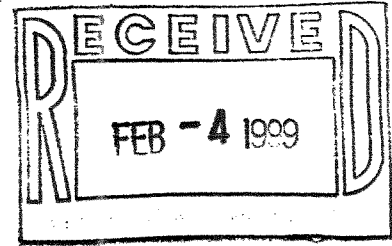




CATELLUS



January 28, 1999
98-22259

Ms. Cristy L. Brubaker
Public Works Department
City of Arlington
238 N. Olympia
Arlington, WA. 98223

Dear Ms. Brubaker:

Enclosed is executed License with the City covering 36-inch storm water drainage pipeline crossing BNSF Railway Company's property at Arlington, WA. **A copy of the executed Agreements must be available upon request at the job site allowing authorization to do the work.** Please contact Roadmaster Ron G. Kazen at Everett, WA., telephone (425) 304-6690, five (5) days in advance of entry and **BEFORE YOU DIG, CALL 1-800-533-2891.**

If you need additional information, please contact me at (972) 719-6156.

Sincerely,

Ron Jackson
Contract Specialist

cc: Mr. Ron G. Kazen, Roadmaster
BNSF Railway Company
2900 Bond Street
Everett, WA. 98201

Form Approved
by VP-Law

Contract No. _____
Tracking No. 98-22259

PIPE LINE LICENSE

THIS LICENSE, made this 2nd day of December, 1998, subject to the terms and conditions set forth herein, between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, its successors and assigns, a Delaware corporation (hereinafter called "Licensor"), party of the first part, and **CITY OF ARLINGTON, WASHINGTON**, a Washington corporation (hereinafter, whether one or more, called "Licensee"), party of the second part.

WITNESSETH, That the parties hereto for the consideration hereinafter expressed covenant and agree as follows:

1. Subject to the terms and conditions hereinafter set forth, Licensor grants a non-exclusive license to Licensee for it and/or its contractors to construct and maintain ONE (1) STORM WATER PIPELINE, 36-INCHES IN DIAMETER (hereinafter, whether one or more pipe lines, called the "PIPE LINE"), across or along the rail corridor of Licensor at or near the station of Arlington (Edgecomb), Snohomish, County, Washington, Line Segment 406, Mile Post 4.71, the location of the PIPE LINE being more particularly shown on the attached EXHIBIT "A", Drawing No. 1-15521, dated November 9, 1998 and revised December 2, 1998, and made a part hereof.

This agreement shall be effective January 28, 1999.

3. Licensee shall use the PIPE LINE solely for carrying STORM WATER and shall not use it to carry any other commodity or for any other purpose whatsoever.

4. Licensee shall pay Licensor as compensation for this license the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$ 2,500.00).

5. Licensee shall, at its own cost and subject to the supervision and control of Licensor's field engineer, locate and/or relocate, construct and maintain the PIPE LINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed or rail corridor of Licensor, or the safe operation of its railroad. When the PIPE LINE is used for oil, gas, petroleum products, or other flammable or highly volatile substances under pressure, the PIPE LINE shall be constructed, installed and thereafter maintained in conformity with the plans and specifications shown on print hereto attached, marked Exhibit B and made a part thereof. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this paragraph, Licensor may, at its option, arrange for the performance of such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby. Licensee's emergency contact _____ can be reached at (360) 435-3811

6. Licensee shall reimburse Licensor for any expense incurred by Licensor for false work to support Licensor's tracks and for flagman to protect its traffic during installation and maintenance periods and for any and all other expense incurred by Licensor on account of the PIPE LINE. (The current rate, subject to change without notice, for furnishing of Licensor's Flagman is a minimum daily charge of \$500.00, for the first eight hours, or any part thereof, per day, with an hourly charge of \$95.00 per hour for any time over eight hours per day).

7. Prior to any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipeline(s) or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipeline(s) and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall be responsible for removing all excavated materials from Licensor's Premises.

8. Prior to installation, five (5) days advance notice must be given to Licensor's Roadmaster, Ron G. Kazen at Everett, WA., telephone (425) 304-6690.

9. (A) EXCEPT AS SET FORTH IN SECTION 9 (C), LICENSEE SHALL RELEASE, INDEMNIFY, AND HOLD HARMLESS LICENSOR FOR ALL LOSSES, DAMAGES, EXPENSES, INJURIES OR DEATH TO LICENSEE, ITS EMPLOYEES, AGENTS AND CONTRACTORS, ARISING IN ANY MANNER FROM THE PERFORMANCE OF THIS AGREEMENT, EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY LICENSOR'S NEGLIGENCE OR INTENTIONAL MISCONDUCT.

LICENSEE FURTHER AGREES TO RELEASE, INDEMNIFY, AND HOLD HARMLESS LICENSOR FOR ALL LOSSES, DAMAGES, EXPENSES, INJURIES, OR DEATH TO ANY PERSON, INCLUDING LICENSOR, WHICH ARISE IN ANY MANNER FROM THE CONSTRUCTION, MAINTENANCE, USE, STATE OF REPAIR OR PRESENCE OF LICENSEE'S PIPE LINE, EXCEPT TO THE EXTENT RESULTING SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR.

(B) WHENEVER ANY EMPLOYEE, AGENT OR CONTRACTOR OF LICENSEE OR ANY OF LICENSEE'S PARTIES MAKES ANY CLAIM FOR PERSONAL INJURY OR DEATH AGAINST LICENSOR WITHIN THE MEANING OF THE FEDERAL EMPLOYERS' LIABILITY ACT, OR ANY APPLICABLE SAFETY ACT, (45 U.S.C. § 51 ET. SEQ.), FOR ANY INCIDENT CAUSED, WHOLLY OR IN PART, BY PROPERTY, EQUIPMENT, FIXTURES OR CONDITION BELONGING TO OR SUBJECT TO THE CONTROL OF LICENSEE, OR CLAIMS OR ALLEGES THAT HE OR SHE IS AN EMPLOYEE OF LICENSOR OR IS FURTHERING THE OPERATIONAL ACTIVITIES OF LICENSOR, LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LICENSOR FOR ALL LOSSES, DAMAGES, COSTS OR EXPENSES RELATED TO SUCH CLAIM, REGARDLESS OF LICENSOR'S NEGLIGENCE.

(C) THE LIABILITY ASSUMED BY LICENSEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF LICENSOR, ITS AGENTS, SERVANTS EMPLOYEES, OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW; PROVIDED, HOWEVER, THAT LICENSEE SHALL HAVE NO OBLIGATION TO ASSUME SUCH LIABILITY TO THE EXTENT CAUSED BY THE NEGLIGENCE OF LICENSOR OR ITS EMPLOYEES OR AGENTS WHERE ASSUMPTION OF SUCH LIABILITY WOULD VIOLATE STATE OF WASHINGTON LAWS.

10. If at any time during the term hereof Licensor shall desire to make any use of its rail corridor with which the pipeline will in any way interfere, including the relocation of existing or the construction of new pipeline(s) and other facilities in which it shall have an interest, Licensee shall, at Licensee's own cost, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the pipeline as in the judgment of Licensor may be necessary to avoid interference with the proposed use of its rail corridor.

11. (a) Licensee shall, at its expense, procure and maintain throughout the term of this License a comprehensive general form of insurance covering liability, including, but not limited to, Public Liability, Personal Injury and Property Damage, as well as Contractual Liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall contain no exclusion with respect to rail corridor of Licensor in the care, custody or control of Licensee. Licensee's contractors shall also procure and maintain the above coverage when on Licensor's property. **LICENSOR AND CATELLUS MANAGEMENT CORPORATION SHALL BE NAMED AN ADDITIONAL INSURED.**

(b) All risk insurance on the PIPE LINE of the Licensee, or Licensor's property in Licensee's care, custody and control, shall contain a waiver of subrogation of claims against Licensor. Licensee shall maintain Workers Compensation insurance which shall contain a waiver of subrogation against Licensor.

(c) All insurance shall be placed with insurance companies licensed to do business in the State in which the PIPE LINE is located, with a current Best's Insurance Guide Rating of B and Class X, or better. Licensee shall provide Licensor in advance of said installation a Certificate of Insurance evidencing such insurance. Insurance must provide for coverage of incidents occurring within fifty (50) feet of a railroad track, and any provision in the insurance policy to the contrary must be specifically deleted.

(d) A Railroad Protective Liability insurance policy issued in the name of Licensor with limits of \$2,000,000 for bodily injury and property damage per occurrence with an aggregate of \$6,000,000 must be provided when construction work will be performed within fifty (50) feet of Licensor's tracks. **The policy will remain in force during the construction phase of this project and must be provided prior to Licensor signing this license.**

(e) In lieu of providing a Railroad Protective Liability Insurance policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,000.00.

I elect to participate in Licensor's Blanket Policy;

I elect not to participate in Licensor's Blanket Policy.

(f) The furnishing of insurance required by this Section shall in no way limit or diminish the liability or responsibility of Licensee as provided under any Section of this License.

12. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit, or other proceeding brought against Licensor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless Licensor. Licensee shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments.

13. (a) Licensee shall comply with all federal, state and local environmental laws and regulations in its use of Licensor's rail corridor, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by RCRA, on or under Licensor's rail corridor. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by CERCLA, on Licensor's rail corridor. Notwithstanding any other requirements in this contract, Licensee assumes all responsibility for the investigation and cleanup of such release and shall indemnify and defend Licensor and its agents for all costs and claims, including consultant and attorney fees, arising in any manner out of such release or Licensee's failure to comply with environmental laws, except to the extent such costs or claims are proximately caused by Licensor's gross negligence or intentional misconduct.

(b) Licensee shall give Licensor timely notice of any release, violation of environmental laws or inspection or inquiry by governmental authorities charged with enforcing environmental laws with respect to Licensor's rail corridor. Licensee also shall give Licensor timely notice of all measures undertaken by or on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

(c) In the event that Licensor receives notice from Licensee or otherwise of a release or violation of environmental laws which occurred or is occurring during the term of this License, Licensor may require Licensee, at Licensee's sole expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation.

14. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee; but any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

15. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the PIPE LINE and shall indemnify Licensor against any loss, liability or expense incurred by Licensor on account of such liens. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the PIPE LINE that is or may be permitted by law to prevent the attachment of any such liens to Licensor's premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section or any other Section of this License.

16. In the case of eviction of Licensee by anyone owning or obtaining title to the rail corridor on which the PIPE LINE is located, or the abandonment by Licensor of said rail corridor, Licensor shall not be liable to Licensee for any damage of any nature whatsoever or to refund any payment made by Licensee to Licensor hereunder, except the proportionate part of any recurring rental charge which may have been paid hereunder in advance.

17. Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed to either party, at the addresses and department shown beneath signature of the parties.

18. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

19. Any contractor or subcontractor performing work on or in connection with the PIPE LINE shall for the purpose of this license, be conclusively deemed to be the servant and agent of Licensee acting on behalf and within the scope of such contractor's or subcontractor's employment for Licensee.

20. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall underlease or sublet the PIPE LINE nor assign or transfer this License or any interest herein, without the prior written consent and approval of Licensor.

21. It is understood and agreed that this License shall not be placed of public record.

22. All the covenants and provisions of this License shall be binding upon the heirs, legal representatives, successors and assigns of Licensee. No assignment by Licensee shall be binding upon Licensor without the written consent of Licensor in each instance.

23. All questions concerning the interpretation or application of provisions of this License shall be decided according to the laws of the State in which the PIPE LINE is located.

24. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

25. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

26. Notwithstanding any other provisions of this license, Licensee shall comply with all statutes, ordinances, rules, regulations, orders and decisions issued by any federal, state or local governmental body or agency established thereby relating to Licensee's use of Licensor's premises hereunder.

27. This license is given by Licensor and accepted by Licensee upon the express condition that the same may be terminated at any time by either party upon thirty (30) days' notice in writing to be served upon the other party, stating therein the date that such termination shall take place, and that upon the termination of this license in this or any other manner herein provided, Licensee, upon demand of Licensor, shall abandon the use of the PIPE LINE and remove the same and restore the rail corridor of Licensor, as near as possible, to the same condition in which it was prior to the placing of the PIPE LINE thereunder. In case Licensee shall fail to restore Licensor's rail corridor within Thirty (30) days after the effective date of termination, Licensor may proceed with such work at the expense of Licensee. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the PIPE LINE is removed and the rail corridor of Licensor restored as above provided.

28. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to license on the Premises, and supersedes any and all other agreements between the parties hereto relating to license on the Premises.

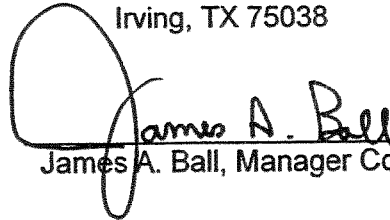
Catellus Management Corporation is acting as agent for The Burlington Northern And Santa Fe Railway Company.

WHEREOF, the parties have executed this agreement in duplicate the day and year first above written.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By: Catellus Management Corporation
Its Attorney in Fact
4545 Fuller Drive, Suite 105
Irving, TX 75038

By:


James A. Ball, Manager Contracts

CITY OF ARLINGTON, WASHINGTON

238 North Olympia Avenue
Arlington, WA. 98223

By:

Title:

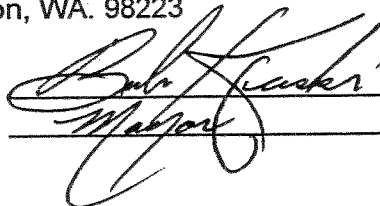
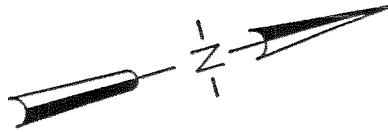

Mayor

EXHIBIT "A"

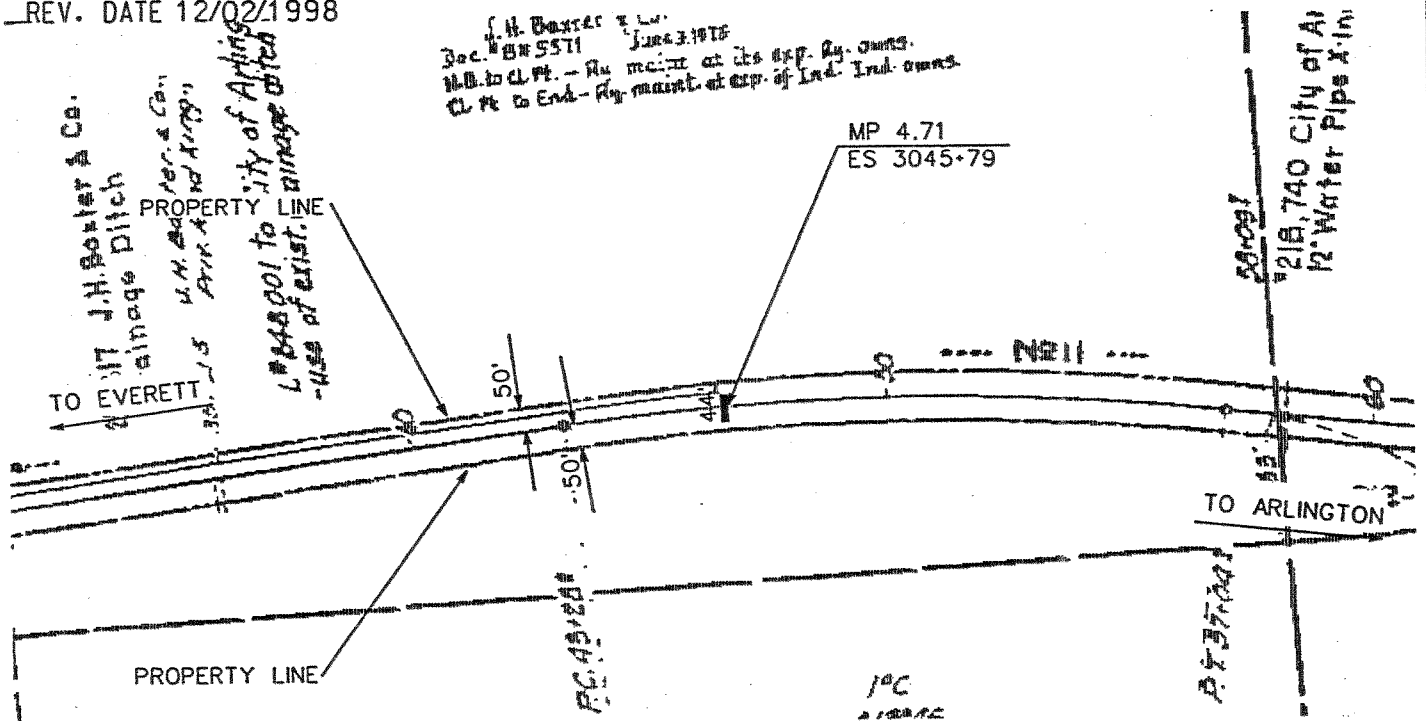
ATTACHED TO CONTRACT BETWEEN
 THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
 AND
 CITY OF ARLINGTON

FORT WORTH, TEXAS
 SCALE: 1 IN. = 100 FT.
 PACIFIC _____ DIV.
 BELLINGHAM _____ SUBDIV. L.S. 0406
 DATE 11/09/1998
 REV. DATE 12/02/1998



V- _____
 MAP _____
 PARCEL _____

*J. H. Baxter & Co.
 Doc. # 885571 June 2, 1978
 M.B. to C.L.P. - No. main at its exp. by owner.
 C.L.P. to End - by maint. at exp. of Ind. Ind. owner.*



DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	36"	N/A	LENGTH ON R/W:	44'	N/A
CONTENTS:	STORM WATER		WORKING PRESSURE:	GRAVITY	
PIPE MATERIAL:	STEEL	N/A	BURY: BASE/RAIL TO TOP OF CASING		5'
SPECIFICATION / GRADE:	GR-B	N/A	BURY: NATURAL GROUND		3'
WALL THICKNESS:	.583"	N/A	BURY: ROADWAY DITCHES		3'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

VENTS: NUMBER N/A SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

AT ARLINGTON
 COUNTY OF SNOHOMISH

STATE OF WA

JLB

MAP REF. S51725