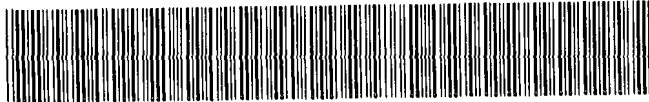


MISC 2015017951



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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 3/13/2015 11:28:43.86



2015017951

PERMANENT SUBSURFACE SEWER EASEMENT

When recorded return to:
 City of Omaha, Nebraska
 Public Works Department
 General Services Division
 R-O-W Section

FOR OFFICE USE ONLY	
Project:	South Interceptor Force Main-North Segment
City Proj. No.:	OPW 52223
Tract No.:	
Address:	Omaha, NE 68102

KNOW ALL MEN BY THESE PRESENTS:

THAT **415 Leavenworth Street Limited Liability Company**, a Nebraska Limited Liability Company, hereinafter referred to as "GRANTOR," for and in consideration of the sum of one dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey unto the **City of Omaha, Nebraska**, a Municipal Corporation, hereinafter referred to as "GRANTEE," and to its successors and permitted assigns, a Permanent Subsurface Sewer Easement for the right to initially construct and thereafter for inspecting, maintaining, operating and repairing the sewer (either for storm or sanitary purposes), drainage structure, and/or drainage way, and appurtenances thereto known as OPW Project No. 52223 (the "Sewer"), under the surface of a parcel of real estate legally described as follows (the "Real Estate"):

SEE ATTACHED EXHIBIT "A" **LEGAL DESCRIPTION**

GRANTOR and GRANTEE acknowledge and agree that GRANTEE shall have no right whatsoever to use or access the surface of the Real Estate, and that GRANTEE's right to use the subsurface of the Real Estate shall be strictly limited to a thirty foot (30') by thirty foot (30') horizontal "SIFM Rock Tunnel" located within the bedrock of the Real Estate, as depicted in Exhibit "B" attached hereto (the "Easement Area"). GRANTEE shall have the right, by way of its initial construction of the Sewer, to locate and establish the Easement Area within the Real Estate. GRANTEE further acknowledges and agrees that it shall have no right to use or access any subsurface areas of the Real Estate other than the Easement Area.

TO HAVE AND TO HOLD unto said GRANTEE, its successors and permitted assigns for the purpose of initially constructing and thereafter inspecting, maintaining, operating, or repairing the Sewer at the will of the GRANTEE. The GRANTOR may, following construction of the Sewer, continue to use the surface and subsurface of the Real Estate located above the Easement Area, subject to the terms of this Permanent Subsurface Sewer Easement.

It is further agreed as follows:

- A. This Permanent Subsurface Sewer Easement is also for the benefit of any contractor, agent, employee, or representative of the GRANTEE and any of said construction and work. The term "Grantee Parties" as used in this agreement shall collectively mean GRANTEE's officers, employees, agents, contractors, representatives and invitees.
- B. Notwithstanding anything set forth in this Permanent Subsurface Sewer Easement to the contrary, the GRANTOR reserves unto itself, its successors and assigns all mineral rights and the right to make such use of the portions of the Real Estate located above the Easement Area, and to erect such buildings and make any improvements they deem desirable thereon and therein. Such improvements and any plants, trees, grass or shrubbery constructed above the Easement Area shall be maintained by GRANTOR, its successors and assigns, subject to the GRANTEE's obligations set forth herein.
- C. Any building or improvements allowed to be constructed over the Easement Area shall be subject to the following restrictions. These restrictions are intended to preserve the integrity of the sewer and related structures, but to permit GRANTOR the ability to liberally construct improvements over the Easement Area so long as such construction does not adversely impact the integrity of the sewer and related structures.
 1. Any improvements including buildings or structures with deep foundations requiring the penetration of the top surface of the bedrock within the horizontal limits of the Easement Area shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall be based upon mutually agreed upon criteria to protect the integrity of the sewer and shall not be unreasonably withheld, conditioned or delayed.
 2. All geotechnical investigations requiring the penetration of the top surface of the bedrock within the horizontal limits of the Easement Area shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall not be unreasonably withheld, conditioned or delayed.
 3. All proposed improvements within the horizontal limits of the Easement Area that exceed the above criteria shall require approval by the GRANTEE including the City of Omaha Public Works Department prior to commencing the work, which approval shall not be unreasonably withheld, conditioned or delayed.
 4. GRANTOR may construct improvements above the Easement Area through the normal GRANTEE permitting processes without special review, provided said improvements or construction activities do not penetrate the horizontal limits of the Easement Area.
 5. Any improvements that are constructed outside the parameters of the design criteria and have not received prior approval by the GRANTEE shall be removed or corrected by the GRANTOR upon written notification by the GRANTEE.
- D. GRANTOR and GRANTEE acknowledge the following minimum requirements for GRANTEE's access to the Easement Area for the purposes of initial construction of the Sewer and GRANTEE's subsequent inspection, maintenance, operation and repair activities related to the Sewer:
 1. That the GRANTEE will take good care of the Easement Area, and will neither commit nor suffer any active or permissive waste or injury thereof and all activities conducted within or about the Easement Area by or on behalf of the GRANTEE will be in a good and workmanlike manner and in

accordance with applicable laws. The GRANTEE shall, at the GRANTEE's expense, promptly repair any injury or damage to the surface and subsurface portions of the Real Estate located above the Easement Area caused by the use, misuse or neglect thereof by the GRANTEE, or by the Grantee Parties or by persons permitted or invited (whether by express or implied invitation) within the Easement Area by the GRANTEE or the Grantee Parties, or by any such parties accessing the Easement Area. Following the initial construction of the Sewer and any subsequent inspection, maintenance, operation or repair of the Sewer, the GRANTEE shall, at its sole cost and expense, promptly rebuild and restore the surface and subsurface portions of the Real Estate located above the Easement Area to their condition as they existed prior to the exercise of the GRANTEE's rights hereunder, and GRANTEE shall, at its sole cost and expense, promptly repair any and all damage to any improvements located above the Easement Area, whether now existing or constructed in the future, using like materials and methods of construction, provided, however, that GRANTOR shall have the right to control and direct such restoration and repair activities in a commercially reasonable manner.

2. That the GRANTEE agrees that all personal property and equipment brought into the Easement Area by the GRANTEE or the Grantee Parties shall be at their sole risk; and the GRANTOR shall not be liable for theft thereof or any damage thereto, such theft or damage being the sole responsibilities of the GRANTEE and the Grantee Parties.
 3. The GRANTEE shall immediately discharge and obtain the release of any lien filed against the real estate within which the Easement Area is located resulting from work performed and alleged to have been performed at the request of the GRANTEE or the Grantee's Parties. Nothing in this Permanent Subsurface Sewer Easement shall be construed as in any way constituting a consent or request by the GRANTOR, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialmen for the performance of any labor or the furnishing of any materials for any specific or general improvements.
 4. The GRANTEE shall not do or permit any act or thing to be done within or about the Easement Area that may subject the GRANTOR to any liability or responsibility for injury, damage to persons or property or to any liability by reason on the existence or application of, compliance with or violation of any applicable law (including without limitation any applicable law or regulation relating to the storage, release or remediation of any hazardous substances), and shall exercise such control over the activities of the GRANTEE and the Grantee Parties within or about the Easement Area as to protect the GRANTOR fully against and such liability and responsibility.
 5. That GRANTEE may inspect, maintain, operate and repair the Sewer as initially constructed within afore described Easement Area. Additional construction or design shall require approval by GRANTOR, which approval shall not be unreasonably withheld, conditioned or delayed.
 6. The GRANTOR and its agents shall have the right to enter the Easement Area at all times to inspect the Easement Area to see that the GRANTEE is complying with all of its obligations hereunder.
- E. That this Permanent Subsurface Sewer Easement contains the entire agreement of the parties hereto, except that certain Temporary Construction Easement and any extension thereof, by and between Omaha Public Power District (GRANTOR's predecessor in interest) and the CITY recorded November 16, 2012 as Instrument No. 2012116857 with the Douglas County Register of Deeds, and that certain a Permanent Sewer Easement of even date herewith by and between GRANTOR and GRANTEE, and no representations, inducements, promises or agreement oral or otherwise, between the parties not embodied herein shall be of any force and effect. The failure of either party to insist in any instance on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall

not be construed as a waiver of such covenant, condition of option in any other instance. This Permanent Subsurface Sewer Easement cannot be changed or terminated orally, and can be modified only in writing executed by each party hereto.

- F. This Permanent Subsurface Sewer Easement runs with the land.
- G. The person signing this Permanent Subsurface Sewer Easement on behalf of the GRANTEE represents and warrants that he or she has the authority to bind the GRANTEE to the terms of this Permanent Subsurface Sewer Easement.
- H. At no point in time shall the GRANTEE or Grantee Parties store or use any hazardous materials upon the Easement Area.
- I. The GRANTEE agrees to indemnify, defend and save the GRANTOR harmless from and against any and all damages, losses, liabilities and claims (including reasonable costs of litigation and reasonable attorney fees) alleged against or incurred by the GRANTOR, for property damage, personal injury or death to persons (including, without limitation, third parties and the Grantee Parties) arising out of or in connection with the GRANTEE's use of the Easement Area or performance under this Permanent Subsurface Sewer Easement.
- J. The GRANTEE shall provide and maintain the following insurance coverages for its provision of work and activities within and about the Easement Area. Except as otherwise expressly set forth herein, the GRANTEE shall require each of its subcontractors to maintain the same insurance described in this Section. The GRANTEE and its subcontractors shall provide evidence of insurance as requested by GRANTOR to confirm that these requirements are satisfied.
 - a) Commercial General Liability Insurance. The GRANTEE shall maintain commercial general liability insurance, including coverage for rigger's liability, products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, personal injury liability, and explosion collapse underground hazard (XC&U), with limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate; with umbrella liability limits of \$9,000,000 per occurrence, and \$9,000,000 general aggregate.
 - b) Business Automobile Insurance. The GRANTEE shall maintain business auto insurance for any owned, non-owned, hired, or rented vehicle with a limit of \$2,000,000 combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.
 - c) Workers Compensation and Employers' Liability Insurance. The GRANTEE shall maintain statutory workers compensation insurance in accordance of the state where such compensation is payable. The GRANTEE shall also maintain employers' liability insurance with limits of \$1,000,000 per accident and \$1,000,000 each employee for injury.
 - d) General Requirements. GRANTOR shall be an additional insured under the GRANTEE's commercial general liability insurance as required under Subsection (a) above, and an additional insured under the business automobile insurance required under Subsection (b) above. In the event of a loss arising out of or related to the GRANTEE's or its subcontractors' activities within or about the Easement Area, all insurance required under this Section shall be primary (pay first) with respect to any other insurance which

may be available to the GRANTOR, regardless of how the "other insurance" provisions may read. The GRANTEE and Grantee Parties shall be responsible for insuring all of its own personal property, tools and equipment.

K. The GRANTOR may assign its rights under this Permanent Subsurface Sewer Easement upon written notice to the GRANTEE. The GRANTEE shall not be allowed to assign its rights and obligations under this Permanent Subsurface Sewer Easement to any other party without the prior written consent of the GRANTOR, which consent shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF the GRANTOR and GRANTEE have hereunto set his or their hand(s) this 23 day of February, 2015.

GRANTOR:

415 Leavenworth Street Limited Liability Company,
a Nebraska limited liability company

By: [Signature]

Name: Todd Heistand

Title: Manager

ACKNOWLEDGMENT

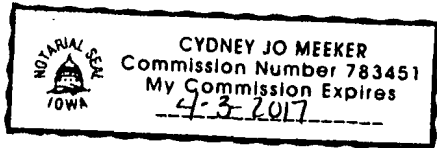
Iowa
STATE OF ~~NEBRASKA~~)
Harrison) SS
COUNTY OF ~~DOUGLAS~~)

On this 23 day of February, 2015 before me, a Notary Public, in and for said County, personally came Todd Heistand of 415 Leavenworth Street Limited Liability Company, a Nebraska Limited Liability Company, who is personally known to be the Manager of the company and the identical person whose name is affixed to the above instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said company.

WITNESS my hand and Notarial Seal the day and year last above written.

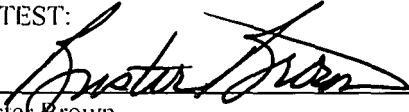
Notary Seal

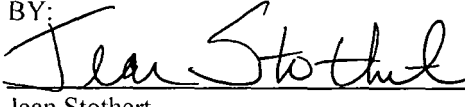
[Signature]
NOTARY PUBLIC




GRANTEE:

CITY OF OMAHA, a Municipal Corporation

ATTEST:

Buster Brown,
City Clerk, City of Omaha

BY:

Jean Stothert,
Mayor, City of Omaha

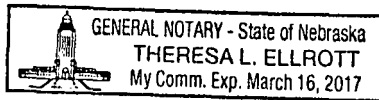
APPROVED AS TO FORM:

ASST. CITY ATTORNEY

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 12th day of March, 2015, before me, a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:




NOTARY PUBLIC

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 12th day of March, 2015, before me, a Notary Public in and for said County, personally came Buster Brown, City Clerk of the City of Omaha to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:

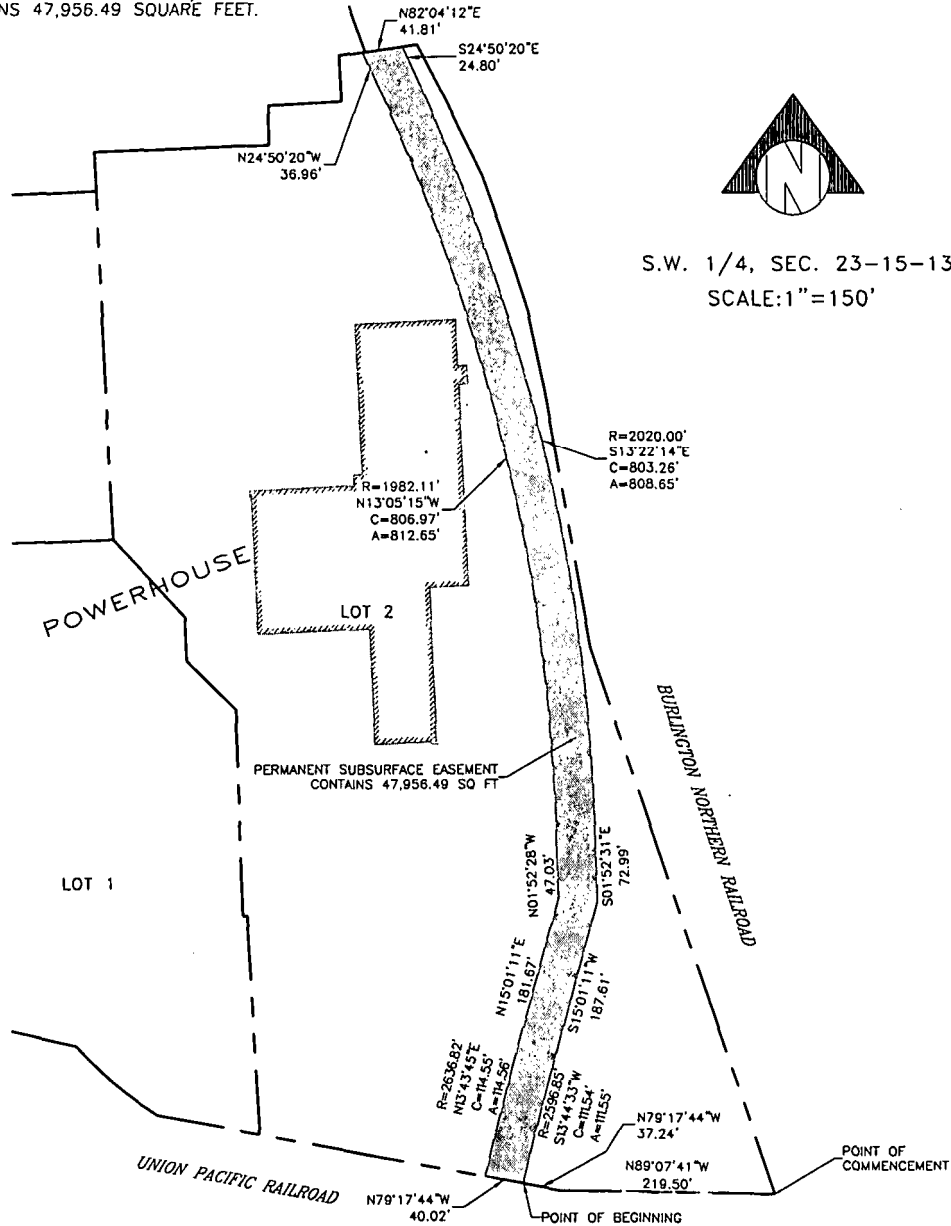



NOTARY PUBLIC


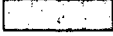

EXHIBIT "A"

LEGAL DESCRIPTIONS

A PERMANENT SUBSURFACE SEWER EASEMENT OVER THAT PART OF LOT 2, POWERHOUSE, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 2;
 THENCE NORTH 89°07'41" WEST (BEARINGS REFERENCED TO THE FINAL PLAT OF POWERHOUSE) FOR 219.50 FEET ALONG THE SOUTH LINE OF SAID LOT 2;
 THENCE NORTH 79°17'44" WEST FOR 37.24 FEET CONTINUING ALONG THE SOUTH LINE OF SAID LOT 2 TO THE TRUE POINT OF BEGINNING;
 THENCE NORTH 79°17'44" WEST FOR 40.02 FEET CONTINUING ALONG THE SOUTH LINE OF SAID LOT 2;
 THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 2636.82 FEET AND A LONG CHORD BEARING NORTH 13°43'45" EAST FOR 114.55 FEET) FOR AN ARC LENGTH OF 114.56 FEET;
 THENCE NORTH 15°01'11" EAST FOR 181.67 FEET;
 THENCE NORTH 01°52'28" WEST FOR 47.03 FEET;
 THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 1982.11 FEET AND A LONG CHORD BEARING NORTH 13°05'15" WEST FOR 806.97 FEET) FOR AN ARC LENGTH OF 812.65 FEET;
 THENCE NORTH 24°50'20" WEST FOR 36.96 FEET TO THE NORTH LINE OF SAID LOT 2;
 THENCE NORTH 82°04'12" EAST FOR 41.81 FEET ALONG THE NORTH LINE OF SAID LOT 2;
 THENCE SOUTH 24°50'20" EAST FOR 24.80 FEET;
 THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 2020.00 FEET AND A LONG CHORD BEARING SOUTH 13°22'14" EAST FOR 803.26 FEET) FOR AN ARC LENGTH OF 808.65 FEET;
 THENCE SOUTH 01°52'31" EAST FOR 72.99 FEET;
 THENCE SOUTH 15°01'11" WEST FOR 187.61 FEET;
 THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 2596.85 FEET AND A LONG CHORD BEARING SOUTH 13°44'33" WEST FOR 111.54 FEET) FOR AN ARC LENGTH OF 111.55 FEET TO THE POINT OF BEGINNING.
 CONTAINS 47,956.49 SQUARE FEET.

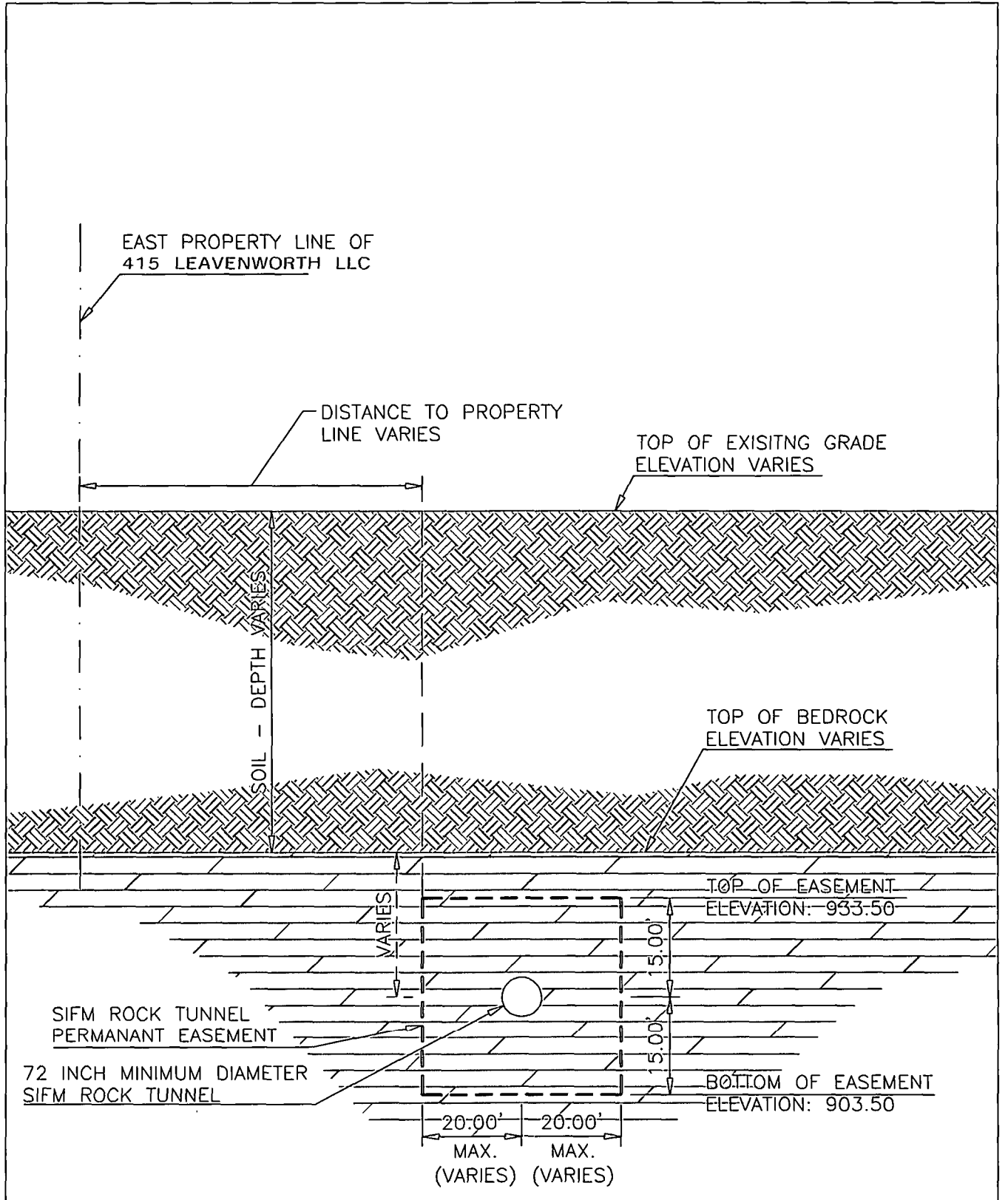



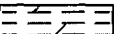

CITY OF OMAHA - PUBLIC WORKS DEPARTMENT

	TEMP ACCESS EASEMENT _____ S.F.
	PERMANENT SUBSURFACE EASEMENT <u>47,956.49</u> S.F.
	TEMPORARY EASEMENT _____ S.F.

PROJECT NO. OPW 52223
 PAGE 1 of 1

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<p>LEGEND</p> <p>----- ROCK TUNNEL PERMANANT EASEMENT ENVELOPE BOUNDARY</p> <p> SOIL</p> <p> BEDROCK</p>		 HDR Engineering, Inc.	OPW-52223 SOUTH INTERCEPTOR FORCE MAIN						
			SIFM ROCK TUNNEL ACROSS NUSTYLE PROPERTY 72 INCH MINIMUM DIAMETER ROCK TUNNEL PERMANANT EASEMENT TYPICAL SECTION EXHIBIT B						
		January 20, 2015	<table border="1"> <tr> <td>FILENAME</td> <td>CONSTRUCTION LOCATIONS</td> </tr> <tr> <td>SCALE</td> <td>NOT TO SCALE</td> </tr> </table>	FILENAME	CONSTRUCTION LOCATIONS	SCALE	NOT TO SCALE	Page 1 of 1	
FILENAME	CONSTRUCTION LOCATIONS								
SCALE	NOT TO SCALE								