



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE March 6, 2007

SUBJECT: Brighthouse License Agreement

DEPARTMENT:

RECOMMENDED MOTION:

To approve the attached license agreement with Brighthouse to provide high speed internet access to the Port Orange Regional Library for a credit of \$150 per month on the City's high-speed services and for the City to retain ownership of the conduit/fiber

SUMMARY:

Staff has been working on the overall technology plan for the City of Port Orange. Part of that plan is to continue the expansion of fiber optic lines throughout the Municipal Complex. Brighthouse has agreed to provide fiber optic service to the Port Orange Regional Library. In turn, Bright House will provide the City with a credit of \$150.00 per month on other high-speed services; and the conduit/fiber will become the property of the City should service ever be abandoned at the library. Staff recommends approval.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Signed	Date
FINANCE DEPARTMENT	Approved as to Budget Requirements	Date
CITY ATTORNEY <i>M.W. Kelt</i>	Approved as to Form and Legality	Date <i>3-9-07</i>
CITY MANAGER <i>[Signature]</i>	Approved Agenda Item For:	<i>3/20/07</i>

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

Return Recorded Document to:
Attention: Records Clerk
1000 City Center Circle
Port Orange FL 32129

This Document Prepared by
Margaret T. Roberts, City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

This Space Reserved for Recording Data

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into by and between the CITY OF PORT ORANGE, FLORIDA, a chartered municipal corporation ("City") as "Licensor," and BRIGHHOUSE NETWORKS ("Brighthouse"), as "Licensee."

PREMISES

WHEREAS, Brighthouse has requested the right to use the conduit owned by the City to run fiber optic cable to the Port Orange Library located on the City's property, as depicted on Exhibit "A," attached hereto and incorporated herein by reference; and

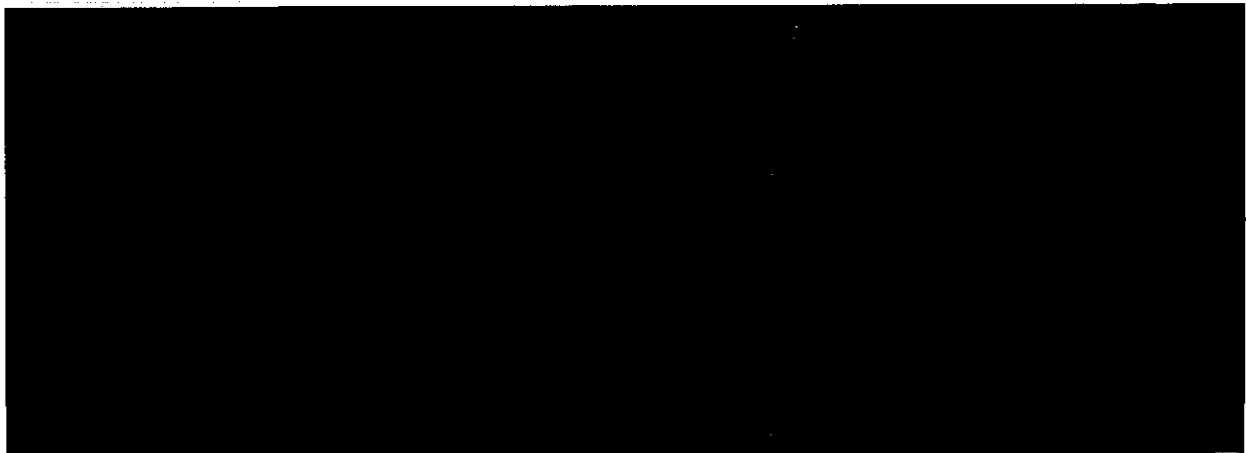
WHEREAS, Brighthouse hereby warrants to the City that Brighthouse has full power and authority to enter into this License Agreement, and that Brighthouse's agreement to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance with the declaration of covenants and restrictions, as may be amended from time to time; and

WHEREAS, the conduit for running the fiber optic cable to the Port Orange Library is located Adjacent to City Center Boulevard and South of City Center Circle, as shown on the sketch attached as Exhibit "A."

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The City hereby grants to Brighthouse a license to enter upon and to utilize the conduit located Adjacent to City Center Boulevard and South of City Center Circle, for the purpose of installation, maintenance, repair, replacement and removal of fiber optic cable for the Port Orange Library (hereinafter collectively referred to as the "Improvements") approved by the City in the location as depicted in Exhibit "A."

2. All Improvements, uses and activities shall comply with the local ordinances and the Land Development Code regarding fiber optic cable, and with the terms and conditions set forth in this License Agreement and exhibits hereto.



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3. Brighthouse assumes all responsibility for the maintenance and, if necessary, replacement of all Improvements.

4. Brighthouse agrees, upon thirty (30) days written notice from the City, to maintain, repair or replace all Improvements that require maintenance, repair or replacement. If the City is not notified in writing of a satisfactory plan to remedy within the specified time, the City reserves the right to remove all Improvements upon thirty (30) days written notice to Brighthouse and at the sole cost and expense of Brighthouse.

5. The City reserves the right to request removal of the Improvements in the event that the City needs to utilize the property for City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses, subject to the establishment of a temporary replacement location approved by Brighthouse. The City shall endeavor to give at least thirty (30) days prior notice to Brighthouse. If the Improvements are not removed within the time specified by the City, or in cases where emergency work by the City becomes necessary, the City may remove or cause to be removed the Improvements without any liability to the City or obligation to replace same upon completion of the City project.

6. Brighthouse agrees that no Improvements shall be made except as depicted in Exhibit "A" or subsequently approved amendments thereto. However, Improvements may be maintained, repaired, replaced and removed.

7. Notwithstanding the date of execution, the license granted by this License Agreement shall be effective commencing **November 1, 2006**, and shall continue until terminated in accordance with the provisions specified herein.

8. Either party may terminate this License Agreement upon giving thirty (30) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. Upon termination by either party, the City shall have the option of requiring all Improvements to be removed or abandoned in place by Brighthouse or maintained in their present state by the City and without further right or obligation by Brighthouse. If Brighthouse is voluntarily or involuntarily dissolved or ceases to function in accordance with the articles of incorporation and by-laws of such corporation, or Licensee terminates this License Agreement or otherwise fails to remain in good standing and in compliance with this License Agreement, the City may maintain and repair the Improvements and the City shall not be obligated to either maintain or repair the Improvements and the City shall not be liable for either undertaking or failing to maintain or repair the Improvements.

9. This license is given to Brighthouse for a monthly fee of \$150.00 to be issued in the form of a credit to the City to be used for any services purchased by the City from Brighthouse commencing on November 1, 2006, and continuing monthly for the term of this License Agreement. In the event Brighthouse discontinues service to

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[Signature]

the Port Orange Library, Brighthouse agrees to transfer ownership to the City of the Fiber (no electronics) in the conduit located on the property. Brighthouse acknowledges the City is the legal title holder to the property described herein and agrees never to deny such title or to claim title in Brighthouse's name.

10. This license is personal to Brighthouse and shall not inure to the successors or assigns of Brighthouse. The rights, privileges and permission granted herein shall not be assignable by Brighthouse in whole or in part.

11. Brighthouse shall exercise the rights, privileges and permission granted herein at Brighthouse's own risk. Brighthouse shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the property. Further, Brighthouse shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property, the exercise of the license granted by this License Agreement, the failure on the part of Brighthouse to comply with any of the provisions specified herein, or the City's removal of any Improvements to be located within the subject licensed area described in Exhibit "A" or otherwise permitted by this License Agreement. The City shall not be liable to Brighthouse if for any reason Brighthouse's use of the property is hindered or disturbed.

12. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the Licensor; and to Bill Gilliam, Vice President of Broadband Solutions, Brighthouse Networks, 65 South Keller Road, Orlando, Florida 32810, for the Licensee, or as otherwise designated in writing to all respective parties.

13. This License Agreement shall not be recorded in the Public Records of Volusia County, Florida.

14. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.



IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

LICENSOR

Printed Name: _____

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Attest: _____
Kenneth W. Parker, City Manager

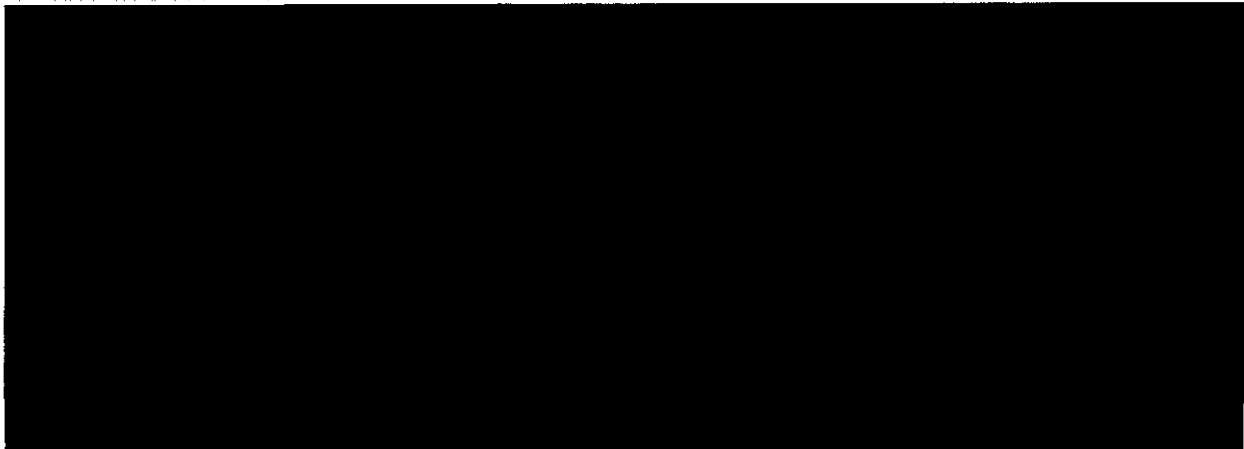
Printed Name: _____

Date: _____
(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the CITY OF PORT ORANGE, FLORIDA, a chartered municipal corporation, and who [] are personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
*Print or type or affix stamp with notary name
Commission and expiration date*



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Handwritten initials/signature in a circle.

WITNESSES:

Carmen Urias
Printed Name: Carmen Urias

Diana Acuña
Printed Name: DIANA ACUÑA

Cindy Sosa
Printed Name: CINDY SOSA

Tim Cherry
Printed Name: TIM CHERRY

LICENSEE:

BRIGHOUSE NETWORKS

By: Bill Gilliam
Bill Gilliam,
Vice President of Broadband Solutions

Attest: Jarrod Worthington
Printed Name: JARROD WORTHINGTON
Title: COMMERCIAL ACCESS SUPERVISOR

Date: Feb 16, 2007

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA



JARROD WORTHINGTON
MY COMMISSION # DD 374071
EXPIRES: November 21, 2008
Bonded Thru Budget Notary Services

The foregoing instrument was acknowledged before me this 16 day of FEBRUARY, 2007 by Bill Gilliam and _____ the Vice President and _____ respectively, of Broadband Solutions, duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of BRIGHOUSE NETWORKS, and who are personally known to me, or have produced _____ N/A as identification.

Jarrod Worthington
Notary Public, State of Florida at Large
Print or type or affix stamp with notary name
Commission and expiration date



JARROD WORTHINGTON
MY COMMISSION # DD 374071
EXPIRES: November 21, 2008
Bonded Thru Budget Notary Services



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EXHIBIT A

Legal Description: The conduit for running the cable to the Port Orange Library is located Adjacent to City Center Boulevard and South of City Center Circle, within the City of Port Orange, Volusia County, Florida.

See attached sketch of location.

EXHIBIT A

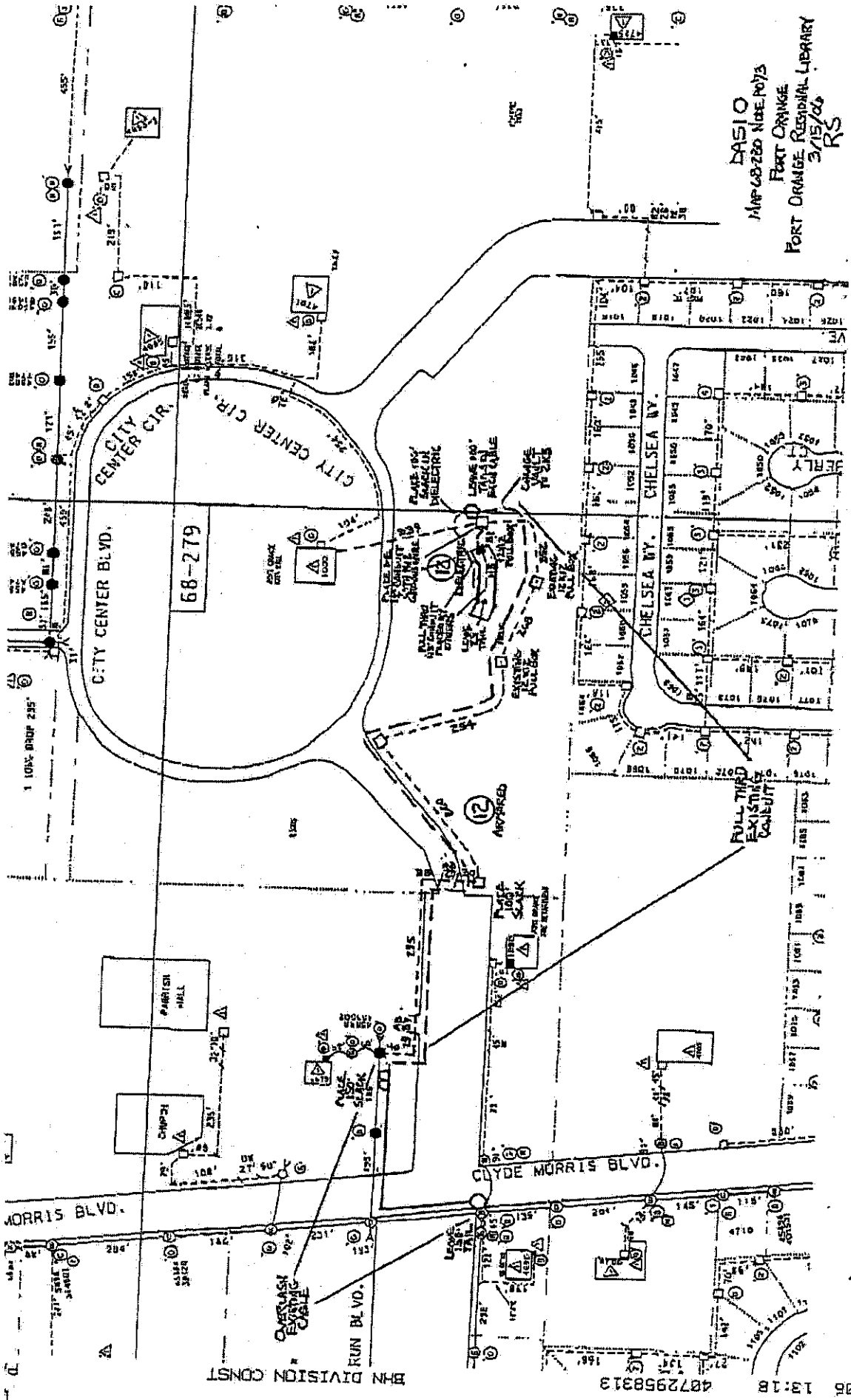
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CPO License Agmt
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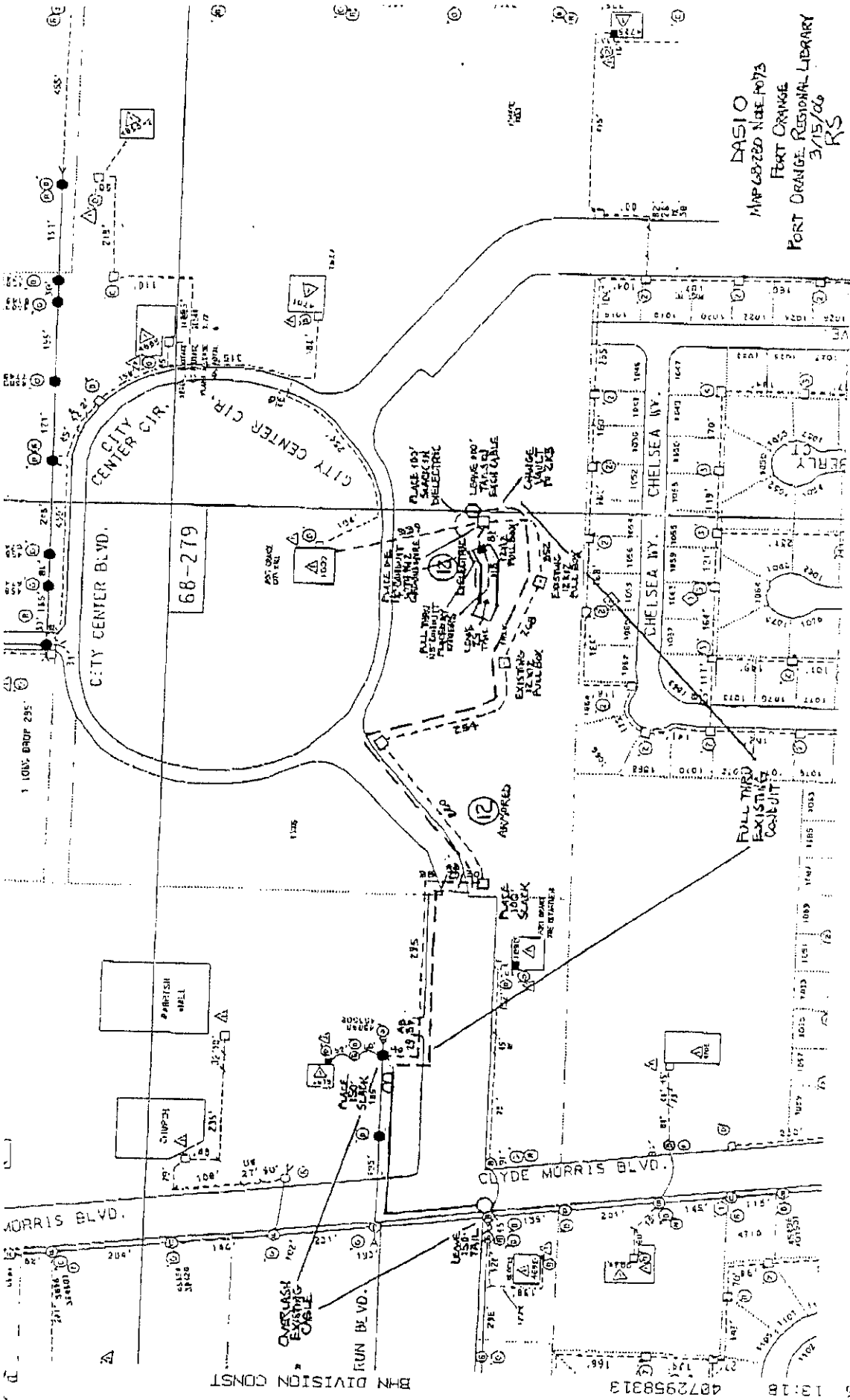
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 RS