



BURLINGTON NORTHERN RAILROAD

PACIFIC DIVISION
C. DAVID GEORGE
Permit Department

2000 First Interstate Center
999 Third Avenue
Seattle, Washington 98104
Telephone (206) 467-3329
Fax No. (206) 467-3315

City of Arlington
238 North Olympic
Arlington WA 98233

October 22, 1992

Attention: Terry Castle, DEBCO CONSTRUCTION

Re: Permit Number PX92-16165 for Underground Longitudinal Sanitary
Sewer Pipeline Xing within the R/W with Manholes at ARLINGTON WA

Attached is copy of completed agreement for your file.

This will acknowledge receipt of your check No. 9336 dated
10/13/92, in the amount of \$300.00, to cover the permit fee for the
first TEN years. Additionally, Debco's check number 07854 dated
10/13/92 in the amount of \$350.00 to cover BNRR's Railroad
Protective Insurance package.

Before beginning any work on our right-of-way, 48 hours' advance
notice must be given to two people. One is Roadmaster S. R. Moran
so that he may make any arrangements deemed necessary. His
telephone number in Bellingham is 206-625-6701. You must also
contact M. D. Anderson, Control Systems Supervisor to identify any
crossing or train signal wiring. His telephone number in Everett
is 206-259-9687. Also before you dig, call 1-800-533-2891 for
fiber optic locations.

Should you have a NAME OR ADDRESS CHANGE 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.

Sincerely,

David George
C. David George
Permit Coordinator

Att.

- cc: Mr. J. A. Gunter, Operations Acctg. & Contracts, St. Paul MN
ATTENTION: Marge Kemp
- Mr. S. R. Moran, Roadmaster, Bellingham WA
- Mr. M. D. Anderson, Control Systems Supv., Everett WA
- Ms. Judy Harris, Risk Management Analyst, Ft. Worth TX
- Mr. J. A. Bezold, Manager Engineering Data, Seattle WA

Miscellaneous
Right-of-Way Occupancy Permit
No. PX92-16165

(Reference T0092392 and
PX92-16164)

THIS AGREEMENT, made this 1st day of OCTOBER, 1992, 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

whose post office address is:

238 North Olympic
Arlington WA 98233

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

660-LF 24-inch PVC longitudinal Sanitary Sewer Pipeline including 3-manholes running along the easterly R/W measuring from approximately 18-feet to 60-feet from the Center Line of the nearest track, depths ranging from 7-feet to 10-feet. Located as per ST Engineering's submitted plans "West Avenue Utility Improvement Project Schedule A: Sanitary Sewer" dated 'April 1992'

hereinafter referred to as the "facility," upon the right-of-way of Burlington, or underneath the surface thereof of Burlington's track, as the case may be, at or near

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

to be located as follows, to-wit:

at Line Segment 0406 - Survey Station 3161+35 to 3167+95 - Milepost 6.89 to 7.01.

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

1. Permittee will pay in advance to Burlington for this permit the sum of THREE HUNDRED DOLLARS (\$300.00) for the first TEN (10) year period hereof and ONE HUNDRED FIFTY DOLLARS (\$150.00) for each subsequent TEN (10) year period that 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 relieve the assignor of any of its rights or obligations under this agreement.

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 6/1/92, heretofore approved by the Burlington's Division Engineer.

Permittee shall fill in the excavation, and restore the surface of the ground to its previous condition subject to the approval of the General Manager of the Division of Burlington upon which the "facility" is located. Said General Manager shall have 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



of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of Burlington, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the said General Manager 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 Burlington.

4. In the event that Burlington, at the request of Permittee or any agent or contractor 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 Burlington 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 Burlington 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 this 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 telecommunications 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, in any way interferes with any train signals, 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 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 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 Burlington 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 Burlington any suits or actions at law brought against it



injuries, death or damage to property, and to pay and satisfy any final judgment that may be rendered against the 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 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 General Manager, or his authorized representative, shall remove the "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 shall fail 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 "facility" from Burlington's premises, Permittee agrees to terminate said Agreement by notifying Burlington's General Manager in writing of Permittee's removal of "facility" and termination of said Agreement within thirty (30) days from date of removal of said "facility" from Burlington's premises. 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.

13. Any notice 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.

15. 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.

ahj

the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

Title: DIVISION ENGINEER

Witnesses in the presence of:

CITY OF ARLINGTON

Arnold L. Zinke
(Witness)

By: Jerry L. Costa

Henry K. ...
(Witness)

Title: Military Supt.



ADDENDUM TO BURLINGTON NORTHERN RAILROAD COMPANY
PERMIT NO. PX92-16165 DATED October 1, 1992

The Permittee or his contractor(s) shall procure and maintain in full force and effect during the 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 the following insurance: (1) Commercial General Liability (including contractual liability) against all claims arising out of bodily injury, illness and death and from damage to or destruction of our property or to property of others, including loss or use thereof, and including liability of Burlington, with minimum limits for bodily injury and property damage of \$1,000,000 for each occurrence and (2) Railroad Protective Liability Insurance for bodily injury and property damage, covering all acts of the Permittee or his contractor during construction of Permit Number PX92-16165, with standard limits of \$2,000,000 per occurrence, with an aggregate limit of \$6,000,000. The BURLINGTON will be the named insured on the Railroad Protective Liability Policy. This Policy and the Certificate of Insurance for General Liability must be submitted with this Permit.

The Railroad Protective Liability 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 \$350.00 referencing Permit No. PX92-16165.

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. PX92-16165 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.

DEBCO Construction
Contractor

20219 99th AVE SE
Address

Snohomish WA 98290 486-1280
City, State, Zip, Phone Number

DAN BUNO
Project Engineer's Name

Tunnel Systems Inc.
Subcontractor

22013 West Boston Rd.
Address

Woodinville, WA 98072 488-4880
City, State, Zip, Phone Number

Bill Sivesind
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