

**EXHIBIT A
ORDINANCE**

After Recording Mail to:
106/800 Linda Birth

Tax Statement shall be sent to:
No Change

Space Above for County Recorder's Use

GRANT OF EASEMENT

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter "Grantor"), for and in consideration of the sum of Four Thousand Three Hundred Seventy Dollars (\$4,370.00) and other good and valuable consideration, to it in hand paid by **CITY OF PORTLAND**, a municipal corporation (hereinafter "Grantee"), the receipt of which is hereby acknowledged, does hereby grant unto the Grantee, its successors and assigns, a non-exclusive perpetual easement ("Easement") for the purpose of constructing, reconstructing, operating, inspecting, monitoring and maintaining a subsurface sewer tunnel facility and appurtenances, through, under and along the property located in Multnomah County, State of Oregon, as described in **Exhibit A**, hereto attached and hereby made a part hereof (the 'Easement Area').

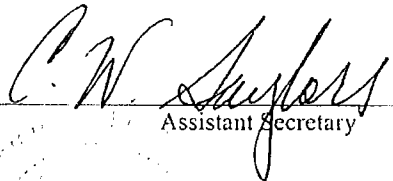
This Easement is subject to the terms, conditions, limitations and covenants in **Exhibit C**, hereto attached and hereby made a part hereof, which shall run with the Easement granted herein, and the Grantee, its successors and assigns, by acceptance of this Easement, agrees to observe each and all of said terms, limitations and conditions, and to perform each and all of said covenants.

TO HAVE AND TO HOLD the Easement unto the Grantee, its successors and assigns.

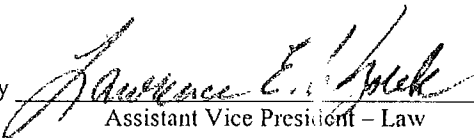
IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed as of the 2nd day of April, 2008.

Attest:

UNION PACIFIC RAILROAD COMPANY



Assistant Secretary

By 

Assistant Vice President - Law

(Seal)

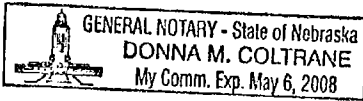
ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On April 2, 2008, before me, a Notary Public in and for said County and State, personally appeared Lawrence E. Wzorek, who is the Assistant Vice President - Law of Union Pacific Railroad Company, a Delaware corporation, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Donna M. Coltrane
Notary Public



(Seal)

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director or designee

EXHIBIT A

Parcel A:

A portion of that tract of land designated as PARCEL NO. 5, in Book 2111, Page 144, recorded April 12, 1992, Multnomah County Deed Records, situated in the Jacob Wheeler Donation Land Claim in Section 34, T1N, R1E, W.M., City of Portland, County of Multnomah, State of Oregon. The subsurface horizontal outline of said easement is described as follows:

Commencing at the southeast corner of said PARCEL NO. 5; thence N 88° 14' 35" W, a distance of 13.67 feet to the True Point of Beginning of the tract herein described; thence N 88° 14' 35" W, a distance of 54.06 feet; thence along the arc of a non-tangent 974.00 foot radius curve to left, through a central angle of 01° 33' 46", an arc distance of 26.57 feet (the chord bears N 15° 20' 10" W, 26.57 feet); thence N 16° 07' 03" W, a distance of 303.26 feet; thence S 37° 40' 38" E, a distance of 141.51 feet; thence S 16° 07' 03" E, a distance of 171.65 feet; thence along the arc of a 1,026.00 foot radius curve to the right, through a central angle of 02° 24' 39", an arc distance of 43.17 feet (the chord bears S 14° 54' 44" E, 43.17 feet) to the True Point of Beginning.

Said easement area contains 14,192 square feet, more or less, and is generally depicted on Exhibits A-1 and B-1 attached hereto.

Parcel B:

A portion of that tract of land owned by Union Pacific Railroad, situated in the southeast one-quarter of Section 34, T1N, R1E, W.M., within the plat of *East Portland*, City of Portland, County of Multnomah, State of Oregon. The subsurface horizontal outline of said easement is described as follows:

Commencing at a point on the east right-of-way line of SE 1st Avenue, said point being S 01° 47' 43" W, a distance of 14.13 feet, from the northwest corner of Block 32, *EAST PORTLAND*; thence S 35° 23' 18" E, a distance of 78.82 feet, to the True Point of Beginning of the tract herein described; thence along the arc of a non-tangent 974.00 foot radius curve to the left, through a central angle of 08° 21' 41", an arc distance of 142.14 feet (the chord bears N 10° 22' 27" W, 142.01 feet), to the north line of *EAST PORTLAND*; thence S 88° 14' 35" E, along said north line, a distance of 54.06; thence along the arc of a non-tangent 1,026.00 foot radius curve to the right, through a central angle of 12° 21' 03", an arc distance of 221.17 feet (the chord bears S 07° 31' 53" E, 220.74 feet); thence N 35° 23' 18" W, a distance of 99.11 feet, to True Point of Beginning.

Said easement area contains 9,496 square feet, more or less, and is generally depicted on Exhibits A-2 and B-2, attached hereto.



C/L TUNNEL &
52' WIDE TUNNEL
EASEMENT

PERMANENT
TUNNEL
EASEMENT
14,192 S.F.

CURVE DATA
D=01°33'46"
R=974.00'
L=26.57'
CB=N 15°20'10"W
CD=26.57'

CURVE DATA
D=02°24'39"
R=1026.00'
L=43.17'
CB=S 14°54'44"E
CD=43.17'

N.E. SECOND AVE (VACATED)

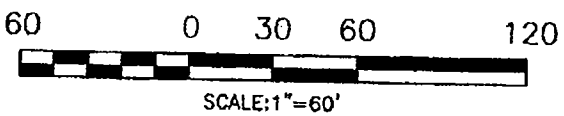
S.E. CORNER
PARCEL NO. 5
BOOK 2111, PAGE 144
APRIL 12, 1992
MULTNOMAH CO. DEEDS

D-2154-PTE_Final.dwg, 03/13/07 at 15:37

PROPERTY OWNER:
OREGON WASHINGTON RAILROAD
STATE ID: 1N1E34AD 1000
RNO: R316794
PROJECT ID: 2154



BAR EQUALS ONE
INCH WHEN DRAWING
IS PLOTTED FULL SIZE.
IF NOT, SCALE ACCORDINGLY



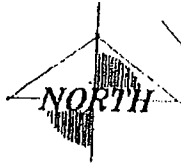
**PARCEL A
EXHIBIT A-1**
UPRR Folder No. 02406-80

PROJECT COORDINATES

CITY OF PORTLAND
ENVIRONMENTAL SERVICES
EAST SIDE CSO TUNNEL PROJECT
**PB PARSONS
BRINCKERHOFF**
122 400 S.W. 5th Ave. Portland, OR 97204

EAST SIDE CSO TUNNEL PROJECT
PERMANENT TUNNEL EASEMENT
PROJECT ID NO. 2154
STATE ID NO. 1N1E34AD 01000
OWNER: OREGON WASHINGTON RAILROAD

1/4 SECTION
3230
SECTION NO.
5516
SHEET NO.
1 of 1



S 88°14'35"E
54.06'

CURVE DATA
D=08°21'41"
R=974.00'
L=142.14'
CB=N 10°22'27"W
CD=142.01'

C/A TUNNEL & 52'
WIDE TUNNEL EASEMENT

PERMANENT
TUNNEL
EASEMENT
9496 S.F.

CURVE DATA
D=12°21'03"
R=1026.00'
L=221.17'
CB=S 07°31'53"E
CD=220.74'

S 35°23'18"E
78.82'

T.P.O.B.
2

EAST

PORTLAND

N.E. FIRST AVE.

N.E. SECOND AVE.

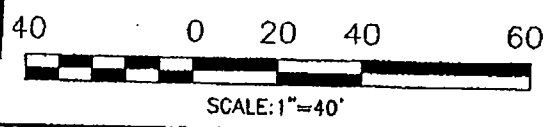
26' 26'

PROPERTY OWNER:
UPRR R/W

UPRR-3_Final.dwg, 02/04/08 at 13:19

1 INCH

BAR EQUALS ONE
INCH WHEN DRAWING
IS PLOTTED FULL SIZE.
IF NOT, SCALE ACCORDINGLY



**PARCEL B
EXHIBIT A-2**
UPRR Folder No. 02406-80

PROJECT COORDINATES

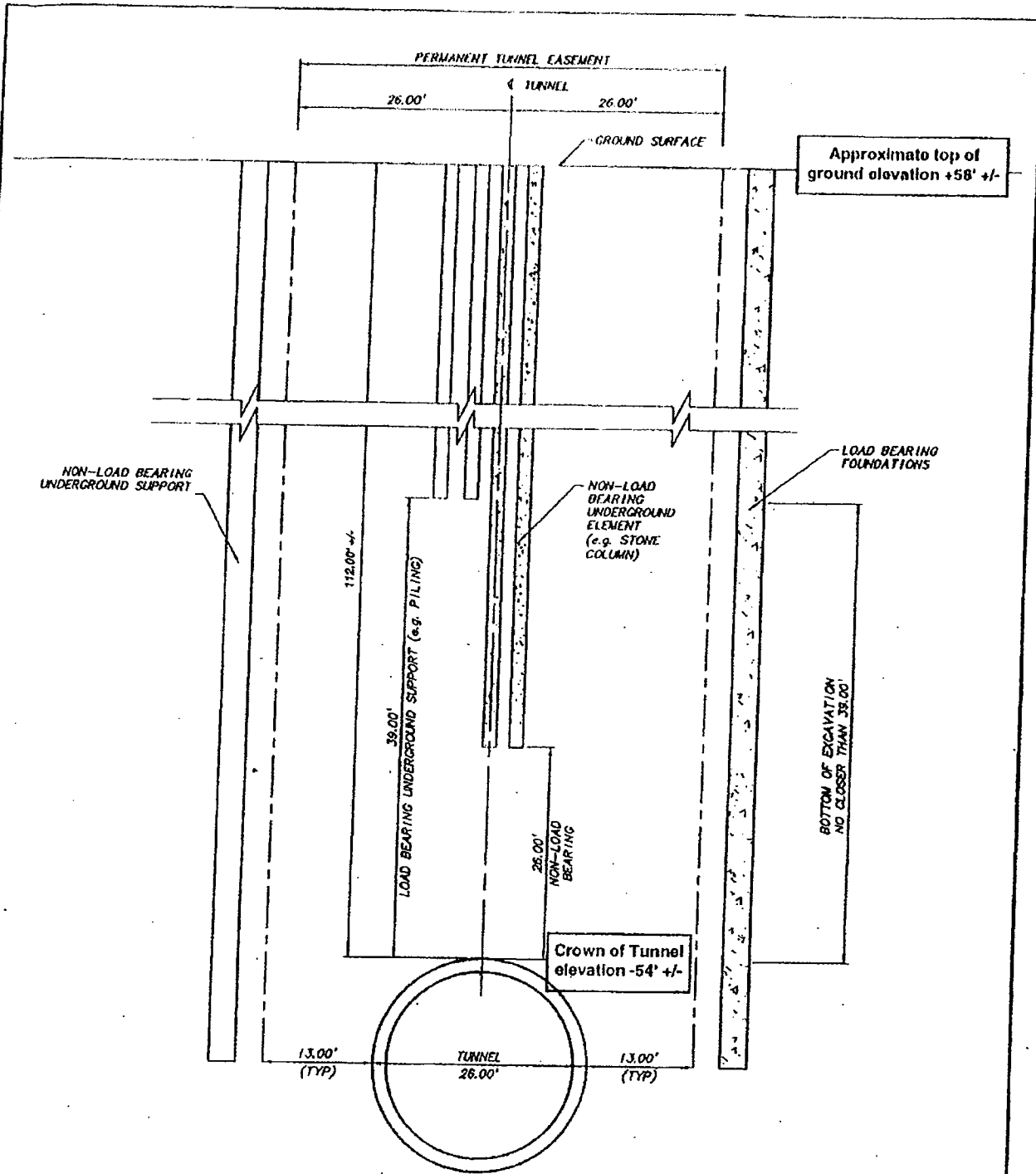
CITY OF PORTLAND
ENVIRONMENTAL SERVICES
EAST SIDE CSO TUNNEL PROJECT
**PB PARSONS
BRINCKERHOFF**
400 S.W. 5th Ave, Portland, OR 97204

EAST SIDE CSO TUNNEL PROJECT
PERMANENT TUNNEL EASEMENT

OWNER: UPRR R/W AREA

1/4 SHEET
3230
JOB NO.
5516
SHEET NO.
1 of 1

Q:\10\HNT\5516-EASTSIDE CSO\PERM-EASEMENTS\UPRR-3_Final.dwg, 2/4/2008 1:20:05 PM, \pordal\camo9

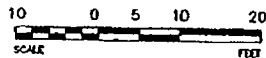


**RESTRICTIONS ON SUBSURFACE DEVELOPMENT
FOR PROTECTION OF TUNNEL**

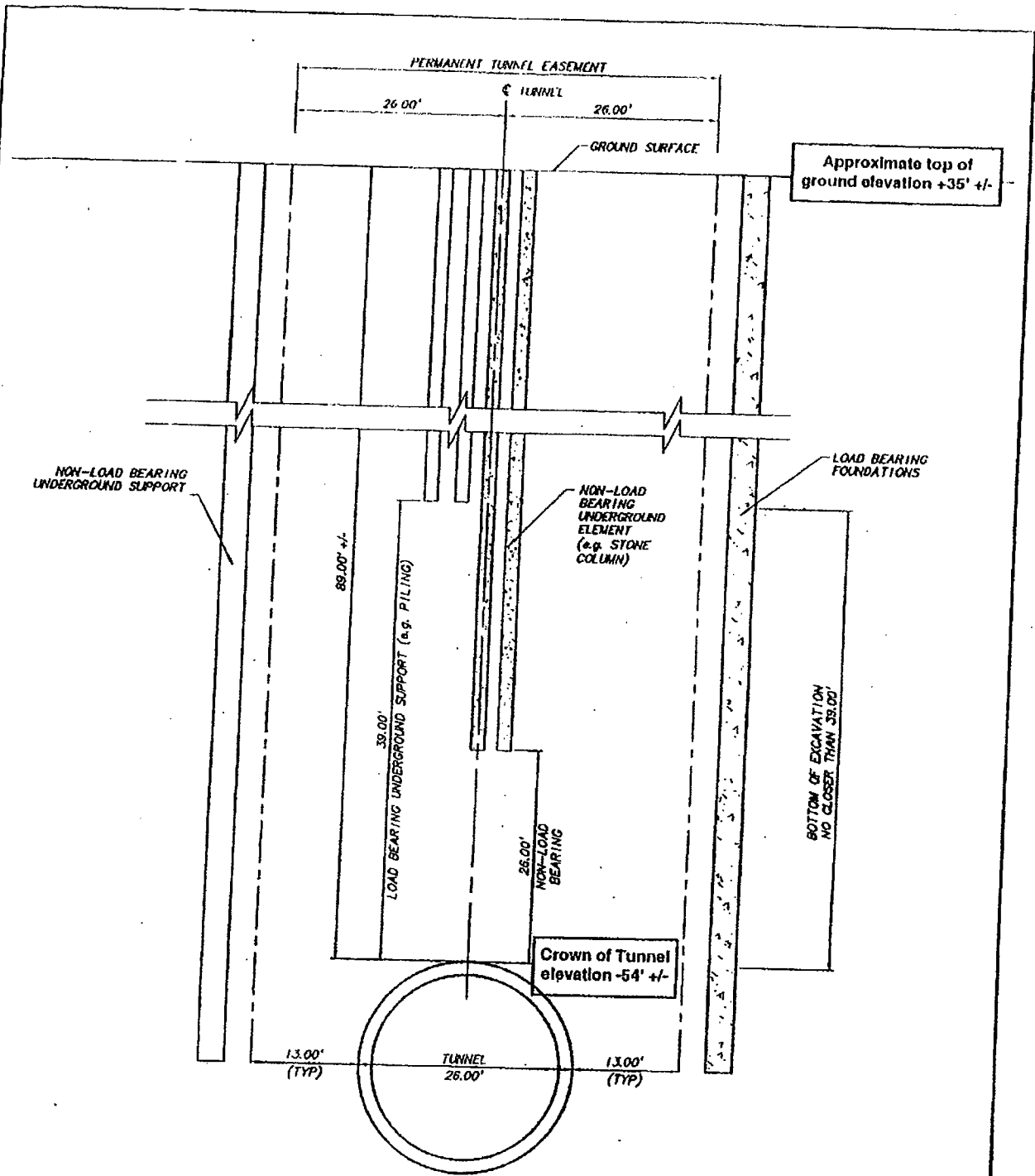
Date: 3/13/08

**PB PARSONS
BRINCKERHOFF**
100 S.W. Sixth Ave. Portland, OR 97204

CITY OF PORTLAND
ENVIRONMENTAL SERVICES



**PARCEL A
EXHIBIT B-1**
UPRR Folder No. 02406-80

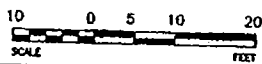


**RESTRICTIONS ON SUBSURFACE DEVELOPMENT
FOR PROTECTION OF TUNNEL**

Date: 3/13/08

**PB PARSONS
BRINCKERHOFF**
121 400 S.W. Sixth Ave. Portland, OR 97204

CITY OF PORTLAND
ENVIRONMENTAL SERVICES



**PARCEL B
EXHIBIT B-2**
UPRR Folder No. 02406-80

EXHIBIT C

Terms, Conditions, Limitations and Grantee's Covenants Running with Easement

SECTION 1. LIMITATIONS AND RESERVATIONS

A. The Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances. The Grantee shall not use or permit use of the Easement Area for any purposes other than those described in this Easement. No nonparty shall be admitted by the Grantee to use or occupy any part of the Easement Area without the Grantor's written consent. Nothing herein shall obligate the Grantor to give such consent.

B. The Grantor reserves the right on behalf of Grantor and its successors or assigns to cross the Easement Area with such railroad tracks or other facilities including but not limited to a trail as may be required for it its successors or assigns convenience or purposes in such manner as to not materially interfere with the operation and maintenance of the pipeline facility or jeopardize the integrity of the pipeline.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Grantee shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Grantor's remaining property, unless the Grantee, at its own expense, settles with and obtains releases from such nonparties.

D. The Grantor reserves the right to use and to grant to others the right to use the Easement Area in any manner and for any purpose which does not materially interfere with the operation and maintenance of the pipeline facility or jeopardize the integrity fo the pipeline within the Easement herein conveyed to Grantee, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Easement Area with a trail, pipelines, signals, fiber optics, communication or power lines and all kinds of equipment. Underground improvements within the easement area must be consistent with Exhibit B-1 for Parcel A and Exhibit B-2 for Parcel B, attached herein, which specifically prohibits any underground improvements within thirteen (13) feet of the tunnel, and shall not install load bearing underground improvements within thirty-nine (39) feet above the crown of the tunnel and non-load bearing underground improvements within twenty-six (26) feet of the crown of the tunnel, as shown on Exhibit B, attached hereto.

SECTION 2. CONSTRUCTION, MAINTENANCE AND OPERATION

A. The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Grantee in strict conformity with Union Pacific Railroad Company requirements for pipeline crossings and with Exhibit A, attached herein. In the event such Specification conflicts in any respect with 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 Grantor, in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, shall be performed to the satisfaction of the Grantor. Upon completion of construction or other work, the Grantee will leave the Easement Area in good condition.

C. The Grantor 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, and/or reconstruction of the Pipeline and in the event the Grantor provides such support, the Grantee shall pay to the Grantor, within thirty days after bills shall have been rendered therefor, all reasonable expenses incurred by the Grantor in connection therewith, which expense shall include all assignable costs

D. All construction work of the Grantee shall be performed diligently and completed within a reasonable time, and in any event within three years from the effective date of this grant, or within such further period of time as may be specified in writing by the Grantor. No part of the construction work within the Easement Area shall be suspended, discontinued or unduly delayed without the Grantor's written consent, and subject to such reasonable conditions as the Grantor may specify. It is understood that the Grantor's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work, and that movement or stoppage of trains, engines or cars may cause delays in the work of the Grantee. The Grantee hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Grantor.

EXHIBIT C

SECTION 3. NOTICE OF COMMENCEMENT OF WORK

If any emergency should arise requiring immediate attention, the Grantee shall provide as much notice as practicable to Grantor before commencing any work. In all other situations, the Grantee shall notify the Grantor at least 72 hours (or such other time as the Grantor may allow) in advance of the commencement of any work within the Easement Area in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. Grantee shall also give at least 24 hours advance notice to Grantor of proposed performance of any work by the Grantee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Grantor will determine and inform the Grantee whether a flagman need be present and whether the Grantee need implement any special protective or safety measures. If any flagman or other special protective or safety measures are performed by the Grantor, such services will be provided at Grantee's expense with the understanding that if the Grantor provides any flagging or other services the Grantee shall not be relieved of any of its responsibilities set forth herein.

SECTION 4. GRANTEE TO BEAR ENTIRE EXPENSE

The Grantee 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 Grantor in connection therewith for supervision, inspection, flagging, or otherwise.

SECTION 5. NO INTERFERENCE WITH GRANTOR'S OPERATION

The Pipeline and all parts thereof within and outside of the limits of the property of the Grantor 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 Grantor, and nothing shall be done or suffered to be done by the Grantee at any time that would in any manner impair the safety thereof. When not in use, Grantee's machinery and materials shall be kept at least 50 feet from the centerline of Grantor's nearest track, and there shall be no crossings of Grantor's tracks except at existing open public crossings.

SECTION 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

A. Fiber optic cable systems may be buried on the Grantor'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 revenues and profits. Prior to commencing any work, the Grantee shall telephone the Grantor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Grantor's premises to be used by the Grantee. If it is, Grantee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable and will commence no work on the right of way, other than emergency work necessary to protect the public health and safety, until all such protection or relocation has been accomplished. Grantee, to the extent allowed by the Oregon constitution and to the limits of the Oregon Tort Claims Act, shall indemnify, defend and hold harmless the Grantor 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 Grantee's failure to comply with the provisions of this paragraph.

B. In addition to all other indemnification provided herein, to the extent allowed by the Oregon constitution and to the limits of the Oregon Tort Claims Act the Grantee shall indemnify, defend and hold harmless the Grantor from and against all costs, liability and expenses whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of Grantee, its contractor(s), agents and/or employees, resulting in (i) any damage to or destruction of any telecommunications system on Grantor's property, and/or (ii) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor(s), agents and/or employees, on Grantor's property, except when such costs, liability or expenses are caused by the sole active direct negligence of the Grantor. Grantee further agrees that it shall not have or seek recourse against Grantor 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 Grantor's property or a customer or user of services of the fiber optic cable on Grantor's property.

EXHIBIT C

SECTION 7. INDEMNITY

A. Grantee, to the extent allowed by the Oregon constitution and to the limits of the Oregon Tort Claims Act, agrees to indemnify, defend and hold harmless the Grantor from any Loss (as hereinafter defined) which is due to or arises from:

1. The prosecution of any work contemplated by this Easement including the 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 products conducted through or escaping therefrom,

except when the Loss is caused by the sole active direct negligence of the Grantor.

B. As used in this Section, the term 'Grantor' includes other railroad companies using Grantor's property and tracks within the Easement Area and their officers, agents and employees, and the term '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:

1. Injury to or death of persons whomsoever (including the Grantor's officers, agents and employees, the Grantee's officers, agents and employees, as well as any other person); and
2. Damage to or loss or destruction of property whatsoever (including damage to the roadbed, tracks, equipment or other property of the Grantor, or property in its care or custody).

SECTION 8. SAFETY MEASURES

It is understood and recognized that safety and continuity of the Grantor's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, the Grantee shall require all its work be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references to the Grantee shall include the Grantee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references to work of the Grantee shall include work both within and adjacent to the Grantor's property.

B. **Compliance With Laws.** The Grantee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Grantee shall use only such methods as are consistent with safety, both as concerns the Grantee, the Grantee's agents and employees, the officers, agents, employees and property of the Grantor and the public in general. The Grantee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations.

C. **Supervision.** The Grantee, at its own expense, shall adequately police and supervise all work to be performed by the Grantee, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Grantor may be responsible, or to property of the Grantor. The responsibility of the Grantee for safe conduct and adequate policing and supervision of its work shall not be lessened or otherwise affected by the Grantor's approval of plans and specifications, or by the Grantor's collaboration in performance of any work, or by the presence at the work site of the Grantor's representatives, or by compliance by the Grantee with any requests or recommendations made by such representatives. If a representative of the Grantor is assigned to the job site, the Grantee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Grantor's property and operations.

D. **Removal of Debris.** The Grantee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Grantor; and any such material and debris shall be promptly removed from the Grantor's property by the Grantee at the Grantee's own expense or by the Grantor at the expense of the Grantee.

EXHIBIT C

E. **Explosives.** The Grantee shall not discharge any explosives on or in the vicinity of the Grantor's property.

F. **Excavation.** The Grantee shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Grantor. The Grantee shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Grantor's tracks or facilities. The Grantee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Grantee in connection with construction, maintenance or other work.

G. **Drainage.** The Grantee, at the Grantee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial), so that said waters may not, because of any facilities or work of the Grantee, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Grantor or any part thereof, or property of others. The Grantee shall not obstruct or interfere with existing ditches or drainage facilities.

H. **Safety-Premises.** The Grantee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Grantee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Grantee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Grantor to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance.

I. **Safety-Personal.** The employees of the Grantee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Grantee shall require its employees to wear personal protective equipment as specified by Grantor rules, regulations or Grantor officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

1. Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Grantee's or subcontractor's company logo or name.
2. Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
3. Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

J. **Safety-Devices.** All heavy equipment provided or leased by the Grantee shall be equipped with audible back-up warning devices. If in the opinion of the Grantor any of Grantee's or any of its subcontractor's equipment is unsafe for use on the Grantor's right-of-way, the Grantee, at the request of the Grantor, shall remove such equipment from the Grantor's right-of-way.

SECTION 9. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES

A. The Grantee shall fully pay for all materials joined or affixed to and labor performed upon property of the Grantor 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 Grantee.

B. The Grantee shall not permit any taxes, charges and assessments to be levied upon Grantor or Grantor's property with respect to, or on account of, the Pipeline.

EXHIBIT C

SECTION 10. RESTORATION OF GRANTOR'S PROPERTY

If the Grantee, in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, or in the performance of any work contemplated by this Easement or by the failure to do or perform anything for which the Grantee is responsible under the provisions of this Easement, shall injure, damage or destroy any property of the Grantor or of any other person lawfully occupying or using the property of the Grantor, such property shall be replaced or repaired by the Grantee at the Grantee's own expense, or by the Grantor at the expense of the Grantee.

SECTION 11. WAIVER OF BREACH

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

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Grantee does not use the rights herein granted for the Pipeline for one (1) year, or if the Grantee continues in default, as described in subsection (b) below, in the performance of any covenant or agreement herein contained, the Grantor may, at its option, give the Grantee notice of default as described in subsection (c) below. A default capable of being cured that is not cured as provided for herein shall be grounds for Grantor terminating this Easement.

B. The failure of the Grantee (not otherwise excused) to perform an obligation under this Easement shall not be deemed a default unless the following conditions are met: (i) the Grantor has served a written notice of default or demand for performance on the Grantee specifying the nature of the alleged default; and (ii), in the case of a default capable of being cured, the Grantee has not cured or diligently commenced the curing of the default within a reasonable time following the receipt of notice of default or demand for performance under (i), above. For purposes of this section, a reasonable time shall be 10 business days in the case of a failure to pay a sum of money; 20 business days in the case of a failure to give an approval or execute a document; 30 business days in the case of obligations that can be performed within such time; and such time as is reasonably appropriate under the circumstances in the case of obligations that cannot be performed within 30 days, provided that the Grantee has commenced to cure said default as early as reasonably possible within such 30-business-day period and shall diligently prosecute such cure to completion.

C. Notice of default and notice of termination may be served personally upon the Grantee or by mailing to the last known address of the Grantee. 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 to thereto.

D. The Pipeline will be a critical component of Grantee's municipal sewage treatment system, and cannot be taken out of service. In the event this Easement is terminated for any reason, it is the Grantee's intention to use its power of eminent domain to obtain any easement rights needed to maintain and operate the portion of the Pipeline located on the Grantor's property. The Grantor agrees that it will not dispute the Grantee's right to obtain the easement rights it needs, and that the only issue in such condemnation proceeding shall be the amount of compensation payable for the rights acquired, it being agreed that the consideration paid for this original Easement may not be used as a credit against compensation due in such a proceeding. This section shall survive any termination of the agreement.

SECTION 13. OTHER RAILROADS

All protective and indemnifying covenants of this Easement shall inure to the benefit of the Grantor and any other railroad company lawfully using the Grantor's property or facilities.

SECTION 14. EASEMENT NOT TO BE ASSIGNED

The Grantee shall not assign this Easement, in whole or in part, or any rights herein granted, without the written consent of the Grantor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Easement 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 Grantor, shall terminate this Easement.

SECTION 15. SUCCESSORS AND ASSIGNS

Subject to the provisions of Section 15 hereof, this Easement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.