

**PIPELINE CROSSING
AGREEMENT**

Mile Post: 2.850, Portland Subdivision/Branch
Location: Portland, Multnomah County, Oregon

THIS AGREEMENT is made and entered into as of August 10, 2004, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Licensor"), and **CITY OF PORTLAND**, an Oregon municipal corporation, whose address is 1120 Sw 5th Ave, Suite 1000, Portland, Oregon 97204 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of **THIRTY-FOUR THOUSAND ONE HUNDRED DOLLARS (\$34,100.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

48 inch and 30 inch Peninsular Force Main sewer pipeline crossing
encased in 108 inch steel casing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated January 22, 2004, marked Exhibit A and as shown and described on Exhibit C attached hereto. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

- A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, **identifying Folder No. 02231-67**, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 2.850 on the Portland Subdivision/Branch, at or near Portland, Multnomah County, Oregon.

- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

- C. All insurance correspondence shall be directed to:

Folder No. 02231-67
Union Pacific Railroad Company
Real Estate Department
1800 Farnam Street
Omaha, NE 68102

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VII. ADMINISTRATIVE HANDLING CHARGE

Upon execution and delivery of this Agreement, the Licensee shall pay to the Licensor an administrative handling charge of **THREE THOUSAND DOLLARS (\$3,000.00)**.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

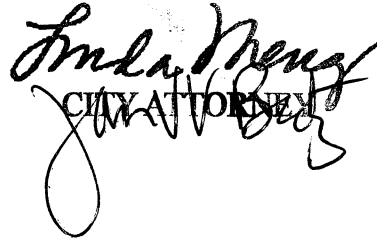
UNION PACIFIC RAILROAD COMPANY

CITY OF PORTLAND

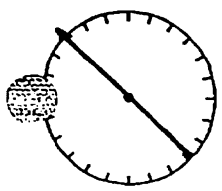
By: 
Director - Contracts

By: _____
Title: _____

APPROVED AS TO FORM


CITY ATTORNEY

FACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

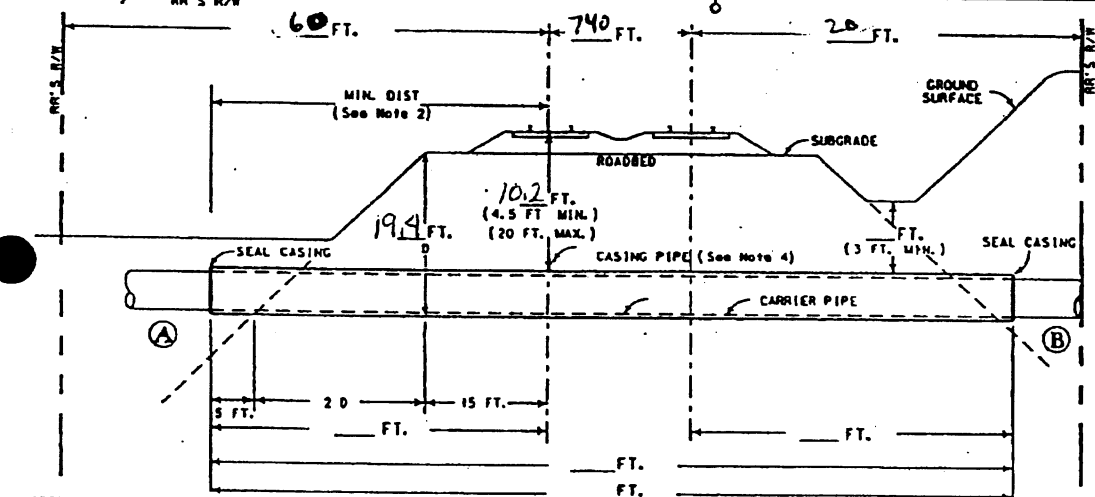
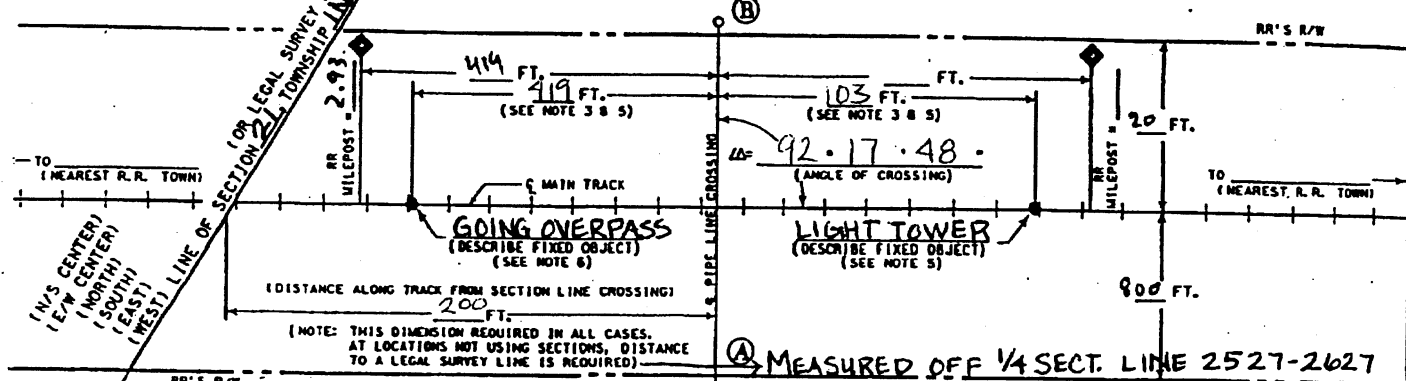


ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV. 5-15-98
www.uprr.com

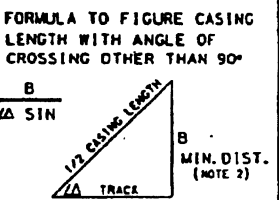
NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.

NO SCALE



MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	1 1/4" 12" OR LESS
.3125"	5/16" OVER 12"-18"
.3750"	3/8" OVER 18"-22"
.4375"	7/16" OVER 22"-28"
.5000"	1/2" OVER 28"-34"
.5625"	9/16" OVER 34"-42"
.6250"	5/8" OVER 42"-48"

OVER 48" MUST BE APPROVED BY R. R. CO.
NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.



- NOTES:
- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM $\frac{1}{4}$ OF TRACK.
 - CASING TO EXTEND BEYOND THE $\frac{1}{4}$ OF TRACK AT RIGHT ANGLES THE GREATER OF 20' x 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - MINIMUM OF 30' FROM THE END OF ANY RAILROAD BRIDGE, $\frac{1}{4}$ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; $\frac{1}{4}$ OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAMES), OR CULVERTS.
 - CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;

B) IF YES, NAME OF STREET _____

D) DISTRIBUTION LINE OR TRANSMISSION LINE _____

C) CARRIER PIPE:
COMMODITY TO BE CONVEYED COMBINED SEWAGE
OPERATING PRESSURE 20-25 PSI
WALL THICKNESS 3/8"; DIAMETER 30" 48"; MATERIAL DI;

E) CASING PIPE:
WALL THICKNESS 1.0"; DIAMETER 108"; MATERIAL STL;
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
 TUNNEL; OTHER MICROTUNNELING
ALL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;

G) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 240'

H) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES DOES NOT EXIST IN VICINITY OF WORKS TO BE PERFORMED. TICKET NO. 2003-0715074

EXHIBIT "A"
(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

PORTLAND
(SUBDIVISION)

M. P. 2.95 E. S. 66+45⁺

ENCASED SEWER FORCE MAIN CROSSING AT
PORTLAND MULTNOMAH OR
(NEAREST CITY) (COUNTY) (STATE)

CITY OF PORTLAND
(MUNICIPALITY)

RR FILE NO. 2231-67 DATE 1-22-04

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OR ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor, consistent with the rights granted herein to Licensee, to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages, except for Licensor's sole and active negligence.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. and in conformance with Exhibit A. ~~Common Standard Specification 1029 adopted November 1949, and all amendments thereof and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Licensor's Vice President Engineering Services.~~ In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all reasonable expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall reasonably find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. To the extent allowed by the Oregon Constitution and to the limits of the Oregon Tort Claims Act. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, to the extent allowed by the Oregon Constitution and to the limits of the Oregon Tort Claims Act, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, To the extent allowed by the Oregon Constitution and to the limits of the Oregon Tort Claims Act. the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Pipeline or any part thereof; or
2. The presence, operation, or use of the Pipeline or contents escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor or decommission the pipeline in place at the election of the Licensor, and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath its roadbed and track or tracks and restore such roadbed to as good a condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration to the satisfaction of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained, including for reasons related to Licensor's operation or safety, for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice, provided that termination will not occur if upon written notice from Licensor of a default, Licensee diligently commences and proceeds with curative action of a default which cannot reasonably be cured within thirty days.

~~(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.~~

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

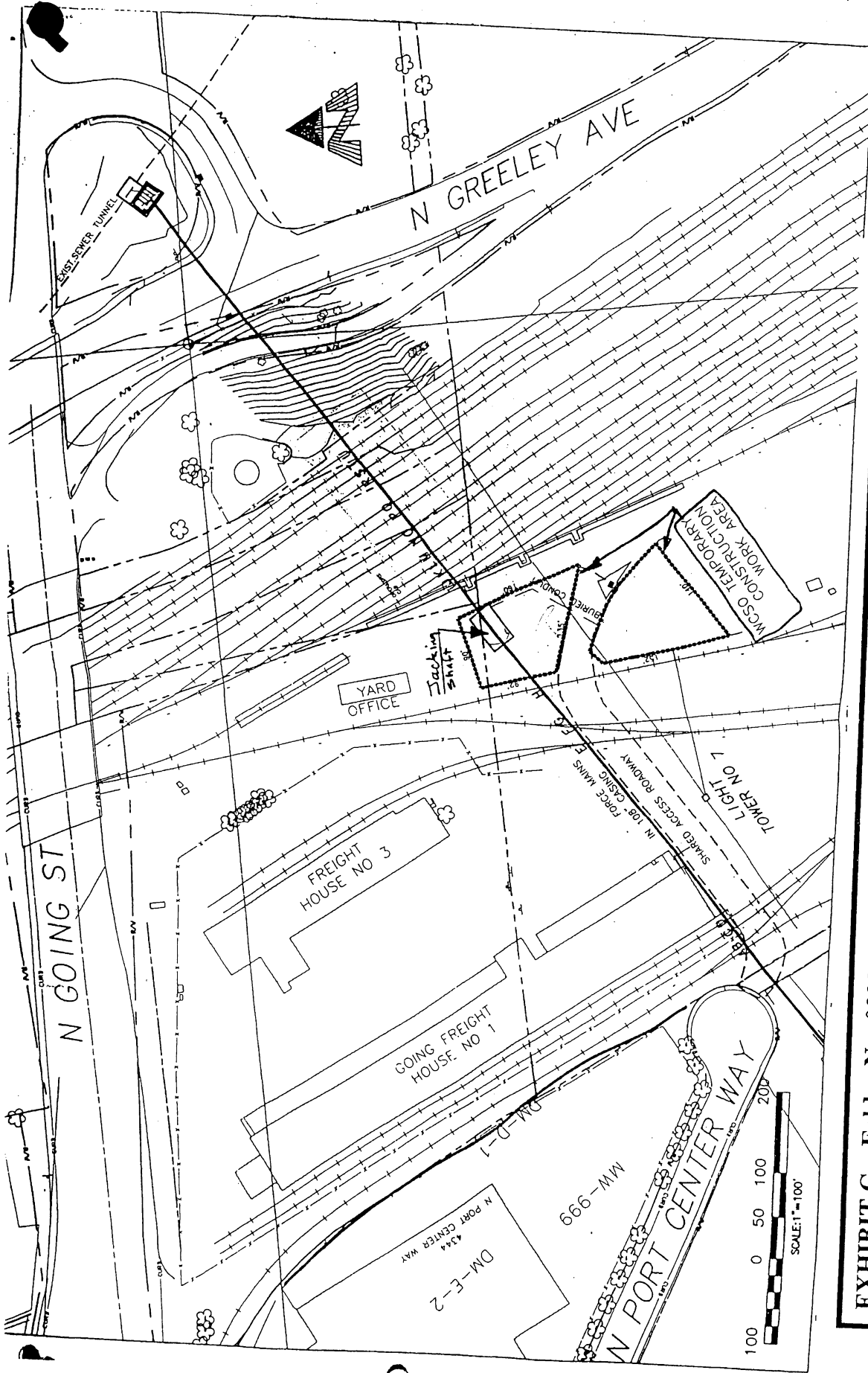


EXHIBIT C – Folder No. 02231-67
Peninsular Force Main Crossing Permit & Permit of Entry

Construction activities as shown on this Exhibit and included in the referenced permits are as follows: establishing two temporary fenced construction work areas, shared access to the site from N. Port Center Way, construction of a temporary jacking shaft, construction of 30" and 48" force main encased in a 108" steel casing microtunneled under the Union Pacific Railroad property and tracks, as shown.