

**AGREEMENT FOR BELOW-GRADE PRIVATE CROSSING**

**THIS AGREEMENT** ("Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2001, ("Effective Date") by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Licensor") and **CITY OF PORTLAND / BUREAU OF ENVIRONMENTAL SERVICES** (hereinafter whether one or more persons or corporations called the "Licensee").

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree to the following:

**GENERAL**

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") a below-grade crossing, Twenty (20) feet wide ("Below-Grade Crossing"), under the rail corridor of Licensor at or near Licensor's station of St. Johns, County of Multnomah, State of Oregon, Line Segment 0047, Mile Post 7.42, at the location and in the manner shown upon the print No. 1-25465, dated July 25, 2001, marked "Exhibit A," attached hereto made a part hereof ("Premises") for the purposes specified in Section 3. For convenience, said Below-Grade Crossing, including all appurtenances thereto and any drainage facilities, traffic signs or devices, identification signs approved by Licensor, or any other appurtenances, if any, shall be collectively referred to as the "Below-Grade Crossing." Licensee must also adhere to the stipulations as set forth on the attached Exhibit "C".
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. It is expressly stipulated that the Below-Grade Crossing is to be a strictly private one, to be solely used for the purpose set forth in Licensee's Application for Crossing attached hereto as Exhibit B and is not intended for and shall not be for public use. The Licensee, without expense to Licensor, will take any and all necessary action to preserve the private character of the Below-Grade Crossing and prevent its use as a public road. In the event Licensor determines that:
  - (a) the Below-Grade Crossing is being used for a purpose or in a manner not set forth in Exhibit B;

- (b) there is a significant change in the volume or nature of traffic at the Below-Grade Crossing; or
  - (c) the Licensee has in any way breached the terms or conditions of this Agreement, Licensor shall have the right to terminate this Agreement in accordance with Section 24.
- 4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises or the Below-Grade Crossing, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
  - 5. Any contractors or subcontractors performing work on the Premises or the Below-Grade Crossing, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

### **TERM**

- 6. This Agreement shall commence on the Effective Date and shall continue for a period of Twenty Five (25) years, subject to prior termination as hereinafter described.

### **COMPENSATION**

- 7. Licensee agrees to pay to Licensor in advance:
  - (a) Consideration payment in the amount of Five Thousand And No/100 Dollars (\$5,000.00).
- 8. Licensee agrees to pay to Licensor from time to time within thirty (30) days after bills are rendered therefor the entire cost of maintaining the Below-Grade Crossing, including, but not limited to the expense incurred by Licensor resulting from the necessity to remove and replace the Below-Grade Crossing in connection with maintaining Licensor's rail corridor and tracks and the expense of furnishing of Licensor's flagman (\$500.00 per eight hour day, \$95.00 per hour thereafter).
- 9. Licensee agrees to pay to Licensor the entire cost of constructing, installing, performing, maintaining, repairing, renewing, and replacing any gates or barriers, track drainage facilities, traffic signs or devices, whistle posts, stop signs or other appurtenances shown on Exhibit "A", or any such appurtenances or warning signs and devices that may subsequently be required to be upgraded by Licensor, by law, by change of volume and nature of vehicular traffic, or by any public authority having jurisdiction. The Licensee is also responsible for notifying Licensor in writing of any need for upgrading the vehicular

traffic control devices or signs at or near the Below-Grade Crossing, since the Licensee is most knowledgeable concerning the volume and nature of the vehicular traffic. In addition, Licensee shall notify Licensor if any significant change in volume or nature of traffic at the Below-Grade Crossing.

### **COMPLIANCE WITH LAWS**

10. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants or restrictions ("Legal Requirements") relating to the construction, maintenance, and use of the Below-Grade Crossing and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Licensor's Internet Website "contractororientation.com". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

### **DEFINITION OF COST AND EXPENSE**

11. (a) For the purpose of this Agreement, "cost" or "costs" "expense or expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
- (b) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

### **RIGHT OF LICENSOR TO USE**

12. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
  - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

- (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
- (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

### **LICENSEE'S OPERATIONS**

- 13. Licensee, at its own expense, shall keep the Below-Grade Crossing clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or from machinery using the Below-Grade Crossing .
- 14. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and Licensee agrees that under no circumstances will Licensee dig in or disturb the surface of the Premises without the express written consent of Licensor.
- 15. Licensee shall construct and maintain, at its own expense, a roadway and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment. Prior to such construction or maintenance, five (5) days advance notice must be given to Licensor's Roadmaster Darrel Collard at 1515 West 39<sup>th</sup> Street, Vancouver, WA 98660, telephone (360) 418-6324.
- 16. Intentionally deleted.
- 17. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Below-Grade Crossing being used by unauthorized persons, and said Licensee agrees that for the purposes of this agreement all persons using the Below-Grade Crossing shall be deemed the agents or invitees of the Licensee.
- 18. Licensee shall, at its sole cost and expense, perform all activities on and about the Below-Grade Crossing in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Below-Grade Crossing at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Below-Grade Crossing to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Below-Grade Crossing. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

19. If at any time during the term of this Agreement, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Below-Grade Crossing, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Below-Grade Crossing as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a Below-Grade Crossing.
20. Upon termination of this Agreement, Licensor may remove the Below-Grade Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement at Licensee's sole cost and expense and without incurring any liability to the Licensee. Licensee shall within twenty (20) days after bill is rendered therefor, reimburse Licensor for all costs and expenses, which Licensor may incur in connection therewith.

### **LIABILITY**

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

**(i) THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

**(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**

**(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED

**BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

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

#### **PERSONAL PROPERTY WAIVER**

22. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

#### **INSURANCE**

23. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:
- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000. Where explosion, collapse, or underground hazards are involved, the X, C, and U exclusions must be removed from the policy. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
  - ◆ Personal Injury and Advertising Injury
  - ◆ Fire legal liability
  - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licensor prior to performing any work or services under this Agreement



**Other Requirements:**

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control.

Licensee's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Staubach Global Services, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Staubach Global Services, Inc. as additional insureds shall be indicated on the certificate of insurance.

If Licensee elects to include any deductible, self-insured retention or other financial responsibility for claims, Licensee shall itself directly cover, in lieu of insurance, any and all Licensor's liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance as if Licensee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Licensee WARRANTS that this License been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, sucesors, assigns and affiliates of each.

## **ENVIRONMENTAL**

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to

promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Agreement, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

### **DEFAULT**

- 25. 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 Agreement by operation of law, Licensor may, at its option, terminate this Agreement by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this Section 25 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

### **TERMINATION**

- 26. This License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
- 27. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

**ASSIGNMENT**

28. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

**NOTICES**

29. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor:           Staubach Global Services  
5650 N. Riverside Drive, Suite 101  
Ft. Worth, TX 76137  
Attn: Licenses/Permits

with a copy to:       The Burlington Northern and Santa Fe Railway Company  
2500 Lou Menk Dr. – AOB3  
Ft. Worth, TX 76131  
Attn: Director Real Estate

If to Licensee:       City of Portland / Bureau of Environmental Services  
Columbia Blvd. WTP  
5001 North Columbia Blvd.  
Portland, OR 97203-2098

**SURVIVAL**

30. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

**RECORDATION**

30. It is understood and agreed that this Agreement shall not be placed on public record.

**APPLICABLE LAW**

31. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas.

**SEVERABILITY**

32. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement 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 Agreement.

**INTEGRATION**

33. This Agreement is the full and complete agreement between Licensor and Agreement with respect to all matters relating to Licensee's use of the Below-Grade Crossing, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Below-Grade Crossing as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

**MISCELLANEOUS**

34. 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.
35. 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.
36. In the event Licensee conveys, transfers, leases or otherwise grants a right of access and/or use of any interest in all or a portion of Licensee's property which is accessed by the Below-Grade Crossing, Licensee shall notify Licensor in writing of the same within thirty (30) days prior to the date of such conveyance, transfer, lease or grant of access and/or use, and Licensee shall cause any receiver or subsequent holder(s) of such an interest or right ("Holder") to: (1) file an application with Licensor's outside contractor, Staubach Global Services, for use of the Below-Grade Crossing, which application may be granted or denied in Licensor's sole discretion; and (2) upon Licensor's approval of Holder's application, Licensee shall cause Holder to execute Licensor's standard License

Agreement then in effect for the use of the Below-Grade Crossing. Licensee may not assign or otherwise transfer, or permit the use of this Agreement or the Below-Grade Crossing by Holder without Licensor's prior written approval for the same and any attempt to do so is a material breach of this Agreement and shall render it null and void.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

**THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY**

Staubach Global Services, Inc., its Attorney in Fact  
5650 N. Riverside Drive, Suite 101  
Fort Worth, TX 76137

By:

Mike Ewing, Director of Permits and Leases

**CITY OF PORTLAND / BUREAU OF  
ENVIRONMENTAL SERVICES**

Columbia Blvd. WTP  
5001 North Columbia Blvd.  
Portland, OR 97203-2098

By:

Title:

APPROVED AS TO FORM

*Dinda Menz*  
CHIEF DEPUTY CITY ATTORNEY

**EXHIBIT "A"**

ATTACHED TO CONTRACT BETWEEN

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

AND

CITY OF PORTLAND /  
BUREAU OF ENVIRONMENTAL SERVICES

FORT WORTH, TEXAS

SCALE: 1 IN. = 100 FT.

OREGON DIV.

FALLBRIDGE SUBDIV. L.S. 0047

DATE 07/25/2001

SECTION: 5

V- -

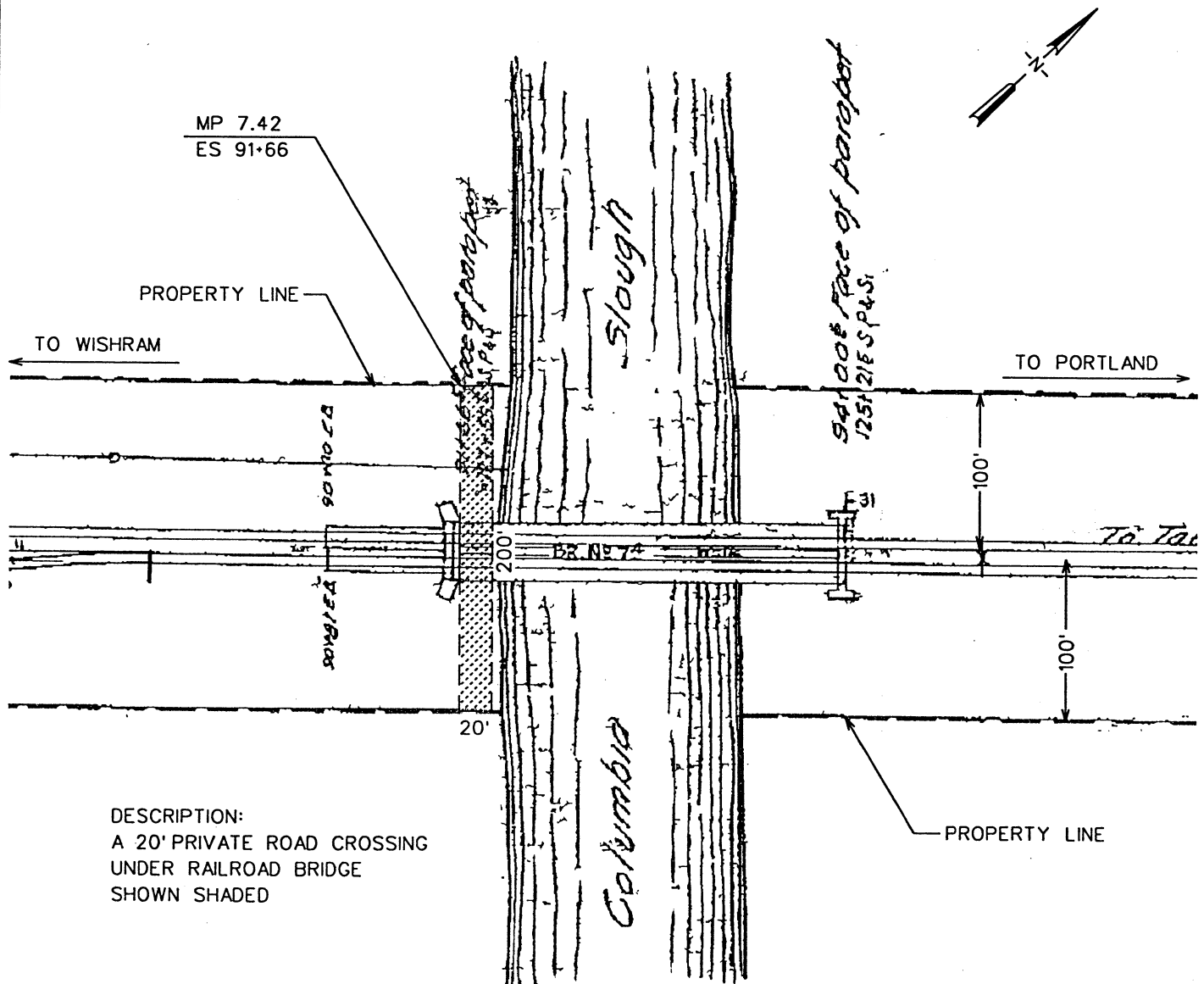
TOWNSHIP: 1N

MAP -

RANGE: 1E

PARCEL -

MAP REF. S51972

NEAR ST. JOHNS  
COUNTY OF MULTNOMAH

STATE OF OR

BCC

# EXHIBIT "B"

Name: City of Portland/Bureau of Environmental Services Daytime Phone: 503.823.2400  
(Legal name as shown on the Permit)

Corporation: \_\_\_\_\_ State in which incorporated: \_\_\_\_\_  
Address: Columbia Blvd WTP, 5001 N. Columbia Blvd Portland OR 97203-2098  
(Street) (City) (State & Zip Code)

Partnership (List full name of all partners): N/A

Type of Crossing (plank, concrete, etc.): Separated road  
below railroad tracks New \_\_\_\_\_ Existing X Width \_\_\_\_\_

Crossing Location: Portland Road Portland OR 97203  
(Street) (City) (State & Zip Code)

Section: 5 Township: 1N Range: 1E Highway Name/No.: Portland Road  
Temporary Permanent X Crossing, located at RR Milepost 7.42 (line DOT#  
segmnt 0047)

What use will be made of the crossing: Maintenance/Construction access to CBWTP - Solids Lagoon.  
(Farm, Residential, Commercial)

What is the anticipated vehicle type: Maint. Truck and volume of traffic per day to use the crossing: 2  
(auto, van, truck)

Does applicant have other private crossing in vicinity: X ☐ Yes ☐ No  
If yes, give distance and direction from the crossing 1 mile southeast (main access to CBWTP)

What is the distance of the closest public crossing in either directions: Public crossing at same location

Do you own or lease the land on either side of your crossing: ☐ Lease X ☐ Own  
If leased, provide owner's name N/A Phone No: \_\_\_\_\_

and written approval for crossing from legal owner.

If an existing crossing, how many families are using it now? NA If known, list names and addresses, if possible.  
Use reverse side of form.

If for Cooperative use, please provide names N/A  
and Permit No. \_\_\_\_\_ held by other users.

If requesting to transfer a crossing permit due to purchase of property, write the name of the previous owner.  
NA and Permit No. \_\_\_\_\_ Date sale was finalized \_\_\_\_\_  
and provide proof of ownership.

What are future plans for this property? Part of CBWTP facility

Is Applicant a Railroad Shipper? \_\_\_\_\_ Yes X No

If yes, BNSF Marketing Rep. Name and Phone No. N/A

Applicant understands he/she will be requested to sign a regular crossing Permit, which will provide that Applicant will 1) assume the cost to construct the crossing, 2) furnish insurance as requested by Burlington, 3) assume the cost to remove the crossing if crossing is temporary, and 4) reimburse Burlington for the expense incurred to maintain the crossing.

Applicant will be responsible for keeping gates closed and rail flangeways free of obstruction.

Date: July 16, 2001 Applicant: Garry Ott 503.823.2498  
Senior Engineer, Bureau of Environmental Services, COP

**TO BE COMPLETED BY DIVISION OFFICE**

APPROVED: Roadmaster: \_\_\_\_\_ Date: \_\_\_\_\_



# EXHIBIT "C"

Mr. Pub Pkg.  
Roadmaster -

Hector Valderrama

Tel: 909/226-2799 Fax: 909/386-4479

Subject: Road Crossing Application Review

City of Portland / Bureau of Environmental Services  
Proposed Permittee

St. Johns, Multnomah, OR  
Location

Attached is a copy of a Permit application. Your recommendations are required. Please complete the following items, and return to our office as soon as possible for our further handling with the Applicant.

1. Location of crossing: LS: 0047 MP: 7.42 Size (feet): 20'  
Plank Concrete Other Existing ~~underpass~~ BRIDGE OVERPASS
- General Condition:  
In place: Yes ☐ No ☐ Pvt. Rd. Signs: Yes ☐ No ☐  
Flashing Lights: Yes ☐ No ☐ Arms: Yes ☐ No ☐ Gate: Yes ☐ No ☐  
Locked Gate: Yes ☐ No ☐ Fence: Yes ☐ No ☐ D.O.T. # ☐  
Visibility Good Shrubs & Trees: Yes ☐ No ☒  
2. Do existing approaches need to be improved? Yes ☐ No ☒  
3. If new crossing, who will do the approach work? BN ☐ Permittee ☐  
4. Is there access to the property without crossing our tracks? Yes ☐ No ☒  
5. Are there other crossings close to this one? Yes ☐ No ☒  
If yes, how many? 2 How close? 2 Could property owner access property if  
one or more crossings were removed? Yes ☐ No ☒  
6. Is general public using crossing? Yes ☐ No ☒  
7. Approximate volume of train traffic over this track 2  
8. How many homes (units) are using this crossing?  
(County apartments and/or mobile homes as one unit.)  
9. Is there evidence of property development in the area? Yes ☐ No ☒  
10. Are there communication or signal lines which would have to be moved: Yes ☐ No ☒  
If yes, please forward this review sheet to the local Signal and/or Communications offices for their review.  
11. Is this line proposed to be abandoned? Yes ☐ No ☒  
Additional Comments: NO PUBLIC USE, ONLY PRIVATE.

CROSSING APPROVED:

DENIED:

Signature

Date

Thank you,

Gene Biddle

817/230-2633

Attachment

Real Estate Administrator

Phone

cc: The BNSF Railway Company  
Mr. Rob Roy, Dir. Field Safety  
2600 Lou Menk Drive  
Fort Worth, TX 76131-2830  
(817) 352-1279 Phone  
(817) 352-7599 Fax

9/14/01