

Return to City Clerk
18.09.29



BURLINGTON NORTHERN

INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

176 East Fifth Street
St. Paul, Minnesota 55101
Telephone (612) 298-2121

Mr. Joseph P. Mathews
City Attorney
315 Olympic Avenue
Arlington, Washington 98223

August 19, 1975

Dear Mr. Mathews:

In line with past correspondence, we have prepared and are enclosing, in duplicate, revised copies of Permit No. 218,740 favoring the City of Arlington for two 12-inch water pipe line crossings at Arlington, Washington.

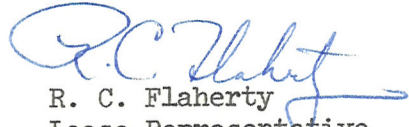
The permit has been revised to provide for permanent occupancies as paragraph 3, 9 and 10 have been changed accordingly.

Will you please arrange for execution on behalf of the City and return both copies to this department for final management approval and execution on behalf of the Railway Company.

Will you also please attach the City's draft in the amount of \$200.00 which includes standard processing fee for such agreements and first five year rental.

Very truly yours,

A. W. Grauel
General Manager Leases

By: 
R. C. Flaherty
Lease Representative

Enc.



BURLINGTON NORTHERN

INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

176 East Fifth Street
St. Paul, Minnesota 55101
Telephone (612) 298-2121

October 2, 1975

Re: Station: Arlington, Washington
Permit No.: 218,740
Date: July 1, 1975
Purpose: Two 12" domestic water
pipe lines

City Clerk
City of Arlington
City Hall
Arlington, Washington 98223

Dear Madam:

The executed duplicate copy of the above agreement is
attached for your record.

Very truly yours,
A. W. Grauel
General Manager Leases


By: R. C. Flaherty
Lease Representative

att.

Pipe Line
No. **218,740**

THIS AGREEMENT, made this **1st** day of **July**, 19 **75**, between

BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad," and

CITY OF ARLINGTON,

whose post office address is **City Hall, Arlington, Washington 98223,**

hereinafter called "Permittee."

WITNESSETH:

Railroad, for and in consideration of the fee herein provided to be paid to it by Permittee and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission to excavate for, construct, maintain and operate **two 12-inch domestic water pipe lines,**

hereinafter referred to as the "facility," upon, along or across the right of way of Railroad, underneath the surface thereof, and under the tracks of its railroad, as the case may be, at or near **Arlington** Station, in the County of **Snohomish**, State of **Washington**, to be located as follows, to-wit:

At survey station 3031 plus 30 - Mile Post 58 plus 363 feet and at survey station 3058 plus 18 - Mile Post 58 plus 3051 feet

as shown colored red on the plat hereto attached, marked Exhibit "A", dated **Revised July 14, 1975,** and by this reference thereto made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. Permittee will pay in advance to Railroad for this permit the sum of **Two Hundred Dollars (\$200.00) for the first five year period and Seventy-Five Dollars (\$75.00) for each subsequent five years that this permit remains in effect,** also all taxes and assessments that may be levied or assessed against said facility. Railroad reserves the right to change the said charge at any time while this permit remains in effect upon thirty (30) days' written notice. This provision for payment shall in no way restrict Railroad's right of termination under Paragraph 9 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair the facility placing the same in accordance with the specifications provided in application dated **May 19, 1975,** heretofore approved by the Railroad's Regional Manager Engineering.

50'

50'

3027+66.5



TO EVERETT

#11

HB 3029+98?

M.P. 58+363
3031+30±

90°

City of Arlington #1
12" C.I.P. Water
22" Steel Casing Pipe
11' below T.T.

183th St N.E.

32' plk King

M.P. 58+3051
3058+18±

90°

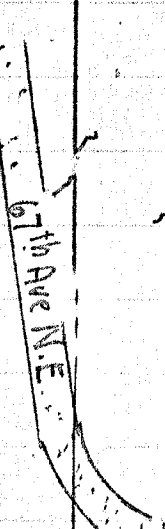
City of Arlington #2
12" C.I.P. Water
22" Steel Casing Pipe
5.5' below T.T.

50'

50'

#9

HB 3061+08



CITY OF ARLINGTON
STATE OF WASHINGTON

July 10, 1975

218740

File
BN Permit

COPY

Superintendent D. H. Burns
Division Supervisor
Burlington Northern
303 S. King Street
Seattle, Washington

Attention: Mrs. Bea Robinson, Chief Clerk

Dear Sir:

The City of Arlington received from R. W. Jacobson, the Assistant Manager of Leases of Burlington Northern from St. Paul, proposed permit No. 218,740. I enclose a copy of Mr. Jacobson's letter and of the permit itself.

The reason for the permit was so that the City of Arlington could cross under the railroad right of way with 12" diameter water lines as part of a water distribution system proposed to be built.

This particular project involves the construction of a two million gallon reservoir some distance east of the railroad and transmission lines therefrom westerly to the Arlington Airport and surrounding property for industrial use and to increase the city water supply for fire purposes and supply.

This project is estimated to cost about \$800,000. It is being funded by approximately \$500,000 from the U.S. Department of Commerce Economic Development Administration, about \$200,000 from the Department of Social and Health Services of the State of Washington and about \$100,000 the City of Arlington must pay, the last item of which would involve a revenue bond issue of the city.

The permit is in the form of a cancelable and terminable permit, and this is something that the governmental agencies involved can not live with. We should have a perpetual easement for these lines, but I understand that the railroad is unwilling to grant such easements.

Your attention is drawn to paragraph 9. of the permit in this regard.

I telephoned Mr. Jacobson this day as to this matter and he indicated to me that the railroad had run into this problem

Superintendent D. H. Burns
Page Two
July 10, 1975

previously and would in appropriate cases issue a permanent and noncancelable permit.

He stated that your procedure for so doing would be for me to contact you, with a letter explaining the problem and the sources of finances for the water project, and I am doing so by this letter.

I talked to Bob Leslie in your office about this today and he confirmed that this is the proper procedure.

It was also brought to my attention by the city and the city's engineer that the city does not need three crossings. We do not need the most northerly one shown on the map attached to the proposed permit (M.P. 53+4345), and the new permit should be only for the two southerly crossings. This will change the fee involved and some of the other wording in the new permit.

It seems to me that the provision which provides that the railroad reserves the right to change the permit at any time while the permit remains in effect upon 30 days written notice is unreasonable and we request that this language be removed from the new permit.

Of course, the city is perfectly willing to and will pay the permit fee, but because of some of our administrative problems and timing involved would request that language such as is contained in paragraph 10. be extended from 10 days to 90 days, particularly in respect to possible late payment of the permit fee.

I am sure you understand that there is no way we can accomplish this water transmission plan without crossing your right of way, and we must be able to satisfy the financing agencies that we do in fact have a permanent right to maintain the facility.

Consequently, on behalf of the city I have been asked to apply to you for a permanent and noncancelable permit for the two locations. I would very much appreciate being able to have a copy of the proposed permit so that I could submit it to the governmental agency prior to actual issuance of it.

We do have some rather serious schedule problems in this project and would deeply appreciate any and all speed you can give to this matter.

Superintendent D. H. Burns
Page Three
July 10, 1975

I might point out that one of the primary purposes of the project is to provide water for industrial purposes, including industrial sprinkling on the Arlington Airport and on property adjacent to your railroad line. Lack of such water has been a factor in the past in slow development of industrial uses along your track which is one of the things the railroad has always sought; so this request is for something that is probably potentially very important to your railroad as well as our city and the surrounding area.

Very truly yours,

Joseph P. Mathews, Jr.
City Attorney
315 Olympic Avenue
Arlington, Washington 98223

Phone: 435-2546

JPM:lp
Encl. 1.

cc: R. W. Jacobson
Assistant Manager Leases
Burlington Northern
Industrial Development and
Property Management Department
176 East Fifth Street
St. Paul, Minnesota 55101

Mr. Fredereick G. Kern
Director of Engineering
Lee Johnson Associates, Inc.
1712 Pacific Avenue
Everett, Washington 98201



BURLINGTON NORTHERN

INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

176 East Fifth Street
St. Paul, Minnesota 55101
Telephone (612) 298-2121

Mr. George Lown
City Supervisor
City of Arlington
City Hall
Arlington, Washington 98223

July 7, 1975

Dear Mr. Lown:

Enclosed in duplicate is proposed Permit No. 218,740 in favor of the City of Arlington covering three 12" domestic water pipe lines crossing beneath our track at Arlington, Washington at the locations indicated in red on Exhibit "A" attached to the permit. The agreement is effective as of July 1, 1975 at our standard crossing charge of \$25.00 for each five year period per crossing plus a \$50.00 preparation fee.

Will you please arrange for execution of both copies of the permit by the Mayor of the City, have them attested by the City Clerk, and return them to this office for completion by Burlington Northern, together with the City's check in the amount of \$125.00 to cover rental for the first five year period. One copy will then be returned for your record.

Very truly yours,

R. W. Jacobson
Assistant Manager Leases

Encl.

cc: Mr. Fredereick G. Kern
Director of Engineering
Lee Johnson Associates, Inc.
1712 Pacific Avenue
Everett, Washington 98201

Pipe Line
No. 218,740 *and*

THIS AGREEMENT, made this 1st day of July, 1975, between

BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called "Railroad," and
CITY OF ARLINGTON,

whose post office address is City Hall, Arlington, Washington 98223,
hereinafter called "Permittee."

WITNESSETH:

Railroad, for and in consideration of the fee herein provided to be paid to it by Permittee and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission to excavate for, construct, maintain and operate three 12-inch domestic water pipe lines,

hereinafter referred to as the "facility," upon, along or across the right of way of Railroad, underneath the surface thereof, and under the tracks of its railroad, as the case may be, at or near Arlington Station, in the County of Snohomish, State of Washington, to be located as follows, to-wit:

At survey station 3031 plus 30 - Mile Post 58 plus 363 feet; at survey station 3058 plus 18 - Mile Post 58 plus 3051 feet and at survey station 3071 plus 02 - Mile Post 58 plus 4335 feet

as shown colored red on the plat hereto attached, marked Exhibit "A", dated May 27, 1975, and by this reference thereto made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. Permittee will pay in advance to Railroad for this permit the sum of One Hundred Twenty-Five Dollars (\$125.00) for the first five year period and Seventy-Five Dollars (\$75.00) for each subsequent five years that this permit remains in effect, also all taxes and assessments that may be levied or assessed against said facility. Railroad reserves the right to change the said charge at any time while this permit remains in effect upon thirty (30) days' written notice. This provision for payment shall in no way restrict Railroad's right of termination under Paragraph 9 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair the facility placing the same in accordance with the specifications provided in application dated May 19, 1975, heretofore approved by the Railroad's Regional Manager Engineering.

the right at any time when in his judgment it becomes necessary or advisable, to require any material used in the work to be replaced with like material or with material of a more permanent character; also to require additional work or change of location of said facility as a matter of safety, or of appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of the railway of Railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the said Superintendent at least two (2) days' advance notice of any work to be done by Permittee in the excavation, construction, any reconstruction, maintenance, repair, change of location or removal of the facility, and shall conduct such work in such manner as not to interfere with the maintenance and operation of the railway of Railroad.

4. In the event that Railroad, at the request of Permittee, or for the protection of its property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, any reconstruction, maintenance, repair, change of location, removal of the facility or otherwise, Permittee shall reimburse Railroad for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for construction, any reconstruction, maintenance, repair, change of location, or removal of the facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track or other railway facilities by work or flagging, engineering and/or supervision, such work is to be performed by Railroad employees and the cost borne by Permittee.

5. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the facility which, in the opinion of Railroad, in any way interferes with any train signals, telephone or telegraph lines, or other facilities of Railroad, Permittee upon being informed by Railroad of such interference shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Railroad from and against any damages, claims, losses, suits or expenses in any manner arising from or growing out of interference with the signals, telephone or telegraph lines of Railroad by the operation, use or existence of any such grounding system.

6. Permittee shall and hereby releases and discharges Railroad of and from any and all liability for damage to or destruction of the said facility, and any other property of Permittee located on or near Railroad's premises; and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees and agents of the parties hereto, or loss of or damage to property to whomsoever belonging, including property owned by, leased to or in the care, custody and control of the parties hereto, in any manner arising from or during the construction, any reconstruction, use, maintenance, repair or removal of said facility, however such injury, death, loss, damage or destruction aforesaid may occur or be caused; and shall and hereby does indemnify and save harmless Railroad of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs or expenses arising or growing out of or in connection with any such injury, death, loss, damage or destruction aforesaid. Permittee further agrees to appear and defend in the name of Railroad any suits or actions at law brought against it on account of any such personal injuries, death or damage to property, and to pay and satisfy any final judgment that may be rendered against the Railroad in any such suit or action. The liability assumed by Permittee herein shall not be affected or diminished by the fact, if it be a fact, that any such suit or action brought against Railroad may arise out of negligence of Railroad, its officers, agents, servants or employees, or be contributed to by such negligence. Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification against the sole negligence of Railroad, its officers, employees or agents.

7. Permittee shall not transfer or assign this permit without the written consent of Railroad.

8. Nothing herein contained shall imply or import a covenant on the part of Railroad for quiet enjoyment.

9. It is expressly understood and agreed that Railroad may at any time cancel and terminate this license and permission by giving to Permittee thirty (30) days' notice in writing of its intention to cancel the same and at the expiration of such notice this license and permission shall terminate. Upon receipt of such notice and before the expiration thereof, Permittee, under the supervision and direction of the said Superintendent, or his authorized representative, shall remove the facility from the right of way of Railroad and restore the right of way and premises of Railroad in a manner and to such condition as shall be satisfactory to the said Superintendent of Railroad. If Permittee shall fail to remove the facility and restore the said right of way to such condition within said thirty (30) day period, Railroad at its option may remove the same and restore the said right of way to its previous condition, and Permittee shall pay the cost and expense thereof to Railroad.

10. Upon any failure of Permittee punctually and strictly to observe and perform the covenants and promises made herein by Permittee to be kept and performed, Railroad may terminate this agreement on ten (10) days' notice to Permittee, remove the facility, and restore the right of way to its previous condition at the cost and expense of Permittee.

11. Any notices given under the provisions of this agreement shall be good if deposited postpaid in a United States post office addressed to Permittee at Permittee's post office address above stated or as otherwise directed by Permittee.

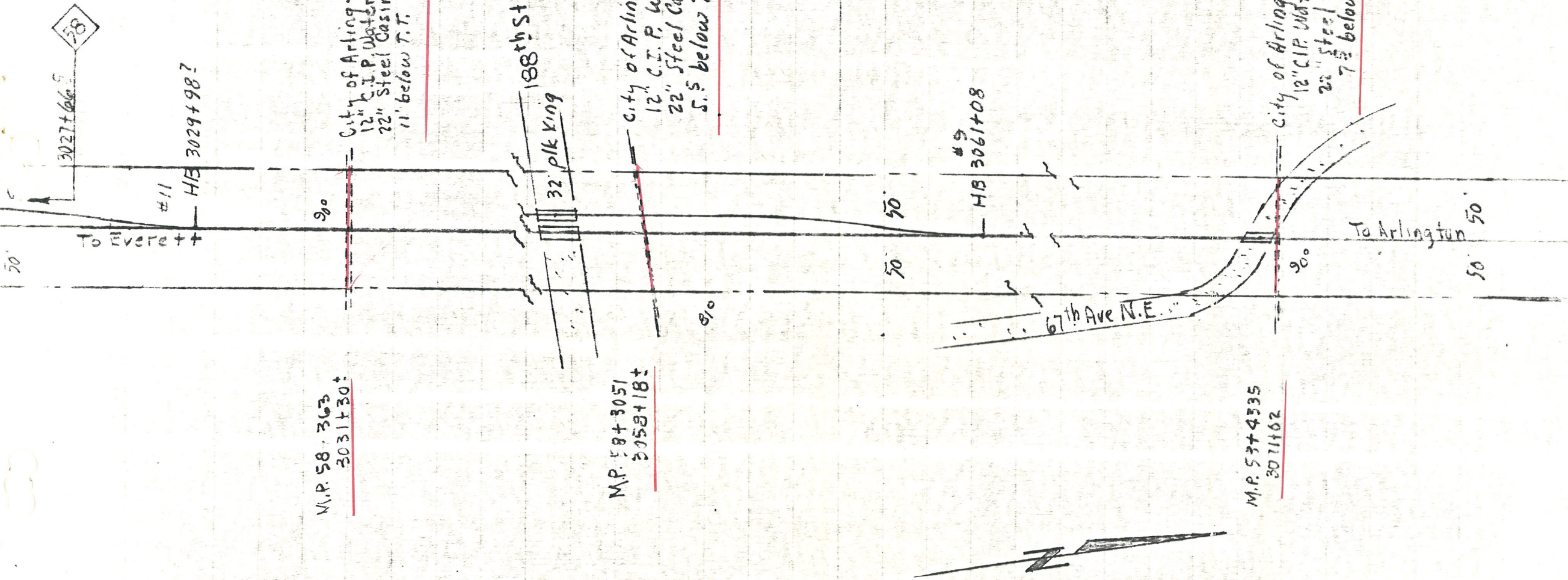
12. The license and permission herein granted is subject to permits, leases and licenses, if any, heretofore granted by Railroad affecting the premises upon which said facility is located.

Subject to the foregoing provisions, this agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Railroad and Permittee have executed this agreement the day and year first above written.

In Presence of:

_____	BURLINGTON NORTHERN INC.
_____	By _____ General Manager - Leases
_____	CITY OF ARLINGTON
_____	By _____ Mayor
_____	Attest _____ City Clerk



M.P. 58+363
3031+30+

M.P. 58+3051
3058+18+

M.P. 59+4335
3071+62

EXHIBIT "A"
BURLINGTON NORTHERN INC.
ARLINGTON, WA
SCALE 1 IN. = 100 FT.

5/27/75