Purdy Topsoil & Gravel, WR Holdings, LLC and Purdy
15 Topsoil & Gravel, LLC, for a portion of Tacoma Power’s Potlatch transmission
16 line right-of-way located in Purdy, WA for an additional ten (10) year term, and
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18 WHEREAS the annual use fee will be \$38,256.00, which is based upon a
19 market value analysis performed by Real Property Service and approved by
20 Tacoma Power, and

21 WHEREAS the permit also requires a 3% annual escalator of the annual
22 use fee, together with a market-based fee adjustment after the first five (5)
23 years of the permit term to ensure Tacoma Power continues to receive fair
24 market value, and
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WHEREAS the permit form contains standard secondary use limitations and other provisions that include revocability with ninety (90) days' written notice by Tacoma Power, and indemnity and insurance requirements to address liability, and

WHEREAS pursuant to Public Utility Board Resolution No. 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", Now, therefore,

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

That the grant of a ten (10) year use permit to WR Holdings, LLC and Purdy Topsoil & Gravel, LLC is approved for the secondary use of 165,000 feet (3.78 acres) of the Potlatch transmission line right-of-way, for a fee in the annual amount of \$38,256, including 3% annual fee escalators and a fair market value adjustment after five years.

Approved as to form: _____
Chair

Secretary

Adopted _____
Clerk



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Tacoma Power Superintendent
Joseph Wilson, Tacoma Power, T&D Section Manager
Dori Bishop, Sr. Real Estate Specialist, Real Property Services
MEETING DATE: February 12, 2025
DATE: January 23, 2025

GUIDING PRINCIPLE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- | | |
|--|--|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input checked="" type="checkbox"/> GP2 – Financial Sustainability | <input type="checkbox"/> GP9 – Economic Development |
| <input type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP5 – Environmental Sustainability | <input type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP14 – Resource Planning |
| <input type="checkbox"/> GP7 – Reliability & Resiliency | |

SUMMARY: Tacoma Power requests your approval to grant a ten (10) year land use permit to WR Holdings LLC and Purdy Topsoil & Gravel, LLC for their use of 165,000 square feet (3.78 acres) of the Potlatch transmission line right-of-way located in Purdy, WA in conjunction with its business operation, Purdy Topsoil & Gravel, which sells landscaping and construction materials to the public.

BACKGROUND: Since 1989, for a fee, Tacoma Power has permitted the operators of Purdy Topsoil & Gravel, to use a portion of its Potlatch transmission line right-of-way located in Purdy, WA (just north of Gig Harbor city limits) in conjunction with its business operation. The current permit, as amended, originally approved by Public Utility Board Resolution U-11134 adopted January 8, 2020, expires February 28, 2025, or upon execution of the new permit whichever is earlier. Tacoma Power desires to grant a new permit for an additional ten (10) year term.

The annual use fee will be \$38,256 with 3% annual escalators, which is based upon a market value analysis performed by Real Property Services and approved by Tacoma Power. The Permit will require a fee adjustment after the first five (5) years of the Permit term to ensure Tacoma Power continues to receive fair market value. The permit form 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: Tacoma Power Permit No. 2640 (new proposed permit); Tacoma Power Permit No. 2485 and its Amendment No. 1 (current permit expires 2/28/2025 or upon execution of the new permit whichever is earlier); Resolution U-11134; Resolution U-10777; Location Map

CONTACT:

Primary Contact: Dori Bishop, Sr. Real Estate Specialist, Ext 8873, dbishop@cityoftacoma.org

Supervisor's Name: Patrick Sullivan, Sr. Real Property Officer, Ext 8979, psullivan@cityoftacoma.org

Presenter (if different from primary contact): N/A



RESOLUTION NO. U-11134

1 A RESOLUTION related to granting a land use permit to WR Holdings, LLC
2 and Purdy Topsoil & Gravel, LLC.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division (dba "Tacoma Power") requests approval to grant a standard form five
5 (5) year land use permit to WR Holdings, LLC, and Purdy Topsoil & Gravel, LLC
6 for their use of 165,000 square feet (3.78 acres) of the Potlatch transmission
7 right-of-way located in Purdy, WA, in conjunction with its business operation,
8 Purdy Topsoil & Gravel, which sells landscaping and construction materials to
9 the public, and
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11 WHEREAS since 1989, for a fee, Tacoma Power has permitted the
12 operators of Purdy Topsoil & Gravel, to use a portion of its Potlatch
13 transmission right-of-way located in Purdy, WA, in conjunction with its business
14 operation, and
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16 WHEREAS the current permit expires January 9, 2020, and Tacoma
17 Power desires to grant a new standard form permit for an additional five (5)
18 years, and
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20 WHEREAS the annual use fee will be \$33,000, with 3% escalators,
21 which is based upon a market value analysis by Real Property Services and
22 approved by Tacoma Power, and
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24 WHEREAS the permit form contains standard legal provisions, including
25 revocability with ninety (90) days' written notice, and indemnity and insurance
26 provisions to address liability, and



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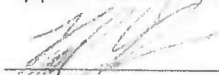
WHEREAS this matter is before the Board pursuant to Public Utility Board Resolution No. U-10777, Section 7, which states, "in the event the proposed use fee to be imposed exceeds \$25,000 annually, the underlying use permit shall be brought before the Board for approval of the proposed use and fee," and

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

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

That the grant for a five (5) year land use permit to WR Holdings, LLC and Purdy Topsoil & Gravel, LLC is approved, for a fee in the annual amount of \$33,000, with 3% escalators, for their use of 165,000 feet (3.78 acres) of the Potlatch transmission line right-of-way.

Approved as to form:



Chief Deputy City Attorney



Clerk



Chair



Secretary

Adopted 1-8-2020



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
("TPU").

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

9
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
20 WHEREAS fees associated with the permitted use of TPU owned or
21 controlled real property ("Permit Fees") have historically been administered by
22 the Department of Public Works, Real Property Services Section, providing real
23 property services to TPU's operating divisions ("TPU Real Property Services"),
24 and
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2 WHEREAS the current Permit Fees have generally been set to recover
3 costs associated with processing, issuing, and administering the land use
4 permits from the party using TPU real property; however, in instances where
5 the proposed uses may involve significant impacts to TPU real property, are
6 complex to administer, or are for commercial gain, TPU Real Property Services
7 may recommend that the fair market value be used to determine the
8 appropriate consideration to be paid to TPU for such use of TPU Real Property,
9 and
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11 WHEREAS, because there are a number of significant, complex, and
12 commercial use requests of TPU real property, it is recommended that the
13 Board provide policy guidance on the establishment of Permit Fees and
14 recognize the authority of the Director to approve such Permit Fees within said
15 policy guidance; Now, therefore,
16

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

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

22 Sec. 2. The fees charged under such Schedules shall be designed to:

23 (a) recover the general costs associated with processing, issuing
24 and administering of land use permits and minimize the impact of such
25 costs to TPU and the City for processing, issuing, and administering said
26 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. Foshe
Chief Deputy City Attorney

Charlene Judy
Clerk

[Signature]
Ex. 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:

TPU BOARD REQUESTED

Section Head

Requested by:

Division Head

Approved:

Director of Utilities

WHEN RECORDED RETURN TO:

Tacoma Public Utilities
Real Property Services
P.O. Box 11007 • Tacoma, WA 98411

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. 2640**

Reference No.:	P2024-154/P2640
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	WR Holdings, LLC and Purdy Topsoil & Gravel, LLC
Legal Description:	Portion of the West half of the Southeast Quarter of Section 24, Township 22 North, Range 1 East, W.M.
Tax Parcel No.(s):	Portion of 0122244011
County:	Pierce
Permit Expiration Date:	
Supersedes:	This Permit supersedes Tacoma Power Permit No. 2485 recorded under Auditor's File No. 202002040025 and Amendment No.1 to Tacoma Power Permit No. 2485 dated January 10, 2025

CONTACT AND NOTIFICATION INFORMATION

LICENSEE:

David G. Randles
WR Holdings, LLC and
Purdy Topsoil & Gravel, LLC
5802 192nd Street E
Puyallup, WA 98375
(253) 219-1803

LICENSOR:

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

This Permit ("Permit") made and entered into effective as of _____ ("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 WR Holdings, LLC, a Washington limited liability company, and Purdy Topsoil & Gravel,

LLC, a Washington limited liability company, hereinafter collectively referred to as "Licensee." Licensor and Licensee collectively hereinafter referred to as "Parties."

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.

- 1.1 **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:

A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED SEPTEMBER 6, 1923, AND RECORDED OCTOBER 22, 1923, UNDER PIERCE COUNTY AUDITOR'S FILE NO. 686747 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; THENCE RUNNING EAST 660 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 200 FEET; THENCE WEST 86.5 FEET; THENCE SOUTH 14°49' EAST, 1165 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST ALONG THE SAME 103.4 FEET; THENCE NORTH 14°49' WEST, 1185 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH A PORTION OF THAT CERTAIN TRACT OF LAND ACQUIRED BY THE CITY OF TACOMA BY JUDGMENT NO. 1 OF PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234 DATED JULY 30, 1923, RECORDS OF PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

A STRIP OF LAND 100 FEET IN WIDTH LYING 50 FEET ON EACH SIDE OF A CENTERLINE LOCATED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF THE NORTH 382.71 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; AT A POINT 548 FEET DISTANT WEST OF THE NORTHEAST CORNER OF SAID SUBDIVISION; RUNNING THENCE SOUTH 14°49' EAST, 280 FEET BEING THE TERMINUS OF THIS DESCRIBED CENTERLINE. THE NORTHERLY END OF SAID STRIP BEING THE NORTH LINE OF SAID SUBDIVISION AND THE SOUTHERLY END OF SAID STRIP BEING PERPENDICULAR TO THE NORTH LINE OF SAID SUBDIVISION.

CONTAINING 165,000 SQ. FT. MORE OR LESS.

(hereinafter "Premises")

1.2 Purpose.

1.2.1 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:

- Ingress and egress
- Operation and maintenance of an existing customer and/or employee parking area
- Existing material storage
- Existing private utility lines and structures (power, storm sewer and water)
- Existing storm pond

(hereinafter "Permitted Use")

1.2.2 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.

1.3 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 only a license to use real property.

1.4 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.

1.5 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.

1.6 Special Conditions. Licensee shall adhere to Special Conditions identified in Exhibit B.

1.7 Insurance. Licensee must, at its sole cost and expense, procure and maintain, effective on the date Licensee first enters or makes use of the Premises and during the term of this Permit the insurance coverages that are identified in Exhibit C.

2. PERMIT PERIOD.

2.1 Term. The term of this Permit and the permission and license granted herein shall be effective for a ten (10) year period beginning on the Effective Date.

2.2 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 2.1. At the direction of the Licensor, a site inspection may 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. For each Permit Extension, Licensee shall pay a Processing/Administrative Fee as identified in Exhibit D, which Licensor has the right to update.

2.3 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.

3.1 Fees. Licensee shall pay all fees, deposits, and charges specified in and in accordance with Exhibit D "Permit/License Fees" attached.

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

3.3 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.

3.4 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.

3.5 Leasehold Excise Tax. In addition to the Permit/License Fees, Licensee shall pay Licensor:

3.5.1 all leasehold excise tax (as required by RCW 82.29A) to the extent that any is determined to be due as a result of this Permit,

3.5.2 any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and

3.5.3 any taxes levied or assessed in lieu of the foregoing, in whole or in part.

3.5.4 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 in this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS.

4.1 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.

4.2 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.

4.3 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.

7.1 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.

7.2 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.

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

8.2 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.

8.3 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.

8.4 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 in 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, its officers and employees, from and against any and all claims for damages or loss to the Licensor'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. ENVIRONMENTAL LIABILITY.

13.1 Definitions.

13.1.1 "Hazardous Substance" means any substance that now or in the future become regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.

13.1.2 "Affiliates" when used in Section 13 means Licensee or Licensee's contractors, agents, employees, affiliates or any person on the Premises under Licensee's direction or with the Licensee's permission.

13.1.3 "Liabilities" as used in Section 13 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

13.2 General Conditions. Licensee's obligations in Section 13 extend to the area in, on, under, or above the Premises and adjacent Licensor-owned lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.

13.3 Current Conditions and Duty to Investigate. Licensor makes no representation about the condition of the Premises or adjacent Licensor-owned lands and is under no duty to supply Licensee information about the condition of the Premises.

13.4 Use of Hazardous Substances.

13.4.1 Licensee and Affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances on or near the Premises. In the event Licensee needs to use, transport, or handle Hazardous Substances on the Premises for the Permitted Use, Licensee or its Affiliates may use, transport, or handle Hazardous Substances on the Premises in accordance with all applicable laws only to the extent necessary for Licensee to use the Premises per the Permitted Use.

13.4.2 If use of Hazardous Substances related to Licensee's use or occupancy of the Premises results in violation of law:

13.4.2.1 Licensee shall implement any remedial measures to restore the Premises that Licensor may require in addition to remedial measures required by regulatory authorities.

13.4.2.2 Licensee shall provide Licensor with copies of all documents Licensee submits to any federal, state or local authorities concerning hazardous substance release, environmental impacts or remedial action to the Premises.

13.5 Notification and Reporting.

13.5.1 Licensee shall immediately notify Licensor if Licensee becomes aware of any of the following:

13.5.1.1 A release or threatened release of Hazardous Substances;

13.5.1.2 Any lien or action arising from Hazardous Substances;

13.5.1.3 Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

13.5.1.4 Any notification from any state or federal agency that remediation or removal of Hazardous Substances is or maybe required at the Premises.

13.5.2 Licensee's duty to report extends to adjacent lands and to any other property used by Licensee in conjunction with the Premises if a release of Hazardous Substances on the other property could affect the Premises.

13.5.3 Environmental Liability Indemnification.

13.5.3.1 In addition to and without limiting the scope or intent of Section 13, Licensee shall indemnify, defend, and hold harmless Licensor from and against Liabilities that arise out of, or relate to:

13.5.3.1.1 The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Licensee and/or Affiliates occurring whenever Licensee or Affiliates occupies or has occupied the Premises;

13.5.3.1.2 The release or threatened release of any Hazardous Substance resulting from any act or omission of Licensee and/or Affiliates occurring whenever Licensee or Affiliates occupies or has occupied the Premises.

13.5.3.1.3 Licensee shall indemnify, defend, and hold harmless Licensor for Liabilities that arise out of or relate to Licensee's breach of obligations in Section 13.

14. RESERVATION OF RIGHTS.

14.1 For Liabilities not covered by the provisions of Section 13, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

14.2 The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in Section 13 benefits or creates rights for

third parties.

- 14.3** The allocations of risks, Liabilities, and responsibilities set forth in Section 13 does not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

15. CLEANUP.

- 15.1** If Licensee's act, omission, or breach of obligation of Section 13 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Licensee shall, at Licensee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- 15.2** Licensee may not undertake a cleanup of the Premises pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program without Licensor's prior approval.

16. SAMPLING.

- 16.1** If the Licensor has reason to believe Licensee's use or occupancy of the Premises results in release or threatened release of Hazardous Substances the Licensor may require or conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Premises at the Licensee's expense.
- 16.2** If Licensee conducts Tests on the Premises, Licensee shall provide the Licensor with validated final data and quality assurance/quality control/chain of custody information about the Tests.

- 17. 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.

18. TERMINATION.

- 18.1 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 or to Licensor.
- 18.2 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, and termination shall be effective IMMEDIATELY upon delivery thereof.
- 18.3 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.
- 18.4 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. If Licensor determines structures or improvements shall remain, it shall be deemed permanent fixtures, not trade fixtures, and shall belong to the Licensor upon the termination (or expiration) of this Permit/License.

19. ASSIGNMENT. This Permit is non-assignable and non-transferable.

20. MISCELLANEOUS.

20.1 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 Section 20, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

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

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

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

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

20.6 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.

20.7 Recording. This Permit or a memorandum referencing the same may, at the Licensor's sole discretion and at the expense of the Licensee, be recorded in any public office.

20.8 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.

20.9 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.

20.10 Survival. The following Sections shall survive the termination of this Permit and

remain enforceable against Licensee after termination:

Sections 2.3, 7, 11, 12, 13, 14, 18, 20.3 and 20.4.

Additionally, any payment or other ongoing Licensee obligations incurred during the term of this Permit shall remain in force after the expiration of this Permit until paid or otherwise satisfied in full.

IN WITNESS WHEREOF, the Parties hereto have caused this Permit to be executed as of the day and year first written above.

LICENSEE:

WR HOLDINGS, LLC

David G. Randles, Managing Member

Date: _____

PURDY TOPSOIL & GRAVEL, LLC

David G. Randles, Managing Member

Date: _____

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

LICENSOR:

Chris Robinson
Power Superintendent

Date: _____

APPROVED:

Joseph Wilson
T & D Manager

Date: _____

John Nierenberg
Assistant Division Manager

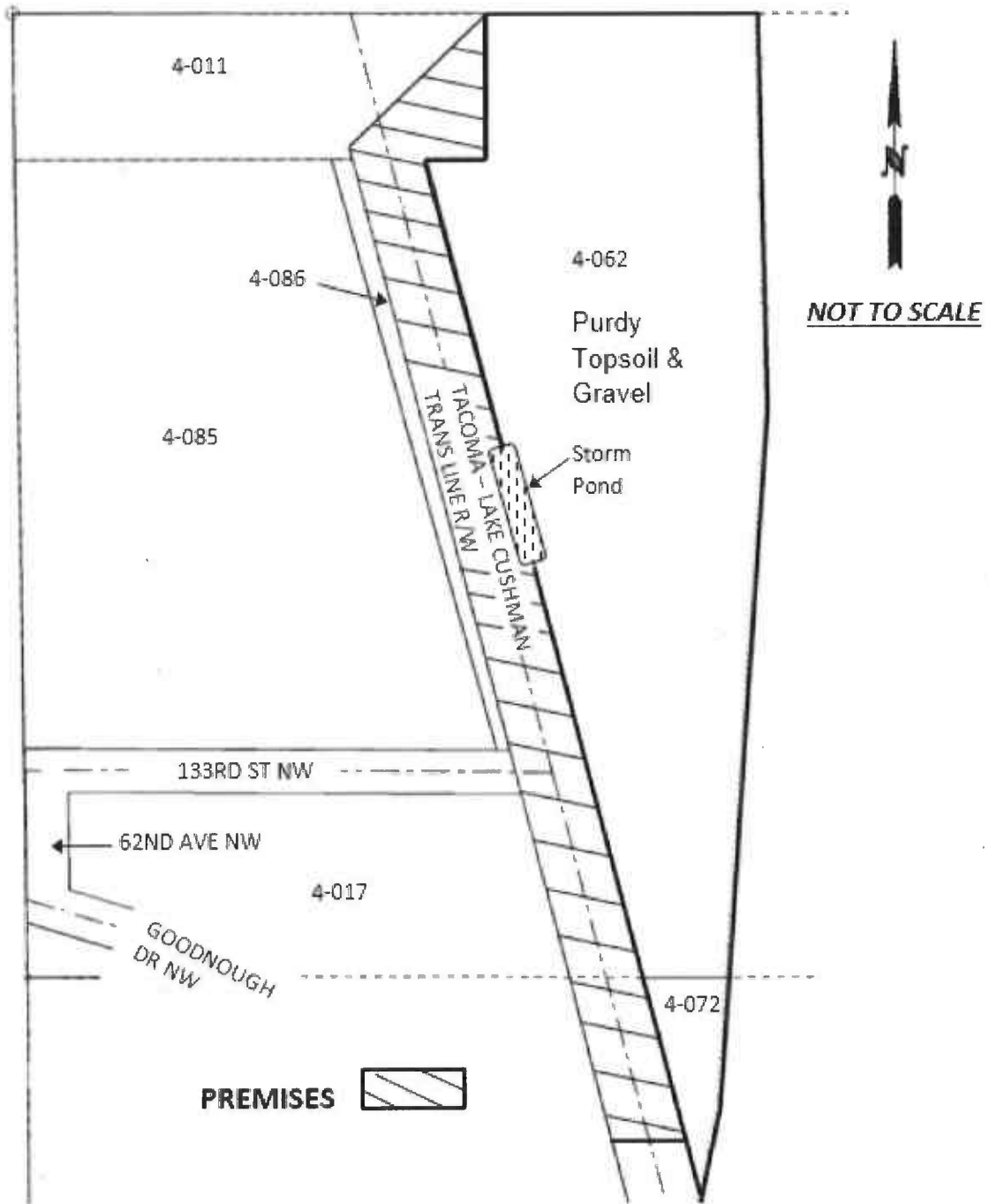
Date: _____

APPROVED AS TO FORM:

Michael W. Smith
Deputy City Attorney

Date: _____

Exhibit A Premises



**EXHIBIT B
SPECIAL CONDITIONS**

1. INSPECTION AND APPROVAL

- 1.1 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/License have been fulfilled.
- 1.2 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.
- 1.3 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.
- 1.4 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.

2. CRITICAL AREAS/HERBICIDES/BLASTING

- 2.1 Licensee shall not adversely impact any critical areas on the Premises. All critical area inspection and mitigation shall be satisfied before construction can begin.
- 2.2 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.
- 2.3 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.
- 2.4 No blasting shall be done on the Premises.

3. LANDSCAPING/TREES

- 3.1 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.
- 3.2 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.

4. ECONOMIC LOSS

- 4.1 Licensors 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.
- 4.2 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.

5. TRANSMISSION LINE SAFETY

- 5.1 **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.
- 5.2 **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.
- 5.3 **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.
- 5.4 **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.
- 5.5 **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.

**EXHIBIT C
INSURANCE**

- 1.1** Licensee acknowledges and agrees to the following insurance requirements:
- 1.1.1.** Coverage shall name the City of Tacoma and its officers, employees, and agents as additional insured.
 - 1.1.2.** 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.
 - 1.1.3.** 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.
 - 1.1.4.** Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.
 - 1.1.5.** Insurance coverages specified in this Permit are not intended and will not be interpreted to limit the responsibility or liability of Licensee or its contractors.
 - 1.1.6.** No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$25,000 without the Licensor's prior written approval. 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. Accordingly, the Licensee agrees herein to indemnify and hold the Licensor harmless from any deductible or self-insured retained limit that may be imposed by operation of the Licensor's additional insured status under the Licensee's Liability insurance policy(s) or coverage.
 - 1.1.7.** All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
 - 1.1.8.** Licensee may utilize a combination of its underlying limits and umbrella policy limits to comply with the per occurrence limits required by this Permit.
 - 1.1.9.** 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. However, this provision is not intended to waive rights of contribution established by chapter 4.22 RCW. This provision is also not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

- 1.1.10. An entity that is wholly or partially self-insured may, with the approval of the Licensor, provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein. By executing this Permit, Licensee agrees that it will pay any deductible or self-insured portions of the insurance or self-insurance provided.
- 1.1.11. The Licensor reserves the right to modify the insurance requirements of this Permit, 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.
- 1.1.12. Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit.
- 1.1.13. Licensee shall keep in force during the entire term of the Permit, at no cost to the Licensor, the insurance coverage and limits of liability listed below and furnish the Licensor Thirty (30) calendar days prior to insurance expiration date of such insurance.
- 1.1.14. Licensee shall send a notice of renewal, cancellation, or non-renewal of this required insurance within Thirty (30) calendar days to coi@cityoftacoma.org and Licensor including the Permit number in the description of the certificate.
- 1.2 During the term of this Permit, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverages ("**M**" below indicates million(s), for example \$1M is \$1,000,000):
- 1.2.1. **Commercial General Liability insurance** with limits for \$1M each occurrence and \$2M annual aggregate. It provides coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on or about the Licensor's Premises. It shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage.
- 1.2.2. **Workers' Compensation** Licensee shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states.
- 1.2.3. **Commercial Automobile Liability insurance** with limits for \$1M each accident for bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles. This coverage shall be obtained and be in place by the Licensee and its contractor(s) prior to entering upon the Premises.
- 1.2.4. **Employer's Liability Insurance** with limits not less than \$1M each employee, \$1M each accident, and \$1M policy limit.

1.2.5. Pollution Liability Insurance shall have per occurrence policy limits of no less than \$5M per occurrence and in the aggregate. This policy shall provide coverage for claims of bodily injury and property damage arising from the Licensee's use of the Premises or the use of its contractors, employees, or agents. The policy shall be endorsed to delete exclusions of coverage for damage to property in the care, custody, control of the insured or Premises occupied by the insured because the Licensor will require that the Licensee remediate any contamination or pollution on the permitted Premises. In the alternative, the Licensee shall obtain first party coverage for the pollution/contamination risk as to the permitted Premises.

1.3 Subcontractors. Licensee shall be responsible for all its contractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee.

1.4 Certificate of Insurance. Certificate(s) of Insurance for the required insurance in Section 1.2 above shall be sent either via email to coi@cityoftacoma.org prior to the use of any rights provided by the Permit. The certificate shall be filed with the acceptance of the Permit and annually thereafter.

**EXHIBIT D
PERMIT/LICENSE FEES**

1. FEES

- 1.1 Processing / Administrative Fees.** Licensee shall pay the sum of FIVE HUNDRED DOLLARS (\$500.00) for Permit/License processing and administration.
- 1.2 Use Fee.** A Use Fee in the sum of THIRTY-EIGHT THOUSAND TWO HUNDRED AND FIFTY-SIX DOLLARS (\$38,256.00) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter during the Permit/License period. Licensor will provide an invoice for the property Use Fee due each year.

2. CHARGE FOR LATE PAYMENTS

- 2.1** 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 thirty (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.
- 2.2** 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

- 3.1** Licensor may review and, by letter, amend this Permit/License for the purpose of increasing the Use Fee amounts provided for herein.
- 3.2** The Use Fee amount specified in paragraph 1 above shall automatically increase by three percent (3%) every year on the anniversary date of the Effective Date. The Licensor has the right to review and adjust the Annual Use Fee every (5) years, to ensure the Annual Use Fee reflects the fair market rental value. Licensor, at its sole discretion and at the Licensee's cost, may elect to have a third-party appraisal completed to determine the fair market rental value. In no event shall any adjustment result in a decrease in the Annual Use Fee in effect immediately prior to the adjustment date. Licensor shall notify Licensee twenty (20) calendar days prior to the increase of the new Annual Use Fee amount.

202002040025

Electronically Recorded

Pierce County, WA LPATTER

02/04/2020 8:22 AM

Pages: 17 Fee: \$119.50

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. 2485**

Reference No.:	P2019-234/P2485
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	WR Holdings, LLC and Purdy Topsoil & Gravel, LLC
Legal Description:	Portion of the West half of the Southeast Quarter of Section 24, Township 22 North, Range 1 East, W.M.
Tax Parcel No.(s):	Portion of 0122244011
County:	Pierce
Permit Expiration Date:	1/9/2025
Supersedes and Replaces:	This Permit supersedes and replaces Tacoma Power Permit No. 2330, recorded under AFN 201701200223

CONTACT INFORMATION

LICENSEE:

David G. Randles
WR Holdings, LLC and
Purdy Topsoil & Gravel, LLC
5802 192nd Street E
Puyallup, WA 98375
(253) 219-1803

LICENSOR:

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

This Permit ("Permit") made and entered into on 1/10/2020 ("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 WR Holdings, LLC, a Washington limited liability company, and Purdy Topsoil & Gravel, LLC, a Washington limited liability company, hereinafter collectively 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:

A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED SEPTEMBER 6, 1923 AND RECORDED OCTOBER 22, 1923 UNDER PIERCE COUNTY AUDITOR'S FILE NO. 686747 DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; THENCE RUNNING EAST 660 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 200 FEET; THENCE WEST 86.5 FEET; THENCE SOUTH 14°49' EAST, 1165 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE WEST ALONG THE SAME 103.4 FEET; THENCE NORTH 14°49' WEST, 1185 FEET; THENCE NORTHEASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH A PORTION OF THAT CERTAIN TRACT OF LAND ACQUIRED BY THE CITY OF TACOMA BY JUDGMENT NO. 1 OF PIERCE COUNTY SUPERIOR COURT CAUSE NO. 51234 DATED JULY 30, 1923 RECORDS OF PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

A STRIP OF LAND 100 FEET IN WIDTH LYING 50 FEET ON EACH SIDE OF A CENTERLINE LOCATED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF THE NORTH 382.71 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.; AT A POINT 548 FEET DISTANT WEST OF THE NORTHEAST CORNER OF SAID SUBDIVISION; RUNNING THENCE SOUTH 14°49' EAST, 280 FEET BEING THE TERMINUS OF THIS DESCRIBED CENTERLINE. THE NORTHERLY END OF SAID STRIP BEING THE NORTH LINE OF SAID SUBDIVISION AND THE SOUTHERLY END OF SAID STRIP BEING PERPENDICULAR TO THE NORTH LINE OF SAID SUBDIVISION.

CONTAINING 165,000 SQ. FT. MORE OR LESS.

(hereinafter "Premises")

Map of Premises is attached to this Permit as 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:

- Ingress and egress
- Operation and maintenance of an existing customer and/or employee parking area
- Existing material storage
- Existing private utility lines and structures (power, storm sewer and water)
- Existing storm pond

(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 ninety (90) 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 5802 192nd Street East, Puyallup, WA 98375, OR to Licensor at PO 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 5802 192nd Street East, Puyallup, WA 98375, 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, Licenser 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 Licenser 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 Licenser in a condition that is satisfactory to the Licenser. Satisfactory condition of the returned Premises shall be determined at the Licenser'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, Licenser 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 Licenser 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:

WR HOLDINGS, LLC

 1/10/2020

David G. Randles, Managing Member

PURDY TOPSOIL & GRAVEL, LLC

 1/10/2020

David G. Randles, Managing Member

Authorized by Public Utility Board Resolution No. U-11134, adopted 1-8-2020.

APPROVED:

Chris Robinson 1/22/2020
Chris Robinson Date
Power Superintendent

ACCEPTED:

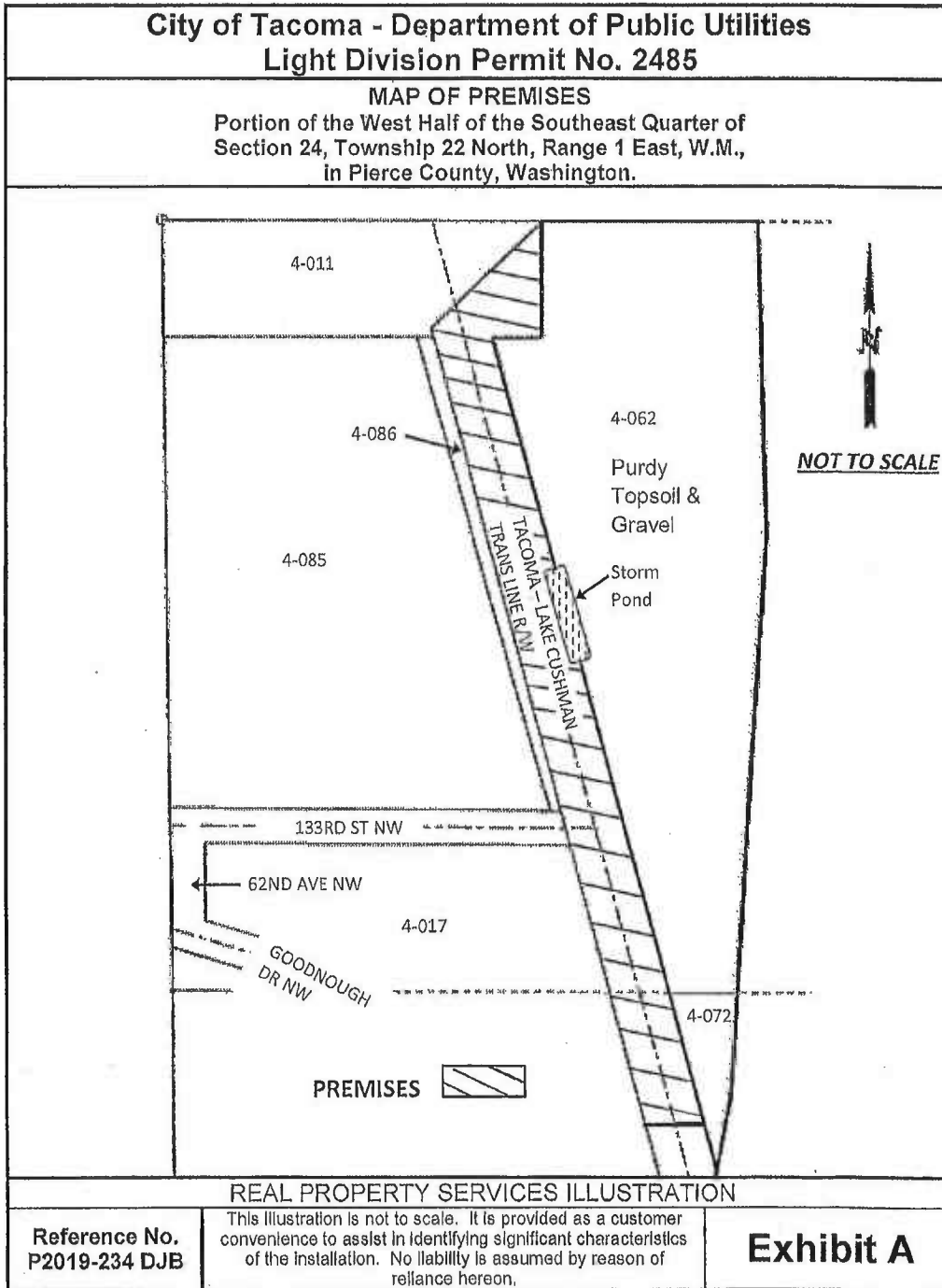
Joseph Wilson
Joseph Wilson
T & D Manager

REVIEWED:

John Nierenberg
John Nierenberg
T & D Assistant Manager

APPROVED AS TO FORM:

Michael W. Smith
Deputy City Attorney



**EXHIBIT B
SPECIAL CONDITIONS**

1. 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.

2. 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.

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. INSPECTION

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/License have been fulfilled. Licensor can be contacted at Real Property Services at (253) 396-3060.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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", WAC 296-155-428 "General Requirements", 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.

**EXHIBIT C
PERMIT/LICENSE FEES**

1. FEES

- A. Processing / Administrative Fees.** Licensee shall pay the sum of FIVE DOLLARS (\$ 500.00) for Permit/License processing and administration.
- B. Use Fee.** A Use Fee in the sum of THIRTY-THREE THOUSAND DOLLARS (\$33,000) per year shall be payable by Licensee to Licensor in advance on or before the Effective Date and each year thereafter during the Permit/License period. 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. Each payment shall reference P2019-234/P2485.

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

- A.** Licensor may review and, by letter, amend this Permit/License for the purpose of increasing the Use Fee amounts provided for herein.
- B.** The Use Fee specified in paragraph 1 above may be increased, at the sole option of Licensor, a total of three percent (3%) at the end of the each year following the effective date of this Permit/License as follows:

Annual Permit Fee (2020-2021)	\$33,000
Year 2 (3% escalator) 2021-2022	\$33,990
Year 3 (3% escalator) 2022-2023	\$35,010
Year 4 (3% escalator) 2023-2024	\$36,060
Year 5 (3% escalator) 2024-2025	\$37,142

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
AMENDMENT NO. 1
TO
LAND USE PERMIT NO. 2485**

Reference No.:	P2024-154/P2485A1
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	WR Holdings, LLC and Purdy Topsoil & Gravel, LLC
Legal Description:	Portion of the West half of the Southeast Quarter of Section 24, Township 22 North, Range 1 East, W.M.
Tax Parcel No.(s):	Portion of 0122244011
County:	Pierce
Permit Expiration Date:	2/28/2025
Amends:	This Permit amends Tacoma Power Permit No. 2485, recorded under AFN 202002040025

This Amendment to Land Use Permit No. 2485 (“Amendment No. 1”) is made and entered into 1/10/2025 (“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 WR Holdings, LLC, a Washington limited liability company, and Purdy Topsoil & Gravel, LLC, a Washington limited liability company, hereinafter collectively referred to as “Licensee.” Licensor and Licensee collectively hereinafter referred to as “Parties.”

RECITALS

WHEREAS, Licensor granted permission to Licensee to access and use a portion of its real property strictly for a specified use and issued Licensee a real property license to use said real property per the terms and conditions specified in Licensor’s Land Use Permit No. 2485 dated January 10, 2020 (“Permit No. 2485”) and recorded under Pierce County Auditor’s File No. 202002040025.

WHEREAS, Permit No. 2485 will expire on January 9, 2025.

WHEREAS, the new land use permit to supersede Permit No. 2485 is in-process, but still needs to be presented to Licensor’s Public Utility Board (“PUB”) for approval as required pursuant to Resolution U-10777, adopted May 20, 2015, Section 7, which 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”*.

WHEREAS, Pursuant to Section 2.B of Permit No. 2485, a Permit Extension may, at Licensor’s sole discretion, be issued, if all permit conditions and uses remain unchanged and all permitted structures and/or improvements are in compliance with the terms and conditions of the Permit.

WHEREAS, Licensor has determined that all permit conditions and uses remain unchanged, and Licensor has conducted a site inspection and confirmed that all permitted structures and/or improvements are in compliance with the terms and conditions of Permit No. 2485.

WHEREAS, Licensor and Licensee desire to authorize Licensee's continued use of Licensor's property until the new permit is approved.

WITNESSETH

NOW THEREFORE, in consideration of the mutual promises contained in this Amendment No. 1 and Permit No. 2485, the Parties agree as follows:

1. The Permit Expiration Date referenced on Page 1 of Permit No. 2485 shall be changed to February 28, 2025, or upon execution of the new permit whichever is earlier.

2. Subsection 2.A. "Term" is hereby replaced and superseded as follows:

A. Term. This Permit and the permission and license granted herein shall be effective for the term beginning on January 10, 2020, and ending on February 28, 2025, or upon execution of the new permit whichever is earlier.

3. **Holdover.**

If Licensee continues to use Licensor's property after the Termination Date, and Licensor has not notified Licensee that Licensee must cease use of Licensor's property, in the absence of a new Permit between Licensor and Licensee, the following terms apply:

(a) Licensee's use of Licensor's property will be on a month-to-month basis, on terms identical to the terms of this Permit, except that either Party may terminate the Permit on thirty (30) days' written notice. The month-to-month use will not be an extension or renewal of the Term.

(b) The monthly use fee during the authorized month-to-month use period will be the same use fee that would be due if the Permit were still in effect and all adjustments in the use fee were made in accordance with its terms.

(c) Payment of more than the monthly use fee will not be construed to create a permit term longer than month-to-month. If Licensee pays more than the assessed monthly use fee and Licensor provides notice of Permit termination, Licensor shall refund the amount of excess payment remaining after Licensee ceases use of Licensor's property.

4. **Amendment No. 1 Use Fee.** Amendment No. 1 Use Fee in the sum of THIRTY-ONE HUNDRED AND EIGHTY-EIGHT DOLLARS (\$3,188.00) shall be payable by Licensee to Licensor in advance on or before the Effective Date and each month thereafter during the Amendment No. 1 period. Licensor will provide an invoice for the property Use Fee due each month.

5. All other terms and conditions of Permit No. 2485 shall remain in full force and effect.

6. Should this Amendment be signed after the Effective Date, all terms and conditions herein shall operate retroactively to the Effective Date.

IN WITNESS WHEREOF, the Parties hereto have caused this Permit to be executed as of the day and year first written above.

LICENSEE:

WR HOLDINGS, LLC

DocuSigned by:

BE2FF6CA083E44A

David G. Randles, Managing Member

Date: 01/10/2025

PURDY TOPSOIL & GRAVEL, LLC

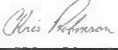
DocuSigned by:

BE2FF6CA083E44A

David G. Randles, Managing Member

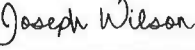
Date: 01/10/2025

LICENSOR:

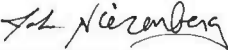
DocuSigned by:

FBOA7C4A6C84B9
Chris Robinson
Power Superintendent

Date: 01/14/2025

APPROVED:

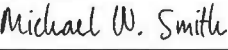
DocuSigned by:

57A07F25C55C431
Joseph Wilson
T & D Manager

Date: 01/14/2025

DocuSigned by:

457275E97A7D162
John Nierenberg
Assistant Division Manager

Date: 01/10/2025

APPROVED AS TO FORM:

Signed by:

43FA2C4C89E641FA
Michael W. Smith
Deputy City Attorney

Date: 01/13/2025

LOCATION MAP

