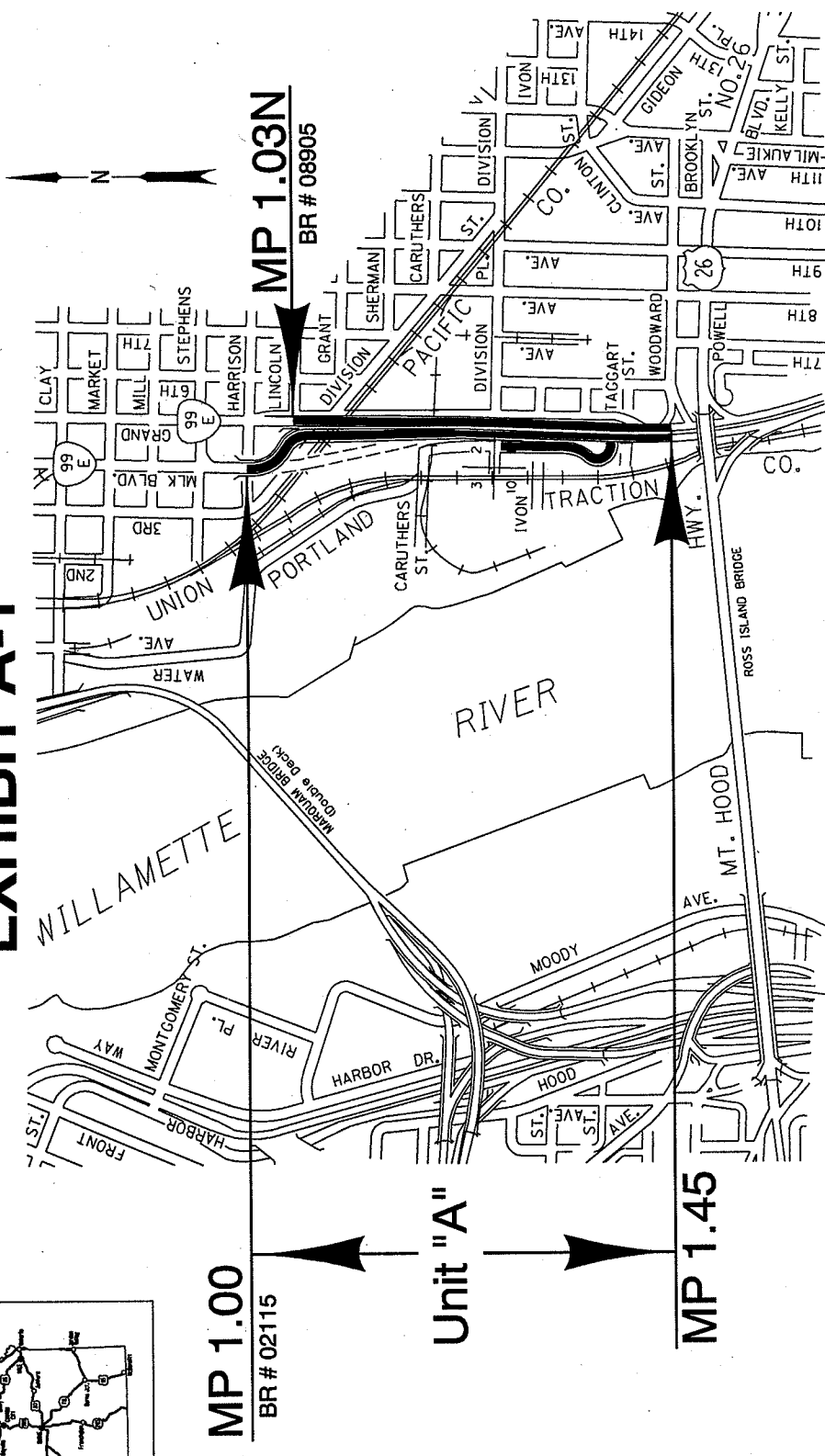
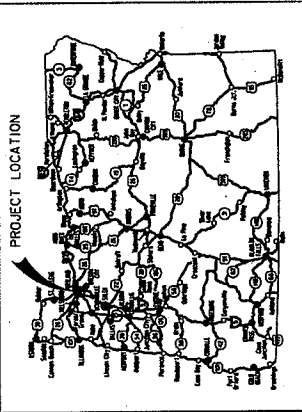


Sec. 2, 3, 10, 11 T. 1N., R. 1E., W.M.

# EXHIBIT A-1



MP 1.00  
BR # 02115

Unit "A"

MP 1.03N  
BR # 08905

MP 1.45

OREGON STATE HIGHWAY DIVISION	
PURPOSE	Jurisdictional Transfer #733
SECTION	MLK/Grand (O-xing UPRR # 02115 & 08905) Viaducts
HIGHWAY	Pacific Hwy. East (99E)
COUNTY	Multnomah
SCALE: Not To Scale	DATE: 18-Nov-2002

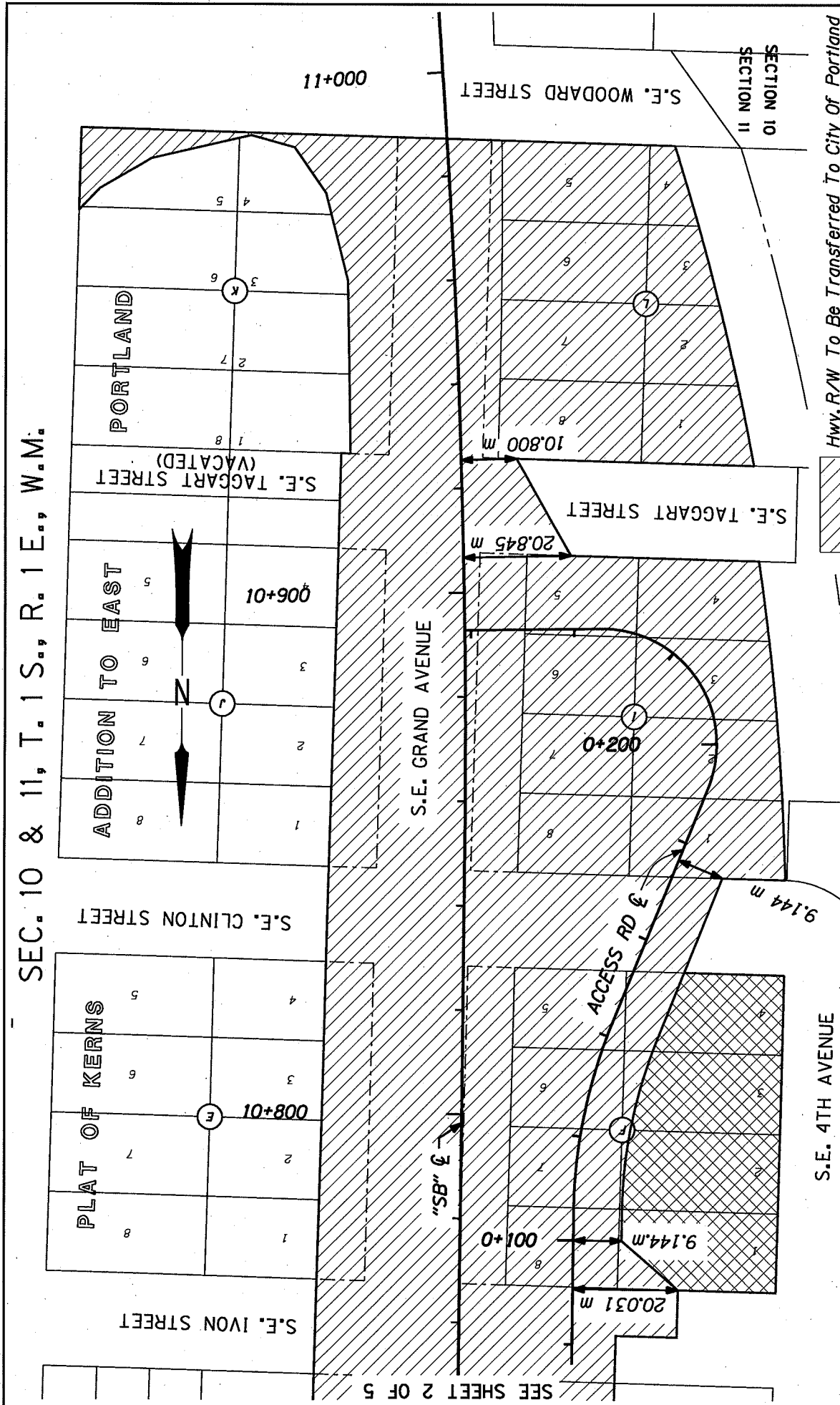


**EXHIBIT D-1**  
**M. C. & A No. 733**  
**PDOT STAFF HOUR ESTIMATES**  
**MLK Viaduct Replacement Project**

Activity	Traffic Desig	Civil Desig	Struct Desig	Street Lights	Env Serv	Right- of- Way	Parks	Other	Staff Hours Total	Estimated Cost for City Participation
Design Phase (11/1/03 – 08/31/06)										
Design Phase Subtotal	1000	100	200	150	600	50	200	100	2400	\$156,000 (2400 hrs x 65** \$/hr)
Construction Phase (06/1/06 – 05/31/10)										
Ongoing project coordination	400								400	
Traffic impact mgmt	300								300	
Public Relations	400								400	
IGA and Jurisdictional Transfer	400					200		200	800	
Monitoring and Inspection	100	150	400	150	4000		200		5000	
Construction Phase Subtotal	1600	150	400	150	4000	200	100	200	6900	\$448,500 (6900 hrs x 65 \$/hr)
Phases Total	2600	250	600	300	4600	250	300	300	9300	\$604,500

**\*\*The hourly rate described on the prior versions of this exhibit incorrectly listed the City's hourly rate at \$40 per hour. The correct City rate has been and is \$65 per hour.**

SEC. 10 & 11, T. 1 S., R. 1 E., W.M.

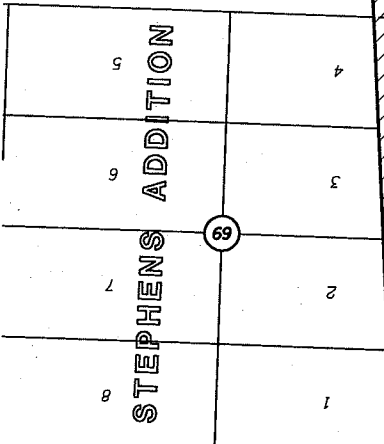


Hwy. R/W To Be Transferred To City Of Portland  
To Be Retained By ODOT

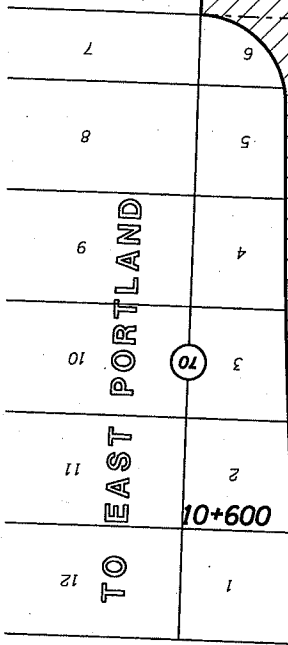
OREGON DEPARTMENT OF TRANSPORTATION <b>JURISDICTIONAL TRANSFER</b> JURISDICTIONAL TRANSFER AGREEMENT #733-3 EXHIBIT G-1, SHEET 1 OF 5	Section	MLK/Grand (O-Xing UPRR #02115 & 08905) Viaducts	Scale	1:1000 Meters
	Highway	Pacific Highway East (99E)	Date	March, 2008
	County	Multnomah County	File	JT#733
			See Drawing 10B-19-14	

SEE SHEET 2 OF 5

SEC. 2, 10 & 11, T. 1 S., R. 1 E., W.M.



STEPHENS ADDITION

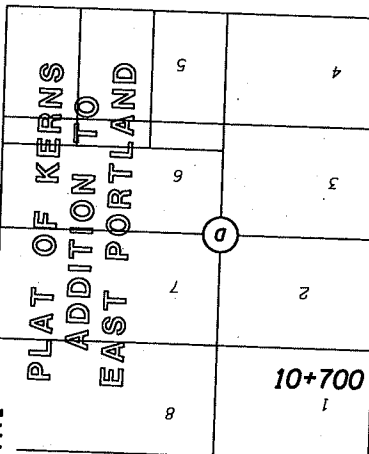


TO EAST PORTLAND

009+01

000+70

S.E. DIVISION PLACE

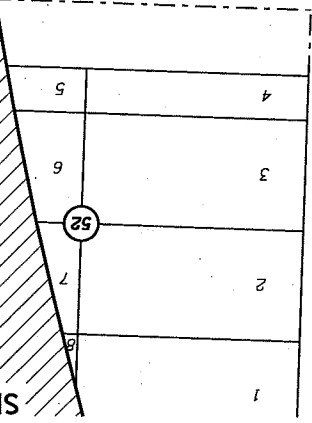


PLAT OF KERNS  
ADDITION TO  
EAST PORTLAND

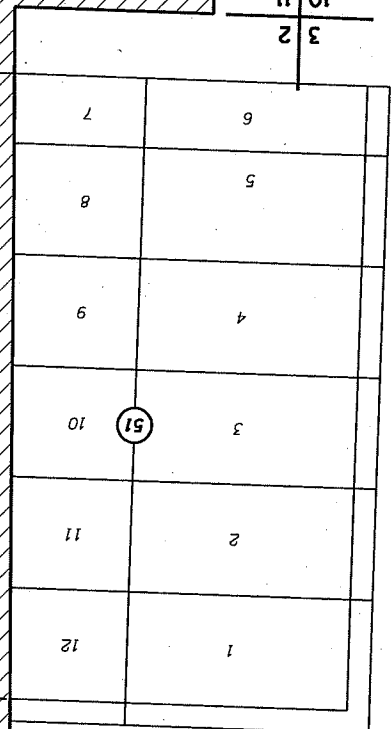
S.E. IVON STREET

S.E. GRAND AVENUE

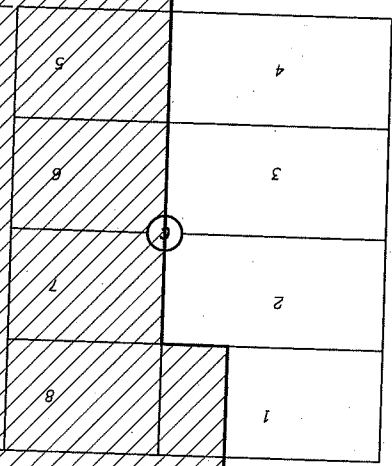
"SB" E



S.E. CARUTHERS STREET



3 2  
10 11



20.031 m

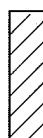
SEE SHEET 3 OF 5

SEE SHEET 1 OF 5



Hwy. R/W To Be Transferred To City Of Portland

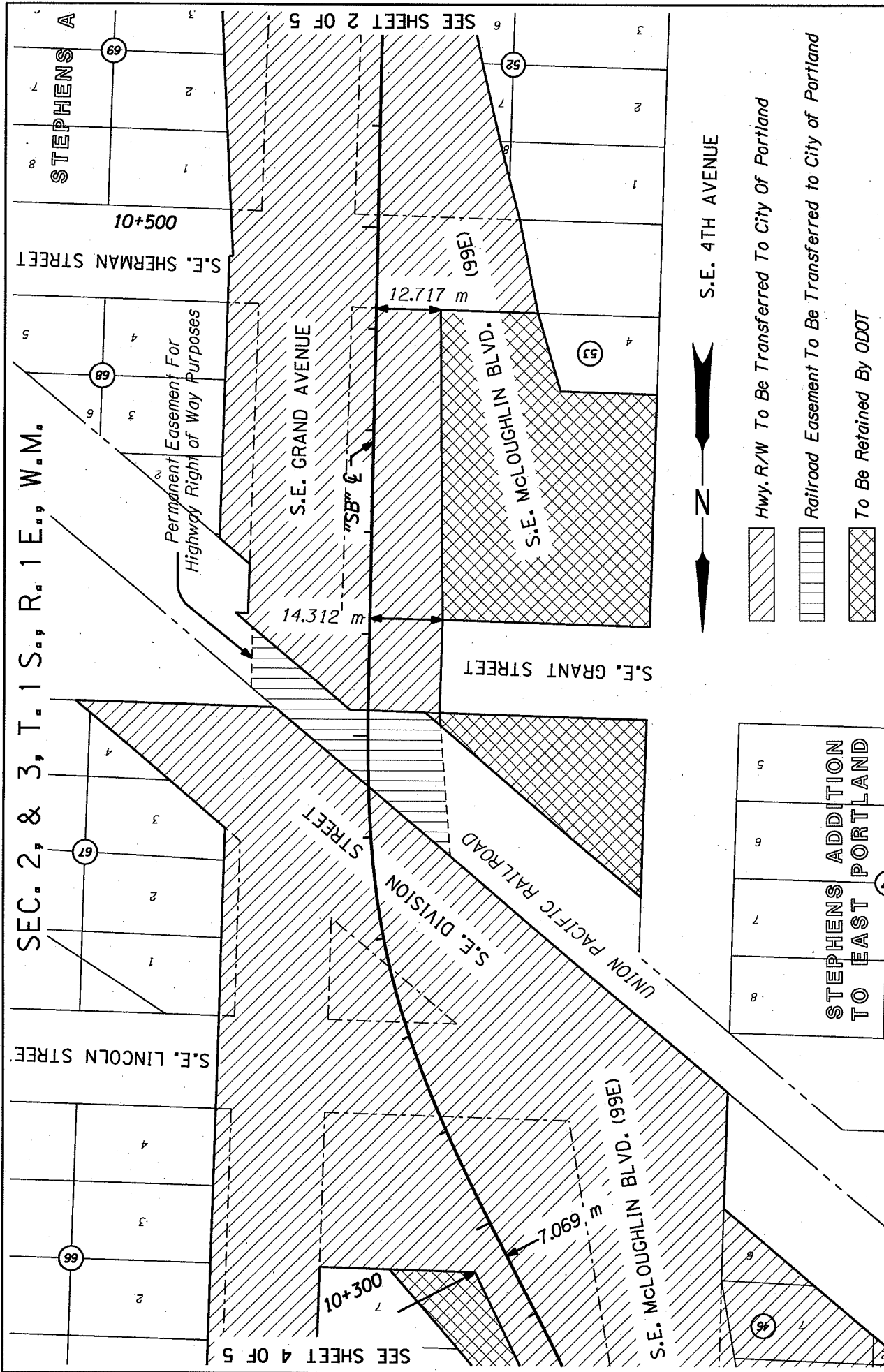
To Be Retained By ODOT



OREGON DEPARTMENT OF TRANSPORTATION  
**JURISDICTIONAL TRANSFER**  
EXHIBIT G SHEET 2 OF 5

Section MLK/Grand (O-Xing UPRR #02115 & 08905) Viaducts  
Highway Pacific Highway East (99E)  
County Multnomah County

Scale 1:1000 Meters  
Date March, 2008  
File JT#733  
See Drawing 10B-19-14

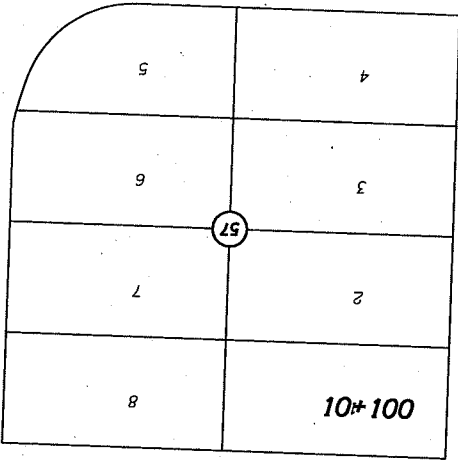


<p>OREGON DEPARTMENT OF TRANSPORTATION  <b>JURISDICTIONAL TRANSFER</b>          EXHIBIT G SHEET 3 OF 5</p>	Section	MLK/Grand (O-Xing UPRR #02115 & 08905) Viaducts	Scale	1:1000 Meters
	Highway	Pacific Highway East (99E)	Date	March, 2008
	County	Multnomah County	File	JT#733
				See Drawing 10B-19-14

SEC. 2, & 3, T. 1 S., R. 1 E., W. M.

S.E. GRAND AVENUE

STEPHENS ADDITION  
TO EAST PORTLAND



Permanent Wall  
w/ 00'± Maintenance Easement  
(To Be Granted To City)

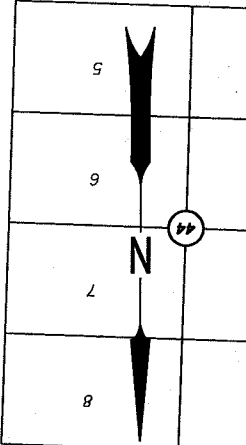
10+300

10+200

10+100

MARTIN LUTHER KING, JR. BOULEVARD  
(S.E. UNION AVENUE)

(S.E. UNION AVENUE)



Hwy. R/W To Be Transferred To City Of Portland

Easement To Be Transferred to City of Portland

To Be Retained By ODOT

S.E. McLOUGHLIN BLVD. (99E)

7.069 m

S.E. HARRISON STREET

S.E. DIVISION STREET

SEE SHEET 5 OF 5

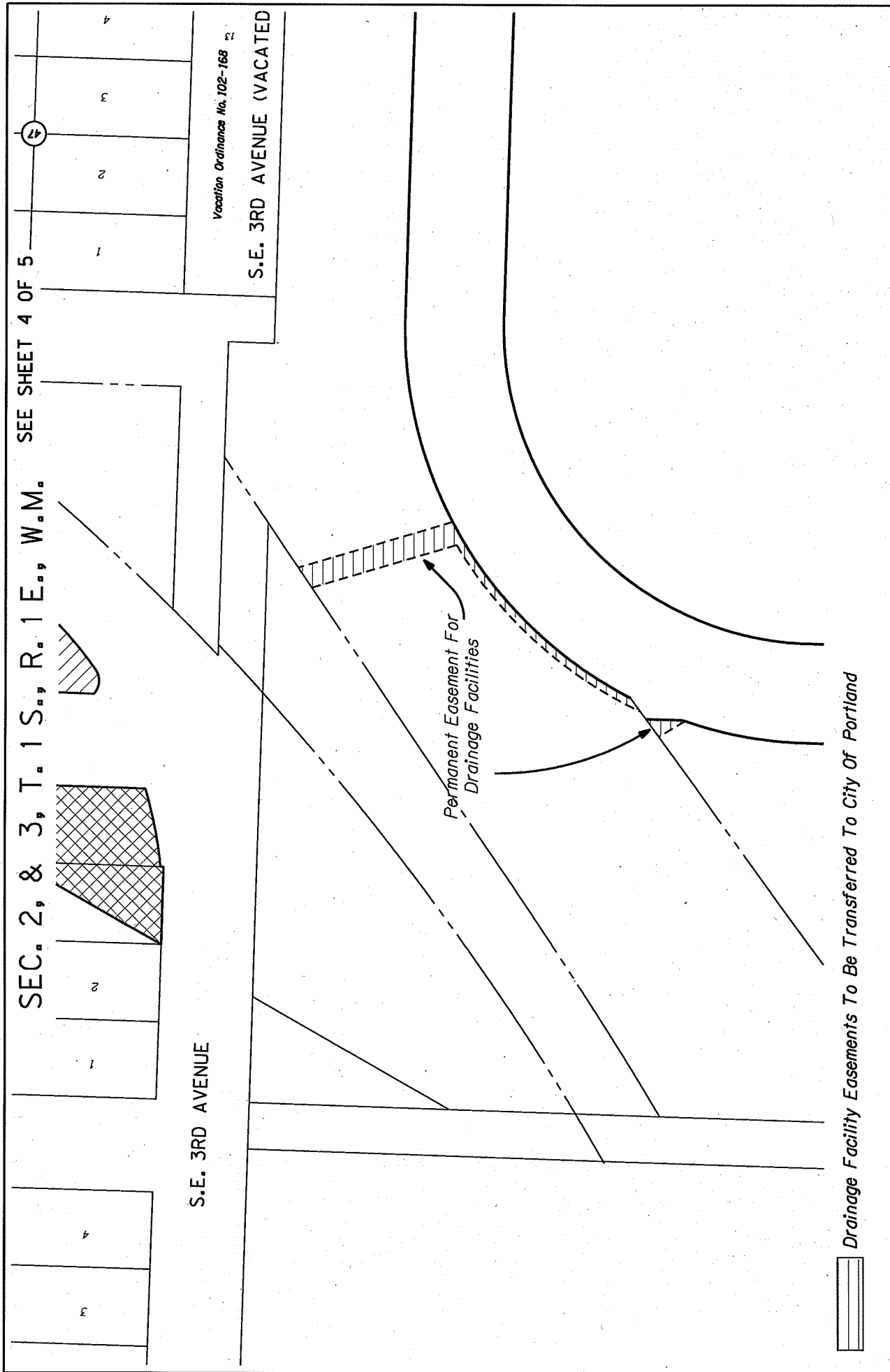
OREGON DEPARTMENT OF TRANSPORTATION  
**JURISDICTIONAL TRANSFER**  
EXHIBIT G SHEET 4 OF 5

Section	MLK/Grand (O-Xing UPRR #02115 & 08905) Viaducts
Highway	Pacific Highway East (99E)
County	Multnomah County

Scale	1:1000 Meters
Date	March, 2008
File	JT#733
See Drawing 10B-19-14	

SEE SHEET 3 OF 5

S.E.



**Drainage Facility Easements To Be Transferred To City Of Portland**

OREGON DEPARTMENT OF TRANSPORTATION <b>JTC</b> JURISDICTIONAL TRANSFER EXHIBIT 6 SHEET 5 OF 5	Section	MLK/Grand (O-Xing UPRR #02115 & 08905) Viaducts	Scale	1:1000 Meters
	Highway	Pacific Highway East (99E)	Date	March, 2008
	County	Multnomah County	File	JT#733
			See Drawing 10B-19-14	

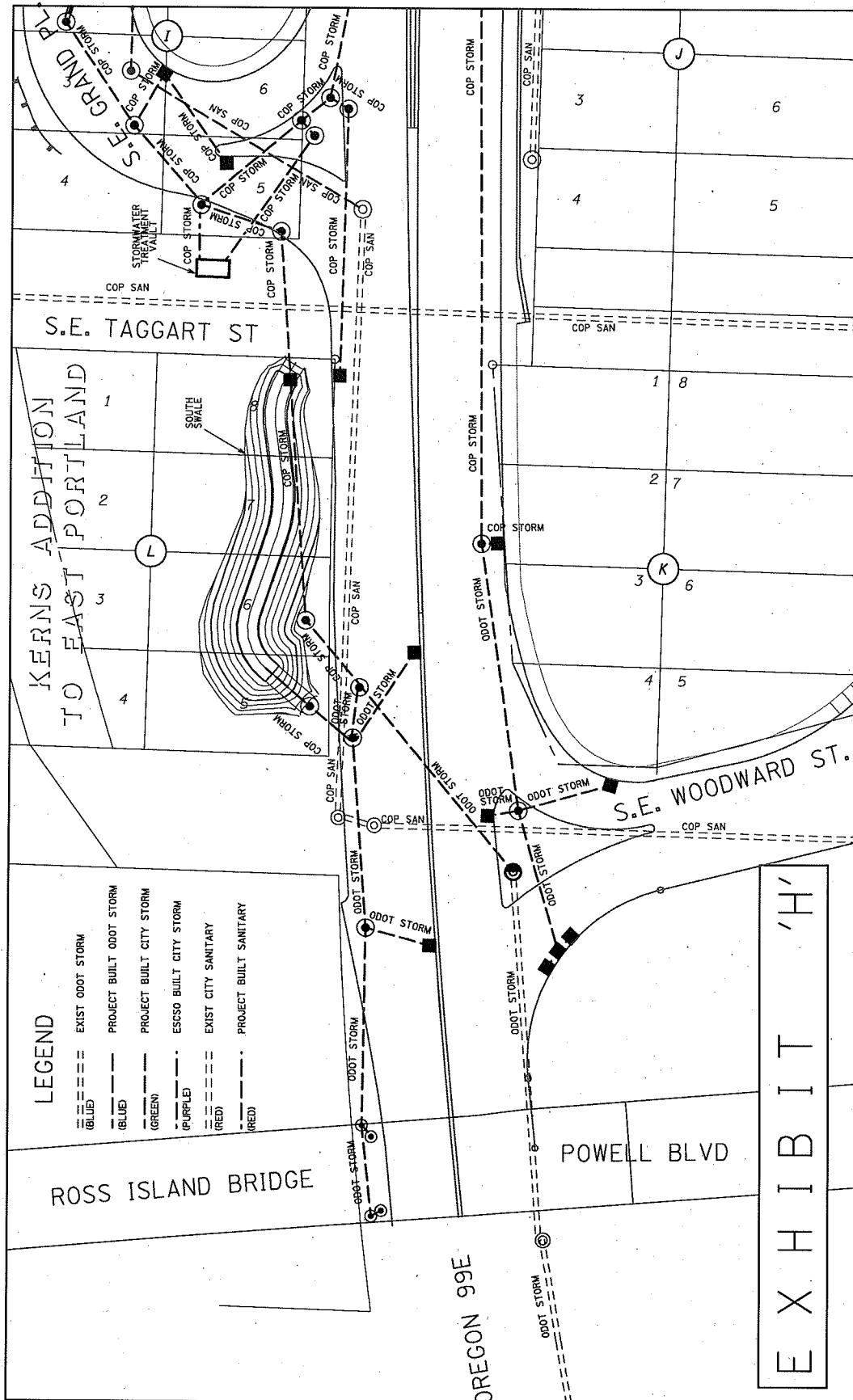


EXHIBIT 'H'



## EXHIBIT I – Jurisdictional Transfer #733

### REIMBURSEMENT SCHEDULE FOR PROJECT IMPROVEMENTS BY CITY

In the interest of coordinating both the ODOT MLK Project work and the City's East Side Willamette River Combined Sewer Overflow (ESCSO) Tunnel Project, the following Project work will be completed by the City, through its Bureau of Environmental Services. ODOT will reimburse the City for Project improvements, as designated in this Exhibit and as shown on Exhibit H.

1. South Swale*	\$ 49,500
2. Sedimentation Manhole & Associated Piping)	\$ 9,000
3. Site Restoration at South Swale	No Charge
4. Stormwater Treatment Vault & Associated Piping	No Charge
TOTAL ODOT REIMBURSEMENT TO CITY	\$ 58,500

*\*Cost reimbursement for South Swale represents the agreed upon cost to construct the ODOT designed south swale including excavation, grading, landscaping and inlet. Final design will vary to accommodate site conditions.*

Reimbursement of work shall be made to the City of Portland in care of the Bureau of Environmental Services upon execution of this agreement.

Site restoration is limited to the area currently occupied by BES, East Side CSO project at the south swale site. ODOT has provided conceptual drawing(s) showing the proposed site restoration and identified required elements to meet Project Permit requirements.

PL X 980112  
Form Approved, AVP-Law

PL X 940206  
Form Approved, AVP-Law

Folder No. 02327-40  
000T RR-1525

## PIPELINE CROSSING AGREEMENT

Mile Post: 768.96, Brooklyn Subdivision/Branch  
Location: Portland, Multnomah County, Oregon

**THIS AGREEMENT** is made and entered into as of June 29, 2005, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **OREGON DEPARTMENT OF TRANSPORTATION**, an Oregon municipal corporation to be addressed at 355 Capitol St. Ne, Salem, Oregon 97301 (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 **Twenty Four Thousand Three Hundred Twenty Dollars (\$24,320.00)**.

### 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

18 inch water pipeline crossing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated December 21, 2005, marked Exhibit A. 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. 02327-40, 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 768.96, on the Brooklyn 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:

Jon E. Devish  
Folder No. 02327-40  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street STOP 1690  
Omaha, NE 68179-1690

**Article VI. TERM.**

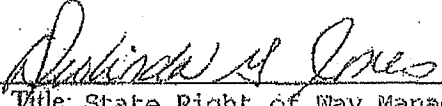
This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

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

UNION PACIFIC RAILROAD COMPANY

OREGON DEPARTMENT OF  
TRANSPORTATION

By:   
\_\_\_\_\_  
Manager - Contracts

By:   
\_\_\_\_\_  
Title: State Right of Way Manager

Director-Contracts

12-12-07

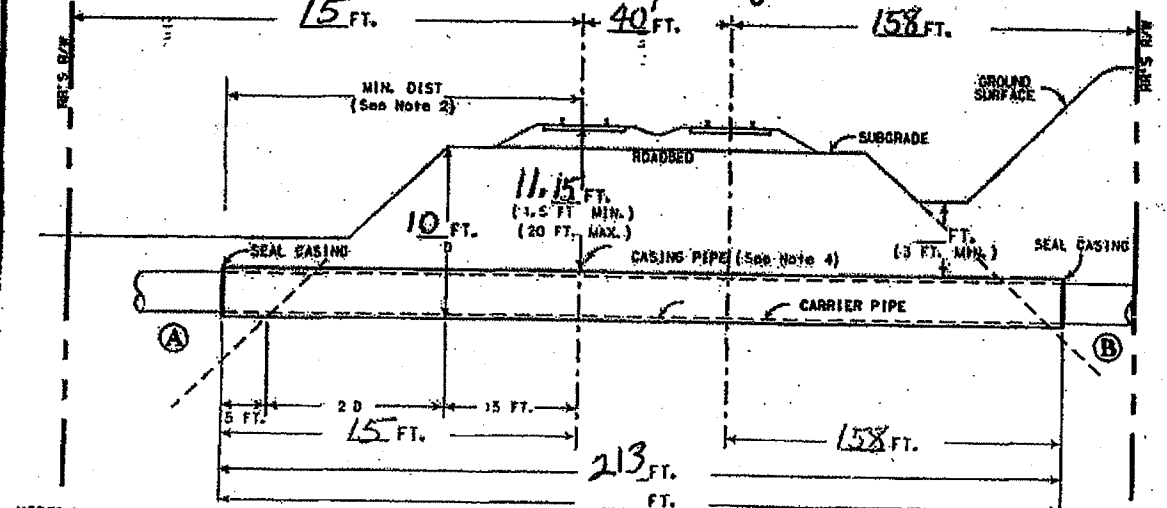
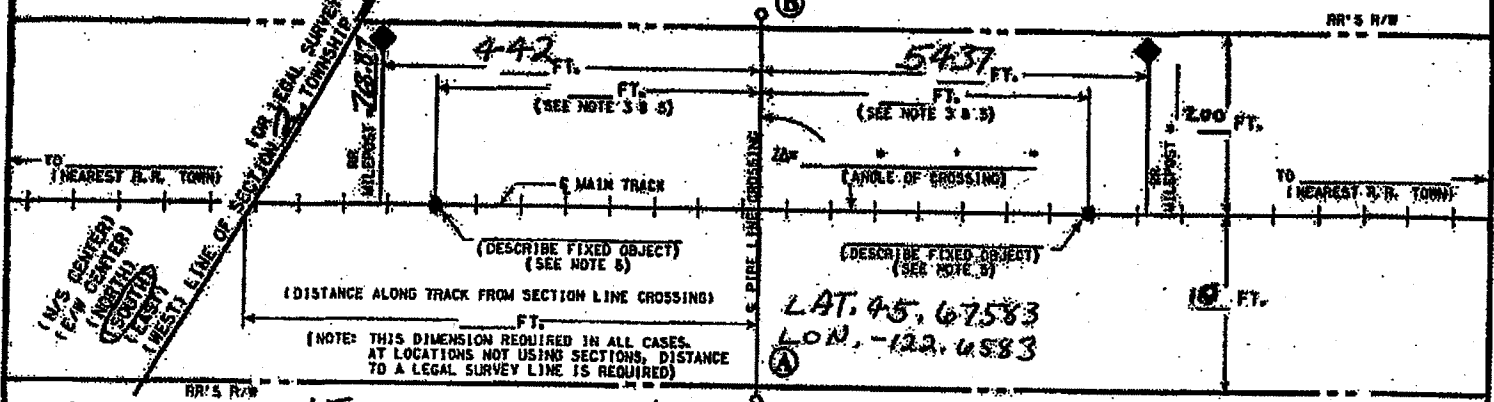
FORM DR-0404-B  
REV. 5-15-98  
www.uprr.com

# ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

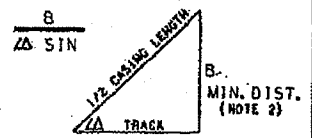


MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	12" OR LESS
.3125"	OVER 12"-18"
.3750"	OVER 18"-22"
.4375"	OVER 22"-28"
.5000"	OVER 28"-34"
.5625"	OVER 34"-42"
.6250"	OVER 42"-48"

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.

FORMULA TO FIGURE CASING LENGTH WITH ANGLE OF CROSSING OTHER THAN 90°



- NOTES:
- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM Q OF TRACK.
  - CASING TO EXTEND BEYOND THE Q OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
  - MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, Q 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; Q OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), 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 Drainage Water (Gravity Flow)  
OPERATING PRESSURE 10 PSI  
WALL THICKNESS 0.53; DIAMETER 18; MATERIAL concrete;
- E) CASING PIPE:  
WALL THICKNESS 0.50; DIAMETER 30"; MATERIAL steel;  
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 \_\_\_\_\_
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR?  YES;  NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 32 (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE  DOES;  DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. \_\_\_\_\_

**EXHIBIT "A"**  
(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.  
Brooklyn  
(SUBDIVISION)

M. P. 768.96 E. S. 7110+

ENCASED \_\_\_\_\_ CROSSING AT  
Portland Multnomah OR  
(NEAREST CITY) (COUNTY) (STATE)

Oregon Dept. of Transportation  
(APPLICANT)

RR FILE NO. 2327-40 DATE 12-21-05

**WARNING**

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

PHONE: 1-800-336-9193

**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 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.

(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. 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 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 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. 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, 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, 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.

(c) This indemnity is limited by provisions in the Oregon Constitution and the Oregon Tort Claims Act  
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 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.





*2H  
two (2) years*

**Section 13. TERMINATION.**

(a) If the Licensee does not use the right herein granted or the Pipeline for ~~one (1)~~ <sup>two (2)</sup> year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained 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.

(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 B-1**

**Union Pacific Railroad Company  
Insurance Provisions For  
Pipeline / Wireline / Drainage License Agreements**

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 single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Waiver of subrogation

**B. Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability** insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least  
\$500,000 each accident, \$500,000 disease policy limit  
\$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

**D. Umbrella or Excess Policies** In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

**Other Requirements**

**E. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.**

**F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. 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 and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. All waivers of subrogation shall be indicated on the certificate of insurance.**

**G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.**

**H. Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.**

**I. Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.**

**J. Licensee WARRANTS that this Agreement 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 and acknowledges that Licensee's insurance coverage will be primary.**

**K. The fact that insurance is obtained by Licensee or Licensor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.**

After Recording, Mail To:

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk

A49 11 ATVLM  
Total : 76.00

AFTER RECORDING RETURN TO:  
OREGON DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY SECTION  
355 CAPITOL STREET NE, ROOM 420  
SALEM, OR 97301-3871

2007-021755 02/05/2007 03:46:33pm

6947008

Space Above for County Recorder's Use

UPRR Folder No: 2416-96

**GRANT OF EASEMENT AND AGREEMENT**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and in consideration of an administrative fee in the sum of One Thousand Dollars (\$1,000.00), as paid to Grantor by **STATE OF OREGON**, acting by and through its Department of Transportation ("Grantee"), the receipt of which is hereby acknowledged, does hereby grant unto the Grantee, its successors and assigns, a nonexclusive easement ("Easement") on, along, across and under the property located in Multnomah County, State of Oregon, as located on the Railroad Location Print marked **Exhibit A**, as detailed on the Railroad Detailed Print marked **Exhibit A-1**, as described in the Legal Description marked **Exhibit A-2**, and as illustrated on the Illustrative Print of the Legal Description marked **Exhibit A-3**, each hereto attached and hereby made a part hereof (the "Property"), together with the right of ingress and egress thereto, for the sole purpose of installing, operating, maintaining, repairing and renewing an 18-inch drainage water pipeline at Grantor's Mile Post 768.96 on Grantor's Brooklyn Subdivision in Portland, Multnomah County, Oregon (the "Pipeline").

This Easement is subject to the terms, conditions, limitations and covenants in **Exhibit B**, 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.

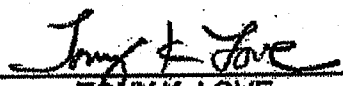
11

IN WITNESS WHEREOF, the Grantor and Grantee have each caused this instrument to be duly executed as of the 9<sup>th</sup> day of January, 2007.

ATTEST:

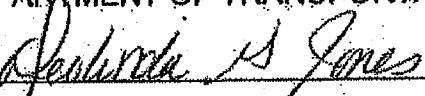
UNION PACIFIC RAILROAD COMPANY  
(Federal Tax ID #94-6001323)

By   
MICHAEL E. HEENAN  
Assistant Secretary

By   
TONY K. LOVE  
AVP-Real Estate

(Seal)

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION

By 

Title State Right of Way Manager

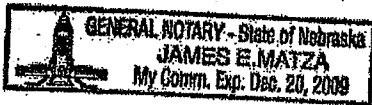
APPROVED As to form  
Debra R. Waldman 1/12/07  
Assistant Attorney General

**ACKNOWLEDGMENT**

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

On January 9, 2007, before me, a Notary Public in and for said County and State, personally appeared Tony K. Love and Michael E. Heenan who are the Assistant Vice President and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



(Seal)

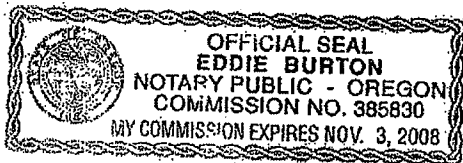
James E. Matza  
Notary Public

**ACKNOWLEDGMENT**

STATE OF OREGON                    )  
  ) ss  
COUNTY OF Marion                )

On 1-22, 2007, before me, a Notary Public in and for said County and State, personally appeared Deolinda G. Jones, who is the State Right of Way Manager of the State of Oregon, Acting by and through its Department of Transportation, 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

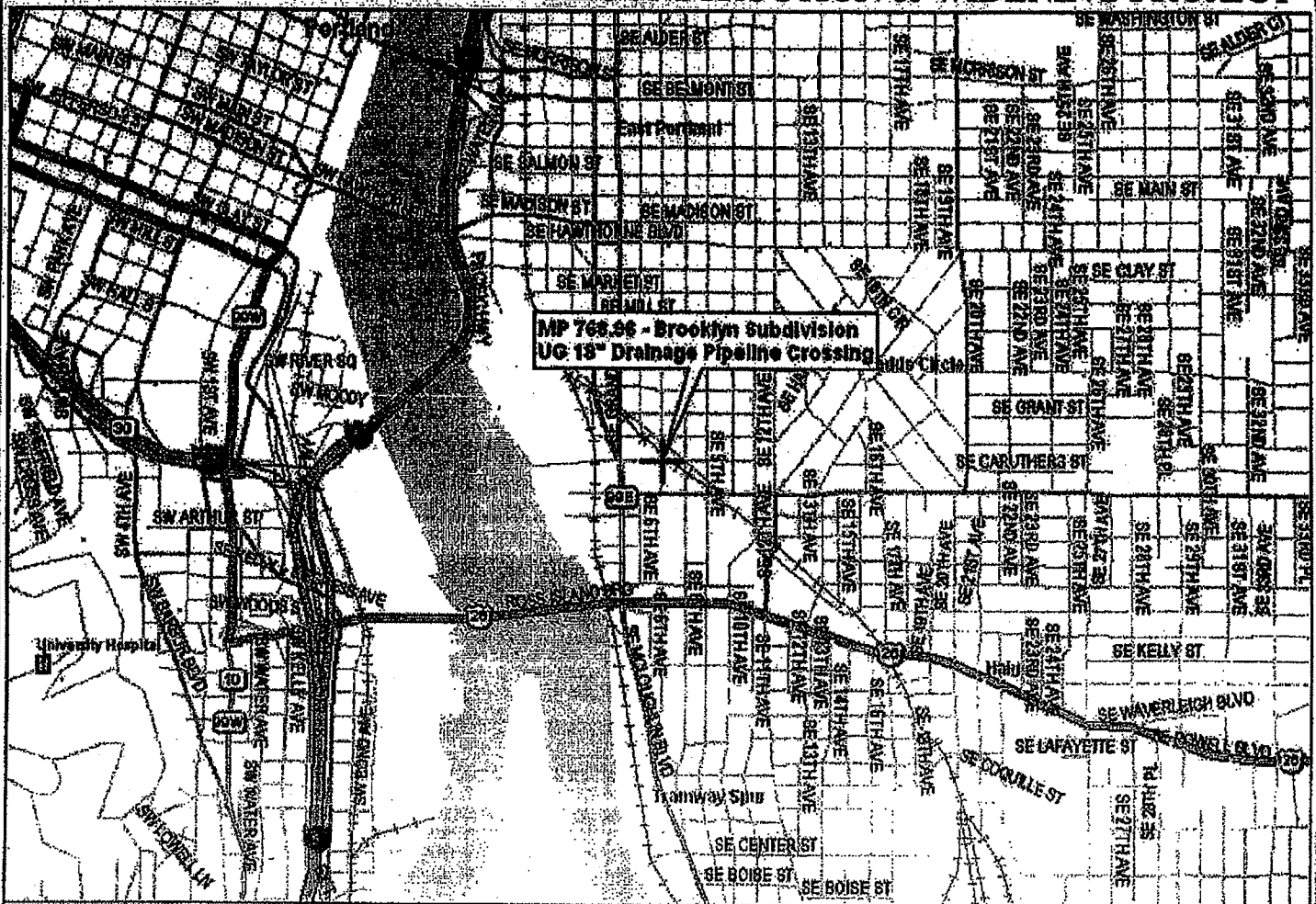
WITNESS my hand and official seal.



Eddie Burton  
Notary Public

(Seal)

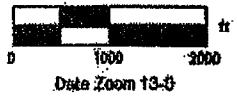
# LOCATION OF AN EXISTING OVERPASS PUBLIC ROAD CROSSING RECONSTRUCTION & WIDENING PROJECT



**DELORME**

Data use subject to license.  
© 2004 DeLorme, Street Atlas USA® 2005.  
[www.delorme.com](http://www.delorme.com)

MN (16.8° E)



**RAILROAD WORK TO BE PERFORMED:**

1. Engineering Review and Flagging.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

BROOKLYN SUBDIVISION  
MILE POST 768.96

GPS: N 45° 40.55', W 122° 39.50'  
PORTLAND, MULTNOMAH CO., OR.

Illustrative print showing location of a new drainage pipeline crossing  
construction project with the

**OREGON DEPARTMENT OF TRANSPORTATION.**

Folder No. 2416-96

Date: December 6, 2006

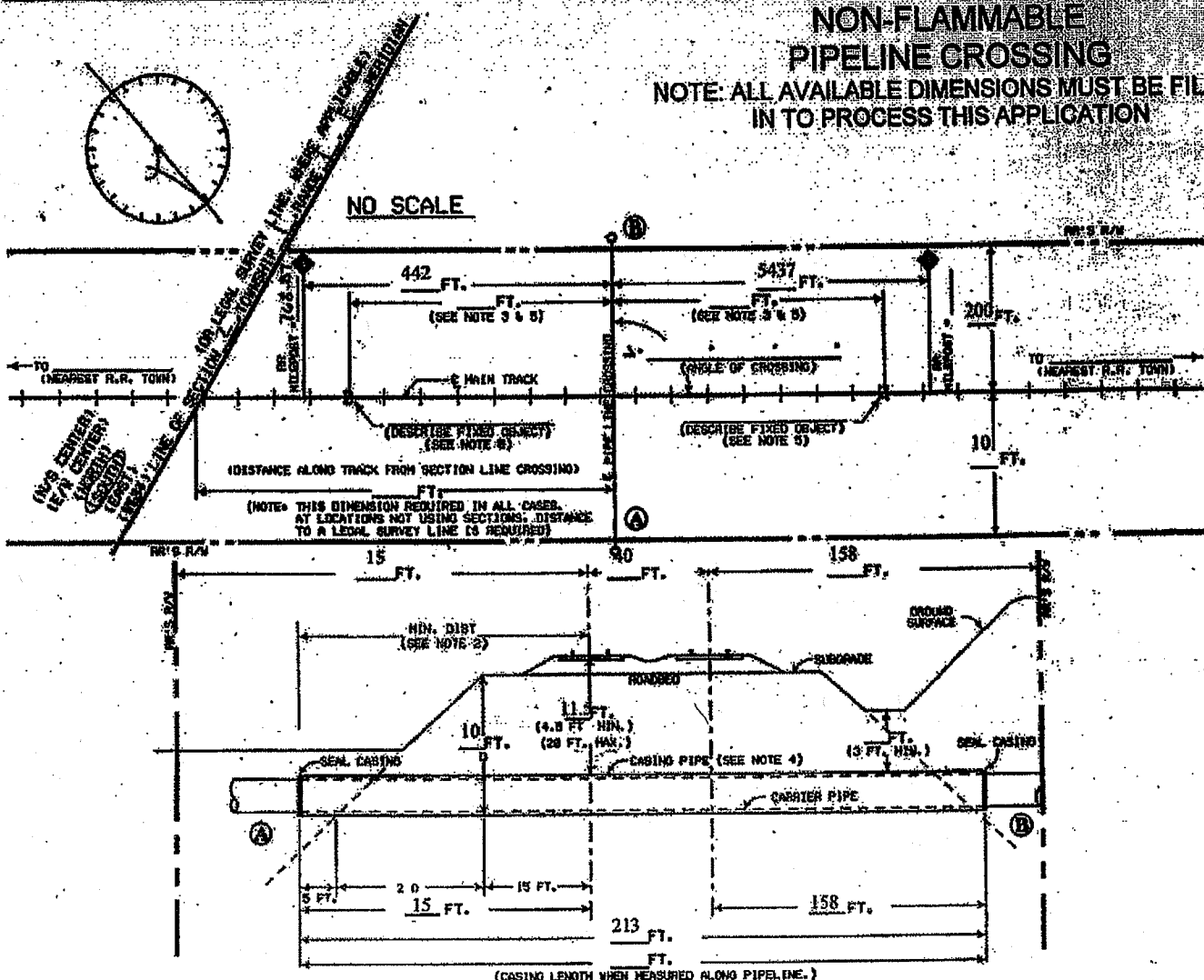
**WARNING**

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193



# APPLICATION FOR ENCASED NON-FLAMMABLE PIPELINE CROSSING

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



- NOTES:
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM THE 6 OF TRACK, EXCEPT AS NOTED.
  - 2) CASING MUST EXTEND A MINIMUM OF 30' OUT FROM 6 OF TRACK, MEASURED AT RIGHT ANGLES.
  - 3) CASING MATERIAL: STEEL, RIGID METALLIC CONDUIT (NO PVC)
  - 4) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, 6 OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
  - 5) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
  - 6) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES, 6 OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAMES), OR 6 OF ANY CULVERTS.
  - 7) 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: (N/A)

C) Distribution Line:  Transmission Line:

D) Carrier Pipe:  
Commodity to be Conveyed: (Drainage); Operating Pressure: (Gravity Flow);  
Wall Thickness: (0.53"); Diameter: (18"); Material: (Concrete)

E) Casing Pipe:  
Wall Thickness: (0.50"); Diameter: (30"); Material: (Steel)

F) Method of Installing Casing Pipe Under Track:  
 Dry Bore and Jack (Wet Bore is NOT Permitted)  
 Tunnel; Other: ( )

G) Will Construction be by an outside contractor?  Yes;  No

H) Distance from □ of Track to Near Face of Boring an Jacking Pits when Measured at Right Angles to Track: (32'); 30' Minimum

I) Applicant has Contacted Union Pacific Communications Department and has Determined Fiber Optic Cable  Does;  Does Not Exist in Vicinity of Work to be Performed. Ticket No.: (?)

**EXHIBIT "A-1"**  
**UNION PACIFIC RAILROAD COMPANY**  
**BROOKLYN SUBDIVISION**  
MILE POST 768.96, E.S. = 71+10  
GPS Location: N 45°, 40.55'; W 122°, 39.50'  
Underground Pipeline Crossing at or near  
PORTLAND, MULTNOMAH CO., OR.  
for the installation of an underground 18"  
drainage pipeline crossing.

Folder No. 2416-96 Date: December 6, 2006

**WARNING**  
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

**EXHIBIT A**

**File 6947008  
Drawing 10B-19-14  
10/10/2005**

**Parcel 2 - Permanent Easement For Drainage Facilities**

**A parcel of land lying in the NE¼SE¼ of Section 3, Township 1 South, Range 1 East, W.M., Multnomah County, Oregon and being a portion of the Union Pacific Railroad Company right of way; the said parcel being described as follows:**

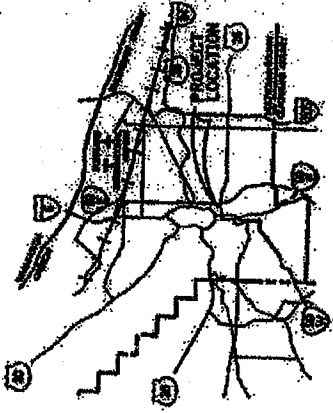
**Beginning at a point on the Northwesternly line of S.E. Water Avenue, said point being North 19° 07' 36" West 402.187 meters (1319.51 feet) from the Southeast corner of Section 3, Township 1 South, Range 1 East, W.M., Multnomah County, Oregon; thence North 73° 27' 46" East 31.852 meters (104.50 feet); thence North 34° 12' 27" West 4.798 meters (15.74 feet); thence South 73° 27' 46" West 29.874 meters (98.01 feet); thence on a 82.906 meter (272.00 feet) radius curve left (the long chord of which bears North 47° 58' 02" West 48.740 meters (159.02 feet)) 49.470 meters (162.30 feet) to the Northwesternly line of S.E. Water avenue; thence along the said Northwesternly line of S.E. Water Avenue South 36° 10' 34" East 3.258 meters (10.689 feet); thence on a 81.382 meter (267.00 feet) radius curve right (the long chord of which bears South 45° 26' 53" East 49.227 meters (161.50 feet)) 50.010 meters (164.07 feet) to the point of beginning.**

**Bearings are based upon the Oregon Coordinate System of 1983(91), north zone.**

**This parcel of land contains 217 square meters (2336 square feet), more or less.**

VICINITY MAP

NOT TO SCALE



SCALE 1:500

EXHIBIT A-2

OREGON DEPARTMENT OF TRANSPORTATION

RAILROAD ENCROACHMENT DRAWING

(PORTLAND) SECTION

PACIFIC HIGHWAY EAST  
MULTNOMAH COUNTY, OREGON

OCTOBER, 1966

PROJECT NO. 67-1745 (A. 887000)

KEY NO. 03203

SEE DRAWING 100-19-14

ENCROACHMENT ON  
UNION PACIFIC RAILROAD

SHEET 2 OF 2

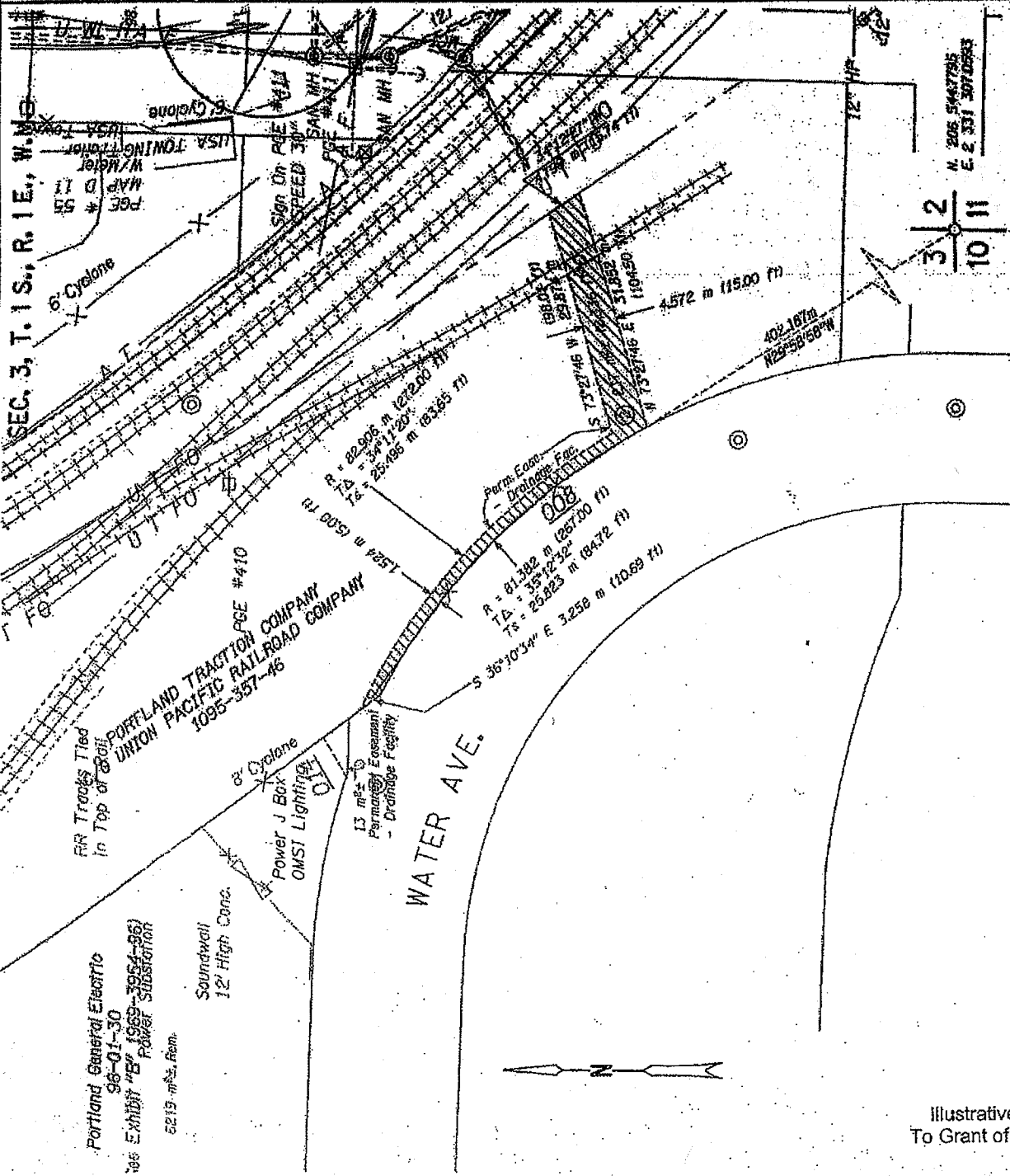


Exhibit A-3  
Illustrative Print of Legal Description  
To Grant of Easement and Agreement

**EXHIBIT B**

**TO GRANT OF EASEMENT AND AGREEMENT**

**TERMS AND CONDITIONS**

**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 Grantor to use and maintain its entire property including the right and power of the Grantor 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 the Property, all or any of which may be freely done at any time or times by the Grantor without liability to the Grantee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of Grantor's licensees and lessees of the Grantor's Property, and others) and the right of the Grantor 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 Grantee in strict conformity with (i) Grantor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Grantor's Assistant Vice President Engineering-Design, or his authorized representative; (ii) such other additional safety standards as the Grantor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will 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 done to the satisfaction of the Grantor.

(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 Grantor, the Grantee shall submit to the Grantor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Grantor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Grantor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. 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, reconstruction or removal of the Pipeline, and, in the event the Grantor provides such support, the Grantee shall pay to the Grantor, within fifteen (15) days after bills shall have been rendered therefore, all expense incurred by the Grantor in connection therewith, which expense shall include all assignable costs.

(d) The Grantee 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 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 ten (10) days (or such other time as the Grantor may allow) in advance of the commencement of any work upon the Property 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. 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. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

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

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on the Property 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 GRANTOR'S OPERATION.**

The Pipeline and all parts thereof within and outside of the limits of the Property 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.

#### **Section 7. 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 revenue and profits. Grantee shall telephone the Grantor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Property. 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 Property until all such protection or relocation has been accomplished. Grantee shall indemnify and hold the Grantor 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 Grantee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Grantee shall indemnify and hold the Grantor 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 Grantee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Grantor'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 Grantor's property, except to the extent that such costs, liability or expenses are caused by the direct active 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.

#### **Section 8. 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 the Property 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. The Grantee shall indemnify and hold harmless the Grantor 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 Grantee 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 the Property, and so that the taxes, charges and assessments levied upon or in respect to the 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 the Property, or on account of the Grantee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Grantee but shall be included in the assessment of the property of the Grantor, then the Grantee shall pay to the Grantor an equitable proportion of such taxes determined by the value of the Grantee's property upon the Property as compared with the entire value of such property.

#### **Section 9. RESTORATION OF GRANTOR'S PROPERTY.**

In the event the Grantor authorizes the Grantee to take down any fence of the Grantor or in any manner move or disturb any of the other property of the Grantor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Grantee shall, as soon as possible and at Grantee'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 Grantee shall indemnify and hold harmless the Grantor, 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 Grantor.

#### **Section 10. INDEMNITY.**

(a) As used in this Section, "Grantor" includes other railroad companies using the Grantor's property at or near the location of the Grantee'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 Grantor's officers, agents, and employees, the Grantee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Grantee's property, damage to the roadbed, tracks, equipment, or other property of the Grantor, or property in its care or custody).

(b) As a major inducement and in consideration of the easement and permission herein granted, the Grantee agrees to indemnify and hold harmless the Grantor 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 Grantor.

(c) This indemnity is limited by provisions in the Oregon Constitution and the Oregon Tort Claims Act.

#### **Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Grantee shall, at Grantee's sole expense, remove the Pipeline from those portions of the Property not occupied by the roadbed and track or tracks of the Grantor and shall restore, to the satisfaction of the Grantor, such portions of the Property to as good a condition as they were in at the time of the construction of the Pipeline. If the Grantee fails to do the foregoing, the Grantor may do such work of removal and restoration at the cost and expense of the Grantee. The Grantor may, at its option, upon such termination, at the entire cost and expense of the Grantee, 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 Grantee to do such work of removal and restoration to the satisfaction of the Grantor. In the event of the removal by the Grantor of the property of the Grantee and of the restoration of the roadbed and property as herein provided, the Grantor shall in no manner be liable to the Grantee for any damage sustained by the Grantee 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 Grantor may have against the Grantee.

#### **Section 12. 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 remedy for any subsequent breach thereof.

#### **Section 13. TERMINATION.**

(a) If the Grantee does not use the right herein granted or the Pipeline for two (2) years, or if the Grantee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Grantor to the Grantee specifying such default, the Grantor may, at its option, forthwith immediately terminate this Agreement by written notice.

(b) 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 thereto.

#### **Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Grantee shall not assign this Agreement, 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 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 Grantor, 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 successors and assigns.

After Recording, Mail To:

AUDIT 242883

AFTER RECORDING RETURN TO:  
OREGON DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY SECTION  
355 CAPITOL STREET NE, ROOM 420  
SALEM, OR 97301-3871

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
A49 4  
Total : 35.00  
ATVLM

2007-021756 02/05/2007 03:46:33pm

6947008

Space Above for County Recorder's Use

UPRR Folder No. 2234-21

**EASEMENT**

This Easement is made as of the 9<sup>th</sup> day of January, 2007, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor") and **STATE OF OREGON**; acting by and through its Department Of Transportation ("Grantee").

The Grantor, for and in consideration of the sum of **Forty-Three Thousand Eight Hundred Fifty-Two Dollars (\$43,852.00)** to it paid by the Grantee, the receipt of which is hereby acknowledged, does hereby grant unto the Grantee, its successors and assigns, a permanent nonexclusive easement on, along, across and over the property situated in Multnomah County, Oregon, as more particularly described in **Exhibit A**, attached hereto and hereby made a part hereof (the "Property"), for the purpose of reconstructing, using, maintaining, repairing and renewing (i) the Pacific Highway East (MLK southbound) overpass grade separation structure at Grantor's Mile Post 768.89 on Grantor's Brooklyn Subdivision (DOT No. 754 562D) in Portland, Multnomah County, Oregon, and (ii) the SE Grand northbound structure at Grantor's Mile Post 768.88 on Grantor's Brooklyn Subdivision (DOT No. 754 561W) in Portland, Multnomah County, Oregon.

The rights herein granted are subject and subordinate to the prior and continuing right and obligation of the Grantor, the Grantor's successors and assigns, to use all the Property in performance of the Grantor's duty as a common carrier and for all lawful Grantor purposes. The Grantor reserves the right to use and to grant to other parties the right to use the Property for any and all purposes not inconsistent with the rights hereby granted. Said purposes include, but not by way of limitation, the right to

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construct, reconstruct, maintain, operate, repair, alter, renew and replace existing and additional wire lines, pipelines, roads, tracks, facilities and appurtenances, located or to be located either wholly or partly within the Property, in such manner, however, as not to damage the highway structures located on the Property; the right to attach signal, communication or power lines and facilities to any highway structures located upon the Property, subject, however, to Grantee's policy on utility installations and approval by Grantee of detailed plans of the proposed attachment; and the right to use, occupy, cross and operate across the Property and the highway structures located thereon, with track equipment and off-track equipment.

The rights hereby granted are subject to any and all encumbrances and rights (whether public or private), irrespective of whether or not they are recorded, existing at the effective date of this Easement, and also to any and all extensions and renewals of said existing encumbrances and rights.

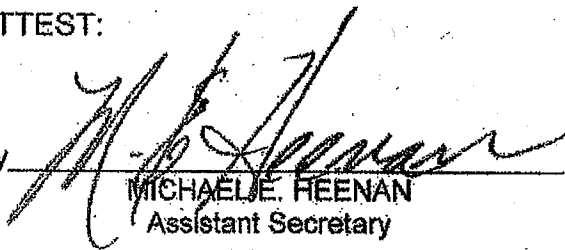
The rights granted herein are granted only insofar as the Grantor lawfully may do so, and the Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances.

If the grade separation structure permanently ceases to be used by the Grantee for the use of the general public for highway purposes, or shall be used for purposes unauthorized herein, then the easement rights granted herein to the Property shall cease and terminate and the Grantee shall execute and deliver to the Grantor a Release and Quitclaim in recordable form that releases the Grantee's easement interest in the Property.

IN WITNESS WHEREOF, the Grantor has duly executed this Easement as of the date first herein written.

ATTEST:

By

  
MICHAEL E. HEENAN  
Assistant Secretary

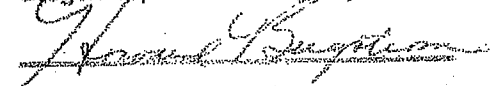
UNION PACIFIC RAILROAD COMPANY  
(Federal Tax ID #94-6001823)

By

  
GREGORY L. RINKER  
Director Contracts

(Seal)

Accepted on behalf of the  
Oregon Department of Transportation



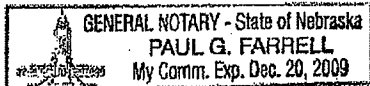


ACKNOWLEDGEMENT

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

On this 9<sup>th</sup> day of January, 2007, before me **Paul G. Farrell**, a Notary Public in and for said County and State personally appeared, **Gregory L. Pinker** and **Michael E. Heenan** who are the *Director Contracts* and *Assistant Secretary*, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and by their signatures on the instrument the persons, or the entity upon behalf of which persons acted, executed the instrument.

WITNESS my hand and official seal.



↑(Affix Seal Here)↑

*Paul G. Farrell*

Paul G. Farrell  
Notary Public in and for  
the State of Nebraska

My Commission Expires: December 20, 2009

**EXHIBIT A**

**File 6947008**  
**Drawing 10B-19-14**  
**10/10/2005**

**Parcel 1 - Permanent Easement For Highway Right of Way Purposes**

A parcel of land lying in the SW¼SW¼ of Section 2, Township 1 South, Range 1 East, W.M., Multnomah County, Oregon and being a portion of the Union Pacific Railroad Company right of way; the said parcel being described as follows:

Beginning on the Northeasterly right of way line of the Union Pacific Railroad Company at a point opposite Engineer's Station 2+366.895 (77+65.40) on the main track of the said Union Pacific Railroad Company; thence Northwesterly along said Northeasterly right of way line to a point opposite Engineer's Station 2+315.575 (75+97.03'); thence Southeasterly to the Southwesterly right of way line of the said Union Pacific Railroad Company to a point opposite Engineer's Station 2+333.732 (76+56.60'); thence Southeasterly along the Southwesterly right of way line of the said Railroad to a point opposite Engineer's Station 2+337.741 (76+69.75'); thence Southeasterly along the Southwesterly right of way line of the said Railroad to a point opposite Engineer's Station 2+349.284 (77+07.62'); thence Southeasterly along the Southwesterly right of way line of the said Railroad to a point opposite Engineer's Station 2+374.322 (77+89.77'); thence Northerly 11.779 meters (38.65 feet) to the point of beginning.

The center line of the main track of the Union Pacific Railroad Company is described as follows:

Beginning at Engineer's center line Station 2+230.370 (73+17.49'), said station being North 4° 57' 21" West 351.563 meters (1153.42 feet) from the Southeast corner of Section 3, Township 1 South, Range 1 East, W.M., Multnomah County, Oregon; thence South 49° 49' 34" East 177.546 meters (582.50 feet) to Engineer's center line Station 2+407.916 (78+99.99').

EXCEPT therefrom that portion of said parcel lying within the existing right of way of the Northbound Lanes of the Highway (S.E. Grand Avenue).

Bearings are based upon the Oregon Coordinate System of 1983(91), north zone.

This parcel of land contains 384 square meters (4131 square feet), more or less.