

RESOLUTION NO. 2440

A RESOLUTION ACCEPTING A PERPETUAL NONEXCLUSIVE UTILITY EASEMENT ADJACENT TO NW EASTWIND DRIVE FROM VELERIY AND VALENTINA ZHIRYADA, AND NW FREIGHT LLC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Veleriy Zhiryada, Valentina Zhiryada and NW Freight LLC are the owners of the real property at 901 NW Eastwind Drive that is being developed.
2. In conjunction with the NW Freight development, the developer extended the existing public storm water main on the NW Freight property, adjacent to NW Eastwind Drive, a private road, to facilitate full development of the site.
3. As a condition of the development and storm main extension, the property owners are required to dedicate a fifteen foot wide public utility easement on NW Freight property.
4. The property owner has provided signed easement documents of a form and content that is in accordance with the requirements of the City (attached).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City of Troutdale accepts the public utility easement from Veleriy Zhiryada, Valentina Zhiryada, and NW Freight LLC, included herewith as Attachment A, for the construction, installation, operation, maintenance, repair, and/or modification of utility systems or components thereof.

Section 2. This resolution is effective upon adoption.

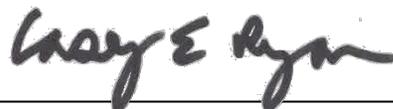
YEAS: 7

NAYS: 0

ABSTAINED: 0



Sarah Skroch, City Recorder
Adopted: January 22, 2019



Casey Ryan, Mayor
Date: January 23, 2019

After recording, return to:

Valeriy & Valentina Zhiryada
Northwest Freight LLC
20913 NW 6th Ct, Ridgefield, WA 98642.

City Recorder
City of Troutdale
219 E Historic Columbia River Highway
Troutdale, OR 97060

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement ("AGREEMENT") is entered into by VALERIY ZHIRYADA, VALENTINA ZHIRYADA & NORTHWEST FREIGHT LLC, a *Washington Limited Liability Company* ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the GRANTOR signs the Certificate of Grantor.

RECITALS

A. GRANTOR owns the property described in this Agreement under paragraph 10 (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area.

B. GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities and grants franchises to other entities to provide additional utilities within the City of Troutdale.

C. The purpose of this Agreement is to grant a utility easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

1. **Grant.** For no dollars but for other good and valuable consideration that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual non-exclusive easement for the Easement Area so that GRANTEE, its franchised utility companies, and its agents and assigns, may construct, install, access, operate, inspect, maintain, repair, replace, and/or modify components of utility systems including, but not solely limited to water, sanitary sewer, transportation, storm water, electric power, natural gas, and telecommunications systems.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure (including any eaves or other architectural appendages), pavement, or vegetation within the Easement Area except for shallowroot grasses and low-growing shrubs (but not trees), fences as permitted by applicable City regulations, and sidewalks or driveways. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallowroot grasses, lowgrowing shrubs, fences, sidewalks, driveways, or any unauthorized structures, pavement or vegetation, within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE.

3. **Use and Access.** GRANTOR shall allow GRANTEE, its franchised utility companies, and its agents and assigns, unrestricted and unobstructed access to the Easement Area at all times to properly construct, install, access, operate, inspect, maintain, repair, replace,

and/or modify components of utility systems. All maintenance and grounds keeping within the easement area, other than maintenance that is necessary to install, access, operate, inspect, maintain, or repair utility systems or components, is the responsibility of the GRANTOR. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions, whether or not such loss, damage or destruction was to GRANTOR's shallowroot grasses, lowgrowing shrubs, fences, sidewalks or driveways that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

4. **Binding Effect, Run with the Land.** This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

5. **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), outofpocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

6. **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

7. **Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this utility easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

9. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10. **Easement Area.**

EXHIBIT A attached to this Document.

CERTIFICATE OF GRANTOR

I, Valentina Zhiryada, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 3rd day of December, 2018.

[Handwritten Signature]
Grantor's Signature

VALENTINA ZHIRYADA
Grantor's Typed or Printed Name

20913 NW 6th Ct
Address

Ridgefield, WA 98642
City, State, Zip Code

STATE OF ~~OREGON~~ ^{WASHINGTON})
COUNTY OF ~~MULTNOMAH~~ ^{CLATSOP}) ss.

Personally appeared the above named VALENTINA ZHIRYADA and acknowledged the foregoing instrument to be His voluntary act and deed.

[Handwritten Signature]
Notary Public

My Commission expires: Apr 19, 2022



CERTIFICATE OF GRANTOR

I, Valentina Zhiryada, owner or the authorized representative of the owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 3rd day of December, 2018

NORTHWEST FREIGHT LLC, a Washington Limited Liability Company

by: [Signature]

Print Name: VALENTINA Zhiryada

Member

STATE OF ~~OREGON~~ WASHINGTON)
COUNTY OF ~~MULTNOMAH~~ CLATSOP) ss.

This instrument was acknowledged before Me on DEC 03, 2018

by VALENTINA ZHIRYADA as MAR of NORTHWEST FREIGHT, LLC

Notary Public [Signature]

My Commission expires: APR 19, 2022



CERTIFICATE OF GRANTEE

I, _____ Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City Council of the City of Troutdale on the ____ day of _____, _____ by Resolution No. _____.

Dated this _____ day of _____, _____.

City Recorder

(seal)

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF OREGON)
) ss.
COUNT OF MULTNOMAH)

Personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.

BEFORE ME: _____
Notary Public for Oregon
Commission Expires: _____

(seal)

Exhibit A

A portion of Parcel 2, Partition Plat No. 1994-139 for the purpose of a drainage easement in the NE 1/4 of Section 27, Township 1N, Range 3E, W.M. in the City of Troutdale, Multnomah County, State of Oregon, more particularly described as follows:

Beginning at a point which lies 93.07' along a curve to the left with a radius of 1507.40' from the northwest corner of said Parcel 2, the long chord of which bears S65°39'55"E, 95.05', said point being the intersection of the south right of way of NE Marine Drive and the east boundary line of NW Eastwind Drive as platted in Multnomah County Partition Plat No. 1994-139; running thence 94.62' along the east line of NW Eastwind Drive, a curve to the left with a radius of 225.00', the long chord of which bears S14°06'09"W, 93.92'; thence S87°56'41"E, 33.25'; thence N47°10'21"E, 44.66'; thence N33°07'24"E, 43.07' to a point on the south right of way of NW Marine Drive; thence 71.48' along said right of way, a curve to the right with a radius of 1507.40', the long chord of which bears N68°47'33"W, 71.47', back to the point of beginning.

TOGETHER WITH a 15' wide strip of land located on said Parcel 2, centered on the line described as follows:

Beginning at the outfall of a storm drain pipe as constructed which lies approximately S33°17'42"E, 155.31' from the northwest corner of said Parcel 2; running thence approximately S1°25'09"E, 88.01' to the center of a manhole as constructed; thence approximately S2°57'31"E, 176.42' to the center of another manhole as constructed.

EXCEPTING THEREFROM that portion lying westerly of the east boundary line of NW Eastwind Drive as platted in Multnomah County Partition Plat No. 1994-139.

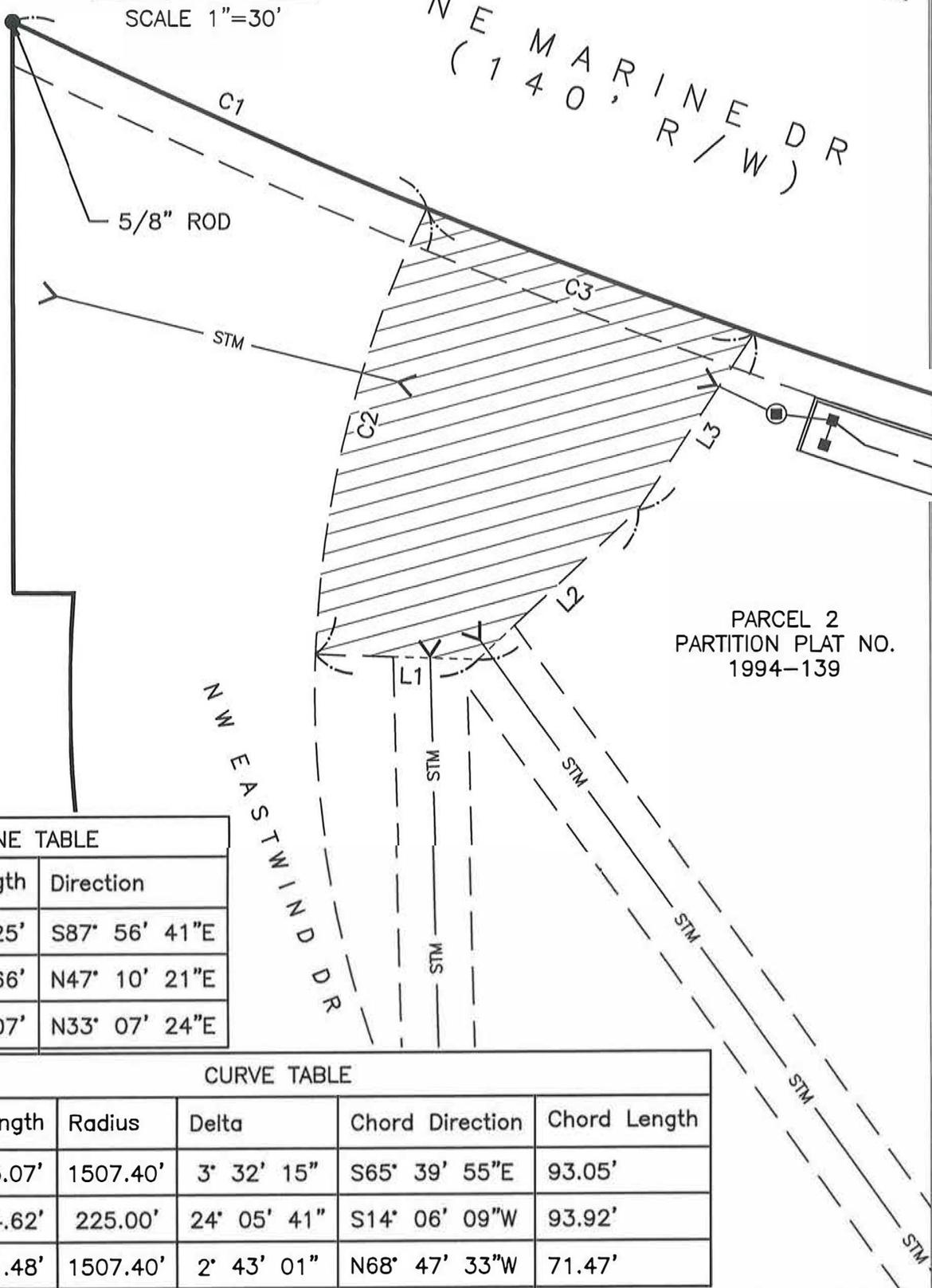
ALSO EXCEPTING THEREFROM any portion lying in the public right of way.

The land herein described containing an area of 6894 square feet, more or less.





N E M A R I N E D R
(1 4 0 , R I N E W)



PARCEL 2
PARTITION PLAT NO.
1994-139

LINE TABLE

Line #	Length	Direction
L1	33.25'	S87° 56' 41"E
L2	44.66'	N47° 10' 21"E
L3	43.07'	N33° 07' 24"E

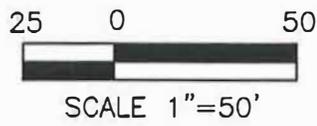
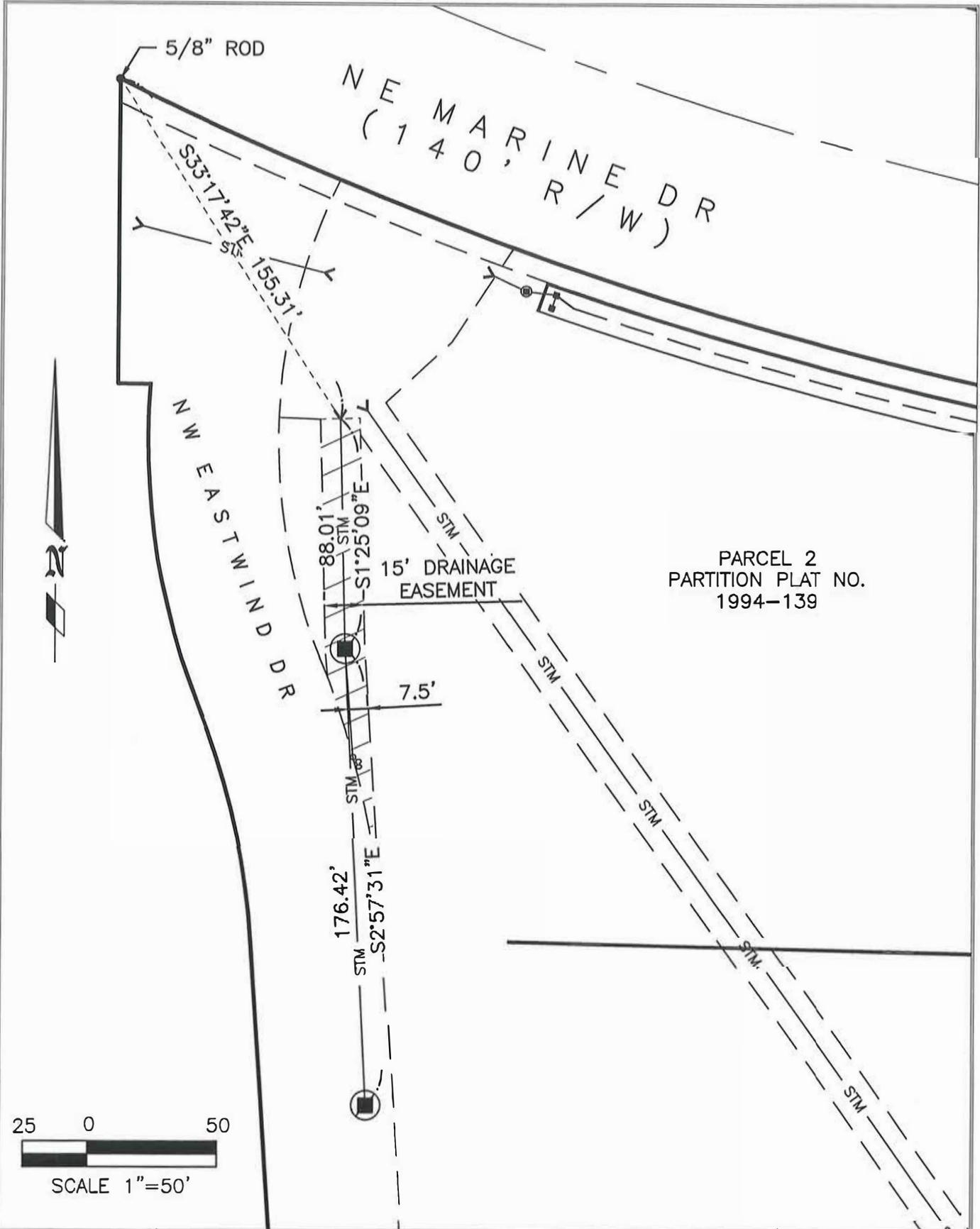
CURVE TABLE

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	93.07'	1507.40'	3° 32' 15"	S65° 39' 55"E	93.05'
C2	94.62'	225.00'	24° 05' 41"	S14° 06' 09"W	93.92'
C3	71.48'	1507.40'	2° 43' 01"	N68° 47' 33"W	71.47'

DATE 11/19/2018
SCALE AS SHOWN
DRAWN NMT
FILE 16077

**NORTHWEST FREIGHT
DRAINAGE EASEMENT**

SHEET
EXH 'B'
OF 1 SHEETS



DATE 11/19/2018
SCALE AS SHOWN
DRAWN NMT
FILE 16077

**NORTHWEST FREIGHT
DRAINAGE EASEMENT**

SHEET
EXH 'C'
OF 1 SHEETS