

Duplicate

(EL 28255)

Pipeline  
No. 244,428

THIS AGREEMENT, made this 1st day of July, 1983, between  
BURLINGTON NORTHERN RAILROAD COMPANY (formerly  
BURLINGTON NORTHERN INC), a Delaware corporation, hereinafter called "Railroad," and CITY OF LINCOLN,  
a municipal corporation of the State of Nebraska,

whose post office address is 555 South 10th Street, Lincoln, Nebraska 68508,  
hereinafter called "Permittee."

WITNESSETH:

Railroad, for and in consideration of the fee herein provided to be paid to it by Permittee and of the covenants and  
promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission  
to excavate for, construct, maintain and operate an 84-inch concrete storm water drainage pipe,

hereinafter referred to as the "facility," upon, along or across the right of way of Railroad, underneath the surface thereof,  
and under the tracks of its railroad, as the case may be, at or near Havelock Station, in the County of  
Lancaster, State of Nebraska, to be located as follows, to-wit:

crossing at survey station 2622 + 30 - Mile Post 54.52

as shown colored red on the plat hereto attached, marked  
Exhibit "A" dated April 13, 1983, and by this reference thereto made a part hereof.  
No. DRN-347

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

1. Permittee will pay in advance to Railroad for this permit the sum of Six Thousand Dollars (\$6,000.00)  
for the full term;

also all taxes and assessments that may be levied or assessed against said facility. Railroad reserves the right to change the said  
charge at any time while this permit remains in effect upon thirty (30) days' written notice. This provision for payment shall  
in no way restrict Railroad's right of termination under Paragraph 9 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair the  
facility placing the same in accordance with the specifications provided in application dated April 5, 1983,  
heretofore approved by the Railroad's Regional Manager Engineering.

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

the right at any time when in his judgment it becomes necessary or advisable, to require any material used in the work to be replaced with like material or with material of a more permanent character; also to require additional work or change of location of said facility as a matter of safety, or of appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of the railway of Railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the said Superintendent at least two (2) days' advance notice of any work to be done by Permittee in the excavation, construction, any reconstruction, maintenance, repair, change of location or removal of the facility, and shall conduct such work in such manner as not to interfere with the maintenance and operation of the railway of Railroad.

4. In the event that Railroad, at the request of Permittee or any agent or contractor of Permittee, or for the protection of its property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, any reconstruction, maintenance, repair, change of location, removal of the facility or otherwise, Permittee shall reimburse Railroad for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for construction, any reconstruction, maintenance, repair, change of location, or removal of the facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track or other railway facilities by work or flagging, engineering and/or supervision, such work is to be performed by Railroad employees and the cost borne by Permittee.

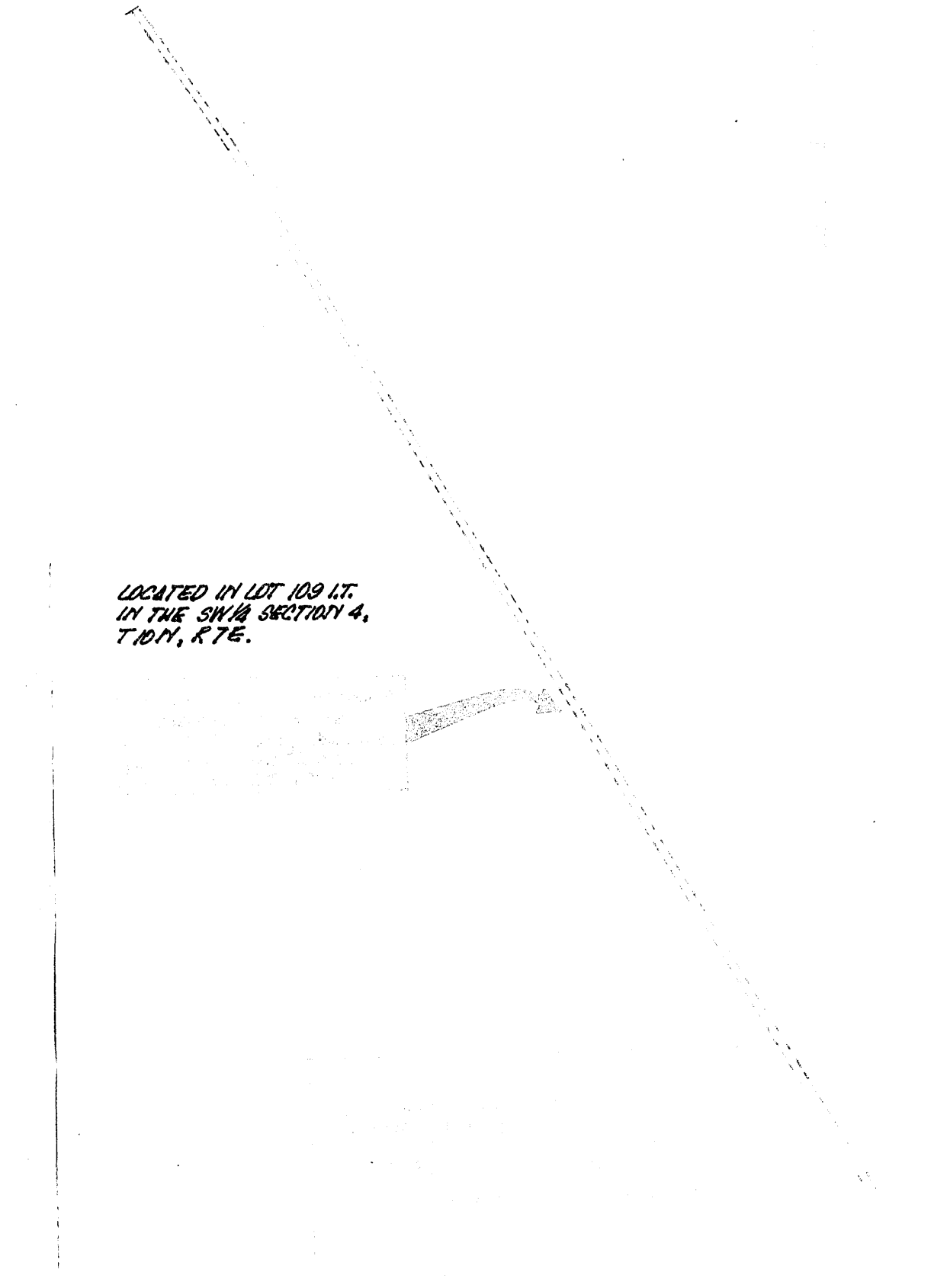
5. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the facility which, in the opinion of Railroad, in any way interferes with any train signals, telephone or telegraph lines, or other facilities of Railroad, Permittee upon being informed by Railroad of such interference shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Railroad from and against any damages, claims, losses, suits or expenses in any manner arising from or growing out of interference with the signals, telephone or telegraph lines of Railroad by the operation, use or existence of any such grounding system.

6. Permittee shall and hereby releases and discharges Railroad of and from any and all liability for damage to or destruction of the said facility, and any other property of Permittee located on or near Railroad's premises; and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees and agents of the parties hereto, or loss of or damage to property to whomsoever belonging, including property owned by, leased to or in the care, custody and control of the parties hereto, in any manner arising from or during the construction, any reconstruction, use, maintenance, repair or removal of said facility, however such injury, death, loss, damage or destruction aforesaid may occur or be caused; and shall and hereby does indemnify and save harmless Railroad of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs or expenses arising or growing out of or in connection with any such injury, death, loss, damage or destruction aforesaid. Permittee further agrees to appear and defend in the name of Railroad any suits or actions at law brought against it on account of any such personal injuries, death or damage to property, and to pay and satisfy any final judgment that may be rendered against the Railroad in any such suit or action. The liability assumed by Permittee herein shall not be affected or diminished by the fact, if it be a fact, that any such suit or action brought against Railroad may arise out of negligence of Railroad, its officers, agents, servants or employees, or be contributed to by such negligence. Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification against the sole negligence of Railroad, its officers, employees or agents.

7. Permittee shall not transfer or assign this permit without the written consent of Railroad.

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

9. If the Permittee shall at any time cease to maintain and operate the said facility or shall fail to perform every agreement of this permit, the Railroad may forthwith terminate this permit and may forthwith expel the Permittee from its premises; and at the end of the permit the Permittee will restore the premises of the Railroad to their former state.



LOCATED IN LOT 109 I.T.  
IN THE SW 1/4 SECTION 4,  
T10N, R7E.

10. ~~Upon any failure of Permittee punctually and strictly to observe and perform the covenants and promises made herein by Permittee to be kept and performed, Railroad may terminate this agreement on ten (10) days' notice to Permittee, remove the facility, and restore the right of way to its previous condition at the cost and expense of Permittee.~~

11. Any notices given under the provisions of this agreement shall be good if deposited postpaid in a United States post office addressed to Permittee at Permittee's post office address above stated or as otherwise directed by Permittee.

12. The license and permission herein granted is subject to permits, leases and licenses, if any, heretofore granted by Railroad affecting the premises upon which said facility is located.

Subject to the foregoing provisions, this agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors and assigns.

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

In Presence of:

BURLINGTON NORTHERN RAILROAD COMPANY  
BURLINGTON-NORTHERN INC.

By

H. D. Shane  
General Manager - Lincoln

Director-Land Management and Contracts

CITY OF LINCOLN

By

[Signature]  
Mayor

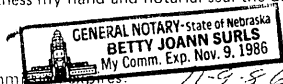
Attest

[Signature]  
City Clerk

STATE OF NEBRASKA )  
LANCASTER COUNTY ) ss:

On August 15, 1983, before me, the undersigned, a Notary Public, personally came Roland A. Luedtke, to me known to be the Mayor of the City of Lincoln, Nebraska, a municipal corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said City.

Witness my hand and notarial seal the day and year first above written.



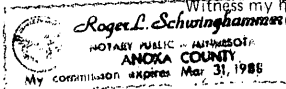
My commission expires 11-9-86

FORM 60025 1-76

STATE of Nebraska )  
COUNTY of Ramsey ) ss:

On August 23, 1983, before me, the undersigned, a Notary Public, personally came H. D. Shane, to me known to be the Director-Land Management and Contracts of Burlington Northern Railroad Company, a Delaware corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal the day and year first above written.



My commission expires 3/31/88

Roger L. Schwinghammer  
Notary Public

7/12-  
22A  
misc

LANCASTER COUNTY, NEBR.  
REGISTER OF DEEDS  
1900 OCT -3 PM 2:53  
FILED IN RECORDS

20605

#25<sup>50</sup>

25<sup>50</sup> City Clerk