

TEMPORARY REVOCABLE LICENSE AGREEMENT

This Temporary Revocable License Agreement (“Agreement”) is made as of October ____, 2022 (“Effective Date”) by and between the CITY OF SNOQUALMIE, WASHINGTON, a Washington municipal corporation (“City”), and GIRARD RESOURCES & RECYCLING, LLC, a Washington limited liability company (“Girard”). The City and Girard are sometimes referred to individually as a “Party”, and collectively as the “Parties.”

Recitals

- A. The City owns the real property described on Exhibits A and B hereto and located in the City of Snoqualmie, King County, Washington.
- B. Girard leases the real property described on Exhibit B (“**Leased Property**”) from the City, which is adjacent to the City’s property shown on Exhibit A (“**Subject Property**”). Both the Leased Property and Subject Property are shown on the vicinity map at Exhibit C.
- C. Girard desires to conduct the Activities described herein to facilitate stormwater conveyance from the Leased Property to the City’s stormwater retention ponds on the Subject Property.
- D. The City desires to grant permission for the activities pursuant to this Agreement and subject to the terms set forth herein.

The City and Girard hereby agree as follows:

1. Permitted Activities. On the terms set forth in this Agreement and effective upon the mutual execution of this Agreement, Girard, its employees, agents, contractors, consultants, invitees, volunteers, or other persons associated with or acting on behalf of Girard (“**Invitees**”), shall have the right to access the Subject Property in order to conduct the following identified activities on the Subject Property owned by the City (the “**Activities**”):

Improvement of the existing drainage system, to meet anticipated requirements of an Industrial Stormwater Permit. Such improvements may include grading, excavation, stormwater conveyance, flow control, installation of pump and pipe to convey overflow from Pond 1 on Exhibit C, across the grade “break” on the Leased Property, and into the drainage ditch that will convey water northeast along the north boundary of the Leased Property to two storm ponds, identified as Pond 2 and 3 on Exhibit C, on the City’s Subject Property, from where it will drain to the constructed wetland.

This Agreement and Girard’s right of entry shall be contingent upon approval by the City of Girard’s final design and engineering plans for the Activities. Upon receipt of the City’s approval of Girard’s final design and engineering plan, the City grants permission to Girard to conduct such Activities on the Subject Property.

2. Use of Subject Property. Girard shall have the right to operate and maintain in good working order and safe condition the stormwater improvement features identified in Paragraph 1 and to use Ponds 2 and 3 on the Subject Property to receive and retain stormwater overflow from Pond 1 and from the Leased Property. Girard shall have the obligation to operate and maintain the stormwater improvement features constructed pursuant to Paragraph 1 in good working order and safe condition for its own benefit and for the benefit of the City, including utilizing such facilities to pump and convey excess stormwater from Pond 1 to Pond 2 or 3, until such time as the Leased Property is no longer leased by Girard. If Girard knows or has a reasonable basis to believe that Pond 1 stormwater is contaminated by a spill or release of Hazardous Substances, as defined in RCW 70A.305.020, in amounts in excess of applicable standards, Girard will immediately inform the City and will cease pumping from Pond 1. Girard will promptly sample the subject stormwater to determine whether it contains Hazardous Substances, as defined in RCW 70A.305.020, in excess of applicable standards. Girard's obligation to pump stormwater from Pond 1 shall resume when testing confirms that the presence of Hazardous Substances, if any, do not exceed applicable standards. While testing is ongoing, the City may require that Girard pump Pond 1 stormwater into an isolated tank, if needed to avoid overflow of Pond 1 stormwater or potential release of Pond 1 stormwater into the environment. If testing reveals the presence of Hazardous Substances in excess of applicable standards, Girard and the City will consult on an appropriate course of action.

3. Conditions. When entering the Subject Property, Girard will adhere to these conditions, guidelines, and warnings:
 - (a) The City may inspect at any time the area where the Activities are taking place on the Subject Property to ensure that such Activities do not interfere with the City's ownership and use of the Subject Property.
 - (b) While conducting the Activities on the Subject Property, Girard shall not obstruct or interfere with access to any surrounding properties that use the same access route.
 - (c) Girard will comply with any and all applicable environmental laws (including but not limited to the Federal Clean Water Act), regulations, or permits in carrying out any Activity on the Subject Property or the Leased Property.
 - (d) Girard will not discharge a pollutant for purposes of the Federal Clean Water Act to any Waters of the United States prior to obtaining an NPDES permit. Once an NPDES permit is obtained, Girard will not discharge a pollutant into any Waters of the United States unless in compliance with a currently effective permit.
 - (e) All work done shall be done in a manner that minimizes interruptions or inconvenience to the public and/or the City or its staff. All work shall be carried on with due regard for the safety of the public, and Girard shall maintain strict compliance with the appropriate provisions relating to control of traffic and pedestrians through work areas as set forth in the Manual on Uniform Traffic and Control Devices (current edition) as adopted by the Washington State Department of Highways.
 - (f) Girard shall not use the Subject Property in any way that materially interferes with the use of the Subject Property by the City, or by other lessees or licensees of the City.

- (g) Girard shall be responsible for prompt clean up and disposal of refuse, waste, and debris produced by the Activities and for removal of equipment, trailers or containers used in the construction of the Activities that are no longer to be used in Girard's regular business. Refuse shall not be permitted to accumulate to the extent that it interferes with vehicular and pedestrian safety. Should the City determine Girard is not fulfilling its obligation in this regard, the City reserves the right to take such action as may be necessary, and to charge Girard with any costs that may be incurred in such remedial action.
 - (h) In the event Girard causes damage of any kind to the Subject Property or offsite property or natural resources during the Term, as defined in Paragraph 4, Girard shall repair the damage and restore the Subject Property at its sole cost and expense, without delay or interruption and within the reasonable time allowed by the City.
 - (i) Prior to initiating the Activities, Girard shall obtain any necessary federal, state or local permit, license, or approval for such Activities.
 - (j) Prior to initiating the Activities, Girard shall obtain the City's approval of final engineering and design plans.
4. Term; Termination. Girard must complete the Activities by April 15, 2023. Girard's rights and obligations under Paragraphs 1, 2 and 3 will continue until the expiration or termination of Girard's lease (now in effect or entered into in the future with the City) of the Leased Property, at which point this Agreement will terminate ("**Term**").
5. Notice. All Notices or requests required under this Agreement shall be in writing and deemed given when (a) delivered in person, (b) when deposited with a reputable overnight courier service, provided that any such Notice shall not be deemed received until the next business day after deposit; or (c) by electronic mail if a copy of the Notice is also sent by overnight courier, in which case Notice shall be deemed delivered on transmittal by electronic mail before 5:00 p.m. on a business day (otherwise, any Notice sent after 5:00 p.m. shall be deemed received on the next business day). All Notices must be properly addressed to the Parties as in Paragraph 6 below.
6. Contacts.

City:

City Administrator
P.O. Box 987
Snoqualmie, WA 98065
Facsimile: (425) 831-6041

Girard:

Girard Resources & Recycling, LLC
P.O. Box 14727
Mill Creek, WA 98092
Facsimile: (425) 787-1600

7. Restoration. In the event that Girard causes damage of any kind to the Subject Property during the course of the Activities, including without limitation any damage to the Subject Property caused by cutting, boring, jack hammering, excavation or other work, and including latent damage not immediately apparent at the time of the work, Girard shall repair the damage and restore the Subject Property at its sole cost and expense, without delay. Upon termination of this Agreement, Girard shall restore the Subject Property to its original condition at its sole expense, except that Girard is not obligated to remove physical features constructed as part of the Activities, unless otherwise required pursuant to Paragraph 8.
8. Removal. If requested by the City in writing at least 30 days prior to the termination of Girard's current or future lease, Girard will remove any physical features constructed as part of the Activities at Girard's sole expense.
9. Discharge of Liens. Girard will promptly pay (and shall secure the discharge of any liens asserted by) all persons or entities furnishing any labor, services, materials, equipment, supplies or other items relating to the Activities to or upon the area for Girard's benefit. Girard's obligations set forth in this Paragraph 9 shall survive the Termination of this Agreement.
10. Assumption of Risk. Girard, on its own behalf and on behalf of any Invitee on the Subject Property with, or without the consent of Girard, acknowledge that the Subject Property has a variety of potentially hazardous conditions and risks; and assume all risks and dangers associated with or arising from the conditions of the Subject Property, including property damage, personal injury and death, which arise out of the entry by any of Girard's Invitees on the Subject Property pursuant to the rights granted in this Agreement. The City shall have no obligation or liability with respect to such conditions or any other portion of the Subject Property for use by Girard, or Girard's Invitees, pursuant to the rights granted in this Agreement. The City shall not be liable for any damage, either to person or property, sustained by Girard or its Invitees on the Subject Property caused by any defects now in the Subject Property or hereafter occurring therein.
11. Indemnification. Except to the extent of the City's own willful misconduct or gross negligence, Girard shall indemnify, defend and hold harmless the City and the City's elected representatives, agents, employees and representatives, and their respective successors and assigns, from and against all claims, actions, losses, liabilities, damages, costs, obligations of any nature, and any and all expenses of any nature (including, but not limited to, all losses, damages, judgments, and reasonable attorneys' fees and costs, or fines, fees or penalties) incurred, suffered by, or claimed against the City arising from any property damage to the Subject Property of any kind whatsoever or injury to persons caused by Girard arising out of the Activities or use of the Subject Property, including from or related to the actions or inactions of Girard's employees or its Invitees, and arising out of or in any way connected with Girard's or its Invitees' entry upon the Subject Property and/or the performance of any of the Activities listed in Paragraph 1. Girard's obligations set forth in this Paragraph 11 shall survive the Termination of this Agreement.
12. Insurance Waiver. Girard specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the Parties.

13. Release. Except for instances of the City's own willful misconduct or gross negligence, the City is not responsible for injuries incurred by Girard or its Invitees while on the Subject Property (including injuries incurred due to the accidental acts of the City or its representatives). By signing below, Girard agrees not to sue the City for any injuries incurred on the Subject Property during the Term of this Agreement (regardless of their cause), unless such injuries are caused by the willful misconduct or gross negligence of the City or its contractors. Any claims by Girard against the City arising out of the willful misconduct or gross negligence of the City shall be limited to the sole willful misconduct or gross negligence of the City, or to the extent there is concurrent gross negligence or willful misconduct, to the extent of the City's willful misconduct or gross negligence.
14. Insurance. Girard shall carry and maintain, and shall require its contractors to carry and maintain, Commercial General liability insurance written on an occurrence basis with available limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, including death, and property damage combined. Such insurance shall be in a form and with insurers acceptable to the City, acting reasonably, and shall contain coverage for all premises and operations, broad form property damage and contractual liability. Any policy which provides the insurance required under this paragraph shall:
- (a) be endorsed to name the City and its elected officials, employees, agents, and representatives as additional insureds (the "**Additional Insureds**") with respect to any liability arising out of Girard or any Invitee's presence on or about the Subject Property,
 - (b) be endorsed to be primary to any insurance maintained by the Additional Insureds,
 - (c) contain a severability of interest provision in favor of the Additional Insureds, and
 - (d) contain a waiver of any rights of subrogation against the Additional Insureds.

If licensed vehicles will be used in connection with this Agreement, Girard shall carry and maintain, and shall ensure that its Invitees who uses licensed vehicles in connection with this Agreement carry and maintain, Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage. Girard shall cover or maintain, and shall require its Invitees to cover or maintain, insurance in accordance with the applicable laws relating to workers' compensation, with respect to all of their respective employees working on or about the Subject Property, regardless of whether such coverage of insurance is mandatory or merely elective under the law. **Girard shall not access the Subject Property unless it has first provided to the City a certificate(s) of insurance reflecting full compliance with the requirements set forth in Paragraph 14.** Further, Girard shall, within ten (10) days of the City's written request, provide the City with a copy of the insurance policy(ies) reflecting full compliance with the requirements set forth herein. Such certificate(s) and policy(ies) shall list the City as a certificate holder and shall be kept current and in compliance throughout the period of this Agreement and shall provide for thirty (30) days' advance written Notice to the City in the event of cancellation.

15. Invitees. Girard is responsible for all actions of its Invitees in execution of work under this Agreement and shall require its Invitees to comply with Paragraphs 11, 13, and 14.

16. Compliance with Laws. In carrying out the Activities under this Agreement, Girard shall comply with all applicable laws and regulations now or hereafter enacted. Further, Girard is responsible for meeting all applicable federal, state and local safety and other codes, and for obtaining all applicable federal, state and local permits, licenses, or other authorizations required for the Activities (including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare). The City makes no representation or warranty as to whether Girard will need any other permits, licenses or other authorizations that may be required for the Activities. It is Girard's responsibility to check with the governing jurisdictions and regulatory agencies.
17. Nature of Agreement. This Agreement is merely permission to enter the Subject Property for the purposes stated herein and in no way entitles Girard to any legal rights to remain on the Subject Property. Upon expiration of the Term, this Agreement will terminate, except for any terms or obligations that survive termination. Any future entry onto the Subject Property after termination shall require a new license agreement.
18. Attorneys' Fees. In any litigation or other proceeding arising out of this Agreement, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and other costs incurred therein.
19. Amendment; Assignment. This Agreement may only be amended or modified by a written instrument executed by both Parties. This Agreement may not be assigned by either Party except by a written instrument executed by both Parties.
20. Rules of Construction. The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
21. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court, King County, Washington.
22. Authority to Bind Parties and Enter Into Agreement. The undersigned represent that they have full authority to enter into this Agreement for and on behalf of the legal entities or vested owner set forth below.
23. Incorporation of Exhibits. All exhibits referred to in this Agreement are incorporated herein by such reference and made a part of this Agreement.
24. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts as may be necessary for the convenience of the Parties, which together shall constitute one agreement. The original counterpart signature pages may be detached from counterpart copies and re-attached to a single original copy. A Party may deliver the executed counterpart of this Agreement by PDF or facsimile transmission to the other Party, which PDF or facsimile copy shall be deemed to be an original executed signature page.

EXECUTED as of the date first above written.

THE CITY OF SNOQUALMIE

GIRARD RESOURCES & RECYCLING, LCC

By:
Its:

By:
Its:

Date: _____

Date: _____

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