

RESOLUTION NO. R-2515

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING AND DIRECTING THE MAYOR TO SIGN ON BEHALF OF THE CITY BURLINGTON NORTHERN RAILROAD CROSSING PERMIT NO. 227,946 .

WHEREAS, it is necessary to carry out and complete the utility and street improvements within Local Improvement District No. 115, to enter into a railroad crossing permit agreement with the Burlington Northern Railroad, and

WHEREAS, the Burlington Northern has agreed to such permit,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:


Section 1. The Mayor of the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland that certain railroad crossing permit agreement with the Burlington Northern Railroad, copy of which is attached to the original of this resolution, and by this reference incorporated herein. Said permit pertains to the public improvement and construction to be accomplished pursuant to Local Improvement District No. 115.

PASSED BY MAJORITY VOTE of the Kirkland City Council in regular meeting on the 17th day of April, 1978.

SIGNED IN AUTHENTICATION thereof on the 17th day of April, 1978.


MAYOR

ATTEST:


Director of Administration &
Finance
(ex officio City Clerk)

THIS AGREEMENT, made this 16th day of March, 1978, between

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

whose post office address is 210 Main Street, Kirkland, Washington 98033, 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 8-inch sewer pipelines, one 12-inch and one 16-inch water pipelines,

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 Kirkland Station, in the County of King, State of Washington, to be located as follows, to-wit:

Sewer pipelines at survey station 262 plus 69 - Mile Post 19 plus 632 feet and survey station 269 plus 55 - Mile Post 18 plus 5178 feet; 12-inch water pipeline at survey station 269 plus 50 - Mile Post 18 plus 5183 feet and 16-inch water pipeline at survey station 243 plus 96 - Mile Post 19 plus 2457 feet

as shown in red Exhibit "A", dated February 8, 1978, 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 agreement 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— heretofore approved by the Railroad's Regional Manager Engineering.

Permittee shall fill in the excavation, and restore the surface of the ground to its previous condition subject to the approval of the Superintendent of the Division of Railroad upon which the facility is located. Said Superintendent 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 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 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 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.

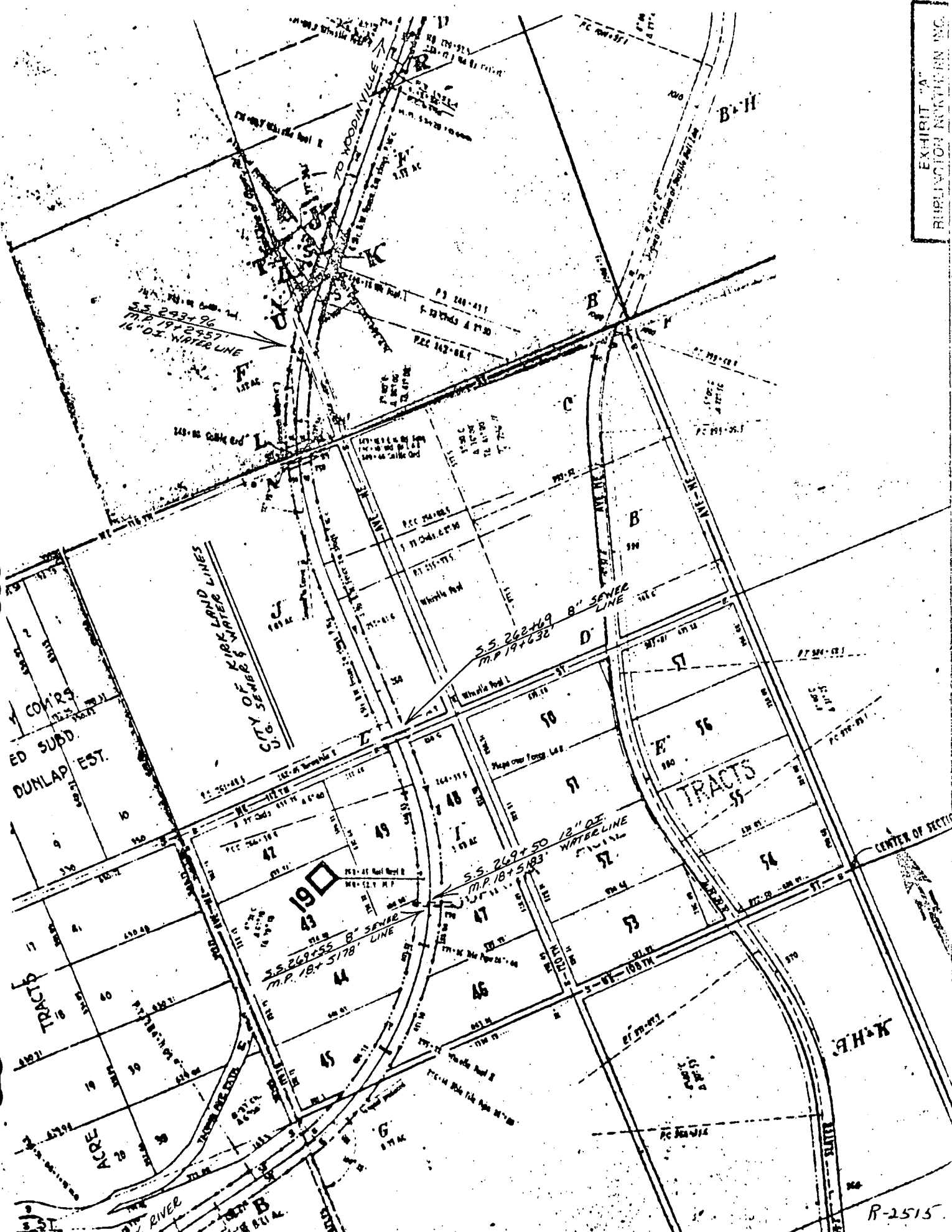
5. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the facility which, in the opinion of Railroad, in any way interferes with any train signals, telephone or telegraph lines, or other facilities of Railroad, Permittee upon being informed by 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.

13. This agreement is intended to supersede that certain written agreement between the parties hereto dated February 1, 1977 relating to the construction and maintenance of sewer and water pipelines at Kirkland, Washington; and upon execution and delivery hereof, said agreement of February 1, 1977, shall stand cancelled and annulled without prejudice to any existing liability.

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 KIRKLAND

By *Robert R. Heir* _____
Mayor

Attest: *T. J. Johnson* _____
City Clerk