



February 4, 2021

Board of County Commissioners
 Clackamas County

Members of the Board:

Approve Trail Easement Agreement Granted by Pedcor Investments to North Clackamas Parks and Recreation to provide for a Portion of the Future Phillips Creek Trail

Purpose/Outcome	Approval by the Board of County Commissioners (BCC) acting as the Board of Directors of the North Clackamas Parks and Recreation District (NCPRD) to accept an easement for the purposes of developing a portion (Section H) of the future Phillips Creek Trail—a trail outlined in the Phillips Creek Greenway Framework Plan which is part of the Clackamas Regional Center Area Plan.
Dollar Amount and Fiscal Impact	No fiscal impact at this time. The trail will be developed in the future after additional properties are acquired to allow for a continuous trail.
Funding Source	No cost for easement
Duration	Easement is in perpetuity
Previous Board Action/Review	None
Strategic Plan Alignment	<ul style="list-style-type: none"> • Provide public spaces to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities. • Promote a <i>Healthy and Active Lifestyle</i> by providing opportunity for a future trail for pedestrians and cyclists. • Promote <i>Carbon Neutrality</i> by providing a trail and connectivity by building near existing trails (I-205 Trail) and adjacent to right-of ways to provide access to alternative transportation.
Counsel Review	1/19/2021 by Jeff Munns
Procurement Review	The item is a conveyance of property rights; it is not subject to Procurement review.
Contact Person	Kathryn Krygier, Project Manager 503-867-2820
Contract No.	NA

BACKGROUND:

In 1999 Clackamas County adopted the Phillips Creek Trail plan into its Comprehensive Plan. The plan outlined a general alignment from the I-205 Bike Path on the north at SE Otty Road,

past the Clackamas Town Center, to the confluence of Phillips Creek and Mt. Scott Creek which is nearby the 3-Creeks Natural Area.

In 2016, Pedcor Investments, a housing developer, submitted an application for a 112 unit affordable housing development on property that coincided with a northern portion of the proposed Phillips Creek Trail alignment. NCPRD requested an easement as part of the developers land use permit for the purpose of creating a portion of the trail. Clackamas County Planning and Zoning Division then made the easement a Condition of Approval of the developer's land use permit. The conveyance of the easement is the carrying out of the Condition of Approval.

The trail easement is approximately 20 feet wide x 612 feet long. It begins at SE Otty Road near the I-205 trail and runs south along the length of the property. At this time there is not a southern connection to public land or right-of-way. It is expected that future development or acquisition of additional property will provide connectivity to public land or right-of-way at which time a trail will be developed.

The easement overlays an existing waterline easement which benefits Clackamas Water River (CRW). CRW Board approved the easement at their January 14, 2021 Board Meeting.

RECOMMENDATION: Staff recommends the Board of County Commissioners (BCC) acting as the Board of Directors of the North Clackamas Parks and Recreation District (NCPRD) approve conveyance of the Trail Easement Agreement

ATTACHMENT:

1. Trail Easement Agreement

Respectfully submitted,

Laura Zentner

Laura Zentner, Director
Business and Community Services

AFTER RECORDING RETURN TO:

North Clackamas Parks and Recreation District
150 Beaver Creek Rd. Oregon City, OR 97045
Attn: Kathryn Krygier

TRAIL EASEMENT AGREEMENT

THIS TRAILS EASEMENT AGREEMENT (the “Agreement”) is made effective this ___ day of _____, 2021 (the “Effective Date”), by and between Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership (“Pedcor” or “Grantor”), the North Clackamas Parks and Recreation District (“NCPRD” or “Grantee”) and the Clackamas River Water, a municipal corporation of the State of Oregon (“CRW”).

WITNESETH

WHEREAS, Grantor is the record owner of certain property located at 8810 SE Otty Rd., Clackamas, OR 97086, as further described on the attached **Exhibit A**, (hereinafter the “Grantor Property” or “Servient Estate”);

WHEREAS, Grantor has, or intends, to develop the Grantor Property into a residential multifamily apartment community, more commonly known as “Rosewood Station Apartments”;

WHEREAS, pursuant to that certain Easement Agreement, dated as of May 2, 1972, Elsie Lowen Flagg, as the prior owner of the Grantor Property, granted in favor of the Clackamas Water District, n/k/a Clackamas River Water, a municipal corporation of the State of Oregon (“CRW”) certain easement rights within Grantor’s Property (the “CRW Easement”), as more fully described within such CRW Easement;

WHEREAS, subject to Section 2 “Conditions of Approval”, of that certain Notice of Land Use Decision, decision date October 20, 2016, with Case File No.: November 1, 2016 (the “Land Use Decision”), the Engineering Division Conditions require Grantor to grant a minimum 20-ft wide public easement in favor of the North Clackamas Parks and Recreation District (“NCPRD”), for the development of the Phillips Creek Trail, along the entire west property line of the Grantor Property (the “Trail Easement”);

WHEREAS, all or a portion of the proposed Trail Easement will exist within the already established CRW Easement;

WHEREAS, Grantor desires to grant, Grantee desires to accept and CRW desires to consent to the establishment of certain rights to locate, access and maintain the Trail Easement over a portion of the Grantor Property as further detailed herein and to otherwise establish other rights and obligations of the parties as provided herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed upon by the parties as follows:

1. **Grant.** Grantor, as owner of the Grantor Property, hereby grants and conveys to Grantee, a permanent easement over, under and across that portion of the Grantor Property as further described within **Exhibit B** (the "Trail Easement Area"), and depicted within **Exhibit C**, and constructed in substantially similar form as depicted in **Exhibit D**, each being attached hereto and incorporated herein by reference.
2. **Purpose.** This Trail Easement is granted for the purpose of constructing, installing, reconstructing, repairing, operating and maintaining the Phillips Creek Trail (the "Trail"), as a recreational trail open to the public for non-motorized travel. Grantee, its agents, contractors and the public shall have the right to enter upon the Trail Easement Area for such purposes. Grantee, its agents or contractors will not cause any unnecessary damage or commit any waste upon the above-described Trail Easement Area. Notwithstanding the rights granted to Grantee, its agents and contractors and the public within this Section 2, CRW shall retain all of its right, title and interest in that portion of the Grantor Property as detailed within the CRW Easement. Nothing herein shall be construed to limit and/or restrict CRW's rights as granted within the CRW Easement.
3. **Grantor's Retained Rights.** Except for the rights of use granted in above Paragraph 2 and/or within the CRW Easement, Grantor reserves all other rights of ownership of the Trail Easement Area, provided that Grantor's exercise of such rights does not prohibit Grantee's and/or CRW's authorized use as described above in Paragraph 2 and/or as described within the CRW Easement.
4. **Subordination.** The Trail Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Grantor Property, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Trail Easement or the Trail Easement Area.
5. **Additional Terms and Conditions of the Trail Easement.** The Trail Easement shall be subject to the following terms and conditions:
 - a. Grantee shall be responsible for any costs incurred to construct, install, reconstruct, repair, operate and maintain the Trail and all impacted surrounding areas, if any;
 - b. Once Grantee constructs the Trail it shall be responsible for NCPRD and Clackamas County ordinances related to the appropriate use of the Trail including removal of unauthorized users.
 - c. This grant of easement shall be considered to give Grantee exclusive rights to the real property described herein, subject to existing exceptions of record;
 - d. To the extent allowed by the Oregon Constitution and the Oregon Tort Claims Act, Grantee releases Grantor and all of Grantor's officers, directors, shareholders and employees of Grantor from, and covenants and agrees that neither Grantor nor any officers, directors shareholders or employees of Grantor shall be liable for, and Grantee agrees to indemnify and hold Grantor and all officers, directors,

shareholders and employees of Grantor harmless against, any and all claims, actions, proceedings, damages, liabilities, costs and expenses incurred, excluding all attorney's fees arising in connection with each such claim, action of proceeding from or in connection with: (i) the conduct, operation or management of the Trail or of any business therein, or any work or thing whatsoever done, or any condition created therein or therein; (ii) any act, omission, or negligence of Grantee or any of its licensee or its or their partners, directors, officers, agents, employees, invitees or contractors; and (iii) any incident, injury damage whatever occurring in, at or upon the Trail Easement except that caused by any action(s) of omissions on the part of the Grantor, its officers, directors, shareholders or employees.

6. **Duration.** This Easement Agreement shall be perpetual in duration unless terminated by mutual written agreement of the parties. Grantor expressly intends this Trail Easement to run with the land and that this Trail Easement shall be binding upon Grantor's successors and assigns.
7. **Fees.** Grantee alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against Grantee's interest in the Trails Easement Area, or against any of Grantor's real property as a result of the Trail Easement granted herein.
8. **Consent by CRW.** Pursuant to that certain CRW Easement (insert recording #), CRW has certain rights to a portion of the Grantor Property for the purpose of installing, maintaining, controlling, operating, locating, relocating, and removing pipe line or lines and installations and facilities, including fire attachments, for the transmission of water pertaining to grantee's operation, as more fully described within such CRW Easement. Subject to the terms and conditions of said CRW Easement, Grantor, its heirs and assigns, shall have the right to reasonably use and enjoy the portion of the Grantor Property encumbered by the CRW Easement, for all purposes which do not interfere or are not inconsistent with the use by the grantee for the purpose stated within the CRW Easement. CRW hereby consents to the grant of the Trail Easement by Grantor and further consents that in the event CRW, its agents or employees, shall negligently cause damage to the property of Grantor and/or improvements installed by NCPRD, as permitted pursuant to this Agreement, CRW will pay a reasonable sum for the damage done. CRW's consent to the Trail Easement shall be conditioned upon the following terms and conditions:
 - a. Ninety (90) days prior to the commencement of construction within the Trail Easement, NCPRD shall provide Grantor and CRW plans and specifications detailing the work to be completed within the Trail Easement. Upon receipt, CRW and Grantor shall have a period of not less than thirty (30) days in which to review and approve such plans and specs, with such approval not to be unreasonably withheld. In the event either party shall fail to provide comments and/or approval within such 30-day period, such party shall be deemed to have approved the plans and specs as presented;
 - b. Installation of improvements within the Trail Easement shall not include trees or large shrubs, and the placement of all landscaping (to include "type" of such vegetation, if any), shall be included within the plans and specs provided to Grantor and CRW for review;

- c. To the extent CRW performs any maintenance and/or repairs to the waterline within the CRW Easement, and such work will be reasonably foreseeable to cause any modification to, interruption in use of, or damage to the NCPRD trail, trail-bed, landscaping or signs CRW shall provide NCPRD with fourteen (14) days prior notice of such work. CRW shall only be required to restore the surface of the property to the condition in which such property existed, including any landscaping, prior to the construction of the Trail. CRW shall not be responsible for replacing trees/shrubbery, signs and/or hard surfaces which were installed subsequent to the establishment of the Trail Easement, which may result due to maintenance or replacement of the CRW waterline;
- d. In the event NCPRD and/or Grantor shall negligently cause damage to the improvements installed by CRW, as permitted pursuant to this Agreement or the CRW Easement, NCPRD and/or Grantor, as the case may be, will pay a reasonable sum to CRW for the damage done.
- e. NCPRD hereby acknowledges and agrees not to utilize any Portland cement concrete pathways within the Trail Easement; and
- f. NCPRD shall use all reasonable efforts to minimize the size, location and number of signs to be located within the Trail Easement existing on Grantor Property.

9. Modification. No amendment to or modification of this Agreement shall be valid unless the same is in writing, signed by the parties or by such successors of the parties who are at that time bound by the terms hereof.

10. Notices. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Grantor: Pedcor Investments-2016-CLV, Limited Partnership
One Pedcor Square
770 3rd Avenue S.W.
Carmel, IN 46032
Attention: Thomas G. Crowe

To Grantee: North Clackamas Parks and Recreation District
150 Beavercreek Rd.
Oregon City, OR 97045
Attn: Kandi Ho, Acting Director
503-794-8001
Email: KandiH@ncprd.com

Copy to: Clackamas River Water
16770 SE 82nd Drive
Clackamas, OR 97015
Attn: Joe Eskew
503-723-2565
jeskew@crwater.com

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended. Telephone, fax numbers, and email addresses are for information only.

11. **Recording.** Grantee shall have the right, at Grantee's expense, to record a fully executed original of this Agreement in the Official Records of Clackamas County, Oregon.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the dates written below, effective on the date this Easement Agreement has been fully executed (the "Effective Date").

GRANTOR:

PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP
an Oregon limited partnership

By: Rosewood Station Housing Company, LLC
an Indiana limited liability company
its General Partner

By: Pedcor Investments, A Limited Liability Company
a Wyoming limited liability company
Its Manager

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Thomas G. Crowe, Executive Vice President of Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, which is the Manager of Rosewood Station Housing Company, LLC, an Indiana limited liability company, which is the General Partner of Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership, who, after having been duly sworn, acknowledged the execution of the foregoing Trail Easement Agreement for and on behalf of Pedcor Investments-2016-CLV, Limited Partnership.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal in said County, State of Indiana, as of this ___ day of _____, 2021.

My Commission Expires:

Notary Signature:

County of Residence:

Notary Name Printed:

GRANTEE:

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

By: _____

STATE OF OREGON)
) SS:
COUNTY OF CLACKAMAS)

Before me, a Notary Public in and for said County and State, personally appeared _____, being the _____ of the North Clackamas Parks and Recreation District, who, after having been duly sworn, acknowledged the execution of the foregoing Trail Easement Agreement for and on behalf of the North Clackamas Parks and Recreation District.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal in said County, State of Oregon, as of this ____ day of _____, 2021.

My Commission Expires:

Notary Signature:

County of Residence:

Notary Name Printed:

ACKNOWLEDGED & AGREED TO BY:

CLACKAMAS RIVER WATER
a municipal corporation of the State of Oregon

By: _____

STATE OF OREGON)
) SS:
COUNTY OF CLACKAMAS)

Before me, a Notary Public in and for said County and State, personally appeared _____, being the _____ of the Clackamas River Water, a municipal corporation of the State of Oregon, who, after having been duly sworn, acknowledged the execution of the foregoing Trail Easement Agreement for and on behalf of the Clackamas River Water.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal in said County, State of Oregon, as of this ___ day of _____, 2021.

My Commission Expires:

Notary Signature:

County of Residence:

Notary Name Printed:

Exhibit A
Grantor Property Legal Description

Exhibit B
Easement Area Legal Description

Exhibit C
Easement Area Depiction

Exhibit D
Typical Asphaltic Concrete Trail Section

EXHIBIT A**[DESCRIPTION OF THE LAND]**

A TRACT OF LAND LOCATED IN SECTION 28, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED AS PARCEL 2, IN DEED DOCUMENT NO. 2016-089350, CLACKAMAS COUNTY DEED RECORDS, THENCE ALONG THE WESTERLY LINE OF SAID DEED DOCUMENT, NORTH $01^{\circ}02'02''$ WEST, 640.18 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SE OTTY ROAD, BEING 20.00 FEET FROM THE CENTERLINE THEREOF; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH $89^{\circ}02'10''$ EAST, 83.97 FEET TO AN ANGLE POINT IN SAID RIGHT OF WAY LINE, BEING A POINT OF INTERSECTION WITH THAT RIGHT OF WAY DEDICATION RECORDED AS DEED DOCUMENT NO. 72-12686, CLACKAMAS COUNTY DEED RECORDS; THENCE ALONG THE SOUTHERLY LINE OF SAID DEDICATION DEED AND THE SOUTHERLY LINE OF THAT DEDICATION RECORDED AS DOCUMENT NO. 71-30200, CLACKAMAS COUNTY DEED RECORDS, SOUTH $80^{\circ}48'03''$ EAST, 220.30 FEET TO THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 205, AS DEDICATED IN DEED DOCUMENT NO. 71-30200, CLACKAMAS COUNTY DEED RECORDS AND A POINT OF NON-TANGENT SPIRAL CURVATURE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE ALONG A 115.00 FOOT OFFSET OF A 400 FOOT SPIRAL CURVE, THE CHORD OF WHICH BEARS SOUTH $13^{\circ}27'25''$ EAST, 255.60 FEET TO A POINT OF TANGENCY; THENCE SOUTH $13^{\circ}43'36''$ EAST, 372.73 FEET TO THE SOUTHERLY LINE OF SAID DEED DOCUMENT NO. 2016-089350; THENCE ALONG SAID SOUTHERLY LINE, NORTH $89^{\circ}03'17''$ WEST, 437.86 FEET TO THE POINT OF BEGINNING.

A-1

EXHIBIT B

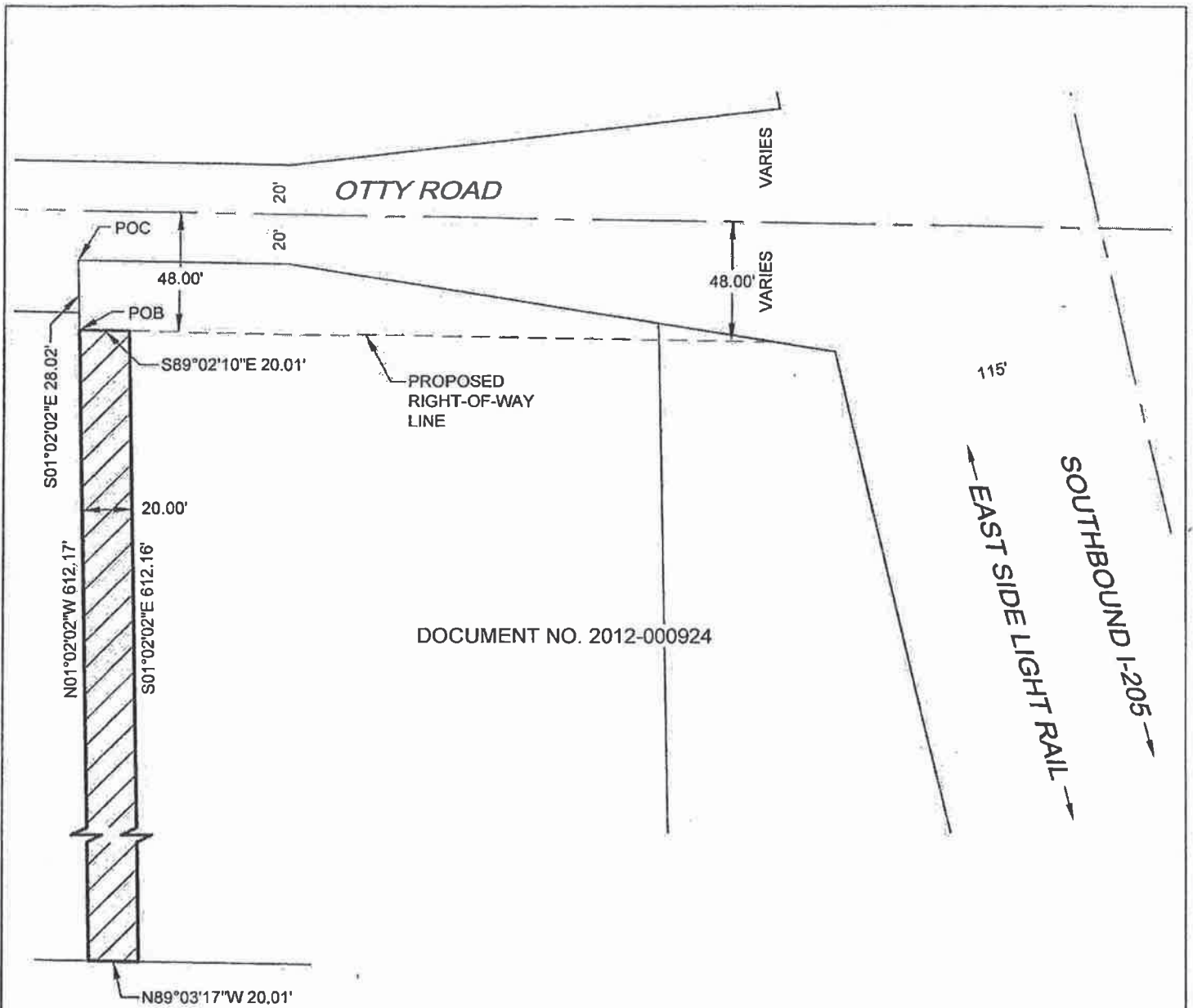
LEGAL DESCRIPTION

A PORTION OF THAT TRACT OF LAND DESCRIBED IN DEED DOCUMENT NO. 2012-000924, CLACKAMAS COUNTY DEED RECORDS, LOCATED IN THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHWEST CORNER OF SAID TRACT OF LAND AND THE SOUTHERLY RIGHT OF WAY LINE OF OTTY ROAD (40.00 FEET WIDE), SAID POINT BEING 20.00 FEET SOUTHERLY OF THE CENTERLINE OF SAID OTTY ROAD; THENCE ALONG THE WESTERLY LINE OF SAID TRACT OF LAND, SOUTH 01°02'02" EAST, 28.02 FEET TO THE **POINT OF BEGINNING**; THENCE 48.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID CENTERLINE, SOUTH 89°02'10" EAST, 20.01 FEET; THENCE 20.00 FEET EASTERLY OF AND PARALLEL WITH SAID WESTERLY LINE, SOUTH 01°02'02" EAST, 612.16 FEET TO THE SOUTHERLY LINE OF SAID TRACT OF LAND; THENCE ALONG SAID SOUTHERLY LINE, NORTH 89°03'17" WEST, 20.01 FEET TO SAID WESTERLY LINE; THENCE ALONG SAID WESTERLY LINE, NORTH 01°02'02" WEST, 612.17 FEET TO THE **POINT OF BEGINNING**.

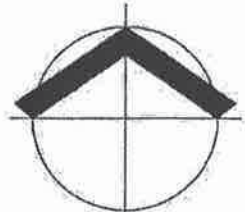
CONTAINS 12,243 SQUARE FEET OR 0.281 ACRES, MORE OR LESS.

EXHIBIT C



DOCUMENT NO. 2012-000924


115'
 EAST SIDE LIGHT RAIL
 SOUTHBOUND I-205



SCALE: 1"=60'



LEGEND:

 AREA OF PARKS AND RECREATION DEPARTMENT EASEMENT
 12,243 SQUARE FEET OR
 0.281 ACRES, MORE OR LESS

POC=POINT OF COMMENCEMENT
 POB=POINT OF BEGINNING

SEE ATTACHED LEGAL DESCRIPTION

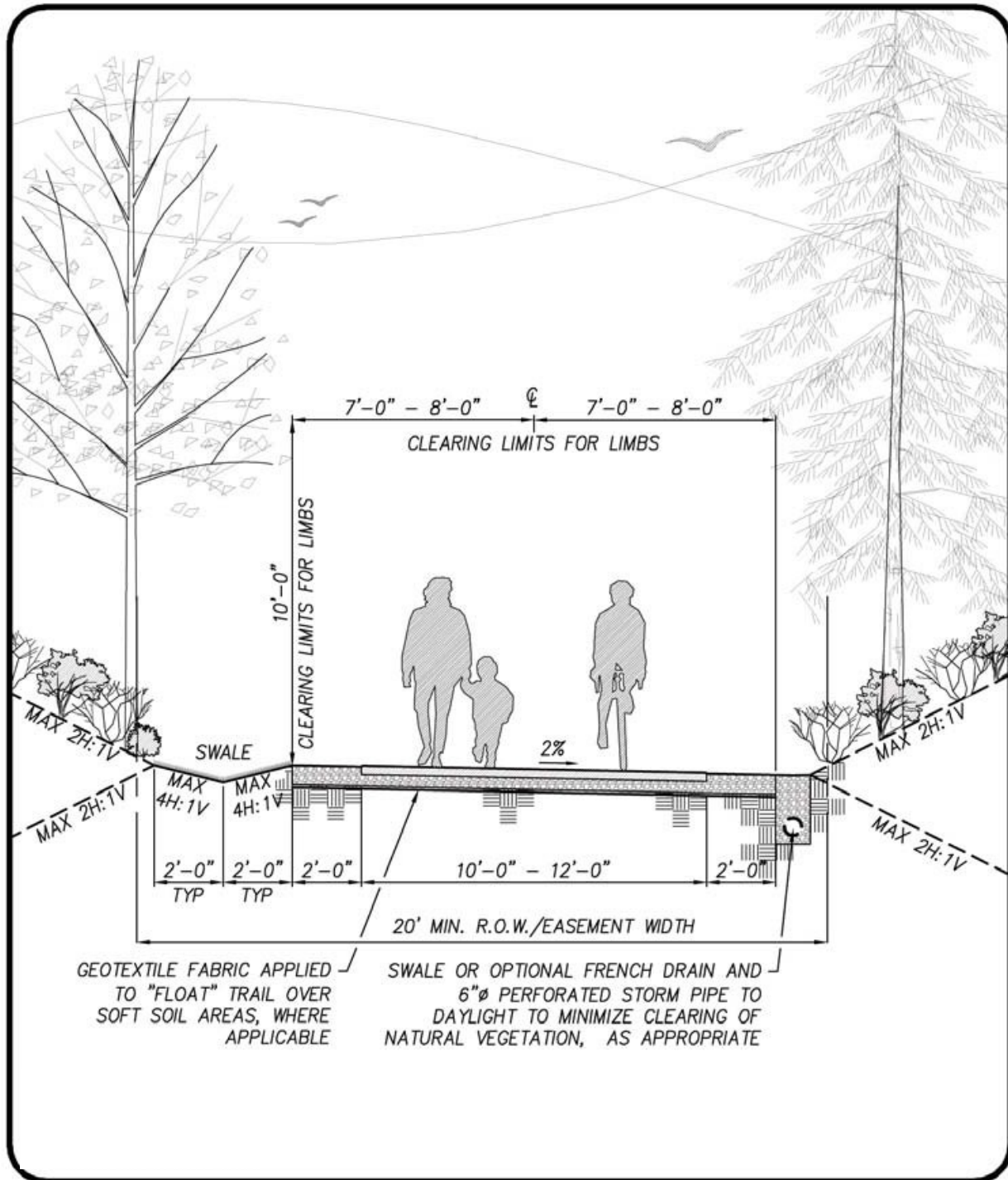


6720 SW MACADAM AVE, SUITE 200
 PORTLAND, OR 97219
 TEL: (503) 419-2500 FAX: (503) 419-2600
 www.cardno.com

EXHIBIT "B"
PARKS AND RECREATION
DEPARTMENT EASEMENT

SW 1/4 OF S28, T1S, R2E, WILLAMETTE MERIDIAN
 CLACKAMAS COUNTY, OREGON

PROJECT NO. 21511060
 DATE: 8/24/2017
 BY: TLB
 SCALE: 1"=60'
 PAGE NO. 2 OF 2



Typical Asphaltic Concrete Trail Section