

Meadowdale

No. CX87-16013

PRIVATE ROADWAY AND CROSSING AGREEMENT

AGREEMENT made this 1st day of MAY, 1987, between BURLINGTON NORTHERN RAILROAD COMPANY (formerly BURLINGTON NORTHERN, INC.), a Delaware corporation, hereinafter called "Railroad", whose post office address is 2000 First Interstate Center, 999 Third Avenue, Seattle, Washington 98104-1105, and

SNOHOMISH COUNTY - PARKS DIVISION, whose post office address is P.O. Box 310, Monroe, WA, 98222

hereinafter called "Permittee",

WITNESSETH:

WHEREAS, Permittee desires for Permittee's use and maintenance under the right-of-way of Railroad of a private 7.5' x 6' high x 60'6" long -foot crossing, hereinafter sometimes jointly referred to as the "roadway", and sometimes referred to as the "crossing", in Tunnel box culvert and existing concrete walkway & steps located at Survey Station 1256+42 - Milepost 21.83, at or near EDMONDS, County of Snohomish, Washington, and Railroad agrees to the maintenance thereof and the use thereof by Permittee upon the following terms and conditions:

1. Permittee shall, at their own cost and expense, maintain the roadway approaches and drainage facilities.

Permittee shall, at their own cost and expense, obtain and furnish to Railroad a policy of Public Liability and Property Damage Insurance as set out in Addendum attached hereto and made a part hereof.

Railroad shall maintain said crossing at Permittee's cost and expense.

2. Permittee shall, upon execution hereof, pay to Railroad for the license and permission hereby granted the sum of FIFTY DOLLARS (\$50.00) for the five-year period commencing as of the date first hereinabove written. Permittee hereby agrees to pay Railroad's standard license and permission charge as may be in effect from time to time for periods subsequent to such initial five-year period.

3. Permittee shall pay to Railroad from time to time the cost of the maintenance, additions and betterments done by Railroad herein agreed to be borne by Permittee, within twenty (20) days after bills are rendered therefor.

4. Should the right-of-way be now or hereafter fenced at the location described, Permittee shall construct, maintain, and keep repaired at Permittee's expense, farm crossing gates in a manner satisfactory to the Division Superintendent of Railroad, and said gates shall be kept closed, except when necessary to be open for travel. Permittee agrees to assume all damages of every kind whatsoever resulting from Permittee's failure to keep gates closed, or for failure to keep the same in proper repair, as agreed in this paragraph.

5. Permittee shall at all times keep the flangeways of said crossing free and clear of all snow, dirt or any other obstructions whatsoever which may accumulate by virtue of vehicles or farm machinery crossing thereover or otherwise.

6. Permittee further agrees that upon the lease, sale, devise or conveyance of the property being served by this crossing that the Permittee shall notify Railroad of such lease, sale, devise or conveyance and shall require that the lessee, grantee, receiver or purchaser make application for a private crossing with Railroad.

7. Permittee, at Permittee's own expense, shall remove and keep removed any vegetation at said crossing which may interfere with the view of trains approaching in either direction.

8. The permission hereby granted shall neither be or be deemed or construed to be a grant of land nor shall it constitute ownership by Permittee of the roadway or that portion of the right-of-way of Railroad upon which the roadway is located.

9. Permittee shall and hereby does release and discharge Railroad of and from any and all liability for damage to or destruction of the said roadway, or any property of Permittee thereon; and shall and hereby does assume any and all liability for injury to or death of persons, or loss of or damage to property in any manner arising from or during the use, maintenance, repair or removal of said roadway, 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, except to the extent that the liability assumed may be prohibited by law.

10. It is agreed that the provisions of paragraph 9 are for the equal protection of any other railroad company or companies, including National Railroad Passenger Corporation (Amtrak), heretofore or hereafter granted the joint use of Railroad's property, of which said premises are a part.

11. In the event Railroad shall require the use of its premises occupied by the said roadway or any part thereof for any purpose whatsoever, or if Permittee shall fail to keep and perform any of the terms and conditions of this agreement herein agreed by Permittee to be kept and performed, Railroad shall have the right to terminate this agreement at any time upon giving to Permittee thirty (30) days' written notice of its intention so to do and shall, upon expiration of said thirty (30) days, have the right to remove said crossing and barricade said roadway at the cost and expense of Permittee. Said notice shall be good if served personally upon Permittee or posted upon the premises or deposited postpaid in a United States Post Office, addressed to Permittee at Permittee's post office address above stated. No portion of any payments made hereunder will be refunded upon termination of this agreement.

12. Permittee shall not assign or transfer this agreement without first having obtained the written consent of Railroad.

13. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns.

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

ADDENDUM TO BURLINGTON NORTHERN RAILROAD COMPANY
PERMIT NO. CX87-16013 DATED May 1, 1987

The Permittee shall procure and keep in full force and effect during the term of Permit No. CX87-16013 a policy of Public Liability and Property Damage Liability Insurance as herein provided, or certificate with respect thereto, together with a Contractual Liability Endorsement attached thereto, under the terms of which the insuring agreements of the policy are extended to cover the liability assumed by the Permittee hereunder. The form of said Endorsement is hereto attached, marked Exhibit "8".

The Permittee shall carry regular Public Liability Insurance for all damages arising from bodily injuries to or death of one or more persons and regular Property Damage Liability Insurance for all damages to or destruction of property during the policy period. Said insurance shall provide for a combined single limit of Five Hundred Thousand Dollars (\$500,000).

Such policy or certificate with respect thereto, together with said Contractual Liability Endorsement attached thereto, shall be submitted to the Railroad for approval as to the insurance company writing same, the amount and the form, and, upon approval and prior to commencement of any work to be performed under this agreement, the Permittee shall deposit the same with the Railroad.

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

Notwithstanding the foregoing provisions of this Addendum, Permittee SNOHOMISH COUNTY - PARKS DIVISION, EDMONDS, WA., shall be permitted to self-insure all or any portion of the risks hereinabove and in Exhibit "B" required to be insured, in accordance with Permittee's corporate risk management and loss retention practices as in effect from time to time, and in the absence of Permittee furnishing any policy or certificate of insurance and contractual liability endorsement herein required all such risks required to be so insured by Permittee shall be regarded as self-insured by Permittee.

Date 5-19-87
Initial jm

Approved as to form:

Carol M. Ward 5-1-87
Deputy Secretary

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IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY

By *Ed Peterson* 6/3/87
Division Engineer

Witnesses to signature of Permittee:

Richard Caldwell
Maguire A. Haverdick
CX87616013

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SNOHOMISH COUNTY - PARKS DIVISION

By *John Martinis* JOHN MARTINIS
Deputy Executive

Approved as to form:

Carol M. Walcott 5-11-87
Deputy Engineering Director