

**INTERLOCAL AGREEMENT FOR
THE OPERATION AND MAINTENANCE OF TRAFFIC SIGNALS AND RELATED
EQUIPMENT ALONG NORTHEAST 124TH STREET IN THE CITY OF KIRKLAND**

THIS AGREEMENT is made and entered into by and between King County, a political subdivision of the State of Washington ("the County") and the City of Kirkland ("the City"). The County and the City are referred to collectively as "the parties".

RECITALS

- A. The County has a Capital Improvement Project (CIP #101496) to interconnect the traffic signal system along Northeast 124th Street ("NE 124th Street Project").
- B. The City owns certain traffic signals along Northeast 124th Street as listed in Exhibit "A", ("the City Signals").
- C. As part of the NE 124th Street Project, the County proposes to install closed circuit television cameras ("CCTV"), a fiber optic communications cabinet, and fiber optic communication cable ("ITS equipment") and replace signal controllers and cabinets in the City Signals ("Signal equipment"); and transit priority request ("TPR") equipment, as itemized in Exhibit "B", to support the operation of transit signal priority ("TSP").
- D. The County and the City find that it would be mutually beneficial for the City to maintain its City Signals, ITS and TPR equipment within the City's corporate limits and the County to operate the system in coordination with related county and city equipment.
- E. The County and the City are authorized, pursuant to RCW Chapter 39.34 to enter into an interlocal governmental cooperative agreement of this nature.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

- 1. Applicability. This Agreement applies to the City Signals and the ITS, TPR and Signal equipment the County installs as part of its NE 124th Project within the City's corporate limits.
- 2. County Responsibilities
 - 2.1 The County will pay for the initial purchase, installation, integration, testing and acceptance of the ITS, TPR and Signal equipment related to this Agreement as part of the construction of the NE 124th Project. Prior to acceptance of the NE 124th Project, the County, at its expense, shall provide to the City two (2) spare signal controllers and training for maintenance of the econolite controllers and Aries software. Following final inspection and acceptance of the NE 124th Project by the County, ownership of the ITS,

TPR and Signal equipment shall automatically transfer to the City, per Exhibit A and Exhibit B.

- 2.2 The County shall own and maintain, at its sole cost, the modem connection to the TPR management server, the TPR management server, the TPR application software, and the City's access to the County's wide area network where the TPR application is housed.
- 2.3 The County shall operate the City Signals, ITS and TPR equipment to optimize safety and efficiency of traffic flows on local streets in such a way that the NE 124th Street arterial is treated as a corridor. The County shall be responsible for all costs associated with the operation of the City Signals, ITS and TPR, including CCTV operation, signal timing generation and implementation, inclusive of transit signal priority settings, citizen requests for timing information, and annual signal timing review.
- 2.4 The County shall prepare a Signal Plan for the operation and coordination of the City Signals and shall provide the Signal Plan inclusive of TSP settings to the City for its review, modification, and acceptance. The County shall not implement the Signal Plan without first obtaining written authority from the City to proceed.
- 2.5 The County, in the event of an emergency, such as caused by acts of nature or vandalism or traffic accidents, shall have the ability to modify the operation of the Signal Plan to reduce resultant traffic hazards.
- 2.6 The City grants the County right of entry into the corporate limits of the City for the purpose of carrying out the terms of this Agreement. The County agrees to perform any work within the City consistent with all current City practices. The County will notify the City prior to performing any work within the City.

3. City Responsibilities

- 3.1 The City shall perform all routine and ordinary maintenance and repair on its City Signals, as well as the ITS, TPR and Signal equipment installed by the County pursuant to this Agreement. The City shall be responsible for all costs associated with such maintenance and repair. The City shall provide records of the foregoing maintenance and repair to the County annually on December 31st.
- 3.2 Following County acceptance of the NE 124th Project, the City shall own and maintain, at its sole cost, the County-installed ITS, TPR and Signal equipment within the City's corporate limits, including the reader, antenna, transit priority request generator, interface panel, associated interconnect, pole attachment agreements, and utility costs.
- 3.3 The City shall be entitled to receive read-only access to the County's Advanced Transportation Management System (ATMS), so that the City may remotely monitor the traffic signal timing and traffic flow information for City Signals on the ATMS system, as well as the traffic signals owned by the County and the State that are on the ATMS system.

- 3.4 The City shall be provided with the County's operational Signal Plan and will review the plan, suggest modifications if necessary, and approve the plan in writing before its implementation.
- 3.5 The City shall fund replacement of the City Signals and CCTV cameras when the City Signals or components of the City Signals or the cameras deteriorate to the point of imminent failure or can no longer be cost effectively maintained as determined by the County and the City. In addition, the City may fund additional improvements to the intersection and traffic system, at its discretion as technology and traffic patterns change.
 - 3.5.1 The County will provide the City necessary documentation of the City Signals' deficiencies as they become apparent during operation of the City Signals. The County will provide this information to the City as soon as practicable.
- 3.6 The City will notify the County of modifications the City intends to make to the City Signals that, in the opinion of the City, could impact the operation of the signal at that intersection or impact the operation of the corridor prior to implementation of those changes. In the event a condition exists resulting from acts of nature, third party damage, unknown third party damage, or other reasons, the City may of its own volition, remove any obvious and immediate traffic hazards before notification to the County.

4. Advisory Input

- 4.1 The County and the City shall cooperate with each other in good faith and take into consideration the comments of the State and other public agencies as to the operation of the City Signals, ITS, and TPR.
- 4.2 The County and the City shall cooperate with each other in good faith to monitor and evaluate the operation of the Signal Plan. The parties will meet at least quarterly to review coordination issues, system changes, and maintenance and operation issues, regarding the City Signals, ITS, and TPR equipment.
- 4.3 The County and the City shall support the implementation of priority treatment for transit where it is determined to be effective.
- 4.4 The County and the City will jointly agree upon hardware requirements for the TPR equipment that is required to implement transit signal priority and on the operational parameters for the implementation of transit priority treatments.
- 4.5 Within ninety (90) days following the execution of this Agreement, the Metro Transit Division of the County and the City shall jointly develop transit signal priority maintenance guidelines outlining the expectations and work processes for the operation and maintenance of TPR equipment.

5. Data and Information Exchange

- 5.1 The County and the City shall make available to each other such information and data, if available, that may be useful in coordinating the operation and maintenance of the NE 124th Street corridor. The information and/or data includes, but is not limited to, traffic counts, signal status, detector occupancy, timing plans, and video signals. The parties recognize that certain information and/or data may be time sensitive and should be provided as quickly as practicable to the other party.
- 5.2 The County and the City will agree upon how to configure the data exchange network server to control what information is available to each party. The County and the City agree that all data should be made available to each party, unless there is a legal, operational, or proprietary reason for withholding the data or information.

6. Addition or Deletion

Exhibits A and B may be modified by adding or deleting traffic signal, ITS or TPR equipment upon written modification, signed by the City's Public Work Director and by the Director of the County's Department of Transportation. Such modification shall be appended to this Agreement.

7. Transfer of Communication Line License

- 7.1 Upon the County's completion of all work within the Burlington Northern and Santa Fe Railway Company's ("BNSF") right-of-way related to the NE 124th Project, the County shall transfer to the City the *License for Communication Line and/or Television Cable Across or Along Railway Property* ("BNSF License") issued by BNSF attached as Exhibit "C".
- 7.2 The City shall accept the transfer of the BNSF License and shall be responsible for any costs or fees related to the transfer of the BNSF License that may be imposed by BNSF.
- 7.3 Any issues or matters related to the BNSF License after the transfer shall be between the City and BNSF, not the County.

8. Term of Agreement, Termination

- 8.1 The term of this Agreement shall begin on the date this Agreement is executed and end on December 31st of that year. Subject to Section 8.3 below, this Agreement shall automatically be renewed on a yearly basis, beginning January 1st of the following year, unless either party has terminated this Agreement under the terms hereof.
- 8.2 Either the County or the City may terminate this Agreement for any reason by providing sixty (60) days written notice to the other party. Termination of this Agreement shall constitute termination of all signal assignment documents as well. Upon termination the following shall apply:

- a. The County shall provide the City with sufficient documentation and training on the control equipment deemed necessary by the City for the continued operation of the Signal Plan should the City decide to operate the Signal Plan.
- b. The County shall release operating access to the city-owned CCTV cameras to the City. The County may maintain read only access to the city-owned cameras.
- c. The City and the Metro Transit Division of the County will need to enter into a separate agreement if the City elects to continue the transit signal priority function. Otherwise, the City shall relinquish its ownership of all TPR equipment as described in Exhibit B. The City shall collect this equipment from the field and deliver it to a location designated by the Metro Transit Division of the County.

8.3 Either the County or the City may partially terminate this Agreement by terminating the Transit Signal Priority element of this Agreement by providing sixty (60) days written notice to the other party. Should the City exercise its right of partial termination, it shall be responsible for the cost of collecting from the field all of the TPR equipment from the field and delivering it to the County at the location requested by the Metro Transit Division of the County.

9. Liability

Washington State law shall govern the respective liabilities of the parties to this Agreement for any loss due to property damage or injury to persons arising out of activities conducted pursuant to it.

10. Audits and Inspections

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County or the City during the term of this Agreement and three years after termination.

11. Exhibits

The following exhibits are attached hereto and incorporated herein by reference:

- A. Traffic Signal System
- B. TPR Equipment
- C. BNSF License

12. Other Provisions

12.1 The County shall be deemed an independent contractor for all purposes, and the employees of the County, or any of its contractors, subcontractors and their employees shall not in any manner be deemed to be employees of the City.

- 12.2 Nothing contained herein is intended to, nor shall be construed to, create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the City, the County, or their officials, employees, agents or representatives, to any party not a signatory to this Agreement.
- 12.3 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 12.4 If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the parties.
- 12.5 The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 12.6 This Agreement contains the entire agreement of the parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
- 12.7 This Agreement may be amended only by an instrument in writing, duly executed by both parties, provided that Exhibits A and B may be modified as set forth in Section 6, Addition or Deletion.

IN WITNESS, THEREOF, the parties have executed this Agreement effective as of the date last written below.

KING COUNTY

CITY OF KIRKLAND

King County Executive



Public Works Director

Date


8-16-04

Date

Approved as to form:

Approved as to form:

Deputy Prosecuting Attorney



City Attorney

EXHIBIT "A"

TRAFFIC SIGNAL SYSTEM

Category A: Traffic Signal System operated by the COUNTY and owned and maintained by **KIRKLAND**.

NE 124th Street/100th Ave NE: Traffic Signal system, CCTV camera system and TPR equipment

NE 124th Street/113th Ave NE: Traffic Signal system

116th Ave NE north of NE 124th St. and on NE 124th Street west of 116th Ave NE : TPR equipment

NE 124th Street/120th PL NE: Traffic Signal system

NE 124th Street/124th Ave NE: Traffic Signal system and CCTV camera system and TPR equipment

NE 124th Street/128th LN NE: Traffic Signal system

EXHIBIT B

Transit Priority Request Equipment	Quantity
Reader Assembly	5
Yagi Antenna	5
Interface Panel	2
Vilink VK230 fiber optic modem	2
Transit Priority Request Generator.	4

<u>Reader Node Number</u>	<u>Location</u>	<u>Direction</u>
05011	100 th Ave NE @ NE 124 th St	Southbound on 100 th Ave
05012	100 th Ave NE @ NE 124 th St	Northbound on 100 th Ave
05013	NE 124 th St @ 100 th Ave NE	Westbound on NE 124th
05031	124 th Ave NE @ NE 124 th St	Southbound on 124 th Ave NE
05032	124 th Ave NE @ NE 124 th St	Northbound on 124 th Ave NE
<u>TPRG Node Number</u>	<u>Location</u>	
05010	NE 124 th St @ 100 th Ave NE	
05030	NE 124 th St @ 124 th Ave NE	

EXHIBIT "C"

02-23625

**LICENSE FOR COMMUNICATION LINE AND/OR TELEVISION CABLE
ACROSS OR ALONG RAILWAY PROPERTY**
(Telephone and Similar Lines, Overhead or Underground)

THIS LICENSE ("License"), made as of the 8th day of January, 200~~2~~⁴, ("Effective Date") by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **KING COUNTY DEPARTMENT OF TRANSPORTATION**, a Washington corporation ("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 communication line and/or television cable, together with all conductors and their supporting or containing structures, containing a maximum of one (1) cable(s), ("Communication line and/or Television Cable") across or along the rail corridor of Licensor at or near the station of Kirkland, County of King, State of Washington, Line Segment 0405, Mile Post 19.73, as shown on the attached Drawing No. 1-28147, dated May 29, 2002, attached hereto as Exhibit "A" and made a part hereof ("Premises").
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. Licensee shall use the Premises solely for construction and maintenance and use of a Communication Line and/or Television Cable as shown on the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Communication Line and/or Television Cable or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License 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. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of Twenty One Thousand Five Hundred Forty Four and No/100 Dollars (\$21,544.00) as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefore) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Communication Line and/or Television Cable, including but not limited to the furnishing of Licensor's Flagman (\$500.00 per eight hour day, \$95.00 per hour thereafter).
- (c) 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.

COMPLIANCE WITH LAWS

8. (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 Communication Line and/or Television Cable 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

9. For the purpose of this License, "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.

RIGHT OF LICENSOR TO USE

10. 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

11. (a) Licensee shall notify Licensor's Roadmaster, at 2750 S. Occidental Ave, Seattle WA 98134, telephone (206) 625-6462, at least five (5) business days prior to installation of the Communication Line and/or Television Cable and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. Licensee shall, at its sole cost and expense, construct and at all times maintain the Communication Line and/or Television Cable in accordance with the National Electric Code.
13. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises 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 Premises 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 Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

- (b) Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, locate, construct and maintain Communication Line and/or Television Cable in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of its railroad. Further, the Communication Line and/or Television Cable shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Communication Line and/or Television Cable at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Communication Line and/or Television Cable by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Communication Line and/or Television Cable, it being solely Licensee's responsibility to ensure that the Communication Line and/or Television Cable is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this paragraph, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefore, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.
14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Communication Line and/or Television Cable, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. Upon completion of the construction of the Communication Line and/or Television Cable and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, 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 Communication Line and/or Television Cable, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make

such changes in the Communication Line and/or Television Cable 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 a new Communication Line and/or Television Cable.

17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Communication Line and/or Television Cable, Licensor will provide Licensee any information that Licensor has in the possession of its Engineering Department concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Communication Line and/or Television Cable. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
- (b) For all bores greater than 20-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- (a) filled in to surrounding ground level with compacted bentonite grout; or
- (b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove the Communication Line and/or Television Cable and all appurtenances thereto at Licensor's sole discretion;
 - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (d) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

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 LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - (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,

THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES WHOLLY CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN 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 LICENSE 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 TO LICENSEE 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 Indemnitee by any entity, relating to any matter covered by this License for which licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. 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. 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.** This insurance shall include 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.** This insurance shall name 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

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,600.00.

- I elect to participate in Licensor's Blanket Policy;
- I elect not to participate in Licensor's Blanket Policy.

- E. All risks property insurance covering all of Licensee's property including property in the care, custody or control of Licensee.** Coverage shall include the following:
- ◆ Issued on a replacement cost basis
 - ◆ Shall provide that in respect of the interest of Licensor the insurance shall not be invalidated by any action or inaction of Licensee or any other person and shall insure the respective interests of Licensor as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Licensee or any other person.
 - ◆ Include a standard loss payable endorsement naming Licensor as the loss payee as its interest may appear.

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, non-renewal, 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.

BNSF acknowledges that King County is Self-funded for all of its liability exposures. The COUNTY agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for the duration of this Permit. The COUNTY agrees to provide BNSF with at least 30 days prior notice of any material change in the COUNTY'S self-funded program and will provide BNSF with a certificate of self-insurance as adequate proof of coverage.

BNSF acknowledges that the City of Kirkland is covered for all of its liability exposures through Washington Cities Insurance Authority. In the event Kirkland assumes the duties and obligations provided in this License, BNSF agrees that Kirkland's coverage provided by WCIA is acceptable in lieu of the insurance policies required above; provided, Kirkland agrees to provide BNSF with at least 30 days prior notice of any material change in its coverage through WCIA and provide BNSF with a certificate of coverage from WCIA.

Licensee WARRANTS that this License has 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. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

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, successors, 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 License, 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 License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

- 25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

- 26. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

QUIET ENJOYMENT

27. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

28. 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 License by operation of law, Licensor may, at its option, terminate this License 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 License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 or any other Section of this License.

TERMINATION

30. 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.
31. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, 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

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

NOTICES

33. 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, Texas 76137
Attn: Licenses/Permits

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

If to Licensee: King County Department of Transportation
201 South Jackson Street
NS:KSC-TR-0222
Seattle, WA 98104

SURVIVAL

34. Neither termination nor expiration will release either party from any liability or obligation under this License, 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 Communication Line and/or Television Cable and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

35. It is understood and agreed that this License shall not be placed on public record, except as required for government records under applicable Washington State and King County laws and regulations.

APPLICABLE LAW

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

SEVERABILITY

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

INTEGRATION

- 38. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises 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.

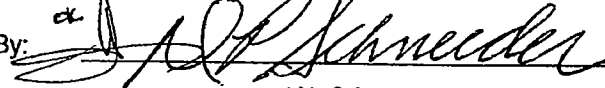
MISCELLANEOUS

- 39. 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.
- 40. 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.

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

P. O. Box 961050
Fort Worth Texas 76161-0050

By: 
GENERAL DIRECTOR REAL ESTATE

KING COUNTY DEPARTMENT OF TRANSPORTATION

201 South Jackson Street
NS:KSC-TR-0222
Seattle, WA 98104

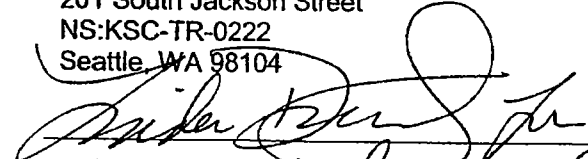
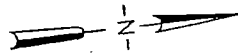
By: 
Title: Director, King County Road Services Division

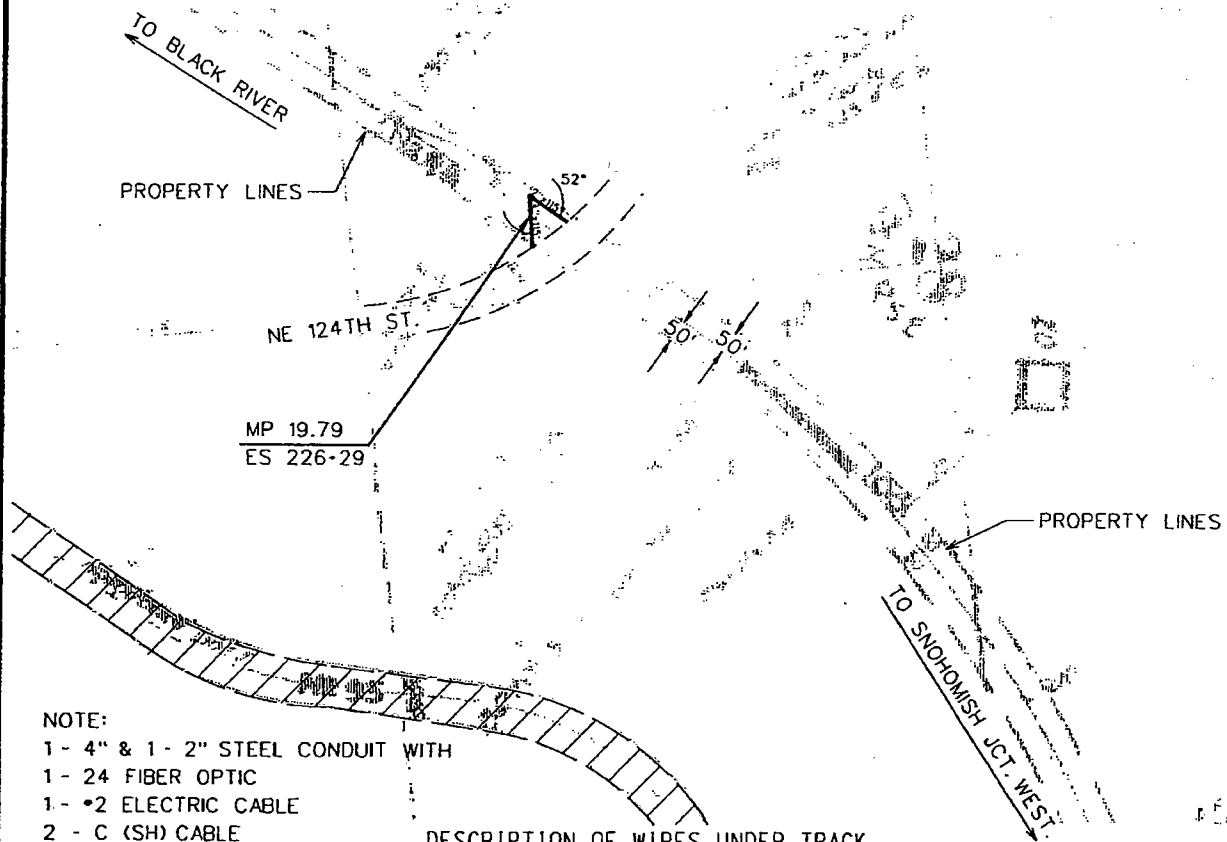
EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
 THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
 AND
 KING COUNTY DEPARTMENT
 OF TRANSPORTATION

FORT WORTH, TEXAS
 SCALE: 1 IN. = 400 FT.
 NORTHWEST DIV.
 WOODINVILLE SUBDIV. L.S. 0405
 DATE 05/29/2002
 REV: 07/25/03



SECTION: 28
 TOWNSHIP: 26N
 RANGE: 5E
 V- WA-08A
 MAP 05
 PARCEL -



NOTE:

- 1 - 4" & 1 - 2" STEEL CONDUIT WITH
- 1 - 24 FIBER OPTIC
- 1 - #2 ELECTRIC CABLE
- 2 - C (SH) CABLE

DESCRIPTION OF WIRES UNDER TRACK
 WIRES LOCATED AS SHOWN BOLD

TYPE	TRAFFIC SIGNAL	SIZE OF CONDUIT	1-4"x115'
NUMBER	SEE NOTE	CONDUIT MATERIAL	STEEL
VOLTAGE	120V	WALL THICKNESS	.188"
		LENGTH ON R/W	230'
		BASE OF RAIL TO TOP OF CONDUIT	5'6"MIN

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

NEAR KIRKLAND
 COUNTY OF KING

STATE OF WA

BCC

MAP REF. R62518