Service Date: November 3, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: DG-210778
PENALTY AMOUNT: $1,000
Investigation #8409
UBI: 604-339-718

SERVICE VIA EMAIL

Prieto Landscaping and Construction, LLC
P.O. Box 1803
White Salmon, WA 98672
Prietosmaintenance@yahoo.com

The Washington Utilities and Transportation Commission (Commission) believes that Prieto Landscaping and Construction, LLC, (Prieto or Company) has violated the Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify one-number locator service before beginning excavation. RCW 19.122.055(1)(a) states, in part, that excavators who fail to notify a one-number locator service and cause damage to an underground gas facility are subject to a civil penalty of not more than $10,000 for each violation.

The Commission reviewed findings and recommendations made by its staff (Staff) and hereby notifies you that it is assessing a $1,000 penalty (Penalty Assessment) against you on the following grounds:

> On August 31, 2021, Prieto was excavating at 517 NE Wauna Avenue, White Salmon, Washington. While excavating Prieto struck an underground facility operated by Northwest Natural (NWN). The Damage Information Reporting Tool report submitted by NWN on September 7, 2021, indicated that the Company was excavating without a valid locate ticket.
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> Staff conducted an investigation that included reviewing damage reports, investigation reports, and the One-Call Ticket database. Staff contacted Prieto seeking further information or documentation and received a statement explaining that Prieto used marks that were on the ground from a previous ticket. The Company admitted it did not call for its own locates and that the existing marks were "pretty washed out." The documents reviewed identified a natural gas event that involved Prieto damaging a natural gas line while excavating without a valid locate ticket. The Commission sent a warning letter to the Company regarding another gas line damage incident in June 2021, but Prieto has not been previously penalized by the Commission. Because the Commission's primary goal is to promote education and prevent damage to underground utilities, Staff recommends the Commission assess a reduced penalty subject to the condition that Prieto receive additional Dig Safe training, as follows:
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> - $1,000 penalty for one violation of RCW 9.122.055(1)(a) with the option to suspend an $800 portion of the penalty for one year, and then waive it, subject to

the conditions that: (1) Company supervisors and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 45 days of this Penalty Assessment, (2) the Company incurs no additional dig law violations within twelve (12) months of the date of this Penalty Assessment, and (3) the Company timely pays the $200 portion of the penalty that is not suspended.

The Commission agrees with Staff's recommendation and assesses a penalty of $1,000, with an offer to suspend, and ultimately waive, $800 of the penalty subject to the conditions described above.

These facts, if not contested or if proved at a hearing and not rebutted or explained, are sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the $1,000 penalty amount due; or
- Pay $200 and notify the Commission that you accept the offer to suspend the remaining $800 of the penalty amount subject to the following conditions:
    - Prieto management and field crew responsible for excavation must complete NUCA Dig Safe Training (https://utc-9183.quickbase.com/db/bpkt6vndh) within 45 days of service of this Penalty Assessment; and
    - **The Company must submit documentation of that attendance to the Commission within five (5) days of attending training;** and
    - Prieto must not commit any additional violations of RCW 19.122 within twelve (12) months of the date of this Penalty Assessment; or.
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and file it with the Washington Utilities and Transportation Commission at records@utc.wa.gov **within FIFTEEN (15) days** after you receive this Penalty Assessment.

RCW 9A.72.020:
"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if, in any official proceeding, he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Lacey, Washington, and effective November 3, 2021.

/s/*Rayne Pearson*
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-210778, Investigation #8409

PLEASE NOTE: You must complete and sign this document and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

[ ] 1. **Payment of penalty.** I admit that the violation occurred and enclose $1,000 in payment of the penalty.

[✓] 2. **Accept the Conditions.** I admit that the violation occurred, enclose $200 in partial payment of the penalty, and I accept the Commission's offer to suspend, and ultimately waive, the remaining $800 of the penalty amount subject to the following conditions:

- Prieto supervisors and applicable field staff must attend dig safe training provided through NUCA within 45 days of the date of this Penalty Assessment; and
- Prieto **must submit documentation of that attendance to the Commission within five (5) days of attending the training**; and
- Prieto must not commit any additional violations of RCW 19.122 within twelve (12) months of the date of Penalty Assessment.

[ ] 3. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below **(if you do not include reasons supporting your contest here, your request will be denied)**:

[ ] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR [ ] b) I ask for a Commission decision based solely on the information I provided above.

[ ] 4. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below **(if you do not include reasons supporting your application here, your request will be denied)**:

[ ] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR [ ] b) I ask for a Commission decision based solely on the information I provided above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 11/15/21 [Month/Day/Year], at White Salmon, WA [City, State]

Prietos landscaping & Const
Name of Respondent (Company) – please print

Jose A Garcia
Signature of Applicant