

Dennis Hannahs
Permit Specialist

P: 1-503-365-7717 x113

F: 503-365-7787

Willamette & Pacific RR

110-10th Ave SW

Albany, OR

- 10/15/03 CALLED DENNIS HANNAHS LEFT MESSAGE 1:48 PM
RE: PERMIT EXPIRATION

- RIGHT OF ENTRY WAS INTENTIONALLY LEFT BLANK
WILL WORK WITH US WHEN A CONTRACTOR COMES ON BOARD 10/16/03 9:35 AM
PER CONVERSATION WITH DENNIS

✓HighMark™

026-02 Harrison St Sewer
RR permit

FACILITY PERMIT FEE WORKSHEET

SCHEDULE 'A'

OAR 734-055-0017

Not related to highway construction

DESCRIPTION/POINT TABLE

AVERAGE DAILY TRAFFIC **	POINT VALUE
<2500	0
2500 - 20,000	1
>20,000	2

1

LENGTH OF UTILITY INSTALLATION	
<350'	1
350' - 2000'	2
>2000'	3

1

TRAFFIC PLAN INVOLVED **	
NO IMPACT	0
2 - WAY TRAFFIC ACCOMODATED (LANE CLOSURE/ENCROACHMENT)	2
1 - WAY TRAFFIC WITH DELAYS	3

0

HIGHWAY PURPOSE, SURFACE, SPEEDS **	
DISTRICT	1
REGION	2
STATEWIDE	3
INTERSTATE / EXPRESSWAY	4

2

OPEN CUTTING	
NONE	0
SOME	2

0

TOTAL POINT VALUE

4

** NOTE: For facility installation work involving more than one highway, the highest criteria will be used to determine point value in each of the three asterisked groupings when there is a difference between the two highways involved.

*PERMIT FEE TABLE

CLASS 1	2 - 5 POINTS	\$ 150
CLASS 2	6 - 8 POINTS	\$ 400
CLASS 3	9 - 10 POINTS	\$ 1,000
CLASS 4	11 OR MORE POINTS	\$ 3,000

\$150.00

PAID

①

*If a permit is necessary due to an ODOT construction project, see schedule 'B' for the fee.

SEND CHECK OR MONEY ORDER MADE OUT TO THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) IN THE AMOUNT SHOWN IN THE PERMIT FEE TABLE ABOVE. \$150.00

DATE CHECK OR MONEY ORDER RECEIVED 2/17/04	CHECK NUMBER 090947	BANK NUMBER 24-22/1230
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UNDERGROUND PIPELINE
(SEWER - WATER - STORM DRAIN - ETC.)

THIS AGREEMENT, made this 2nd day of February 2003("Effective Date"), by and between **WILLAMETTE & PACIFIC RAILROAD, INC.**, a New York corporation ("Licensor"), a lessee of **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware corporation ("Lessor"), and **CITY OF NEWBERG**, a MUNICIPALITY, whose address is: P.O. Box 970 Newberg, Oregon 97132. ("Licensee");

WITNESSETH:

1. *Grant of Rights:* Licensor hereby grants to Licensee the right to construct, reconstruct, maintain and operate, subject to the terms of this Agreement, underground Sanitary sewer crossing (herein called "structure"), at or near Dundee Station, West Side District, County of Yamhill, State of Oregon, in the location shown on the attached print marked Exhibit A, dated 2/5, 2003.

This grant is subject and subordinate to the prior and continuing right of Licensor and Lessor, their successors and assigns, to use all of its property in the conduct of its business, Licensor or Lessor reserving full rights, consistent with the rights herein granted, to construct, reconstruct, maintain and operate existing and additional transportation, communication, pipeline and power facilities upon, over and beneath its premises.

2. *Identifying Markers:* Markers in form and size satisfactory to Licensor shall be installed and constantly maintained by Licensee at Licensor's property lines or such locations as Licensor shall designate and shall be relocated or removed by Licensee upon request of Licensor. The absence of markers does not constitute a warranty by Licensor that there are no subsurface installations.
3. Unless earlier terminated in accordance with the terms and provisions of this Agreement, the term of this Agreement shall commence on the Effective Date and shall expire 15 years from the Effective Date.
4. *Costs:* Upon execution hereof, Licensee shall pay Licensor a nonrefundable, one-time fee of Five Hundred and No/100 Dollars (\$500.00) to defray cost of handling.

Upon execution hereof, Licensee shall also pay Licensor a nonrefundable, one-time fee of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00) as consideration for Railroad's consent and this Agreement. Any renewal or extension of this Agreement as may be later agreed to by the parties in writing shall be subject to additional fee(s) as then determined by Railroad.

Licensee shall bear the entire cost of constructing, reconstructing, maintaining and operating said structure on Licensor's premises. Licensee shall reimburse Licensor for all cost and expense to Licensor in furnishing any materials or performing any labor in connection with such work, including, but not limited to, installation of falsework and other protection beneath or along Licensor's tracks, and furnishing such watchmen, flagmen and inspectors as Licensor deems necessary.

5. *Construction and Maintenance:* Said structure shall be constructed, reconstructed and maintained in accordance with plans approved by Licensor. Approval by Licensor shall not constitute a warranty by Licensor that such plans conform with federal, state and/or local codes and regulations applicable thereto. All work upon or in connection with said structure shall be done to Licensor's satisfaction at such times and in such manner as not to interfere with Licensor's operations. In the construction, reconstruction and maintenance of said structure, Licensee shall keep Licensor's premises in a neat and safe condition, failing which Licensor may do so at Licensee's expense. If required by Licensor in its use of Licensor's premises, Licensee shall reconstruct, relocate or alter said structure. Except in emergencies, Licensee shall give Licensor five (5) days' written notice of the day and hour it proposes to do any work on said structure.

Licensee shall cooperate with Licensor in making any tests it requires of any installation or condition which in its judgment may have adverse effect on any of the facilities of Licensor. All costs incurred by the tests, or any corrections thereafter, shall be borne by Licensee.

No change shall be made by Licensee in the commodity being conveyed through said structure without Licensor's prior written approval.

6. The rights herein granted are subject to the rights of Licensor or Lessor (or anyone acting with the permission of Licensor) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems ("system(s)") in, upon, along, across and beneath the premises and rights-of-ways of Licensor or Lessor including the premises through which said structure shall be constructed.

Licensee agrees to reimburse Licensor, Lessor and/or the owner of the system(s) for all expenses, which either may incur which expenses would not have been incurred except by reason of the use of the premises by Licensee, its agents, employees or invitees including relocation costs or any damages incurred by such owner due to injury to the system(s).

Licensee, at least five (5) days prior to performing any digging activities on the premises of Licensor, must call 1-800-AT-FIBER (available 24 hours) to receive a Southern Pacific Telecommunications Company control number. Licensee will be advised if a telecommunications system is buried anywhere on or about the premises of Licensor in the location where Licensee will perform such digging activities. If there is a telecommunications system, Licensee will be advised as to the owner of the telecommunications system and provided instructions on arranging for a cable locator and will be advised whether relocation or other protection for the telecommunications system is required prior to beginning any work on the premises of Licensor.

7. Licensee agrees to and shall indemnify and hold harmless Licensor and Lessor, their respective officers, agents and employees from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with any work done, action taken or permitted by Licensee, its subcontractors, agents or employees under this Agreement. It is the express intention of the parties hereto, both Licensee and Licensor and Lessor, that the indemnity provided for in this paragraph indemnifies Licensor and Lessor for the negligence of each, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect Licensor or Lessor from liability for death, injury or damage arising solely from the criminal actions of Licensor and Lessor, their respective officers, agents and employees.

The terms "Licensor" and "Lessor" as used in this section shall include their successors, assigns and affiliated companies, and any other railroad company operating upon the tracks.

8. *Termination:* This Agreement may be terminated by either party hereto by giving thirty (30) days' written notice to that effect to the other party and Licensee shall there upon remove said structure and appurtenances and Licensor's satisfaction failing which Licensor may arrange to do so at Licensee's expense.

If Licensee makes default in respect to any covenant or condition on Licensee's part hereunder and fails to correct such default within thirty (30) days' after receipt of notice from Licensor so to do, Licensor may forthwith terminate this Agreement by notice to Licensee.

9. *Condemnation:* In the event all or any portion of Licensor's premises shall be condemned or taken for public use, Licensee shall receive compensation only for the taking and damaging of said structure. Any compensation or damages for taking said premises or Licensee's interest therein awarded to Licensee shall be assigned by Licensee to Lessor.
10. *Environmental Protection:* Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and waste and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor and/or Lessor.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder as a result of Licensee's use, presence, operations or exercise of the rights granted hereunder, Licensee shall immediately notify Licensor and shall, at Licensee's expense, be obligated to clean all property affected thereby, whether owned or controlled by Licensor, Lessor or any third persons to the satisfaction of Licensor or Lessor (insofar as the property owned or controlled by Licensor or Lessor is concerned) and any governmental body having jurisdiction in the matter. Licensor or Lessor may, at its option, clean Licensor's premises; if Licensor elects to do so, Licensee shall pay Lessor the cost of such cleanup promptly upon the receipt of a bill therefor. Licensee agrees to release, indemnify and defend Licensor and Lessor from and against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) incurred by Licensor or Lessor as a result of Licensee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this Agreement is in effect or thereafter, unless such liability, cost or expense is proximately caused solely and exclusively by the active negligence of Licensor or Lessor, their respective officers, agents or employees.

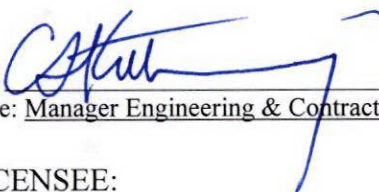
11. *Contractors:* No work on Licensor's premises shall be commenced by any contractor for Licensee until such contractor has entered into Licensor's standard Contractor's Right of Entry agreement covering such work.
12. *Non-assignability:* This Agreement is not assignable, in whole or in part, by Licensee without Licensor's prior written.
13. *Liens:* Licensee shall pay in full all persons who perform labor on said premises for Licensee, and will not suffer any mechanics' or materialmen's liens to be enforced against Licensor's premises for work done or materials furnished at Licensee's insistence or request. If any such liens are filed thereon, Licensee agrees to remove the same at Licensee's own cost and expense and to pay any judgment, which may be entered thereon or thereunder. Should Licensee fail, neglect or refuse so to do, Licensor shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Licensee shall be liable to Licensor for

all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings or in the payment of any said liens or any judgment obtained therefore.

14. Said structure shall be installed in accordance with minimum requirements of Exhibit A, also attached and made a part hereof.
15. Acceptance by Licensor of rental or fees in advance shall not be construed as a waiver by Licensor of its right to terminate as set forth in Section 8 hereof.
16. It is the intention of the parties that Lessor is a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in triplicate the day and year first hereinabove written.

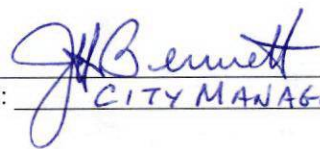
LICENSOR:

By: 

Title: Manager Engineering & Contracts

LICENSEE:

WITNESSED BY:

By: 

Title: CITY MANAGER

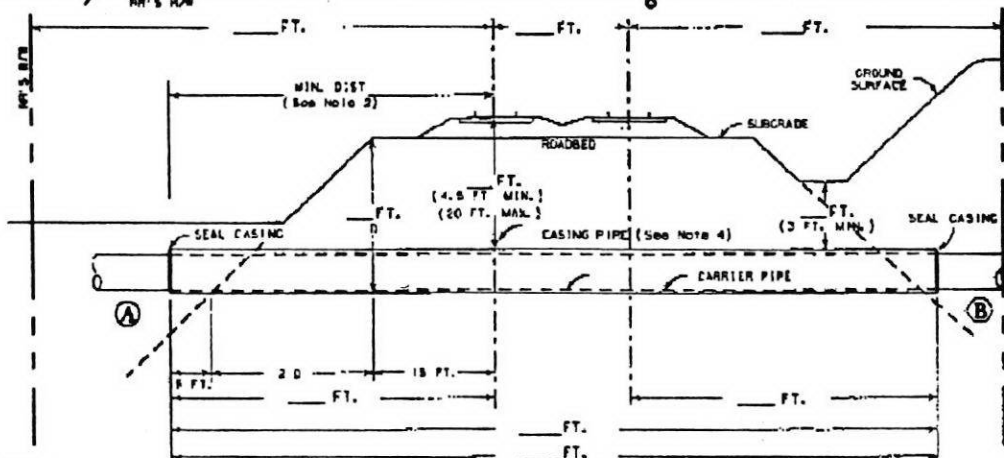
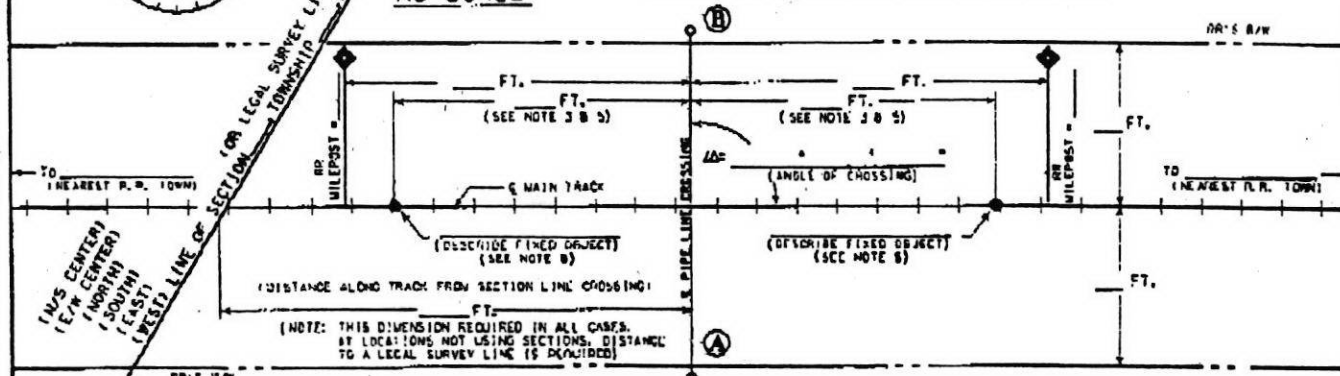
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

FORM DR-0403-B
REV. 5-15-88

ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE

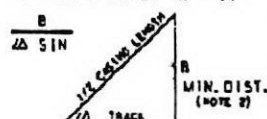


MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500" 1/4"	12" OR LESS
.3125" 5/16"	OVER 12"-18"
.3750" 3/8"	OVER 18"-24"
.4375" 7/16"	OVER 22"-28"
.5000" 1/2"	OVER 28"-34"
.5625" 9/16"	OVER 34"-42"
.6250" 5/8"	OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R. R. CO.

NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.

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



NOTES :

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM R. OF TRACK.
- 2) CASING TO EXTEND BEYOND THE R. 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.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, R. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALL ALLOWABLE FIXED OBJECTS INCLUDE: FACIALLS OF BRIDGES R. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- 6) 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; x NO;

BI IF YES, NAME OF STREET

D) DISTRIBUTION LINE _____ OR TRANSMISSION LINE _____

C1 CARRIER PIPE :

COMMODITY TO BE CONVEYED Sanitary Sewer

COMMODITY TO BE CONVEYED gas
OPERATING PRESSURE gravity psi

OPERATING PRESSURE: 14.7 PSI
WALL THICKNESS: sch 3034 DIAMETER: 6" MATER. AL: pvc

E) CASING PIPE :

WALL THICKNESS .375"; DIAMETER 24"; 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.

F1 METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):

X DRY BORE AND JACK (WET BORE NOT PERMITTED);

TUNNEL ; OTHER

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? X YES; _____ NO;

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 40' min

2) 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 MAILING USE ONLY)

UNION PACIFIC RAILROAD CO.
Willamette & Pacific Railroad

M. F. P-748.20 E. S. _____

ENCASED Sanitary Sewer CROSSING AT

Newberg Yamhill Oregon

City Of Newberg

RR FILE NO. 3325^{PPC/CANT} DATE 2-5-03

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 1-800-336-8192



C.S. Kettenring VP- Engineering

C.R. Gilbert Mgr.Engineering & Contracts

Document Custody
650 Hawthorne Ave. SE, Ste 220
Salem, Oregon 97301

Lease No:3325

April 24, 2003

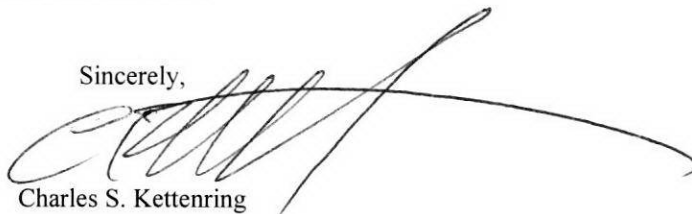
Jadene Stensland, P.E.
City of Newberg
P.O. Box 970
Newberg, Oregon 97132

Dear Ms. Jadene Stensland:

Enclosed, please find for your records, fully executed right-of-entry and Underground Pipeline Agreement.

If you have any questions please contact me at (503) 365-7717.

Sincerely,



Charles S. Kettenring

Enclosure

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the 2nd, day of February, 2003, by and between **WILLAMETTE & PACIFIC RAILROAD COMPANY**, a New York corporation (hereinafter referred to as the "Railroad"); and **CITY OF NEWBERG**, a Municipality corporation, to be addressed at: P.O. Box 970 Newberg, Oregon 97132 (hereinafter the "Licensee").

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

ARTICLE 1. DEFINITION OF LICENSEE

For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's officers, supervisors, agents, and employees, and others acting under its or their authority.

ARTICLE 2. RIGHT GRANTED; PURPOSE

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property in the vicinity of Mile Post P-748.24, West Side District, at or near Dundee Station, as shown on the attached print dated 2/5, 2003, marked Exhibit A for the purpose of inspection and supervision of work. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

ARTICLE 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND B-1

The terms and conditions contained in Exhibits B and B-1, heretoattached, are hereby made a part of this agreement.

ARTICLE 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the respective local Assistant Vice President of Engineering or his authorized representative (hereinafter the Railroad Representative).

ARTICLE 5. ADMINISTRATIVE HANDLING CHARGE

Upon execution and delivery of this Licensee's Agreement, the Licensee shall pay to the Railroad an administrative handling charge of **Five Hundred and no/100 Dollars (500.00)**.

ARTICLE 6. TERM; TERMINATION

- a). The grant of right herein made to Licensee shall commence on _____, and continue until _____, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the railroad Representative in writing when it has completed its work on Railroad property.
- b). This agreement may be terminated by either party on one (1) day's written notice to the other party.

ARTICLE 7. CERTIFICATE OF INSURANCE

a). Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement in a policy which contains the following type of endorsement:

Willamette & Pacific Railroad Company, is named as additional insured with respect to all liabilities arising out of Insured's, as Licensee, performance of any work on the property of the Railroad.

b). Licensee warrants that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

c). All insurance correspondence shall be directed to:

Agreement No. 3325

Willamette & Pacific Railroad Company, Document Custody
650 Hawthorne Ave. SE, Ste 220 Salem, Oregon 97301

ARTICLE 8. ENFORCEABILITY; CHOICE OF FORUM; CHOICE OF FORUM

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Oregon. Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of Oregon only, and parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and to service of process issued by such courts.

ARTICLE 9. RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES

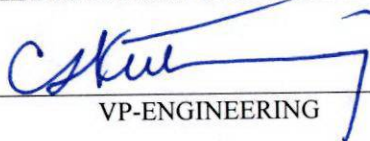
No work of any kind shall be performed, and no person equipment, machinery, tool(s) material(s) vehicles(s) or thing(s) shall be located operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit B. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay all charges connected therewith, within 30 days after presentation of a bill therefore. The rate of pay per Railroad flagman is sixty-five dollars (\$65.00) per hour.

Arrangements for flagging are to be made at least seventy-two (72) hours in advance of commencing work by contacting Mr. Dennis Hannahs of my staff by telephone at (503) 365-7717 Ext. 113 or by FAX at (503) 365-7787.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as the date first herein written.

WILLAMETTE & PACIFIC RAILROAD COMPANY

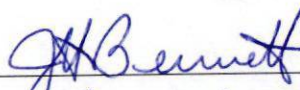
By


VP-ENGINEERING

WITNESS:

(Name of Licensee)

X



Title:

CITY MANAGER

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

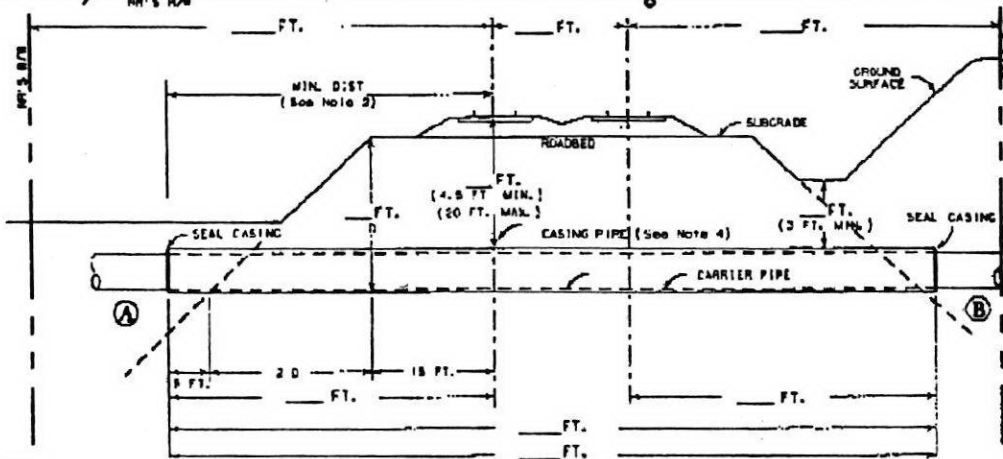
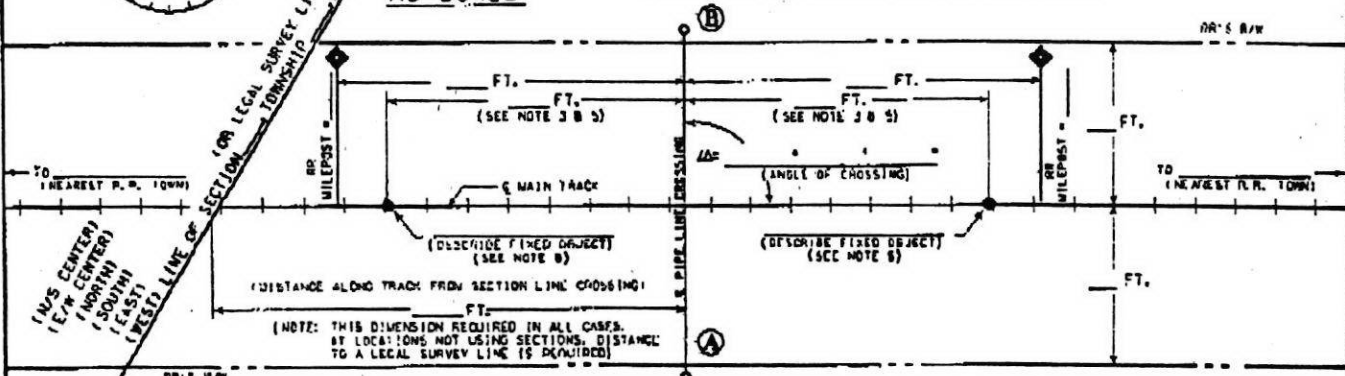
FORM OR-0402-B
REV. 5-15-95

ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE

RR'S R/W



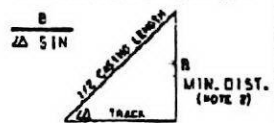
STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	1 1/4" 12" OR LESS
.3125"	6/16" OVER 12"-18"
.3750"	3/8" OVER 18"-22"
.4375"	7/16" OVER 22"-28"
.5000"	1/2" OVER 28"-34"
.5625"	9/16" OVER 34"-42"
.6250"	5/8" OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI.

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



- NOTES:
- ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. OF TRACK.
 - CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 20 - 30 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, C. 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: FACE WALLS OF BRIDGES; C. 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: Sanitary Sewer

OPERATING PRESSURE: gravity psi

WALL THICKNESS: SCH 30 DIAMETER 6" MATERIAL: pvc

E) CASING PIPE: _____

WALL THICKNESS: .375" DIAMETER 24" 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: 40' 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.
Willamette & Pacific Railroad

PROPOSITION
M. P. P-748-20 E. S. _____

ENCASED Sanitary Sewer CROSSING AT

Newberg Yamhill Oregon

NEAREST CITY: _____ (COUNTY: _____) (STATE: _____)

City Of Newberg

RR FILE NO. 3325 DATE 2-5-03

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 LICENSEE'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK -FLAGGING.

The Licensee agrees to notify the Railroad Representative at least 48 hours in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee 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 notice the Railroad Representative will determine and inform the Licensee whether a flagman will be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2. NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 3. MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad from and against all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a). Fiber optic cable systems may be buried on the Railroad'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 Railroad at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on the Railroad'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.

b). In addition to other indemnity provisions in this Agreement the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad'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 Railroad's property. Licensee shall not have or seek recourse against Railroad 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 Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 5. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents and employees, and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 6. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a). The Licensee 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 Licensee 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 Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.

b). The employees of the Licensee 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 work boots and at least the following protective equipment:

- (1) Protective headgear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee'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.

c). All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 7. INDEMNITY.

a). As used in this Section, "Railroad" includes other railroad companies using the Railroad'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 Railroad'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 Railroad, 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 Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement. However, the Licensee shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.

c). The Licensee shall maintain whatever insurance coverage is necessary to adequately underwrite its general and contractual liability under the terms of this Agreement.

Section 8. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, 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.

Section 9. WAIVER OF BREACH.

The waiver by the Railroad 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 Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 10. ASSIGNMENT - SUBCONTRACTING.

The Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

EXHIBIT B-1
Licensee Right of Entry Agreement
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- a) General Liability insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability with a separate general aggregate for the project (ISO Form CG 25 03 or equivalent), Broad Form Property Damage, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Licensee's obligation to Railroad in the Agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled.
- b) Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Licensee's obligation to Railroad in the Agreement.
- c) Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employer's Liability. Also compliance with all laws of states which require participation in their state worker' compensation fund.
- d) Railroad Protective Liability Insurance naming Railroad as insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy form shall be AAR-AASHTO with broad form coverage for "Physical Damage to Property" (ISO Form GL 00 30) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 28 31 or equivalent). If the Lloyd's, London policy form is used, limits shall be \$3,000,000 per occurrence with a \$9,000,000 aggregate and the Extended Claims Made Date shall be determined by adding the length of original policy period plus one year to the policy expiration date.

The Licensee hereby waives its right to subrogation, as respects the above insurance policy (ies), against Railroad for payments made to or on behalf of employees of Licensee or its agents and for loss of its owned or leased property or property under its care, custody and control while on or near Railroad's right-of way or other real property. Licensee's insurance shall be primary with respect to any insurance carried by Railroad.

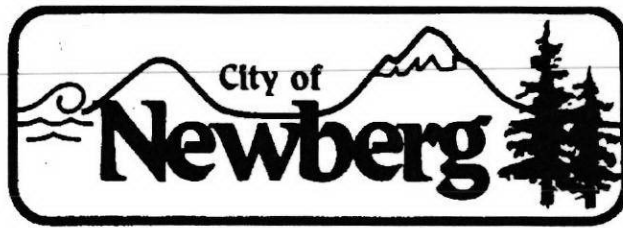
Licensee shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.

Licensee WARRANTS that this Agreement has been thoroughly reviewed by Licensee's insurance agents(s)/brokers(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement.

If Licensee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Licensee.

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



Community Development Office

P.O. BOX 970 • 414 E. FIRST STREET • NEWBERG, OREGON 97132 • (503) 537-1240 • FAX (503) 537-1272

March 24, 2003

Dennis Hannahs
Willamette & Pacific Railroad
650 Hawthorne Ave, SE, Ste 220
Salem, OR 97301

RE: Harrison Street Sewer Railroad Crossing Agreements

Dear Mr. Hannahs,

Thank you for your assistance in completing this documentation.

Enclosed are the duplicate City-signed original documents for our use of the W & P Railroad right-of-way for the above named project. The \$3,250.00 check (# 87115) was sent to you office on March 6, 2003.

Please return one set of fully executed original documents for our files.

We anticipate bidding this project in May 2003 with construction starting in July 2003.

If you have any questions, please do not hesitate to contact me at 503-554-8881.

Sincerely,

Jadene Torrent Stensland, P.E.
Utilities Engineer

JTS/jts

Enc: W&P Underground Pipeline Agreement
W&P Right of Entry Agreement

K:\WP\ENGINEER\JADENE\WWTP\Harrison Sewer 2003\ltr.H&S.W&P-signed_appl.doc

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the 2nd, day of February, 2003, by and between **WILLAMETTE & PACIFIC RAILROAD COMPANY**, a New York corporation (hereinafter referred to as the "Railroad"); and **CITY OF NEWBERG**, a Municipality corporation, to be addressed at: P.O. Box 970 Newberg, Oregon 97132 (hereinafter the "Licensee").

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

ARTICLE 1. DEFINITION OF LICENSEE

For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's officers, supervisors, agents, and employees, and others acting under its or their authority.

ARTICLE 2. RIGHT GRANTED; PURPOSE

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property in the vicinity of Mile Post P-748.24, West Side District, at or near Dundee Station, as shown on the attached print dated 2/5, 2003, marked Exhibit A for the purpose of inspection and supervision of work. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

ARTICLE 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND B-1

The terms and conditions contained in Exhibits B and B-1, heretoattached, are hereby made a part of this agreement.

ARTICLE 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the respective local Assistant Vice President of Engineering or his authorized representative (hereinafter the Railroad Representative).

ARTICLE 5. ADMINISTRATIVE HANDLING CHARGE

Upon execution and delivery of this Licensee's Agreement, the Licensee shall pay to the Railroad an administrative handling charge of **Five Hundred and no/100 Dollars (500.00)**.

ARTICLE 6. TERM; TERMINATION

- a). The grant of right herein made to Licensee shall commence on _____, and continue until _____, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the railroad Representative in writing when it has completed its work on Railroad property.
- b). This agreement may be terminated by either party on one (1) day's written notice to the other party.

ARTICLE 7. CERTIFICATE OF INSURANCE

a). Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement in a policy which contains the following type of endorsement:

Willamette & Pacific Railroad Company, is named as additional insured with respect to all liabilities arising out of Insured's, as Licensee, performance of any work on the property of the Railroad.

b). Licensee warrants that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

c). All insurance correspondence shall be directed to:

Agreement No. 3325

Willamette & Pacific Railroad Company, Document Custody
650 Hawthorne Ave. SE, Ste 220 Salem, Oregon 97301

ARTICLE 8. ENFORCEABILITY; CHOICE OF FORUM; CHOICE OF FORUM

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Oregon. Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of Oregon only, and parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and to service of process issued by such courts.

ARTICLE 9. RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES

No work of any kind shall be performed, and no person equipment, machinery, tool(s) material(s) vehicles(s) or thing(s) shall be located operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit B. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay all charges connected therewith, within 30 days after presentation of a bill therefore. The rate of pay per Railroad flagman is sixty-five dollars (\$65.00) per hour.

Arrangements for flagging are to be made at least seventy-two (72) hours in advance of commencing work by contacting Mr. Dennis Hannahs of my staff by telephone at (503) 365-7717 Ext. 113 or by FAX at (503) 365-7787.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as the date first herein written.

WILLAMETTE & PACIFIC RAILROAD COMPANY

By _____
VP-ENGINEERING

WITNESS:

(Name of Licensee)

_____ X J. Bennett
Title: CITY MANAGER

EXHIBIT B LICENSEE'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK -FLAGGING.

The Licensee agrees to notify the Railroad Representative at least 48 hours in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee 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 notice the Railroad Representative will determine and inform the Licensee whether a flagman will be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

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b). In addition to other indemnity provisions in this Agreement the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad'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 Railroad's property. Licensee shall not have or seek recourse against Railroad 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 Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

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In the prosecution of the work covered by this agreement, the Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents and employees, and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

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b). As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement. However, the Licensee shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.

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EXHIBIT B-1
Licensee Right of Entry Agreement
Contract Insurance Requirements

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The Licensee hereby waives its right to subrogation, as respects the above insurance policy (ies), against Railroad for payments made to or on behalf of employees of Licensee or its agents and for loss of its owned or leased property or property under its care, custody and control while on or near Railroad's right-of way or other real property. Licensee's insurance shall be primary with respect to any insurance carried by Railroad.

Licensee shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.

Licensee WARRANTS that this Agreement has been thoroughly reviewed by Licensee's insurance agents(s)/brokers(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement.

If Licensee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Licensee.

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

UNDERGROUND PIPELINE
(SEWER - WATER - STORM DRAIN - ETC.)

THIS AGREEMENT, made this 2nd day of February 2003("Effective Date"), by and between

WILLAMETTE & PACIFIC RAILROAD, INC., a New York corporation ("Licensor"), a

lessee of **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware

corporation ("Lessor"), and **CITY OF NEWBERG**, a MUNICIPALITY, whose address is: P.O. Box

970 Newberg, Oregon 97132. ("Licensee");

WITNESSETH:

1. *Grant of Rights:* Licensor hereby grants to Licensee the right to construct, reconstruct, maintain and operate, subject to the terms of this Agreement, underground Sanitary sewer crossing (herein called "structure"), at or near Dundee Station, West Side District, County of Yamhill, State of Oregon, in the location shown on the attached print marked Exhibit A, dated 2/5, 2003.

This grant is subject and subordinate to the prior and continuing right of Licensor and Lessor, their successors and assigns, to use all of its property in the conduct of its business, Licensor or Lessor reserving full rights, consistent with the rights herein granted, to construct, reconstruct, maintain and operate existing and additional transportation, communication, pipeline and power facilities upon, over and beneath its premises.

2. *Identifying Markers:* Markers in form and size satisfactory to Licensor shall be installed and constantly maintained by Licensee at Licensor's property lines or such locations as Licensor shall designate and shall be relocated or removed by Licensee upon request of Licensor. The absence of markers does not constitute a warranty by Licensor that there are no subsurface installations.
3. Unless earlier terminated in accordance with the terms and provisions of this Agreement, the term of this Agreement shall commence on the Effective Date and shall expire 15 years from the Effective Date.
4. *Costs:* Upon execution hereof, Licensee shall pay Licensor a nonrefundable, one-time fee of Five Hundred and No/100 Dollars (\$500.00) to defray cost of handling.

Upon execution hereof, Licensee shall also pay Licensor a nonrefundable, one-time fee of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00) as consideration for Railroad's consent and this Agreement. Any renewal or extension of this Agreement as may be later agreed to by the parties in writing shall be subject to additional fee(s) as then determined by Railroad.

Licensee shall bear the entire cost of constructing, reconstructing, maintaining and operating said structure on Licensor's premises. Licensee shall reimburse Licensor for all cost and expense to Licensor in furnishing any materials or performing any labor in connection with such work, including, but not limited to, installation of falsework and other protection beneath or along Licensor's tracks, and furnishing such watchmen, flagmen and inspectors as Licensor deems necessary.

5. *Construction and Maintenance:* Said structure shall be constructed, reconstructed and maintained in accordance with plans approved by Licensor. Approval by Licensor shall not constitute a warranty by Licensor that such plans conform with federal, state and/or local codes and regulations applicable thereto. All work upon or in connection with said structure shall be done to Licensor's satisfaction at such times and in such manner as not to interfere with Licensor's operations. In the construction, reconstruction and maintenance of said structure, Licensee shall keep Licensor's premises in a neat and safe condition, failing which Licensor may do so at Licensee's expense. If required by Licensor in its use of Licensor's premises, Licensee shall reconstruct, relocate or alter said structure. Except in emergencies, Licensee shall give Licensor five (5) days' written notice of the day and hour it proposes to do any work on said structure.

Licensee shall cooperate with Licensor in making any tests it requires of any installation or condition which in its judgment may have adverse effect on any of the facilities of Licensor. All costs incurred by the tests, or any corrections thereafter, shall be borne by Licensee.

No change shall be made by Licensee in the commodity being conveyed through said structure without Licensor's prior written approval.

6. The rights herein granted are subject to the rights of Licensor or Lessor (or anyone acting with the permission of Licensor) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems ("system(s)") in, upon, along, across and beneath the premises and rights-of-ways of Licensor or Lessor including the premises through which said structure shall be constructed.

Licensee agrees to reimburse Licensor, Lessor and/or the owner of the system(s) for all expenses, which either may incur which expenses would not have been incurred except by reason of the use of the premises by Licensee, its agents, employees or invitees including relocation costs or any damages incurred by such owner due to injury to the system(s).

Licensee, at least five (5) days prior to performing any digging activities on the premises of Licensor, must call 1-800-AT-FIBER (available 24 hours) to receive a Southern Pacific Telecommunications Company control number. Licensee will be advised if a telecommunications system is buried anywhere on or about the premises of Licensor in the location where Licensee will perform such digging activities. If there is a telecommunications system, Licensee will be advised as to the owner of the telecommunications system and provided instructions on arranging for a cable locator and will be advised whether relocation or other protection for the telecommunications system is required prior to beginning any work on the premises of Licensor.

7. Licensee agrees to and shall indemnify and hold harmless Licensor and Lessor, their respective officers, agents and employees from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with any work done, action taken or permitted by Licensee, its subcontractors, agents or employees under this Agreement. It is the express intention of the parties hereto, both Licensee and Licensor and Lessor, that the indemnity provided for in this paragraph indemnifies Licensor and Lessor for the negligence of each, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect Licensor or Lessor from liability for death, injury or damage arising solely from the criminal actions of Licensor and Lessor, their respective officers, agents and employees.

The terms "Licensor" and "Lessor" as used in this section shall include their successors, assigns and affiliated companies, and any other railroad company operating upon the tracks.

8. *Termination:* This Agreement may be terminated by either party hereto by giving thirty (30) days' written notice to that effect to the other party and Licensee shall there upon remove said structure and appurtenances and Licensor's satisfaction failing which Licensor may arrange to do so at Licensee's expense.

If Licensee makes default in respect to any covenant or condition on Licensee's part hereunder and fails to correct such default within thirty (30) days' after receipt of notice from Licensor so to do, Licensor may forthwith terminate this Agreement by notice to Licensee.

9. *Condemnation:* In the event all or any portion of Licensor's premises shall be condemned or taken for public use, Licensee shall receive compensation only for the taking and damaging of said structure. Any compensation or damages for taking said premises or Licensee's interest therein awarded to Licensee shall be assigned by Licensee to Lessor.

10. *Environmental Protection:* Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and waste and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor and/or Lessor.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder as a result of Licensee's use, presence, operations or exercise of the rights granted hereunder, Licensee shall immediately notify Licensor and shall, at Licensee's expense, be obligated to clean all property affected thereby, whether owned or controlled by Licensor, Lessor or any third persons to the satisfaction of Licensor or Lessor (insofar as the property owned or controlled by Licensor or Lessor is concerned) and any governmental body having jurisdiction in the matter. Licensor or Lessor may, at its option, clean Licensor's premises; if Licensor elects to do so, Licensee shall pay Lessor the cost of such cleanup promptly upon the receipt of a bill therefor. Licensee agrees to release, indemnify and defend Licensor and Lessor from and against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) incurred by Licensor or Lessor as a result of Licensee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this Agreement is in effect or thereafter, unless such liability, cost or expense is proximately caused solely and exclusively by the active negligence of Licensor or Lessor, their respective officers, agents or employees.

11. *Contractors:* No work on Licensor's premises shall be commenced by any contractor for Licensee until such contractor has entered into Licensor's standard Contractor's Right of Entry agreement covering such work.
12. *Non-assignability:* This Agreement is not assignable, in whole or in part, by Licensee without Licensor's prior written.
13. *Liens:* Licensee shall pay in full all persons who perform labor on said premises for Licensee, and will not suffer any mechanics' or materialmen's liens to be enforced against Licensor's premises for work done or materials furnished at Licensee's insistence or request. If any such liens are filed thereon, Licensee agrees to remove the same at Licensee's own cost and expense and to pay any judgment, which may be entered thereon or thereunder. Should Licensee fail, neglect or refuse so to do, Licensor shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Licensee shall be liable to Licensor for

all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings or in the payment of any said liens or any judgment obtained therefore.

14. Said structure shall be installed in accordance with minimum requirements of Exhibit A, also attached and made a part hereof.
15. Acceptance by Licensor of rental or fees in advance shall not be construed as a waiver by Licensor of its right to terminate as set forth in Section 8 hereof.
16. It is the intention of the parties that Lessor is a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in triplicate the day and year first hereinabove written.

LICENSOR:

By: _____
Title: Manager Engineering & Contracts

LICENSEE:

WITNESSED BY:

By: J. B. Bennett
Title: CITY MANAGER

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

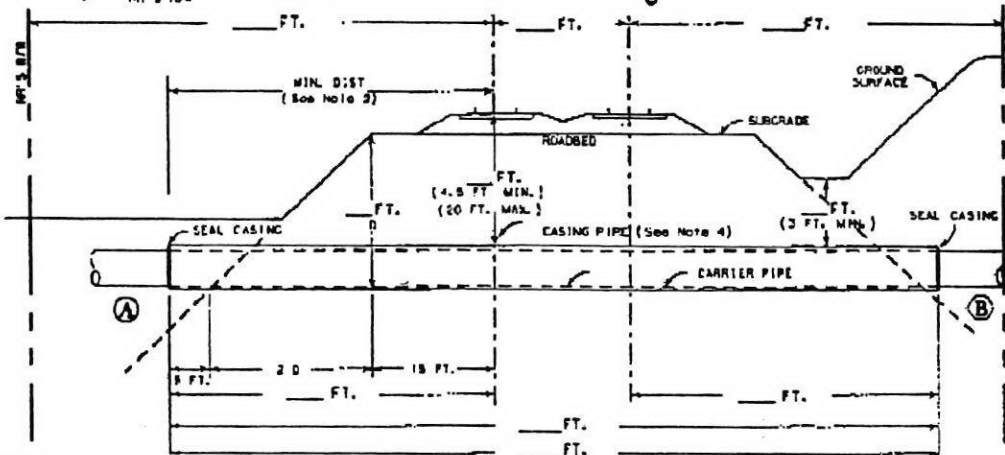
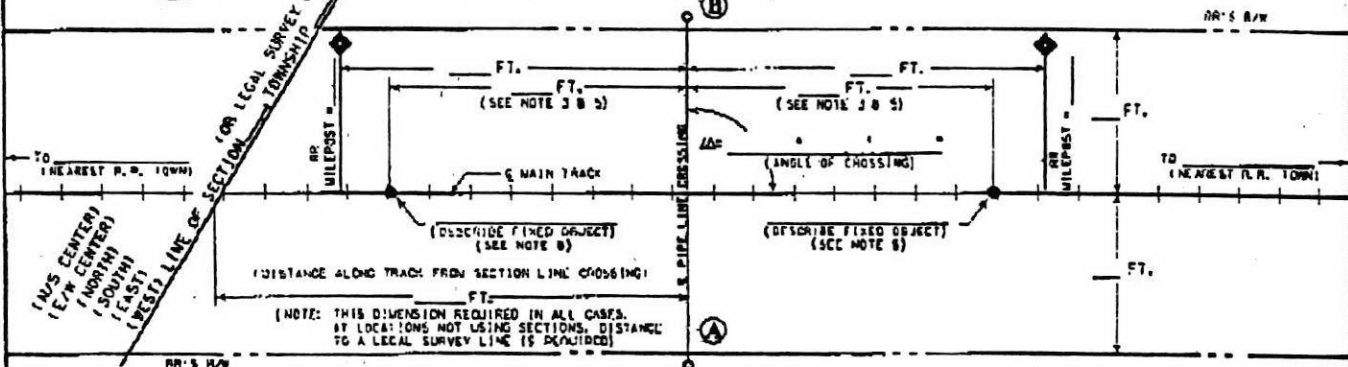
FORM OR-0402-B
REV. 5-15-88

ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE

RR'S R/W



STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
.2500"	17 1/4" 12" OR LESS
.3125"	5/16" OVER 12"-18"
.3750"	3/8" OVER 18"-22"
.4375"	7/16" OVER 22"-28"
.5000"	1/2" OVER 28"-34"
.5625"	9/16" OVER 34"-42"
.6250"	5/8" OVER 42"-48"

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

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



- NOTES:
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM R. OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE R. OF TRACK AT RIGHT ANGLES THE GREATER OF 20' - 30 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, R. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 5) ALLOWABLE FIXED OBJECTS INCLUDE: EMBANKMENTS OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 6) 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: Sanitary Sewer
COMMODITY TO BE CONVEYED _____
OPERATING PRESSURE gravity psi
WALL THICKNESS sch 30 DIAMETER 6" MATERIAL pvc
- E) CASING PIPE: .375" DIAMETER 24" 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 40' 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.
Willamette & Pacific Railroad

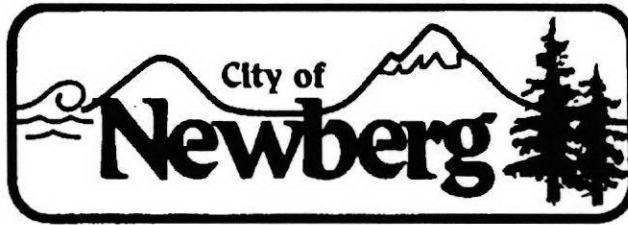
LOCATION
M. F. P-748.20 E. S. _____

ENCASED Sanitary Sewer CROSSING AT
Newberg Yamhill Oregon
CITY OF Newberg

RR FILE NO. 3325 DATE 2-5-03

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



Community Development Office

P.O. BOX 970 • 414 E. FIRST STREET • NEWBERG, OREGON 97132 • (503) 537-1240 • FAX (503) 537-1272

January 28, 2003

Dennis Hannahs
Willamette & Pacific Railroad
650 Hawthorne Ave, SE, Ste 220
Salem, OR 97301

RE: Harrison Street Sewer Railroad Crossing Application

Dear Mr. Hannahs,

Enclosed is the completed application for the underground sewer crossing in the W&P railroad right-of-way. We anticipate bidding this project in April 2003 with construction starting before July 2003.

Please forward a waterline crossing agreement for our signatures.

If you have any questions, please do not hesitate to contact me at 503-554-8881.

Sincerely,

A handwritten signature in cursive script that reads "Jadene Stensland".

Jadene Torrent Stensland, P.E.
Utilities Engineer

Enc: W&P application – double-sided
Exhibit A – encased non-flammable pipeline crossing
H&S drawings – 30% draft

APPLICATION

- 1). Name of Licensee: City Of Newberg
(Name to be shown on Document)
- a) If a corporation _____
(Exact Name of Corporation)
- a corporation of the State of _____
(State of Incorporation)
- NOTE: The corporate name of a company should be exactly as stated in its Articles of Incorporation. Type of Corporation, if other than a normal business corporation, MUST be shown:
- Minucipal
(Municipal, quasi-municipal, body politic, etc.)
- b) If an Individual _____
(Name of Individual)
- of _____
(City & State)
- c) If an individual or corporation doing business under a trade name:

(Doing Business As or Trade Name)
- d) If a partnership _____
(Name of Partnership)
- a partnership consisting of:

and _____
all of _____
(City & State)
- 2). Address of Licensee:
Office: 414 E. First Street, Newberg. Mailing: P.O. Box 970, Newberg, OR 97132
- 3). Name and mailing address of individual to whom instrument is to be sent for execution if different than shown in Item 2:

(Name & Address)
- 4). Billing address if different than shown in Item 2:

(Address)
- 5). Name and phone number of individual to contact in event of questions:
Jadene Stensland P.E. @ (503)-554-8881

FAX # (503)-537-1277
- 6). a) Do you plan to utilize the right-of-way for a public use (for a utility crossing)? ☒ Yes ☐ No
b) Do you have authority to utilize the right-of-way for a public use by condemnation? ☐ Yes ☐ No
c) Will you initiate condemnation proceedings to acquire the subject property in the event negotiations are unsuccessful? ☐ Yes ☐ No

- 7). When do you expect construction to begin on the Railroad Company's property? July thru December 2003
- 8). When do you need to receive this agreement from the Railroad Company? March 2003
(Please allow 30-45 days for crossings and 90-120 days for encroachments)
- 9). Permanent or Temporary Installation - Permanent installation of sanitary sewer crossing
(6" dia. sewer in 24" steel carrier pipe)
If Temporary, estimated term - _____
- 10). Location of installation - Newberg, Yamhill County, Oregon
(City, County & State)
850ft South of ft. (N), (S), (E), or (W) of the (N), (S), (E), (W) or (Center) line of Section 19
the North
Township 3S (N) or (S), Range 2W (E) or (W).
- 11). New installation, relocation or modification of existing installation which is located on the Railroad Company's property or across tracks?
New instalation- Sanitary sewer line across tracks and state highway.
- 12). Do you have an existing agreement at this location with the Railroad Company which is to be affected by this request?
() No () Yes, Railroad Company Contract Number: _____
- 13). Is installation a crossing Yes or encroachment No or both? _____
- 14). Is installation located within a dedicated public street? No X
Yes _____, enclosed are records which identify and prove the dedication of such public way.
- 15). Additional information pertinent to this installation:
Construction Plans entitled "Harrison & Sheridan Street Sanitary Sewer
Project"- Mailed with this application. Bidding process applies.
- 16). If an encroachment, who will be served?
Not Applicable
(Railroad, Railroad Tenant, General Public, etc.)
- 17). Did the Railroad Company's magazine advertisement affect your decision to utilize the right-of-way for a utility corridor?
() Yes () No. If not, did another medium impress your decision? () Yes () No.
Not Applicable
If applicable, please advise other medium: _____

CONTRACTOR AND INSTALLATION INFORMATION

- 18). Will construction be by a Contractor? () No (X) Yes
If yes, Contractor will be: Not to be determined
Address: _____
Corporate Status: _____
Name and Phone Number of individual to contact in the event of questions: _____
- 19). Describe in detail the method and manner of installation on the Railroad Company's property:
Bore across railroad tracks. install 6" diameter sewer with 24" steel carrier pipes.

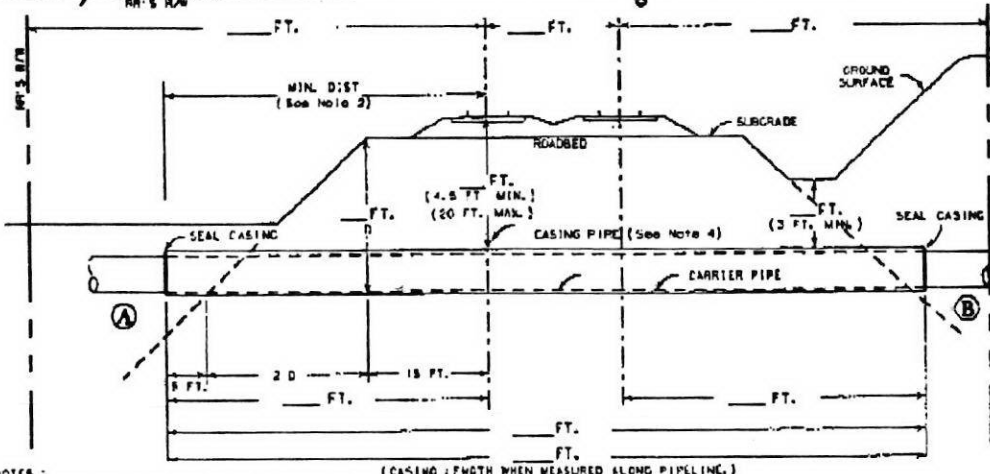
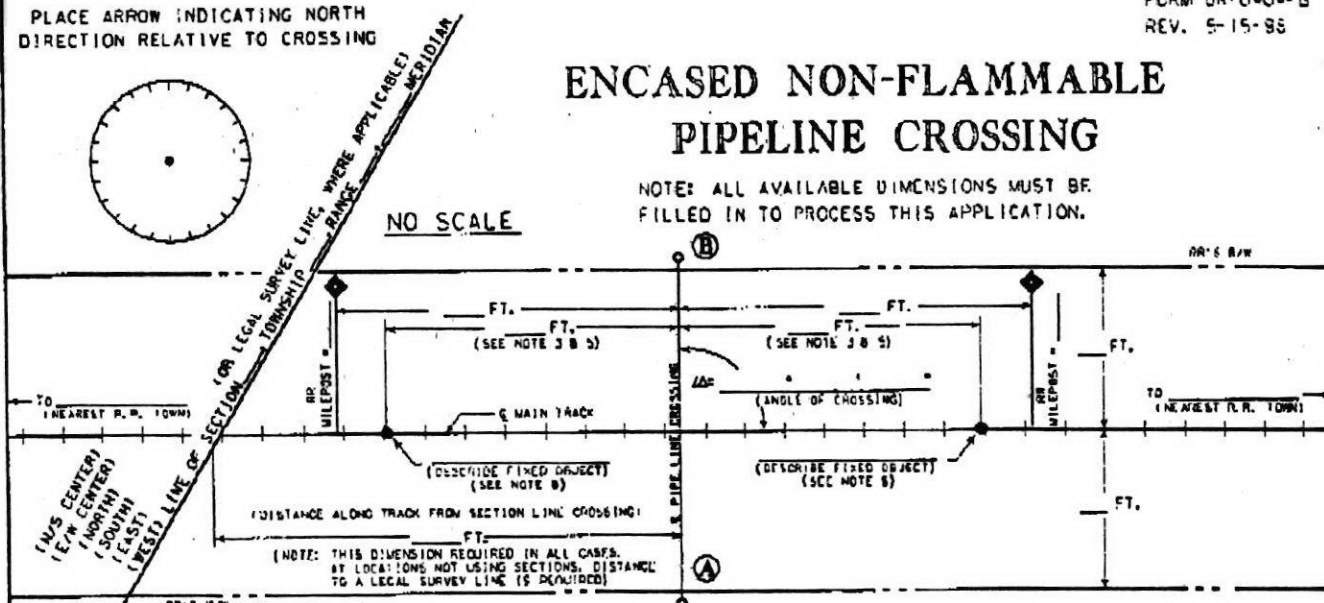
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

FORM DR-040J-B
REV. 5-15-95

ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE



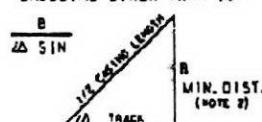
STEEL CASING WALL THICKNESS CHART

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

OVER 48" MUST BE
APPROVED BY R. R. CO.

NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI

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



- NOTES: (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM % OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE % OF TRACK AT RIGHT ANGLES THE GREATER OF 20 - 20 FT., OR 80 FT.
 - 3) AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - 4) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, CULVERT, OR FROM ANY SWITCH OR CULVERT.
 - 5) SITUATION OF SENSITIVE AND CRITICAL INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 6) ALLOWABLE COVERED OBJECTS INCLUDE: RAILWAYS OF BRIDGES OF ROAD CROSSINGS OR OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 7) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 6 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPE LINE CROSSING WITHIN DEDICATED STREET? YES ~~NO~~
- B) IF YES, NAME OF STREET _____
- D) DISTRIBUTION LINE _____ OR TRANSMISSION LINE _____
- C) CARRIER PIPE : Sanitary Sewer
COMMODITY TO BE CONVEYED gravy
OPERATING PRESSURE psi
WALL THICKNESS sch 30 DIAMETER 6" ; MATERIAL pvc ;
- E) CASING PIPE :
WALL THICKNESS .375" ; DIAMETER 24" ; 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):
X DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
TUNNEL ; OTHER _____
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? X YES ; ~~NO~~ ;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND
JACKING PILTS WHEN MEASURED AT RIGHT ANGLES TO TRACK 40' min
(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 HAND READING USE ONLY

UNION PACIFIC RAILROAD CO.
Willamette & Pacific Railroad

194501010000

M. F. _____ E. S. _____

ENCASED Sanitary Sewer CROSSING AT

Newberg Yamhill Oregon

CITY OF NEWBERG

APPLICANT

RR FILE NO. _____ DATE _____

W A R N I N G

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 1-800-236-8193

- 7). When do you expect construction to begin on the Railroad Company's property? July thru December 2003
- 8). When do you need to receive this agreement from the Railroad Company? March 2003
(Please allow 30-45 days for crossings and 90-120 days for encroachments)
- 9). Permanent or Temporary Installation - Permanent installation of sanitary sewer crossing
If Temporary, estimated term - (6" dia. sewer in 24" steel carrier pipe)
- 10). Location of installation - Newberg, Yamhill County, Oregon
(City, County & State)
850 ft South of the North ft. (N), (S), (E), or (W) of the (N), (S), (E), (W) or (Center) line of Section 19
Township 38 (N) or (S), Range 2W (E) or (W).
- 11). New installation, relocation or modification of existing installation which is located on the Railroad Company's property or across tracks?
New installation - sanitary sewer line -- across tracks and State highway.
- 12). Do you have an existing agreement at this location with the Railroad Company which is to be affected by this request?
() No () Yes, Railroad Company Contract Number: _____
- 13). Is installation a crossing Yes or encroachment No or both? _____
- 14). Is installation located within a dedicated public street? No
Yes _____, enclosed are records which identify and prove the dedication of such public way.
- 15). Additional information pertinent to this installation:
Construction Plans entitled "Harrison St & Sheridan St Street Sanitary Sewer Project" mailed with this application. Bidding process applies.
- 16). If an encroachment, who will be served?
Not applicable.
(Railroad, Railroad Tenant, General Public, etc.)
- 17). Did the Railroad Company's magazine advertisement affect your decision to utilize the right-of-way for a utility corridor?
() Yes () No. If not, did another medium impress your decision? () Yes () No.
Not applicable.
If applicable, please advise other medium: _____

CONTRACTOR AND INSTALLATION INFORMATION

- 18). Will construction be by a Contractor? () No (x) Yes
If yes, Contractor will be: (To be determined.)
Address: _____
Corporate Status: _____
Name and Phone Number of individual to contact in the event of questions: _____
- 19). Describe in detail the method and manner of installation on the Railroad Company's property:
Bore across railroad tracks, install 6" diameter sewer with 24" steel carrier pipe

APPLICATION

1). Name of Licensee: City of Newberg
(Name to be shown on Document)

a) If a corporation _____
(Exact Name of Corporation)

a corporation of the State of _____
(State of Incorporation)

NOTE: The corporate name of a company should be exactly as stated in its Articles of Incorporation. Type of Corporation, if other than a normal business corporation, MUST be shown:

Municipal
(Municipal, quasi-municipal, body politic, etc.)

b) If an Individual _____
(Name of Individual)

of _____
(City & State)

c) If an individual or corporation doing business under a trade name:

(Doing Business As or Trade Name)

d) If a partnership _____
(Name of Partnership)

a partnership consisting of: _____
and _____
all of _____
(City & State)

2). Address of Licensee: 414
Office: 414 E. First Street, Newberg. Mailing: P. O. Box 970, Newberg, OR 97132

3). Name and mailing address of individual to whom instrument is to be sent for execution if different than shown in Item 2:

(Name & Address)

4). Billing address if different than shown in Item 2:

(Address)

5). Name and phone number of individual to contact in event of questions:
Jadene Stensland, P.E. @ (503) 554-8881
FAX # (503) 537-1277

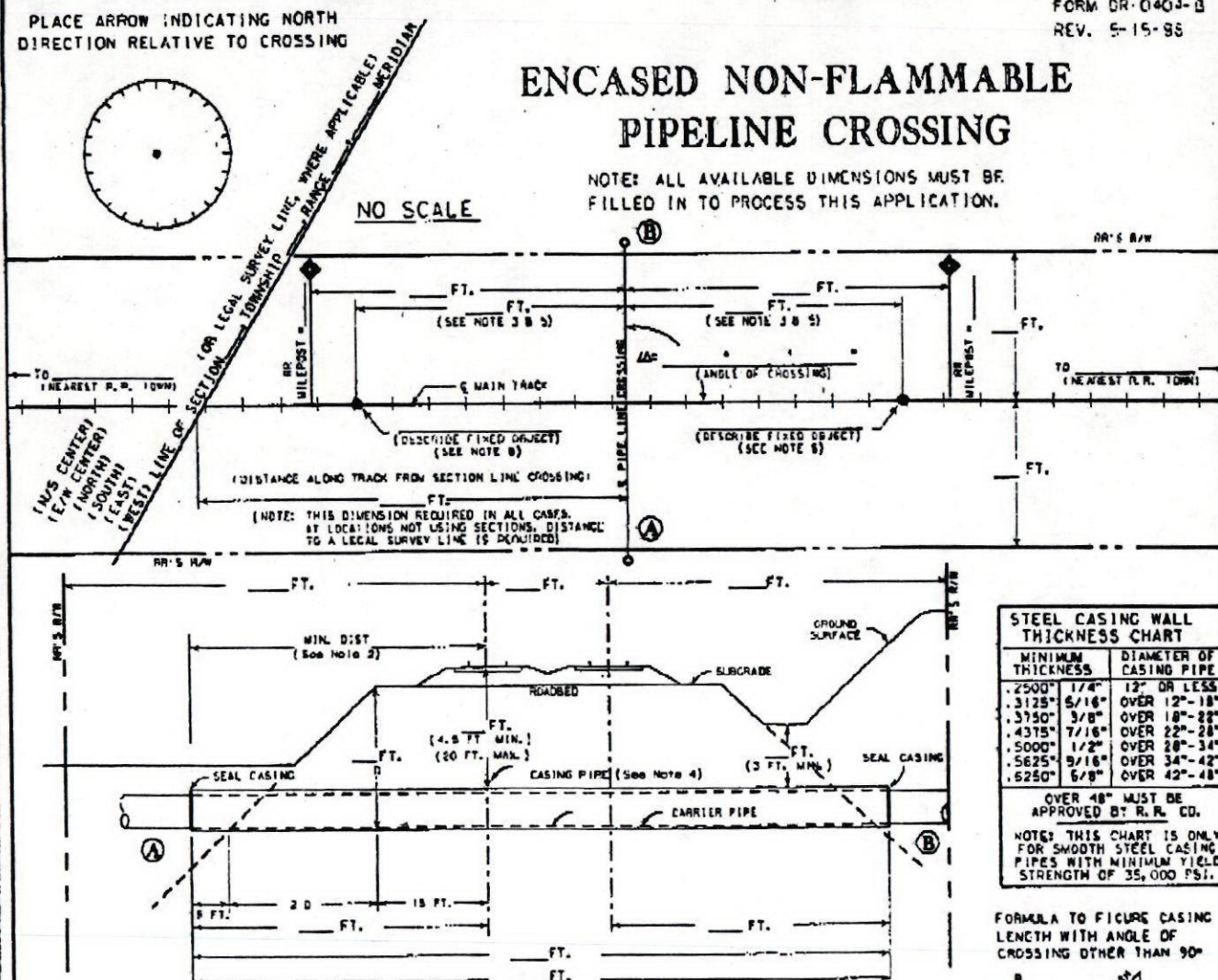
- 6). a) Do you plan to utilize the right-of-way for a public use (for a utility crossing)? ☒ Yes () No
b) Do you have authority to utilize the right-of-way for a public use by condemnation? () Yes () No
c) Will you initiate condemnation proceedings to acquire the subject property in the event negotiations are unsuccessful? () Yes () No

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

FORM DR-0402-B
REV. 5-15-95

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 R. OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE R. 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.
 - 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, R. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 5) ALLOWABLE FIXED OBJECTS INCLUDE: RAILROADS OF BRIDGES; R. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 6) 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 SANITARY SEWER

OPERATING PRESSURE PSI GRAVITY

WALL THICKNESS 3/32" DIAMETER 6" MATERIAL PVC

E) CASING PIPE:

WALL THICKNESS 0.35" MIN DIAMETER 24" 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 40' 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.
Willamette & Pacific Railroad

(SUBDIVISION)

M. F. _____ E. S. _____

ENCASED Sanitary Sewer CROSSING AT
NEWBERG, YAMHILL OREGON

(NEAREST CITY) (COUNTY) (STATE)

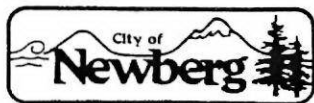
City of Newberg

(APPLICANT)

RR FILE NO. _____ DATE _____

WARNING

IN ALL DECISIONS, 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



Newberg Community Development Department Inter-office Memorandum

Date: March 3, 2003
To: Mike Soderquist
CC: Jadene Torrent Stensland
From: Dan Danicic 
RE: Railroad Crossing Agreements for Harrison Street Sewer Crossing

On January 24, 2003, the "example" agreements were sent to Terry for review. He approved them on February 3. These are the "final" agreements that need to be signed by the City Manager.

The City is required to sign the attached "Underground Waterline Crossing Agreement" and the "Right of Entry Agreement" to bore a new sewer line under the Willamette and Pacific (W&P) Railroad right-of-way. This CIP project is planned for construction in the Summer 2003.

These are the same documents that the City signed in 2000 for the River Street Sewer Crossing.

Please note that all crossing agreements with W&P will terminate in 15 years from the "effective date". City staff responsible for maintaining agreements will need to add this one to their list.

Enc: Underground Waterline Crossing Agreement
Right of Entry Agreement

Note:

- ♦ It is recommended that after you fill out the check request and before you print it for distribution, you save it in your personal folder for your records.
- ♦ When inputting line items: Input the first line then select "OK" from the prompts. If you have additional line items you may manually insert them when you come into the form itself. Arrow to row 2 and finish your request.
- ♦ The check request will calculate the totals for you. Right click on the mouse, and click "calculate".
- ♦ When you are finished, print the check request and attach 2 copies of backup paperwork; one for vendor; one for finance files. Route to Division Manager & Dept. Head for signatures. The request will be forwarded to the Finance Dept. for check issuance.
- ♦ Enter any special instructions, i.e. "Vendor will pick up the check at City Hall", in the "Comments" section.
- ♦ If request is for payment against an encumbered purchase order, please attach a copy of the P.O.

REQUEST FOR CHECK PAYMENT - CITY OF NEWBERG

To: Portland & Western Railroad	Date: February 26, 2003
Attention:	Ordered by: Jadene Stensland
Address: Suite 200, 1200-C Scottsville Road	Division Manager Approval:
Rochester, NY	Department Head Approval:
Vendor No. (Finance only):	Finance Approval:
	City Manager Approval: (required only when over \$5000)

DESCRIPTION	PO #	PROJECT (xxx-xxx)	ACCOUNT # (xx-xxxx-xxxxxx)	AMOUNT \$
P & W RR Permit			04-5150-706362	\$3,250.00
TOTAL				\$3,250.00

Comments:

FINANCE: PLEASE SEND ONE COPY OF DOCUMENTATION WITH THE CHECK UNLESS OTHERWISE NOTED.

CK # 87115

mailed on 3/6/03
by Finance

Portland & Western Railroad

A Genesee & Wyoming Company
Suite 200
1200-C Scottsville Road
Rochester, NY 14624

Invoice

Invoice No.: PWRR-0000226

Date: 2/19/2003

Page: 1

Bill To:

CITY OF NEWBERG
P.O. BOX 970
NEWBERG OR 97132

Ship To:

CITY OF NEWBERG
P.O. BOX 970
NEWBERG OR 97132

Purchase Order No.		Customer ID	Shipping Method	Payment Terms	
		CITYNEWBER-WPRR		Net 30	
Quantity	Item Number	Description	Unit Price		Ext. Price
1	L-3325	U/G Pipeline Agreement - Admin. Fee	\$500.00		\$500.00
1	L-3325	U/G Pipeline Agreement - 15yr. Term Fee	\$2,250.00		\$2,250.00
1	L-3325	Right of Entry Agreement	\$500.00		\$500.00

MAKE ALL CHECKS PAYABLE TO:

Portland & Western Railroad
P.O. BOX 295
ALBANY, NY 12201

Subtotal	\$3,250.00
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Total	\$3,250.00

JS rec'd 2/25/03



C.S. Kettenring AVP- Engineering

C.R. Gilbert Mgr. Engineering & Contracts

Document Custody
650 Hawthorne Ave. SE, Ste 220
Salem, Oregon 97301
Phone: (503) 365-7717
Fax: (503) 365-7787

File No: 3325

2/5, 2003

City of Newberg
Ms. Jadene Stensland
P.O. Box 970
Newberg, Oregon 97132

Dear Jadene Stensland:

Enclosed are ^{dup} ~~triplicate~~ originals of a underground Wire line Crossing Agreement covering your use of the Railroad Company's right-of-way.

To properly document your use of the Railroad Company's right-of-way, it is necessary that you execute these crossing agreements, and return the following to me at the above listed address:

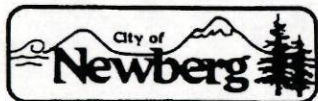
1. ^{dup} ~~All~~ triplicate originals of the crossing agreement.
2. Check made payable to the Willamette & Pacific Railroad in the amount of \$3,250.00, to cover attached invoice. In compliance with the Internal Revenue Service's policy regarding Form 1099, I certify that 06-1020582 is the Railroad's correct Federal Taxpayer Identification Number and Willamette & Pacific Railroad is doing business as a corporation.
3. If any work to install the utility is to be performed by an independent contractor, please ensure they Contact Willamette & Pacific Railroad for a Contractors Right of Entry Agreement , insurance application and Flagging Agreement before performing the installation work.

If the crossing agreement originals are not executed and returned within three months from the date of this letter, the offer of the agreement is withdrawn and becomes null and void. If you have any questions concerning this agreement, please telephone Dennis Hannahs of my staff at (503) 365-7717 Ext. 113.

Sincerely,

Charles S. Kettenring
VP-Engineering

Enclosures



Newberg Community Development Department Inter-office Memorandum

Date: January 24, 2003
To: Terry Mahr *OK John*
CC: Dan Danicic, Mike Soderquist, Tabbi Mueller
From: Jadene Torrent Stensland
RE: Railroad Crossing Agreements for Harrison Street Sewer Crossing

RECEIVED
FEB 3 2003
By [Signature]

Please review and approve the attached documents by February 17, 2003.

The City will be required to sign the attached "Underground Waterline Crossing Agreement" and the "Right of Entry Agreement" to bore a new sewer line under the Willamette and Pacific (W&P) Railroad right-of-way. This CIP project is planned for construction in the Summer 2003.

W&P has provided these "example" documents for our Legal Department to review while they are processing our application. They will send the City three originals, with the correct dates and information, and request that the City sign and return them.

These are the same documents that the City signed in 2000 for the River Street Sewer Crossing.

Enc: Example of the Underground Waterline Crossing Agreement
Example of the Right of Entry Agreement

30% draft - H&S sewer design

Approved to Form: AVP-Engineering 1/1/01

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____, day of _____, 2002, by and between **WILLAMETTE & PACIFIC RAILROAD COMPANY**, a New York corporation (hereinafter referred to as the "Railroad"); and _____, a _____ corporation, to be addressed at: _____, _____, _____ (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**ARTICLE 1. DEFINITION OF LICENSEE**

For purposes of this agreement, all references in this agreement to the Licensee shall include the Licensee's officers, supervisors, agents, and employees, and others acting under its or their authority.

ARTICLE 2. RIGHT GRANTED; PURPOSE

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property in the vicinity of Mile Post _____, _____ District, at or near _____ Station, as shown on the attached print dated, _____, 2002, marked Exhibit A for the purpose of inspection and supervision of work. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

ARTICLE 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND B-1

The terms and conditions contained in Exhibits B and B-1, heretoattached, are hereby made a part of this agreement.

ARTICLE 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the respective local Assistant Vice President of Engineering or his authorized representative (hereinafter the Railroad Representative).

ARTICLE 5. ADMINISTRATIVE HANDLING CHARGE

Upon execution and delivery of this Licensee's Agreement, the Licensee shall pay to the Railroad an administrative handling charge of Five Hundred and no/100 Dollars (500.00).

ARTICLE 6. TERM; TERMINATION

a). The grant of right herein made to Licensee shall commence on _____, and continue until _____, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the railroad Representative in writing when it has completed its work on Railroad property.

b). This agreement may be terminated by either party on one (1) day's written notice to the other party.

ARTICLE 7. CERTIFICATE OF INSURANCE

Approved to Form: AVP-Engineering 1/1/01

a). Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement in a policy which contains the following type of endorsement:

Willamette & Pacific Railroad Company, is named as additional insured with respect to all liabilities arising out of Insured's, as Licensee, performance of any work on the property of the Railroad.

b). Licensee warrants that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

c). All insurance correspondence shall be directed to:

Agreement No. _____
Willamette & Pacific Railroad Company, Document Custody
110 West 10th Avenue Albany, Oregon 97321

ARTICLE 8. ENFORCEABILITY; CHOICE OF FORUM; CHOICE OF FORUM

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Oregon. Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of Oregon only, and parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and to service of process issued by such courts.

ARTICLE 9. RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES

No work of any kind shall be performed, and no person equipment, machinery, tool(s) material(s) vehicles(s) or thing(s) shall be located operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit B. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay all charges connected therewith, within 30 days after presentation of a bill therefore. The rate of pay per Railroad flagman is sixty-five dollars (\$65.00) per hour.

Arrangements for flagging are to be made at least seventy-two (72) hours in advance of commencing work by contacting Mr. Duane Forney, Forney Enterprises, by telephone (503) 680-5741 or by FAX at (503) 648-0384. Forney Enterprises is an independent agent of Willamette & Pacific Railroad and approved for Railroad Flagging.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as the date first herein written.

WILLAMETTE & PACIFIC RAILROAD COMPANY

By _____
AVP-ENGINEERING

WITNESS:

(Name of Licensee)

X _____

Title: _____

LICENSEE ROE 021801
Form Approved, AVP-ENG

EXHIBIT B LICENSEE'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK -FLAGGING.

The Licensee agrees to notify the Railroad Representative at least 48 hours in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee 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 notice the Railroad Representative will determine and inform the Licensee whether a flagman will be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2. NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 3. MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the Railroad from and against all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a). Fiber optic cable systems may be buried on the Railroad'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 Railroad at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on the Railroad'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.

b). In addition to other indemnity provisions in this Agreement the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad'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 Railroad's property. Licensee shall not have or seek recourse against Railroad 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 Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 5. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents and employees, and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

UTILITIES X & E ROE 990701
Form Approved, AV P-ENG

Section 6. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

- a). The Licensee 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 Licensee 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 Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.
- b). The employees of the Licensee 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 work boots and at least the following protective equipment:
 - (1) Protective headgear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee'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.
- c). All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 7. INDEMNITY.

- a). As used in this Section, "Railroad" includes other railroad companies using the Railroad'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 Railroad'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 Railroad, 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 Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement. However, the Licensee shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.
- c). The Licensee shall maintain whatever insurance coverage is necessary to adequately underwrite its general and contractual liability under the terms of this Agreement.

Section 8. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, 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.

UTILITIES X & E ROE 990701
Form Approved, AVP-ENG

Section 9. WAIVER OF BREACH.

The waiver by the Railroad 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 Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 10. ASSIGNMENT - SUBCONTRACTING.

The Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

01/23/2003 12:45 FAX 5033657787

FW SALEM

0001

EXHIBIT B-1
Licensee Right of Entry Agreement
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- a) General Liability insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability with a separate general aggregate for the project (ISO Form CG 25 03 or equivalent), Broad Form Property Damage, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Licensee's obligation to Railroad in the Agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled.
- b) Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Licensee's obligation to Railroad in the Agreement.
- c) Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employer's Liability. Also compliance with all laws of states which require participation in their state worker' compensation fund.
- d) Railroad Protective Liability Insurance naming Railroad as insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy form shall be AAR-AASHTO with broad form coverage for "Physical Damage to Property" (ISO Form GL 00 30) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 28 31 or equivalent). If the Lloyd's, London policy form is used, limits shall be \$3,000,000 per occurrence with a \$9,000,000 aggregate and the Extended Claims Made Date shall be determined by adding the length of original policy period plus one year to the policy expiration date.

The Licensee hereby waives its right to subrogation, as respects the above insurance policy (ies), against Railroad for payments made to or on behalf of employees of Licensee or its agents and for loss of its owned or leased property or property under its care, custody and control while on or near Railroad's right-of way or other real property. Licensee's insurance shall be primary with respect to any insurance carried by Railroad.

Licensee shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.

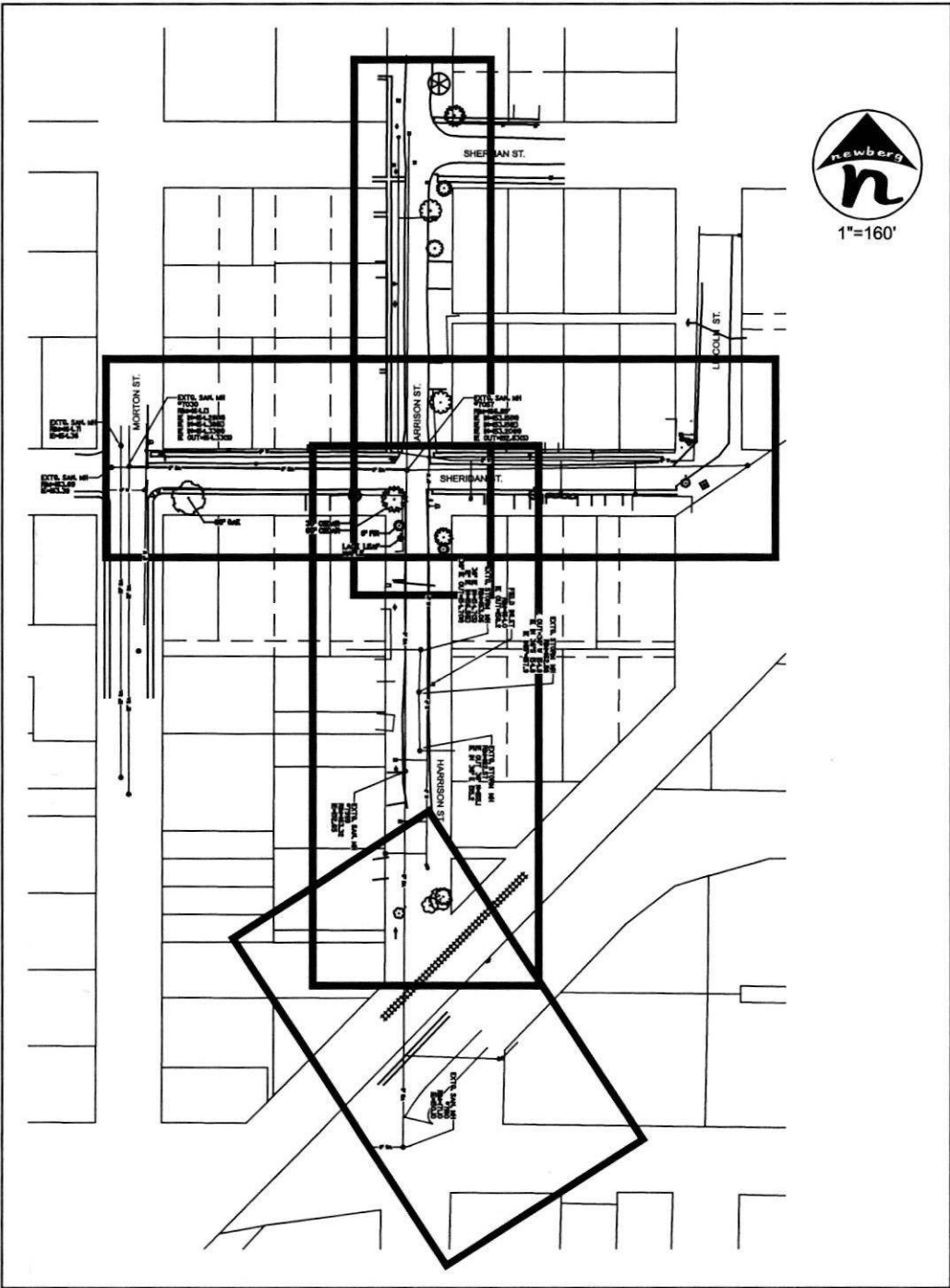
Licensee WARRANTS that this Agreement has been thoroughly reviewed by Licensee's insurance agents(s)/brokers(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement.

If Licensee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Licensee.

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

HARRISON STREET, AND SHERIDAN STREET SANITARY SEWER REPLACEMENT PROJECT

City of Newberg Capital Improvement Project Number 706362



AGENCY / UTILITY CONTACTS

AGENCY	CONTACT	PHONE
PGE	JEFF CHITTICK	503-463-4336
NW NATURAL	BOB KELLER	503-226-4211 X3046
ODOT	DAVE CHUCULATE	503-986-2876
AT&T	TIMOTHY SHACHER	503 932-9499
VERIZON	DEBRA MORRISON	503-639-7959
W-P RAILROAD	DENNIS HANNAHS	503365-7717 XII3

CITY CONTACTS

DAN DANICIC	CITY ENGINEER	503-537-1238
JADENE STENSLAND	PROJECT ENGINEER	503 554-8881
STEVEN BIDDLE	INSPECTOR ENG. TECH.	503 537-1370
RYAN TRUAIR	INSPECTOR ENG. TECH.	503 537-1236
RUSS THOMAS	PUBLIC WORKS SUPERINTENDENT	503 537-1233
COMMUNITY DEVELOPMENT ENGINEERING FAX NUMBER		503 537-1277

SHEET INDEX

1.	COVER SHEET
2.	CONSTRUCTION NOTES
3.	MORTON STREET TO LINCOLN STREET
4.	SHERMAN STREET TO SHERIDAN STREET
5.	SHERIDAN STREET SOUTH
6.	RAIL ROAD - 99W BORE
7.	DETAILS

NO. 1. 2. 3. 4.

REVISION DATE

SCALE: AS SHOWN

DATE:

DRAWN:

DESIGNED:

APPROVED:

COMMUNITY DEVELOPMENT DEPT.
ENGINEERING DIVISION
P.O. BOX 970
414 E. FIRST ST.
NEWBERG, OREGON 97132
PH. (503) 537-1240 FAX (503) 537-1277

City of Newberg

COVER SHEET

for

HARRISON STREET

SANITARY SEWER IMPROVEMENTS

CITY OF NEWBERG, YAMHILL COUNTY, OREGON

1 SHEET

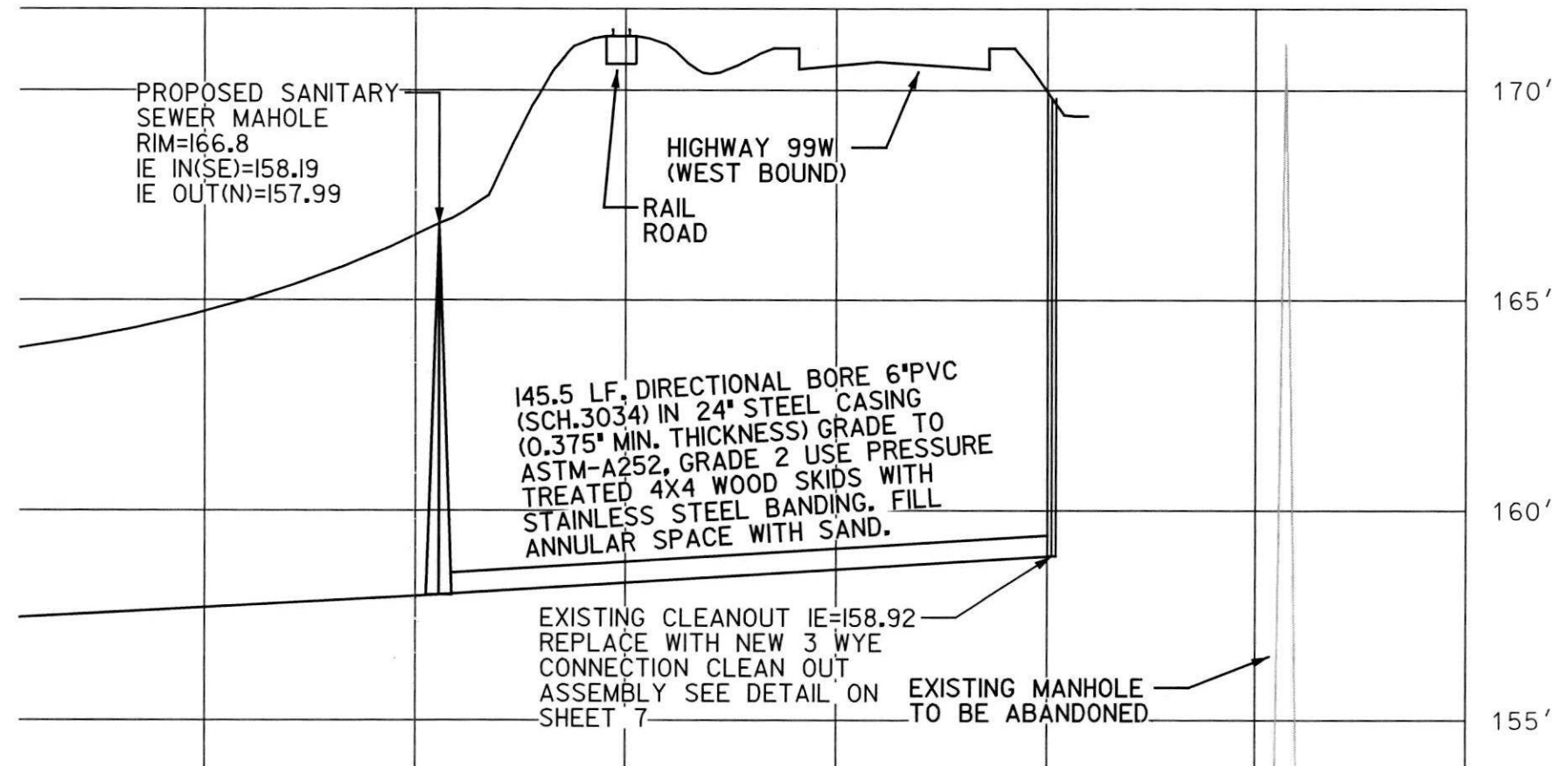
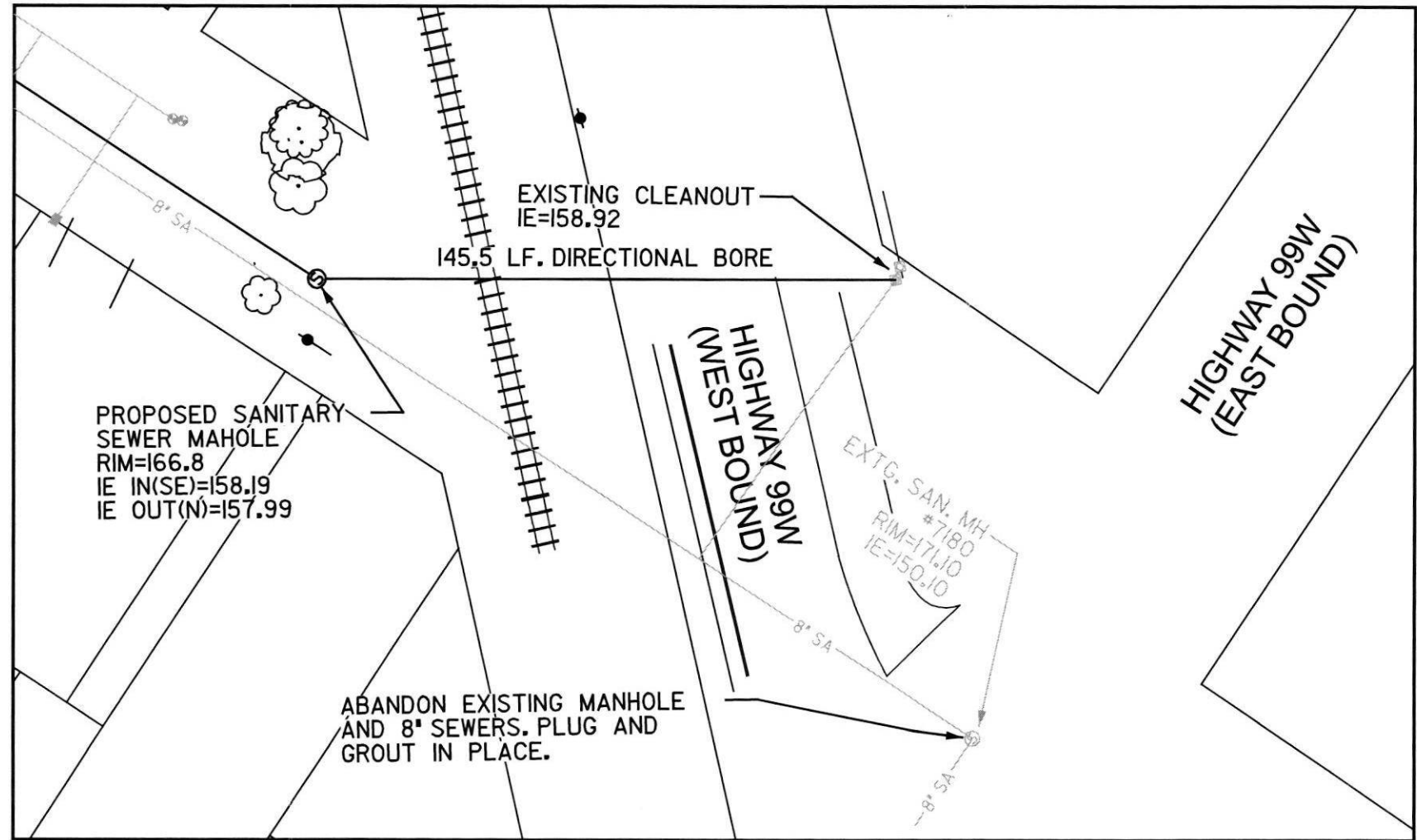
OF

6

PLOT DATE: 1/29/2003
FILE: K:\ENGR\PROJECT\6362\Harrison_Sanitary\design\plans\01_Cover.dgn



1"=40'



for
HARRISON STREET
SANITARY SEWER IMPROVEMENTS
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

SHEET

6 OF 6

NO.	REVISION	DATE	SCALE: AS SHOWN
1.			
2.			
3.			
4.			

COMMUNITY DEVELOPMENT DEPT.
ENGINEERING DIVISION
P.O. BOX 970
414 E. FIRST ST.
NEWBERG, OREGON 97132
PH. (503) 537-1240 FAX (503) 537-1277

PLOT DATE: 1/29/2003
FILE: K:\ENGR\PROJECT\4382_Harrison_Sewer\Drawn\plan\06-PLAN_Bore.dgn

LEASE AUDIT NO: _____

RELMIS: _____

UNDERGROUND WATERLINE CROSSING AGREEMENT

This Agreement, made this 24th day of November, 2002 ("Effective Date"), between **WILLAMETTE & PACIFIC RAILROAD, INC.**, a New York corporation ("Licensor"), a lessee of **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware corporation ("Lessor"), and _____, a municipality, whose address is : _____. ("Licensee"):

WITNESSETH:

1. Licensor hereby permits Licensee (subject to the provisions hereof) to construct, maintain and operate [Underground] waterline crossing (which together with its supports and appurtenances shall hereinafter be termed "facilities"), at or near Mile Post _____, _____ Station, _____ District, County of _____, State of Oregon, in the location shown on the attached print marked Exhibit "A".
2. The term of this Agreement shall commence on the Effective Date and shall expire 15 years from the Effective Date, unless earlier terminated in accordance with the terms and provisions of this Agreement.
3. Upon execution hereof, Licensee shall pay to Licensor a nonrefundable, one-time fee of Five Hundred and No/100 Dollars (\$500.00) to defray cost of handling.
4. Upon execution hereof, Licensee also shall pay to Licensor a non-refundable, one-time fee of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00) as consideration for the permission herein granted. Any renewal or extension of this Agreement later agreed to in writing by the parties shall be subject to additional fee(s) as then determined by Licensor.
5. The permission herein granted is subject to all licenses, leases, easements, encumbrances and claims of title affecting said property of Licensor.

Absence of markers does not constitute a warranty by Licensor of no subsurface installations.

6. The facilities shall be installed and maintained by Licensee to the satisfaction of Licensor and in strict conformance to the attached plans and specifications noted thereon. Clearances with respect to existing and future tracks and other structures on Licensor's premises shall be provided by Licensee to conform with all applicable orders of governmental bodies and, in the absence of such orders, with the National Safety Code. Licensee shall take all precautions necessary to prevent interference by

its facilities with existing or future railway signals, gates or safety devices, or the telephone, telegraph or other circuits of Licensor, or of other persons on Licensor's premises with Licensor's consent, whether such interference be by leakage, induction or otherwise. Licensee shall assume the expense of insulating any wire lines and of any other alterations to any facilities on Licensor's premises required by reason of Licensee's facilities. Before performing any work in the vicinity of Licensor's tracks, or which would involve any excavation of Licensor's premises, Licensee shall give Licensor sufficient notice to permit Licensor to have its representative present.

In the event an emergency arises involving Licensee facilities, Licensee shall immediately call Licensor Dispatcher at 1-800-800-2203 (available 24 hours) to permit Licensor to protect movements of any trains, equipment, or employees present in the area.

Prior to placing the facilities in service for any reason (testing or otherwise), Licensee shall contact Licensor's local Signal Supervisor to permit Licensor's qualified signal personnel to be present at such time to perform as Licensor so determines any test (including the evaluation thereof) to Licensor's signal communication equipment (equipment) located in the vicinity of Licensee's facilities. If, in Licensor's opinion, it is determined from such test that the operation of Licensee's facilities interferes with normal and required operation of Licensor's equipment. Licensee shall pay for all modifications to either its own facilities or to Licensor's equipment that are required to eliminate or mitigate all interference to Licensor's equipment.

If said facilities or any portion thereof are underground, project markers in form and size satisfactory to Licensor identifying the facility and its owner will be installed and constantly maintained by and at the expense of Licensee at Licensor's property lines or such locations as Licensor shall approve. Such markers shall be relocated upon request of Licensor without expense to Licensor.

7. The rights herein granted are subject to the rights of Licensor and Lessor (or anyone acting with the permission of Licensor or Lessor) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems (systems) in, upon, along, across and beneath the premises and right-of-ways of Licensor including the premises through which said facilities shall be constructed.

Licensee agrees to reimburse Licensor and/or the owner of the system(s) for all expenses which either may incur which expenses would not have been incurred except by reason of the use of the premises by Licensee, its agents, employees or invitees including relocation costs or any damages incurred by such owner due to injury to the system(s).

Licensee, at least five (5) days prior to performing any digging activities on the premises of Licensor, must call 1-800-AT-FIBER (available 24 hours) to receive a Southern Pacific Telecommunications Company control number. Licensee will be advised if a telecommunications system is buried anywhere on or about the premises

of Licensor in the location where Licensee will perform such digging activities. If there is a telecommunications, Licensee will be advised as to the owner of the telecommunications system and provided instructions on arranging for a cable locator and will be advised whether relocation or other protection for the telecommunications system is required prior to beginning any work on the premises of Licensor.

8. Licensor and/or Lessor reserve the right, at any time or time that Licensor deems it necessary, to require Licensee, at Licensee's expense, to reconstruct, alter or change the location of Licensee's facilities.

Licensee shall keep Licensor's premises in a neat and safe condition, so far as affected by said facilities, keeping the track area and toe path clear of all obstructions including but not limited to any holes, depressions or excavations of any sort.

Licensee agrees to reimburse Licensor for any expense incurred by Licensor by reason of the construction, presence, maintenance, use or removal of said facilities on Licensor's premises including expense arising from delays to engines, trains, and/or Licensor's tracks.

9. Licensee agrees to and shall indemnify and hold harmless Licensor and Lessor, their respective officers, agents and employees from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs, another expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with any work done, action taken or permitted by Licensee, its subcontractors, agents or employees under this Agreement. It is the express intention of the parties hereto, both Licensor and Licensee, that the indemnity provided for in this paragraph indemnifies Licensor and Lessor for the negligence of each or both, whether that negligence is active or passive, or is the sole or a concurring cause of the injury, death or damage; provided that said indemnity shall not protect Licensor or Lessor, from liability for death, injury or damage arising solely out of the criminal actions of Licensor and/or Lessor, their respective officers, agents or employees.

The terms "Licensor" and "Lessor" as used in this section shall each include the successors, assigns and affiliated companies, and any other railroad company operating upon Licensor's or Lessor's tracks.

10. This Agreement may be terminated by either party hereto by giving thirty (30) days' notice in writing to that effect to the other. Upon termination or expiration of this Agreement, Licensee shall remove said facilities and any and all conductors, structures or other apparatus placed on Licensor's premises by virtue of this Agreement and restore Licensor's premises to a condition satisfactory to Licensor, failing in which Licensor may perform such work at the expense of Licensee.

11. The rights and privileges herein given are personal to Licensee and as such Licensee shall not be permitted to assign the rights and privileges herein given, or any part thereof, without the previous written consent of Licensor.
12. No work on Licensor's premises shall be commenced by any contractor for Licensee until such contractor has entered into Licensor's standard Contractor's Right of Entry agreement covering such work.
13. Licensee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including without limitation those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance upon request of Licensor.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder the rights granted hereunder, Licensee shall immediately notify Licensor and Lessor and shall, at Licensee's expense, be obligated to clean all property affected thereby, whether owned or controlled by Licensor or any third person to the satisfaction of Licensor (insofar as the property owned or controlled by Licensor is concerned) and any governmental body having jurisdiction in the matter. Licensor may, at its option, clean Licensor's premises; if Licensor elects to do so, Licensee shall pay Licensor the cost of such cleanup promptly upon the receipt of a bill therefor. Licensee agrees to investigate, release, indemnify and defend Licensor from and against all liability, cost and expense (including without limitation and fines, penalties, judgments, litigation costs and attorney fees) incurred by Licensor as a result of Licensee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this Agreement is in effect or thereafter, unless such liability, cost or expense is proximately caused solely and exclusively by the active negligence of Licensor, its offices, agents or employees.

14. Licensee shall pay all persons who perform labor on said premises for Licensee, and will not suffer any mechanics' or materialmen's liens to be enforced against Licensor's premises for work done or materials furnished at Licensee's instance or request. If any such liens are filed thereon, Licensee agrees to remove the same at Licensee's own cost and expense and to pay any judgment, which may be entered thereon or thereunder. Should the Licensee fail, neglect or refuse so to do, Licensor shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and the Licensee shall be liable to the Licensor for all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment obtained therefor.

The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wireline, 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 Wireline 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.

15. Neither termination nor expiration of this Agreement will release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the facilities are removed and the premises are restored as provided herein.
16. Lessor is intended by the parties to be a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties hereby have caused these presents to be executed in triplicate the day and year first hereinabove written.

LICENSOR:

By: _____
Title: _____

WITNESSED BY:

LICENSEE:

By: _____
Title: _____