

N.E. 27TH L.I.D. STREET VACATION

Portions of N.E. Holland Street and N.E. 27th Avenue of the duly recorded Plat of Irvington Park, Blocks 100 to 103 Inclusive, Multnomah County Plat Records, situated in the Northwest one-quarter of Section 13, Township 1 North, Range 1 East, of the Willamette Meridian in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

TRACT-1 – BEING A PORTION OF N.E. HOLLAND STREET

BEGINNING at the Southeast corner of Block 103 of said Plat;

Thence, South 01°34'52" West, a distance of 52.29 feet, to the Northeast corner of Block 100 of said Plat;

Thence, along the North line of said Block, North 71°17'27" West, a distance of 27.00 feet, to the Northwest corner of said Block, also being a point on the West line of said Plat;

Thence, along said West line, North 02°05'54" East, a distance of 52.15 feet, to the Southwest corner of said Block 103;

Thence, along the South line of said Block, South 71°17'27" East, a distance of 26.51 feet to the POINT OF BEGINNING.

Containing 1,337 Square Feet.

TOGETHER WITH THE FOLLOWING TRACT-2 – BEING A PORTION OF N.E. 27TH AVENUE

COMMENCING at the Northeast corner of Block 100 of said Plat;

Thence, along the East line of said Block, South 01°34'52" West, a distance of 19.85 feet to the TRUE POINT OF BEGINNING of this tract;

Thence, South 88°25'08" East, a distance of 7.00 feet, to a point of non-tangent circular curve;

Thence, Southeasterly, a distance of 37.90 feet along the arc of a non-tangent circular curve to the left of which the radius point bears South 88°25'08" East, a radial distance of 45.00 feet, and having a central angle of 48°15'01" (long chord bears, South 46°40'09" East, a distance of 36.79 feet), to a point of tangency;

Thence, South 46°40'09" East, a distance of 7.99 feet;

Thence, South 01°34'52" West, a distance of 11.38 feet, to the South line of said Plat;

Thence, along said South line, North 72°52'42" West, a distance of 29.06 feet, to the Southwest corner of said Block, also being the Southwest corner of said plat;

Thence, along the West line of said Plat, North 01°34'52" East, a distance of 42.49 feet to the POINT OF BEGINNING.

Containing 733 Square Feet.

TOGETHER WITH THE FOLLOWING TRACT-3 – BEING A PORTION OF N.E. HOLLAND STREET

COMMENCING at the Southwest Corner of Block 102 of said Plat;

Thence, along the South line of said Block 102, South $71^{\circ}17'27''$ East, a distance of 12.83 feet to the TRUE POINT OF BEGINNING of this tract;

Thence, continuing along said South line, South $71^{\circ}17'27''$ East, a distance of 265.02 feet, to the East line of said Plat;

Thence, along said East line, South $01^{\circ}49'18''$ West, a distance of 52.25 feet, to the Northeast corner of Block 101;

Thence, along the North line of said Block 101, North $71^{\circ}17'27''$ West, a distance of 272.63 feet;

Thence, North $18^{\circ}42'33''$ East, a distance of 3.00 feet;

Thence, South $71^{\circ}17'27''$ East, a distance of 39.91 feet;

Thence, North $18^{\circ}42'33''$ East, a distance of 25.00 feet;

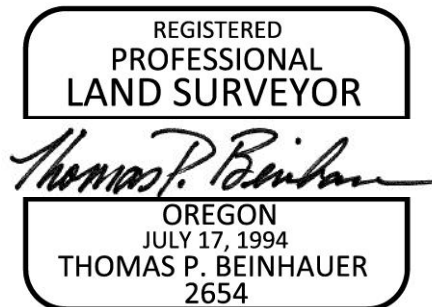
Thence, North $71^{\circ}17'27''$ West, a distance of 47.48 feet;

Thence, North $18^{\circ}42'33''$ East, a distance of 22.00 feet to the South line of Block 102, also being the POINT OF BEGINNING.

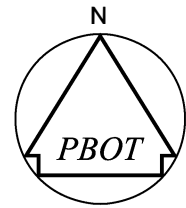
Containing 12,421 Square Feet.

Containing 14,491 total Square Feet.

Project No. 40683
Revised: December 10, 2019



EXPIRES 12-31-2019



SCALE: 1"=60'

REVISÉ: DÉCEMBRE 10, 2019

R/W#	PROJ# 40683	N.E. 27TH AVENUE L.I.D.	PREPARED BY: TPB	DATE: 6-25-19
SURVEY SECTION 1120 S.W. 5TH AVE., SUITE 800 PORTLAND, OREGON 97204 PHONE 503-823-7150		STREET VACATION N.E. 27TH AVENUE AND N.E. HOLLAND STREET		

AFTER RECORDING, RETURN TO:

City of Portland
Portland Fire & Rescue
55 SW Ash Street
Portland, OR 97204

RWA #8825

EMERGENCY VEHICLE ACCESS EASEMENT AND MAINTENANCE AGREEMENT**RECITALS**

A. McInnis Investments, LLC (“Declarant”) is the record owner of a certain parcel of real property located in the City of Portland, Multnomah County, Oregon described in Section 1 below (“Parcel”).

B. The City of Portland has initiated a request for Street Vacation RWA #8825.

C. Declarant desires to provide for an easement for emergency vehicle access in the location described below on Exhibit A and depicted on Exhibit B, respectively, attached hereto, on the terms and conditions described in this Agreement.

D. Declarant has further agreed to record this Agreement in the real property records of Multnomah County, Oregon to provide record notice of the terms of this Agreement, and to bind subsequent owners of the Parcels.

Now therefore, in consideration of terms and conditions of this Agreement, Declarant declares as follows:

AGREEMENT

1. LEGAL DESCRIPTIONS. The property that is subject to this Agreement is as follows:

Parcel #1: That portion of vacated NE Holland Street, in the City of Portland, County of Multnomah, State of Oregon, as described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

2. CREATION EASEMENT AND MAINTENANCE AGREEMENT FOR ELEMENTS. Declarant conveys the rights under this Agreement to the successors in interest in the Parcel as follows:

A reciprocal non-exclusive easement (the “Easement”) for the benefit of each Parcel to access, use, maintain, construct, re-construct, and repair the access

roadways and other Elements (as defined below) in the location described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Declarant covenants and agrees that the Parcel shall be subject to the benefits and burdens of this Agreement immediately upon execution of this Agreement.

3. TERM AND BINDING EFFECT. This Agreement shall be effective as of the date of the signatures below. Once effective, Declarant and subsequent owners and assigns may not modify, withdraw from, terminate, or dissolve this Agreement without the written approval of the City. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes burdening each Parcel and shall be binding on Declarant, Declarant's heirs, executors, administrators, successors, and assigns and all current and future owners of the Parcels and all persons claiming title to such property.

4. PURPOSE. The purpose of this Agreement is to provide for an easement in perpetuity benefitting and burdening each of the Parcels as described in Section 1 above for emergency vehicle access to the police department, fire department and ambulance service employees and similar emergency assistance personnel authorized by the City to provide emergency assistance, and to provide for the repair, maintenance and replacement of and access to the roadways and "no parking" signage within the Easement area (the "Elements").

5. MODIFICATION AND TERMINATION. Once effective, this Agreement and the Easement shall continue in perpetuity, unless or until modified, superseded or terminated by a written instrument executed by all current owners of the Parcels and approved by Portland Fire & Rescue, in writing, and recorded in the real property records of Multnomah County, Oregon.

6. RELATIONSHIP TO OTHER EASEMENTS OF ENCUMBRANCES. The Easement is non-exclusive, and is granted subject to all prior easements or encumbrances then of record. Declarant and Declarant's successors and assigns shall be allowed use of the property subject to the Easement so long as such use does not interfere with the use of the Easement for its intended purpose.

7. ACCEPTANCE OF TERMS – DEED. By acceptance of a deed conveying title to any of the Parcels, future owners of any Parcel will become parties to this Agreement, whether or not expressly stated in any conveyance.

8. MAINTENANCE AND REPAIR OF ELEMENTS AND EASEMENT. Declarant and Declarant's successors and assigns covenant and agree to maintain the Elements in good condition and repair, and in compliance with the then applicable Oregon Specialty Codes and the Portland Fire Code. The fire apparatus access roads shall be constructed and maintained with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds and provide all weather driving capabilities. Elements shall not be modified or altered without building permits when required by the applicable building code. The cost of required repair and maintenance of Elements shall be shared by the Parcel owners in proportion to the usable square footage of the above-grade improvements located on such Parcel.

9. RESTRICTIONS; ENFORCEMENT. Declarant and Declarant's successors and assigns covenant and agree that the Easement area shall be kept open and unimpeded at all times. Parking within the Easement area shall be prohibited. Declarant and Declarant's successors and assigns covenant and agree to maintain "No Parking" signs within the Easement area. The fire apparatus access roads shall be marked with permanent "No Parking-Fire Lane" signs. The signs shall have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background. Signs shall be posted on both sides of the fire apparatus access roads every 100 feet. No structures or installations may be constructed or installed within the Easement area that would impede the open use of the Easement area. Declarant and Declarant's successors and assigns covenant and agree to enforce the provisions of this Section.

10. CONSIDERATION. Part of the consideration for this Covenant is to provide for compliance with Section 503 of the Portland Fire Code ("Fire Code") which details fire apparatus access requirements.

11. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

12. NOTICES. Any notice under this Agreement shall be made in writing and sent by hand delivery, certified mail, return receipt requested, or overnight courier, to the City of Portland and to Declarant at the addresses set forth below. Notices to any successor to Declarant shall be made in the same manner, in care of the street address of the owner's Parcel, or in the event the owner does not maintain an address at the subject Parcel, in care of the current property tax notification address of the Parcel; provided, however, that any owner can change the notification address by written notice to each other current owner of any Parcel and to the City of Portland.

City of Portland:
Portland Fire & Rescue
55 SW Ash Street
Portland, OR 97204

Declarant:
McInnis Investments, LLC
Attn: Steve McInnis
PO Box 30087
Portland, OR 97294

With copy to:
City Attorney's Office
1221 SW 4th Avenue, Room 430
Portland, Oregon 97204

13. INDEMNIFICATION. The Declarant and their successors and assigns, as applicable, shall indemnify, defend and hold harmless the City of Portland, its officers, agents, officials, and employees against any and all claims, demands, actions, and suits, including attorneys' fees and costs to the extent resulting from such party's violation of the terms of this Agreement.

14. THIRD PARTY BENEFICIARY. Declarant agrees that the City of Portland is intended to be the sole third party beneficiary of this Agreement, and that this Agreement shall not be modified or suspended without the prior written approval of the City of Portland.

15. AUTHORITY TO EXECUTE COVENANT. The Declarant expressly represents and warrants that the persons executing this Covenant are duly authorized to do so. This Covenant may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

16. SEVERABILITY. Each provision of this Covenant shall be independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Covenant.

IN WITNESS WHEREOF, the Declarant has executed this Agreement as of the date set forth below.

DECLARANT:

IN WITNESS WHEREOF, McInnis Investments, LLC, and Oregon limited liability company, pursuant to its Operating Agreement, duly and legally adopted, has caused these presents to be signed by its Member, this _____ day of _____, 20____.

MCINNIS INVESTMENTS, LLC,
AN OREGON LIMITED LIABILITY COMPANY

By: _____
Member

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, 20____, by _____ as a Member of McInnis Investments, LLC, an Oregon limited liability company.

Notary Public for (state)_____
My Commission expires _____

APPROVED AS TO FORM:

City Attorney

ACCEPTED and APPROVED:

Bureau Director or designee

8825/EVAE

DRAFT

EXHIBIT A**N.E. 27TH L.I.D.
EMERGENCY VEHICLE ACCESS EASEMENT**

A portion of N.E. Holland Street, 50.00 feet in width, of the duly recorded Plat of Irvington Park, Blocks 100 to 103 Inclusive, Multnomah County Plat Records, situated in the Northwest one-quarter of Section 13, Township 1 North, Range 1 East, of the Willamette Meridian in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

COMMENCING at the Southeast corner of Block 102 of said Plat;

Thence, along the East line of said plat, South 01°49'18" West, a distance of 0.52 feet to the POINT OF BEGINNING;

Thence, continuing along said East line, South 01°49'18" West along said line, a distance of 25.08 feet;

Thence, North 71°17'27" West, a distance of 133.31 feet, to a point of a tangent circular curve;

Thence, Westerly, a distance of 44.45 feet along the arc of a circular curve to the left having a radius of 99.00 feet and through a central angle of 25°43'24" (long chord bears, North 84°09'09" West, a distance of 44.07 feet), to a point of a reverse circular curve;

Thence, Westerly, a distance of 55.22 feet along the arc of a reverse circular curve to the right having a radius of 123.00 feet and through a central angle of 25°43'24" (long chord bears, North 84°09'09" West, a distance of 54.76 feet), to a point of non-tangency;

Thence, North 18°42'33" East, a distance of 24.00 feet, to a point of a non-tangent circular curve;

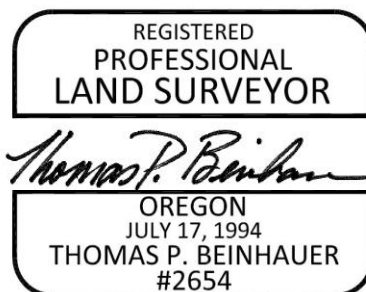
Thence, Easterly, a distance of 44.45 feet along a non-tangent curve to the left of which the radius point lies North 15°59'59" East a distance of 99.00 feet, a central angle of 25°43'24" (long chord bears, South 84°09'09" East, a chord distance of 44.07 feet), to a point of a reverse circular curve;

Thence, Easterly, a distance of 55.22 feet along the arc of a reverse circular curve to the right having a radius of 123.00 feet and through a central angle of 25°43'24" (long chord bears, South 84°09'09" East, a distance of 54.76 feet), to a point of tangency;

Thence, South 71°17'27" East, a distance of 126.02 feet to the POINT OF BEGINNING.

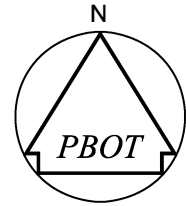
Containing 5,504 Square Feet.

RWA #8825
Project No. 40683
Revised: January 8, 2021

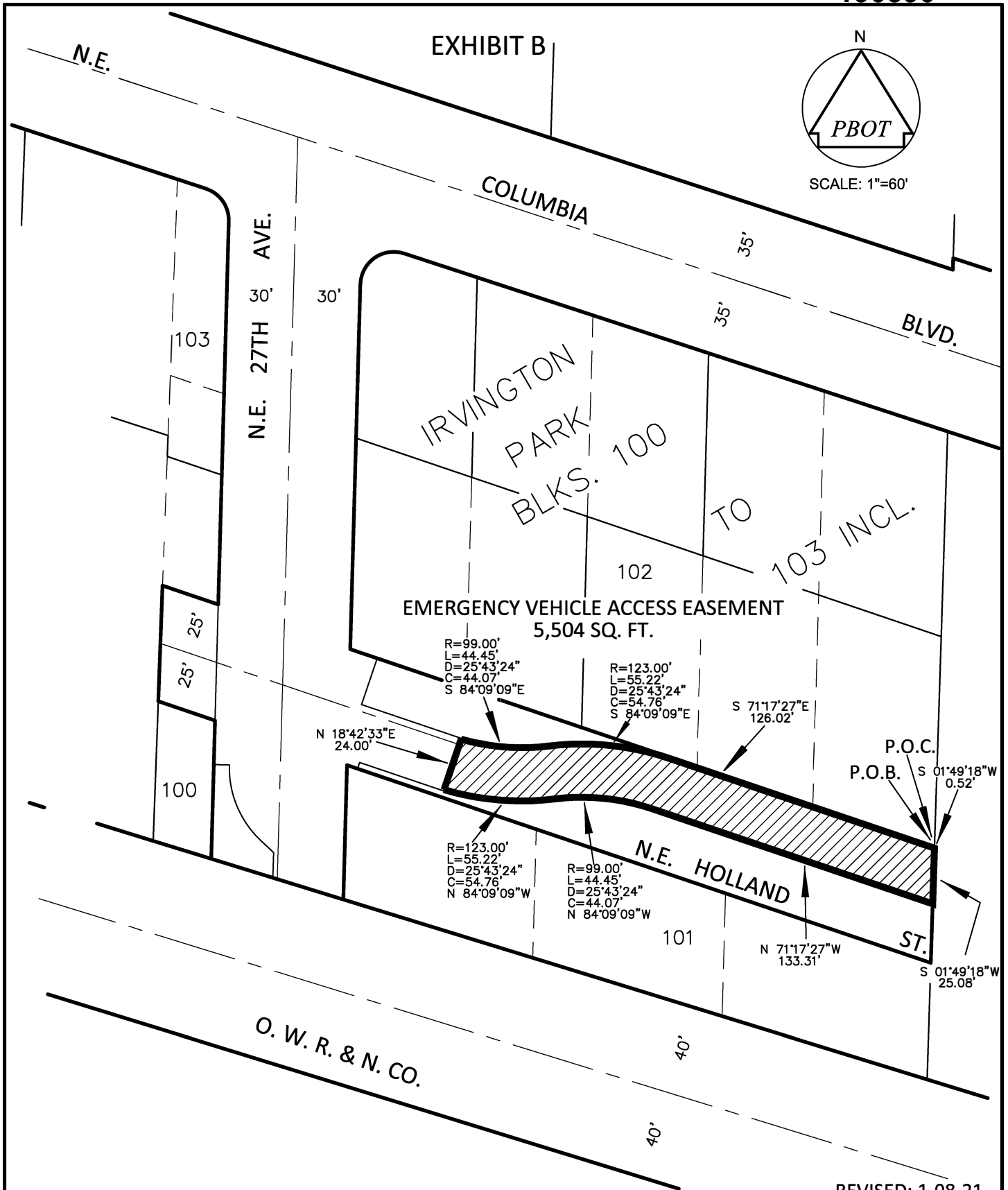


EXPIRES 12-31-2021

EXHIBIT B



SCALE: 1"=60'



REVISED: 1-08-21

R/W# 8825

PROJ# 40683

N.E. 27TH AVENUE L.I.D.

PREPARED BY: TPB

DATE: 1-04-21

SURVEY SECTION
1120 S.W. 5TH AVE., SUITE 800
PORTLAND, OREGON 97204
PHONE 503-823-7150

EMERGENCY VEHICLE ACCESS EASEMENT
N.E. 27TH AVENUE
AND N.E. HOLLAND STREET

PBOT
PORTLAND BUREAU OF TRANSPORTATION

Grantor's address:

McInnis Investments, LLC
 PO Box 30087
 Portland, OR 97294

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("this Easement") is made and entered into on the last date of mutual execution ("the Effective Date") by and between McInnis Investments LLC, an Oregon limited liability company ("Grantor"), and the City of Portland ("Grantee"), an Oregon municipal corporation, by and through its Bureau of Parks and Recreation. In this Easement, Grantee and Grantor may each be referred to as a "Party" and jointly as "the Parties."

RECITALS

I. Grantor is the owner of certain real property in the City of Portland, County of Multnomah, State of Oregon, and wishes to grant a conservation easement to Grantee, with the easement area more particularly described as follows ("the Easement Area").

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

Contains 3,914 square feet, more or less.

II. The Easement Area possesses resource values of importance to Grantee. Specifically, the Easement Area contains or offers the following conservation and resource values (collectively, "the Conservation Values"):

- a) The Easement Area contains four large evergreen trees including two Douglas Fir trees and two Western Red Cedar trees (collectively, "the Trees");
- b) The Trees are healthy, mature, native evergreen conifers that are high value for retention, especially in a low-canopy area;
- c) The Portland Urban Forestry Management Plan specifically calls out an objective to retain groves of evergreen conifers in the Goals, Objectives, and Performance Measures Section (2004).

R/W # 8825

After Recording Return to:

Lance Lindahl, City of Portland

1N1E13BB TL 2600, 2700 & 2800

1120 SW 5th Avenue, Suite 1331

Portland, OR 97204

Tax Statement shall be sent to: No Change

III. Grantee desires to identify, protect, and preserve in perpetuity the Conservation Values of the Easement Area.

IV. In granting this Easement, Grantor agrees to honor the intentions of Grantee to preserve and protect the Conservation Values of the Easement Area in perpetuity according to this Easement's terms.

CONVEYANCE AND TERMS AND CONDITIONS

- 1) **Grant.** In consideration of the foregoing and the mutual terms, conditions, and restrictions contained in this Easement, Grantor conveys to Grantee, and Grantee accepts, this Easement on, over and across the Easement Area of the nature, to the extent, and on the terms set forth in this Easement.
 - 2) **Purposes.** Grantee intends that this Easement will limit Grantor's uses of the Easement Area to activities consistent with the purpose of this Easement and protective of the Trees, as identified below:
 - a) To protect and preserve the Conservation Values of the Easement Area; and
 - b) To ensure the Trees are protected, and, except as provided in this Easement, to prevent uses of the Easement Area that will materially impair the Conservation Values of the Easement Area.
 - 3) **Rights Conveyed to Grantee.** To accomplish the purposes of this Easement, Grantor conveys to Grantee, and Grantee accepts, the following rights:
 - a) The right to maintain, preserve and protect the Conservation Values of the Easement Area pursuant to the terms and conditions of this Easement;
 - b) The right to enter the Easement Area at any time from the adjacent public right-of-way or by way of another route agreed upon by the Parties, for the purpose of inspecting, improving and managing improvement to and management of the Easement Area in a manner consistent with the intent of this Easement.
 - c) The right to prevent, through appropriate enforcement actions, including injunction, any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement, and require, pursuant to Section 7 "Grantee Covenants and Grantee Remedies," the restoration of such features of the Easement Area as may be damaged by any inconsistent activity or use;
 - d) The right to keep the Easement Area in a good and safe condition, consistent with like properties held by Grantee for natural area purposes;
 - e) The right to assign or transfer Grantee's interest in this Easement in accordance with Section 10, "Transfer or Assignment;"
 - f) The right to install planting, signage, or other elements to delineate the boundaries of the Easement Area;
 - g) Nothing contained herein imposes any requirement on Grantee or its successors or assigns to exercise the rights or to engage in any of the activities or uses described in this Section
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4) **Rights and Obligations of Grantor.**

- a) Grantor reserves for itself and for its successors and assigns any and all rights accruing from its interest in the Easement Area, including the right to engage in, or permit or invite others to engage in, all permitted uses that are consistent with the purpose and terms of this Easement and are not expressly prohibited herein. Without limiting the generality of the foregoing, Grantor expressly reserves the right, for itself and for its successors and assigns, to conduct the following activities and engage in the following uses of the Easement Area:
 - i) To engage in, and permit others to engage in, passive, non-consumptive recreational uses of the Easement Area that are consistent with this Easement and that do not adversely affect the Conservation Values of the Easement Area;
 - ii) Take reasonable steps in cooperation with public or nonprofit agencies to restore, enhance, and protect the Conservation Values of the Easement Area.
 - b) Grantor shall maintain the Trees in a safe condition, consistent with the purpose and terms of this Easement and the provisions of Title 11 of the Portland City Code or any subsequent code, rule or law that supersedes Title 11.
 - c) Any redevelopment of Grantor's larger property will be done in a manner that protects the Trees in compliance with the Tree Protection Plan (Exhibit C).
 - d) Unless expressly agreed to in writing by Grantee or indicated in the Tree Protection Plan (Exhibit C) within the Easement Area, Grantor shall not:
 - i) Use any chemical herbicides, pesticides or fertilizers;
 - ii) Remove or disturb the Trees, including the harvesting of the Trees or other forest resources;
 - iii) Place debris or fill or otherwise alter the topography of the Easement Area, including the excavation or removal of sand, gravel or rock from the Easement Area;
 - iv) Pave any portion of the Easement Area that is not already paved as of the Effective Date of this Easement.
 - v) Undertake or authorize any subsurface or surface construction or place or install structures of any kind within the Easement Area;
 - vi) Engage in any activity that will or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;
 - vii) Install roads or overpasses through or over Easement Area;
 - viii) Divide, subdivide or partition the Easement Area;
 - ix) Drain, fill, dredge, ditch or dike any portion of the Easement Area or alter any watercourses, water impoundments or wetlands within the Easement Area;
 - x) Operate or park motorized vehicles, including, but not limited to, cars, trucks, or construction equipment on any area of the Easement Area that is not paved
 - xi) Introduce nonnative plant or animal species to the Easement Area;
 - xii) Discharge firearms or engage in hunting or trapping within the Easement Area.
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5) **Grantor's Covenants.**

a) Grantor shall comply with the terms of this Easement.

6) **Acts Beyond Parties' Control.** Nothing contained in this Easement may be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Easement Area resulting from causes beyond that Party's control including, without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

7) **Grantee Covenants and Grantee Remedies.**

a) Grantee shall comply with the terms of this Easement. Grantee has the right to enforce the terms of this Easement against Grantor, its successors and assigns.

b) If Grantee determines a violation of the terms of this Easement has occurred or is threatened, Grantee must give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cause the violation to be cured within thirty (30) days after receipt of notice thereof (or, where the violation cannot reasonably be cured within a 30-day period, Grantor fails to begin curing the violation within such period or fails to continue diligently curing such violation until cured), Grantee will have the following rights and remedies, in addition to all other rights under this Easement:

i) To bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement;

ii) To enjoin the violation by temporary or permanent injunction;

iii) To recover any damages to which it may be entitled for violation of the terms of this Easement; and

iv) If the violation results in injury to the Easement Area, to require the restoration of the Easement Area to the condition that existed prior to any such injury.

c) If Grantee reasonably determines that, due to a violation of the terms and conditions of this Easement by Grantor, immediate action is required to prevent or mitigate significant damage to the Conservation Values, Grantee may, at Grantor's cost, take immediate action to prevent, mitigate, or repair damage without prior written notice to Grantor or without waiting for the period provided for cure to expire. Grantee must make reasonable efforts to contact Grantor prior to exercising this right.

d) Nothing in this Easement shall prevent Grantee from exercising any of its regulatory authority as provided under applicable law, including the denial of or conditioning any permits applied for by Grantor or Grantor's successor and assigns.

8) **Representations and Warranties.**

a) **Grantor's Representations and Warranties**

- i) To the knowledge of Grantor, the Easement Area is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use and Grantor will continue to comply with all state and federal environmental laws and regulations relating to pollutants or hazardous, toxic or dangerous substances; and
- ii) There is no pending or threatened litigation affecting, involving, or relating to the Easement Area.

b) **Grantee's Representations and Warranties**

- i) Grantee is a qualified organization within the meaning of Internal Revenue Code section 170(h) and the applicable regulations promulgated thereunder and is authorized to acquire and hold conservation easements under ORS 271.715 et seq.; and
- ii) Grantee has all requisite corporate authorization and authority necessary to enter into this Easement and to carry out Grantee's obligations hereunder.

9) **Indemnification.**

Grantor agrees to defend, indemnify and hold Grantee and its officers, agents, and employees harmless against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from: (a) a release or threat of release of hazardous substances, as defined in ORS 465.200(16), into the soil, or groundwater, on the Easement Area; or (b) the wrongful or negligent acts or omissions of Grantor or its affiliates, subsidiaries, members, directors, officers, employees, agents, contractors, successors, or assigns. Grantor shall not be liable for claims caused by the sole negligence of Grantee or its officers, directors, agents or employees. Grantee, by accepting this Easement, is not accepting any liability for any release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

10) **Transfer or Assignment.** At Grantee's sole discretion, Grantee may transfer the Easement to a qualified governmental or nonprofit entity with advance written notice to Grantor, but such transfer will not relieve Grantor its obligations under this Easement. All other transfers or assignments will require the express prior written consent of Grantor.

11) **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantee and Grantor may jointly amend this Easement. Any such amendment must be consistent with the purpose of this Easement and no such amendment will be effective unless signed by Grantee and Grantor.

12) **Subsequent Transfers.** Any future conveyance of any interest in the Easement Area, including without limitation, a leasehold interest, will be subject to the terms of this Easement.

13) **Miscellaneous.**

- a) **Controlling Law and Forum.** This Easement will be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this Easement will occur in the court sitting in Multnomah County having proper jurisdiction.
- b) **Notices.** All Notices or other communications required or permitted under this Easement shall be in writing, and shall be:
 - A) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed given on receipt at the office of the addressee; or,
 - B) sent by a confirmed e-mail copy (either by automatic electronic confirmation or by affidavit of the sender) directed to the e-mail address of the Party set forth below; or,
 - C) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed given three (3) days after deposit in the United States mail; or,
 - D) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed given one business day after deposit with such courier.
- c) Either Party may specify to the other in writing, a change of physical or electronic address from time to time during this Easement.

If to Grantor: McInnis Investments LLC
 PO Box 30087
 Portland, OR 97294

If to Grantee: City of Portland
 Property Manager
 Bureau of Parks and Recreation
 1120 SW Fifth, Room 858
 Portland, OR 97204

- 14) **Recording.** Grantee must record this instrument in the official real estate records of Multnomah County, Oregon and may re-record it as required to preserve its rights under this Easement.
 - 15) **Severability.** If any provision of this Easement is found to be invalid, the remaining portion thereof and all other provisions of this Easement will, nevertheless, remain in full force and effect.
 - 16) **Entire Easement.** This Easement is the final and entire Easement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or Easements between the Parties.
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- 17) **Successors.** The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and permitted assigns. Both the benefits and burdens of this Easement will run with the Easement Area in perpetuity.
- 18) **Termination of Rights and Obligations.** Except for the obligations of Grantee, Grantor's rights and obligations under this Easement terminate upon transfer of Grantor's interest in the Easement Area or the Easement granted hereby, but liability for acts or omissions occurring prior to a transfer shall survive such transfer.
- 19) **Counterparts.** The Parties may execute this instrument in two or more counterparts, and when taken together will constitute one and the same instrument.
- 20) **No Third-Party Beneficiaries Created.** This Easement is intended solely for the benefit of Grantor and Grantee and there are no third-party beneficiaries hereto, intended or otherwise. This Easement may be enforced only by Grantor and Grantee, their successors and permitted assigns. As used in this Easement, the term "third party" means individuals or entities other than Grantor and Grantee.
- 21) **Exhibits and Recitals.** The exhibits and recitals are incorporated herein by this reference.

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IN WITNESS WHEREOF, the Parties hereto have caused this Easement to be executed this ____ day of _____, 20_____.

MCINNIS INVESTMENTS LLC

CITY OF PORTLAND

By: _____

By: _____
Bureau of Parks & Recreation

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20_____,
by _____ (name) as _____ (title),
on behalf of McInnis Investments, LLC, an Oregon limited liability company.

Notary Public for OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20_____, by Adena Long, Director, Bureau of Parks & Recreation of the City of Portland.

Notary Public for OREGON
My Commission Expires: _____

EXHIBIT A
RWA #8825
CONSERVATION EASEMENT
1N1E13BB-2700

Being a portion of Lots 6 and 7, Block 102, Irvington Park, Multnomah County Plat records and a portion of N.E. Holland Street, situated in the Northwest one-quarter of Section 13, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon, more fully described as follows:

Beginning at the Southwest corner of said Lot 6;

Thence N1°34'52"E along the West line of said Lot 6 also being the East Right of Way line of NE 27th Ave., 60.00 feet in width, a distance of 7.48 feet;

Thence S87°22'56"E, a distance of 66.89 feet;

Thence Southeasterly, a distance of 66.88 feet along the arc of a circular curve to the right having a radius of 37.00 feet and through a central angle of 103°33'47", (Long Chord bears S35°36'02"E, a distance of 58.14 feet);

Thence Westerly, a distance of 11.54 feet along the arc of a non-tangent curve to the left having a radius of 123.00 feet and through a central angle of 5°22'25", (Long Chord bears S85°42'28"W, a distance of 11.53 feet);

Thence Westerly a distance of 44.45 feet along a reversing curve to the right having a radius of 99.00 feet and through a central angle of 25°43'24", (long Chord bears N84°07'03"W, a distance of 44.07 feet;

Thence N18°44'39"E, a distance of 0.49 feet;

Thence N71°15'21"W, a distance of 42.75 feet;

Thence N18°44'39"E, a distance of 22.00 feet to a point on the south line of said Lot 6;

Thence N71°15'21"W along the south line of said Lot 6, a distance of 12.96 feet to the Point of Beginning.

Containing 3914 S.F. more or less

REGISTERED
PROFESSIONAL
LAND SURVEYOR

 3/30/21

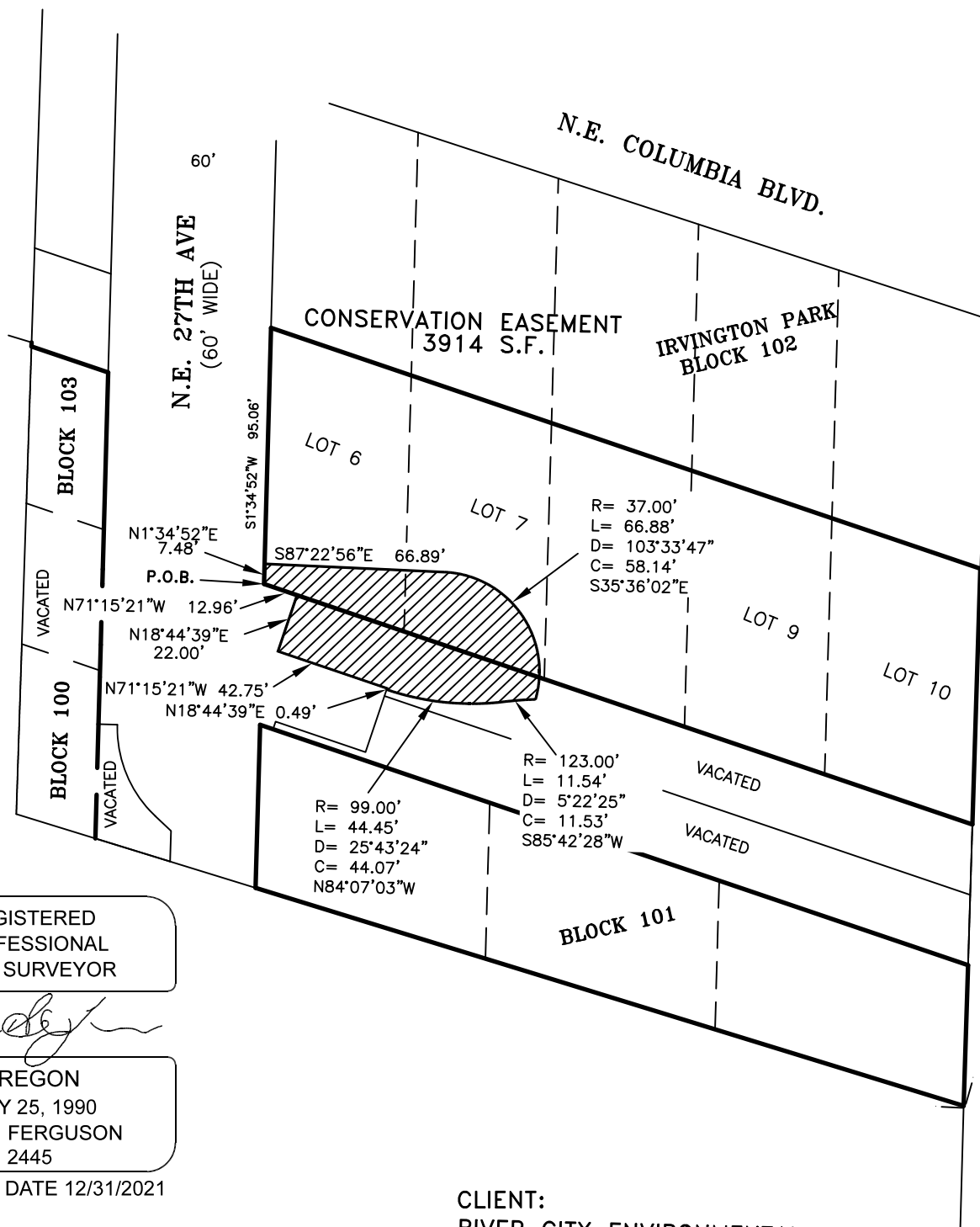
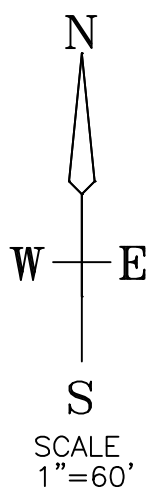
OREGON
JULY 25, 1990
JOE H. FERGUSON
2445

RENEWAL DATE 12/31/21

EXHIBIT B

RWA #8825

A PART OF LOTS 6 AND 7, BLOCK 102, IRVINGTON PARK,
LOCATED IN THE NW 1/4 OF SECTION 13, T.1.N., R.1.E., W.M.
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 25, 1990
JOE H. FERGUSON
2445

RENEWAL DATE 12/31/2021

CLIENT:
RIVER CITY ENVIRONMENTAL

Ferguson Land Surveying, Inc.

646 SE 106TH AVE. PORTLAND, OR 97216
Phone (503) 408-0601 Fax (503) 408-0602

SHEET NO. 1 OF 1

JOB NO. 17-188

DRAFTED: 3/30/21



TERAGAN & ASSOCIATES, INC. ARBORICULTURAL CONSULTANTS

MEMORANDUM

DATE: January 5, 2021

TO: Steve McInnis (River City Environmental)

FROM: Todd Prager, RCA #597, ISA Board Certified Master Arborist

RE: Tree Assessment and Protection Recommendations at NE 27th Avenue & Holland Street

Summary

This memorandum includes a tree assessment and protection recommendations for the trees to be retained during driveway access construction at NE 27th Avenue & Holland Street in Portland.

Background

Street and right-of-way improvements were recently constructed by the City of Portland at NE 27th & Holland Street in Portland. Curb cuts for driveway access were provided as part of the improvements for the properties on the east side of NE 27th Avenue. Five existing trees are within or adjacent to the driveway accesses. Attachment 1 is the street improvement plan from the City of Portland with the driveway accesses and existing trees.

The assignment requested of our firm for this project was to assess the existing trees and provide protection recommendations for construction of the driveways.

Tree Assessment

On December 14, 2020 I assessed the existing trees at the site. Attachment 2 is the complete inventory data for the trees and includes the species (common and scientific names), DBH, crown radius, health condition, structural condition, and pertinent comments. The tree numbers in the inventory in Attachment 2 correspond to the tree numbers shown on the street improvement plan in Attachment 1.

Tree Protection Recommendations

Five trees were included in my assessment. Tree 1 is within the north driveway alignment and will need to be removed for construction. I will prepare a tree removal permit application for the removal of tree 1.

Trees 2 through 5 are between the north and south driveways and can be retained and protected. However, based on the size of their root protection zones and the proposed driveway locations, the performance path for tree protection is required.

As shown in Figure 1, the root protection zone area on the south side of the trees is either already paved or heavily compacted with existing rock since it has historically been used as a driveway. The area to the north of the trees is also disturbed since it is used as a storage area over existing rock as shown in Figure 2.

Based on the existing disturbances and improvements surrounding the trees, the following performance path tree protection recommendations can provide adequate protection for trees 2 through 5:

- **Remove Storage and Block Wall:** The various stored items and block wall in the root protection zones and north driveway alignment shall be removed under the onsite supervision of the project arborist. The existing rock and gravel underlying the storage area shall be retained.
- **Tree Protection Fencing:** Place tree protection fencing at the edge of the protection area shown in Attachment 1.
- **Driveway Paving:** The driveways shall be paved under the onsite supervision of the project arborist. The existing rock and gravel shall be reused as the base rock for the new driveways and supplemented as needed while avoiding disturbance of the trees' roots.
- **Curbs:** New curbs constructed at the edges of the protection zone shall be roll curbs, extruded curbs, or other curb treatment that allows excavation to be minimized with no soil/root disturbance.



Figure 1: Existing disturbances on south side of trees



Figure 2: Existing disturbances on north side of trees

- **Protect Crowns of Trees:** Care will need to be taken to not contact or otherwise damage the crowns of the trees during storage removal and construction activities.
- **Pruning:** Some of the trees may need to be clearance and/or reduction pruning to allow for construction or driveway access. Any pruning shall be completed by a qualified, certified arborist in a manner that is consistent with ANSI A300 pruning standards. The pruning shall be the minimum necessary to achieve the required clearance.
- **Sediment Fencing:** Sediment fencing shall be installed outside the root protection zones of the trees to be retained to minimize root disturbances. If erosion control is required inside the root protection zones, straw wattles shall be used to avoid trenching in the root zones.
- **Rock in Root Zones:** The existing rock in the root protection zones should be retained to avoid unnecessary soil/root disturbance that would occur with removal. If needed for aesthetic reasons, a 3-inch layer of mulch may be added above the rock layer.
- **Permanent Fencing:** Permanent fencing may be placed at the edge of the protection area shown in Attachment 1 to prevent parking and trash disposal in the protection area. The fence posts shall be hand dug under the onsite supervision of the project arborist and adjusted as needed to avoid significant woody roots.

Additional tree protection recommendations that are consistent with the tree protection standards in the City of Portland Code are provided in Attachment 3.

Conclusion

The trees to be retained will be adequately protected by adhering to the recommendations in this report.

Please contact me if you have questions, concerns, or need any additional information.

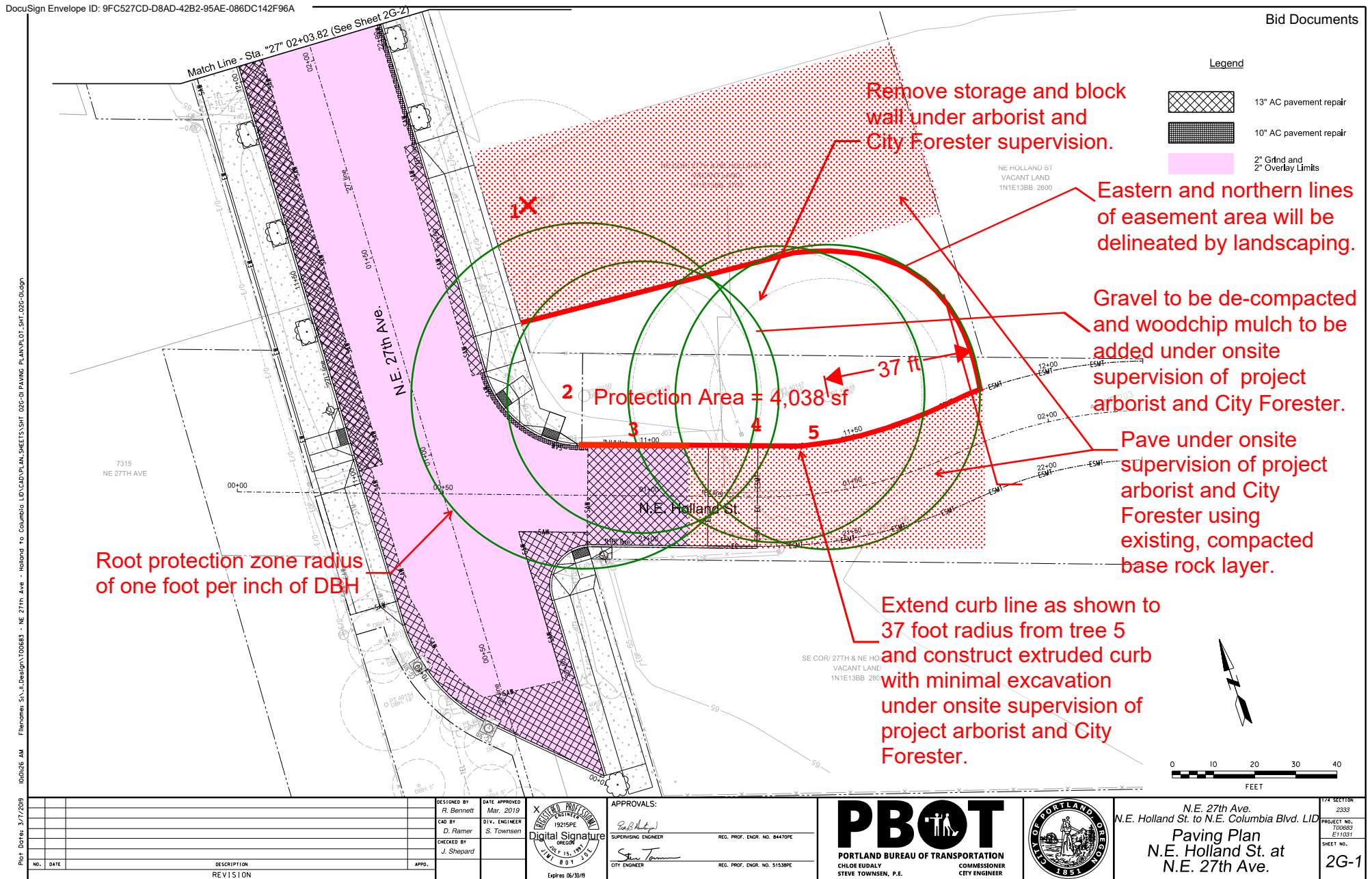
Sincerely,



Todd Prager

*ASCA Registered Consulting Arborist #597
ISA Board Certified Master Arborist, WE-6723B
ISA Qualified Tree Risk Assessor
AICP, American Planning Association*

Attachment 1:	Street Improvement Plan
Attachment 2:	Tree Inventory
Attachment 3:	Additional Tree Protection Recommendations
Attachment 4:	Assumptions and Limiting Conditions



Attachment 2

Tree No.	Common Name	Scientific Name	DBH ¹	C-Rad ²	Condition ³	Structure	Comments
1	Port-Orford-cedar	<i>Chamaecyparis lawsoniana</i>	32	15	good	fair	branches with high aspect ratios, large pruning cuts with poor wound closure at lower trunk, extensive rock and storage in root zone
2	Douglas-fir	<i>Pseudotsuga menziesii</i>	42	23	good	fair	codominant at 40' with included bark, moderately one sided crown, side pruned for high voltage clearance, , extensive rock and storage in root zone
3	Douglas-fir	<i>Pseudotsuga menziesii</i>	33	28	good	fair	codominant at 25' with U shaped union, one sided crown, extensive rock and storage in root zone
4	western redcedar	<i>Thuja plicata</i>	36	20	fair	good	thin, chlorotic crown, watersprouts at lower trunk from past pruning cuts, block retaining wall and storage in root zone
5	western redcedar	<i>Thuja plicata</i>	37	23	fair	good	thin, chlorotic crown, block retaining wall and storage in root zone

¹**DBH** is the trunk diameter in inches measured per City of Portland Code requirements.

²**C-Rad** is the approximate crown radius in feet.

³**Condition** and **Structure** ratings range from very poor, poor, fair, to good.

Attachment 3 Tree Protection Recommendations

Before Construction Begins

1. Notify all contractors of tree protection procedures. For successful tree protection on a construction site, all contractors must know and understand the goals of tree protection.
 - a. Hold a tree protection meeting with all contractors to explain the goals of tree protection.
 - c. Have all contractors sign memoranda of understanding regarding the goals of tree protection. The memoranda should include a penalty for violating the tree protection plan. The penalty should equal the resulting fines issued by the local jurisdiction plus the appraised value of the tree(s) within the violated tree protection zone per the current Trunk Formula Method as outlined in the current edition of the ***Guide for Plant Appraisal*** by the Council of Tree & Landscape Appraisers. The penalty should be paid to the owner of the property.
2. Fencing
 - a. Trees to remain on site will be protected by installation of tree protection fencing at the edge of the protection area shown in Attachment 1.
 - b. The fencing should be put in place before the ground is cleared in order to protect the trees and the soil around the trees from disturbances.
 - c. Fencing should be established by the project arborist based on the needs of the trees to be protected and to facilitate construction.
 - d. Fencing should consist of 6-foot high steel fencing on concrete blocks or 6-foot metal fencing secured to the ground with 8-foot metal posts to prevent it from being moved by contractors, sagging, or falling down. Fencing within the public right of way may be 3.5-foot tall orange plastic construction fencing.
 - e. Fencing should remain in the position that is established by the project arborist and not be moved without approval from the project arborist until final project approval.
3. Signage
 - a. All tree protection fencing should have signage as follows so that all contractors understand the purpose of the fencing:

TREE PROTECTION ZONE

DO NOT REMOVE OR ADJUST THE LOCATION OF THIS
TREE PROTECTION FENCING
UNAUTHORIZED ENCROACHMENT MAY RESULT IN FINES

Please contact the project arborist if alterations to the location of the tree protection fencing are necessary.

Todd Prager, Project Arborist, Teragan & Associates, 971-295-4835

- b. Signage should be placed every 75-feet or less.

During Construction

1. Protection Guidelines Within the Tree Protection Zones:
 - a. No new buildings; grade change or cut and fill, during or after construction; new impervious surfaces; or utility or drainage field placement should be allowed within the tree protection zones.
 - b. No traffic should be allowed within the tree protection zones. This includes but is not limited to vehicle, heavy equipment, or even repeated foot traffic.
 - c. No storage of materials including but not limiting to soil, construction material, or waste from the site should be permitted within the tree protection zones. Waste includes but is not limited to concrete wash out, gasoline, diesel, paint, cleaner, thinners, etc.
 - d. Construction trailers should not to be parked/placed within the tree protection zones.
 - e. No vehicles should be allowed to park within the tree protection zones.
 - f. No other activities should be allowed that will cause soil compaction within the tree protection zones.
2. The trees should be protected from any cutting, skinning or breaking of branches, trunks or woody roots.
3. The project arborist should be notified prior to the cutting of woody roots from trees that are to be retained to evaluate and oversee the proper cutting of roots with sharp cutting tools. Cut roots should be immediately covered with soil or mulch to prevent them from drying out.
4. Trees that have woody roots cut should be provided supplemental water during the summer months.
5. Any necessary passage of utilities through the tree protection zones should be by means of tunneling under woody roots by hand digging or boring with oversight by the project arborist.
6. Any deviation from the recommendations in this section should receive prior approval from the project arborist.

After Construction

1. Carefully landscape the areas within the tree protection zones. Do not allow trenching for irrigation or other utilities within the tree protection zones.
2. Carefully plant new plants within the tree protection zones. Avoid cutting the woody roots of trees that are retained.
3. Do not install permanent irrigation within the tree protection zones unless it is drip irrigation to support a specific planting or the irrigation is approved by the project arborist.
4. Provide adequate drainage within the tree protection zones and do not alter soil hydrology significantly from existing conditions for the trees to be retained.
5. Provide for the ongoing inspection and treatment of insect and disease populations that are capable of damaging the retained trees and plants.
6. The retained trees may need to be fertilized if recommended by the project arborist.
7. Any deviation from the recommendations in this section should receive prior approval from the project arborist.

Attachment 4

Assumptions and Limiting Conditions

1. Any legal description provided to the consultant is assumed to be correct. The information provided by River City Environmental and their consultants was the basis of the information provided in this report.
2. It is assumed that this property is not in violation of any codes, statutes, ordinances, or other governmental regulations.
3. The consultant is not responsible for information gathered from others involved in various activities pertaining to this project. Care has been taken to obtain information from reliable sources.
4. Loss or alteration of any part of this delivered report invalidates the entire report.
5. Drawings and information contained in this report may not be to scale and are intended to be used as display points of reference only.
6. The consultant's role is only to make recommendations. Inaction on the part of those receiving the report is not the responsibility of the consultant.
7. The purpose of this report is to assess the existing trees and provide protection recommendations for construction of the driveways.