

ARLINGTON NORTHERN RAILROAD

PACIFIC DIVISION
Permit Department
C. David George

2000 First Interstate Center
999 Third Avenue
Seattle, Washington 98104-1105
Phone 206-467-3329

Cascade Surveying & Engineering Inc.
P. O. Box 326
Arlington, WA 98223

January 29, 1991
(Revised 1/30/91)

Attention: Howard Moore, Randy Devoe

Re: Permit Number PX91-16001 for Underground Potable Water Pipeline
Xing at ARLINGTON, WA

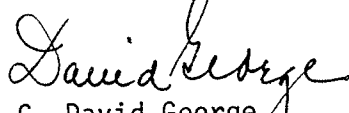
Attached is copy of completed agreement for your file.

This will also acknowledge receipt of your check No. 8187 dated 1/24/91, in the amount of \$700.00, \$450.00, to cover the permit fee for the ENTIRE TIME, and Additionally, \$250.00 to cover BNRR's Railroad Protective Insurance package.

Should you have a NAME CHANGE OR change of address in the future other than that shown in this Agreement, kindly notify us at the above address making reference to this Permit Agreement number. Also notify us of any change of property ownership served by this facility as outlined in this Agreement, with reference to transfer and/or assignment.

Before beginning any work on our right-of-way, 48 hours' advance notice must be given to Roadmaster M. C. Balgaard so he can make any arrangements he deems necessary. His telephone number in Everett is 206-259-9690.

Yours truly,


C. David George
Permit Specialist

Att.

cc: Mr. J. P. Kuklok, St. Paul Accounting Dept., St. Paul, MN
Mr. M. C. Balgaard, Roadmaster, Everett, WA
Ms. Judy Harris, Risk Management Analyst, Ft. Worth, TX
Mr. J. A. Bezold, Manager Engineering Data, Seattle WA

CALL BEFORE YOU DIG 1-800-533-2891

jan2981d02

Pipeline Permit
No. PX91-16001

Cascade Surveying and
Engineering Inc. #8696

THIS AGREEMENT, made this 1st day of FEBRUARY, 1991, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington" whose post office address is 2000 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104-1105, and

CITY OF ARLINGTON, a Municipality corporation,

whose post office address is: 238 N. Olympic
Arlington, WA 98223

hereinafter called "Permittee,"

WITNESSETH:

Burlington, 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

8-inch ductile iron potable water pipe placed inside a 15.376-inch steel casing pipe, at a length of 50-feet, at a depth of 5-feet 6-inches from T/Tie to T/Casing, installation by jack and bore, with face of jacking/receiving pits a minimum of 25-feet from Center Line of nearest track

hereinafter referred to as the "facility," upon, along or across the right-of-way of Burlington, under the tracks of Burlington, as the case may be, at or near

ARLINGTON, in the County of Snohomish, State of Washington,

to be located as follows, to-wit:

Crossing at Line Segment 0406 - Survey Station 3122+08 - Milepost 6.14.

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

1. For this Permit, Permittee will pay Burlington, in advance, the sum of FOUR HUNDRED FIFTY DOLLARS (\$450.00) for the entire time this permit remains in effect and Permittee will also pay or reimburse Burlington for all taxes and assessments that may be levied or assessed against said "facility". Burlington reserves the right to change the fee on future Permits at any time without notice. This provision shall in no way affect Burlington's right to terminate this permit pursuant to Paragraph 10 hereof. Either party hereto may assign any receivables due them under this Agreement, provided, however, such assignments shall not release the assignor of any of its rights or obligations under this Agreement.

Handwritten notes:
The CONTRACTOR shall be responsible for the maintenance and repair of the facility in accordance with the specifications provided in application dated 11/7/90, and restore the surface of the ground upon which the "facility" is located to its previous condition subject to the Division Roadmaster's approval. Said Roadmaster shall have the right at any time when in his/her 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 and/or 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 Burlington's

jan0991d07



all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the Division Roadmaster at least 48 hours' advance notice of any work to be done by Permittee in the excavation, construction, 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 Burlington's railroad; however, if emergency work is necessary, Permittee shall make every effort to notify Roadmaster that such work is to be done. Permittee shall, at their own expense, restore any facilities or said premises which are in any manner disturbed by such maintenance, repairs or removal.

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

5. (a) Fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in the Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

6. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the "facility" which, in the opinion of Burlington, interferes with train signals in any way, telephone or telegraph lines, or other facilities of Burlington, Permittee, upon being informed by Burlington 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 Burlington from and against any damages, claims losses, suits, or expenses in any manner arising from or growing out of Permittee's interference with the signals, telephone, or telegraph lines of Burlington by the operation, use, or existence of any such grounding system.

7. Permittee shall and hereby releases and discharges Burlington 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 Burlington'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, and 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 excavation for, construction, reconstruction, use, maintenance, repair or removal of said "facility", however such injury, death, loss, damage or destruction aforesaid may occur or be caused, demands, suits, action, damages, recoveries, judgment, 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 Burlington any suits or actions at law



against Burlington on account of any such personal injuries or death, and loss and damage to or destruction of property, and to pay and satisfy any final judgment that may be rendered against Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE 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 BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW; PROVIDED, HOWEVER, THAT PERMITTEE SHALL HAVE NO OBLIGATION TO ASSUME SUCH LIABILITY TO THE EXTENT CAUSED BY THE NEGLIGENCE OF BURLINGTON OR ITS EMPLOYEES OR AGENTS WHERE ASSUMPTION OF SUCH LIABILITY WOULD VIOLATE WASHINGTON LAW (RCW 4.24.115), OREGON, IDAHO OR THE PROVINCE OF BRITISH COLUMBIA LAWS.

8. Permittee shall not transfer or assign this permit without the written consent of Burlington.

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

10. It is expressly understood and agreed that Burlington may, so long as reasonable, at any time cancel and terminate this license and permission by giving to Permittee thirty (30) days' written notice 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 General Manager, or his authorized representative, shall remove said "facility" from the right-of-way of Burlington and restore the right-of-way and premises of Burlington in a manner and to such condition as shall be satisfactory to the said General Manager. If Permittee fails to remove the "facility" and restore the said right-of-way to such condition within said thirty (30) day period, Burlington at its option may remove the same and restore the said right-of-way to its previous condition, and Permittee shall pay to Burlington the cost and expense thereof.

11. Upon any failure of Permittee to punctually and strictly to observe and perform the covenants and promises made herein by Permittee to be kept and performed, Burlington 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.

12. In the event of Permittee's removal of the Pipeline from Burlington's premises, Permittee agrees to terminate said Agreement by notifying Burlington's General Manager in writing of Permittee's removal of Pipeline and termination of said Agreement within thirty (30) days from date of removal of said Pipeline from Burlington's premises.

13. Any notices given under the provisions of this Agreement shall be good if deposited with the United States Postal Service addressed to Permittee at Permittee's post office address above stated or as otherwise directed by Permittee.

14. The license and permission herein granted is subject to permits, leases and licenses, if any, heretofore granted by Burlington 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.



BURLINGTON NORTHERN RAILROAD COMPANY
PERMIT NO. PX91-16001 DATED February 1, 1991

The Permittee or his contractor(s) shall procure and maintain in full force and effect during the Initial Construction Period and all future maintenance or reconstruction periods, which require the use of heavy machinery or excavation of soil upon BURLINGTON'S Right-of-way or within FIFTY (50) FEET of BURLINGTON'S tracks a RAILROAD PROTECTIVE LIABILITY INSURANCE POLICY, naming BURLINGTON as the insured, covering all acts of the Permittee or his contractor(s) arising out of the installation of Permit No. PX91-16001 facilities, with standard limits of TWO MILLION DOLLARS (\$2,000,000) for each bodily injury and property damage with an aggregate of SIX MILLION DOLLARS (\$6,000,000).

This insurance coverage may be provided by exercising one of the two following alternatives:

- (a) Permittee or his contractor(s) purchase a policy on the open market or
- (b) Permittee shall have the option to participate in the Burlington Blanket Railroad Protective Liability program by paying to Burlington in check, prior to the commencement of any work or access under this Permit, the amount of \$250.00 referencing Permit No. PX91-16001.

Prior to commencement of any work to be performed under this agreement, Permittee shall submit to Burlington the ORIGINAL INSURANCE POLICY AS DESCRIBED IN (A) ABOVE, WITH the Permit No. PX91-16001 shown on the declarations page.

It is understood that said insurance policy shall be so written that no insurance company shall have any recourse against Burlington, by way of subrogation or otherwise, for any loss covered by or paid or payable under said policies.

<u>Gott Construction</u> Contractor	_____ Subcontractor
<u>3930 - 88th Street NE</u> Address	_____ Address
<u>Marysville 98270</u> <u>Burlington Wa 98773</u> City, State, Zip, Phone Number	_____ City, State, Zip, Phone Number
<u>204 - 653 - 3133</u> Project Engineer's Name	_____ Project Engineer's Name

If more than one Subcontractor is involved, attach additional information to this Addendum, together with Insurance required.

NEITHER PERMITTEE, CONTRACTOR, OR ANY SUBCONTRACTOR SHALL BEGIN ANY WORK ON BURLINGTON'S PROPERTY AND/OR RIGHT-OF-WAY UNTIL ALL NECESSARY EVIDENCE OF INSURANCE HAS BEEN FURNISHED AND APPROVED BY BURLINGTON, AND THE ROADMASTER NOTIFIED 48 HOURS IN ADVANCE.

Questions or clarifications of insurance requirements may be directed to:

Ms. Judith Harris
Risk Management Analyst
BURLINGTON NORTHERN RAILROAD COMPANY
777 Main Street
Fort Worth, TX 76102
Phone: 817-878-2374
FAX: 817-878-2377

For number of trains, etc., CONTACT Trainmaster J. S. Lunak, at Bellingham,
206-625-6700
jan0991d08



...HEREOF, Burlington and Permittee have executed this Agreement
one day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By: GE Haug
Title: DIVISION ENGINEER

Witnesses in presence of:

Melanie A. Blowers
(Witness)

Harry Peterson
(Witness)

CITY OF ARLINGTON

By: X [Signature]

Title: Mayor

