

Item # 4-1B

**City of Carson City  
Agenda Report**

**Date Submitted:** July 3, 2008

**Agenda Date Requested:** July 17, 2008

**Time Requested:** Consent

**To:** Mayor and Supervisors

**From:** Andrew Burnham, Public Works Director

**Subject Title:** Action to approve a Channel Maintenance and Easement Agreement between North Carson Crossing, LLC and Carson City, providing legal access for the City to maintain a storm drainage facility adjacent to the North Carson Crossing commercial shopping center and the Carson City Freeway.

**Staff Summary:**

This Agreement provides the legal access for the City to maintain a drainage channel and trash rack on lands to be disposed of by NDOT to the North Carson Crossing commercial development which will allow for additional commercial development to be accommodated at the center. The action facilitates the disposal action by NDOT. The City already is obligated to maintain drainage facilities along College Parkway which feed into this channel. This Agreement is related to Amendment #3 to Interlocal Agreement PR561-03-015 by and between NDOT and Carson City under separate Board action.

**Type of Action Requested:** (check one)  
☐ Resolution ☐ Ordinance  
☒ Formal Action/Motion ☐ Other (Specify)

**Does This Action Require A Business Impact Statement:** ☐ Yes ☒ No

**Recommended Board Action:**

I move to approve a Channel Maintenance and Easement Agreement between North Carson Crossing, LLC and Carson City, providing legal access for the City to maintain a storm drainage facility adjacent to the North Carson Crossing commercial shopping center and the Carson City Freeway.

**Explanation for Recommended Board Action:**

Approving this Agreement will allow the City to maintain a storm drainage facility adjacent to the North Carson Crossing commercial shopping center and the Carson City Freeway. The action facilitates the disposal action by NDOT and which will allow for additional commercial development to be accommodated at the center. The City already is obligated to maintain drainage facilities along College Parkway which feed into this channel. This Agreement is related to Amendment #3 to Interlocal Agreement PR561-03-015 by and between NDOT and Carson City under separate Board action.

**Applicable Statue, Code, Policy, Rule or Regulation:** N/A

**Fiscal Impact:** None.

**Explanation of Impact:** N/A.

**Funding Source:** N/A.

**Alternatives:** Not approve the Agreement, which will negate the disposal of surplus Freeway property.

**Supporting Material:** Channel Maintenance and Easment Agreement.

**Prepared By:** Andrew R. Burnham

**Reviewed By:**

(Department Head)

(City Manager)

(District Attorney)

(Finance Director)

Date: 7/8/08

Date: 7/8/08

Date: 7-8-08

Date: 7-8-08

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

## **CHANNEL MAINTENANCE AND EASEMENT AGREEMENT**

This CHANNEL MAINTENANCE AND EASEMENT AGREEMENT (hereinafter "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2008, by and between North Carson Crossing, LLC, a Nevada limited liability company (hereinafter "NCC"), and Carson City, Nevada, a political subdivision of the State of Nevada ("Carson City").

### **RECITALS**

**WHEREAS**, NCC is the owner of certain real property commonly known as the North Carson Crossing Shopping Center located in Carson City, Nevada, and as more specifically described in the legal description attached hereto as Exhibit "A" ("NCC Property");

**WHEREAS**, the Nevada Department of Transportation ("NDOT") has constructed the Carson City Freeway ("Freeway") which traverses downtown Carson City, Nevada and is located directly to the east of, and adjacent to, the NCC Property;

**WHEREAS**, the configuration of the Freeway has left surplus property ("Surplus Property") between the Freeway and NCC's Property which NDOT desires to sell and NCC desires to purchase;

**WHEREAS**, NCC is in the process of purchasing the Surplus Property from NDOT;

**WHEREAS**, there is a certain open earthen trapezoidal drainage channel approximately fifty (50) feet in width ("Channel") located directly adjacent to the Freeway and within the Surplus Property, which is depicted on the attached Exhibit "F," which NDOT is requiring NCC acquire as part of its purchase of the Surplus Property;

**WHEREAS**, Carson City desires that NCC purchase and develop the Surplus Property in order to increase Carson City's tax base;

**WHEREAS**, as an inducement to NCC to proceed with its purchase of, and future development of, the Surplus Property, Carson City has agreed to take full responsibility for the Channel and has entered into an agreement with NDOT memorializing this responsibility;

**WHEREAS**, Carson City, as part of its agreement to assume full responsibility for the Channel, needs an access easement over and across Market Street, where it becomes a private roadway owned by NCC, and then across NCC's property from Market Street to the Channel in order to carry out its maintenance-related activities; and

**WHEREAS**, both NCC and Carson City now desire to memorialize their agreement regarding Carson City's access to, and responsibility for, the Channel;

## AGREEMENT

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

### ARTICLE 1

1.1 Channel Maintenance and Related Tasks. Carson City shall, at its sole expense, operate, clean, repair, replace and maintain (collectively "Maintain" or "Maintenance") the Channel and appurtenances including, but not limited to, the concrete apron, headwalls and the trash rack at the existing 11'x6' concrete box culvert beneath US 395, and any future improvements or modifications to the Channel or storm drain system through the NCC property. It shall conduct these Maintenance activities in such a way as to minimize intrusions on, and interruptions to, NCC, its tenants and their patrons. Indeed, Carson City shall clean, repair or replace any harm or damage resulting to the NCC Property from its Maintenance activities.

#### 1.2 Access Easement.

1.2.1 In consideration for Carson City's agreement to Maintain the Channel as described in section 1.1, NCC hereby agrees to grant Carson City a non-exclusive right-of-way easement over and across Market Street, a private road, and a non-exclusive blanket easement over and across the remaining NCC Property (collectively both easement portions shall constitute the "Easement"), solely for purposes of gaining access between Market Street and the Channel to conduct its Maintenance obligations as set forth above. The Easement shall not be expanded for any reason without NCC's express written consent.

1.2.2 After NCC receives final governmental approval for its development plans for those portions of its property which are situated between Market Street and the Channel, the parties shall agree upon a fixed, permanent and minimally-intrusive route to be used by Carson City to access the Channel henceforth and said route shall then be memorialized in an easement agreement which shall replace the Easement described herein. NCC, however, reserves the right to thereafter move or relocate the permanent easement, with Carson City's written agreement and consent (which shall not be unreasonably withheld), to accommodate any further development of, or modifications to, the NCC Property.

1.2.3 Except in cases of emergency, Carson City shall provide NCC with at least twenty-four (24) hours written notice of its intent to use the Easement and conduct its maintenance obligations. Until such time as the easement route is fixed by written agreement of the parties, Carson City shall use that route which is the least intrusive, and in a manner which minimizes inconvenience and interruptions to NCC, its tenants and their patrons. Carson City shall be responsible for conducting any repairs to the NCC Property which are caused in whole or in part by Carson City's use of the easement.

1.2.4 The Easement granted in this Agreement is nonexclusive. NCC retains the right to make any use of the servient tenement (i.e., the NCC Property), including the right to grant

third parties concurrent easements in, over and through the NCC Property, that does not interfere unreasonably with Carson City's free use and enjoyment of the Easement.

1.3 Indemnity. Carson City further hereby agrees to indemnify and hold NCC and its parent, subsidiaries, and affiliate companies, and their respective members, managers, owners, principals, officers, agents and employees harmless from and against any and all damages, liabilities, causes of action, judgments and claims for personal injury, death and property damage, and from any fees, expenses or costs of any kind, including reasonable attorney's fees, incurred in connection with any damages, liabilities, causes of action, judgments and claims brought, claimed or asserted at any time arising from or relating to the Channel and its appurtenances or to Carson City's use of the Easement.

1.4 Future Modifications to the Channel. The parties anticipate that NCC may, at some future time, decide to modify or improve the Channel in a way that decreases the necessary size of the Channel. Carson City agrees to fully cooperate with NCC in gaining the necessary approvals for any such modifications or improvements. Any modifications or improvements to the Channel must first be approved by Carson City, NCC and NDOT.

## ARTICLE 2

2.1 Independent Contractor Relationship. The relationship between Carson City and NCC is that of independent contractor, and this Agreement is not intended to and shall not be deemed to create any agency, employment, partnership or joint venture relationship between the parties hereto.

2.2 Choice of Law. This Agreement and all of the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Nevada.

2.3 Interpretation. The parties hereto acknowledge that they have read and reviewed this Agreement and have had the opportunity to negotiate, and confer with counsel regarding, its terms. Accordingly, this Agreement shall be construed neither for nor against either party (*i.e.*, the legal principle of *contra proferentem* shall not apply when interpreting this Agreement), but rather it shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties.

2.4 Waivers. Any delay or omission to exercise any right, power, or remedy accruing to any party upon any breach or default by the other party under this Agreement shall not be construed as a waiver of any breach. Moreover, no waiver of any kind shall arise from a party's silence or conduct; all waivers under this Agreement must be in writing.

2.5 Notices. All notices or communications required under this Agreement shall be given in writing and shall be considered given when personally served or mailed by certified or registered mail to the other party at the addresses set forth below the parties' representative signatures to this Agreement, or at such other address as the party shall designate to the other party in writing.

2.6 Attorneys Fees and Costs. If either party to this Agreement brings any legal action, proceeding or arbitration to interpret or enforce this Agreement, for damages for any alleged breach hereof, or which action otherwise arises from or relates to this Agreement, the prevailing party in any such action shall be entitled to recover its/his attorneys' fees from the other party, including those incurred on appeal and in collection. In addition, any such prevailing party shall be entitled to recover, through a standard post-trial (or post-hearing) motion procedure, *all* of the costs and expenses it incurred in the action (including expert witness fees), and such an award shall not be limited by any statute, code, judicial or court rule or other legal authority or law.

2.7 Time is of the Essence. Time is of the essence of this Agreement and the performance of all obligations hereunder.

2.8 Captions. All captions, headings, titles, and numerical references are for convenience only and shall have no effect on the interpretation of this Agreement.

2.9 Severability. In the event any provision in this Agreement is more restrictive than allowed by law, such provision shall be deemed amended so that it shall then be fully enforceable to the extent permitted by such law. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provisions unenforceable, invalid, or illegal.

2.10 Entire Agreement; Amendments. This Agreement contains all of the agreements and understandings between the parties and cannot be amended or modified except by a written agreement executed by all of the parties. This Agreement supersedes any and all prior agreements and understandings between the parties hereto and alone expresses the agreement of the parties.

2.11 Binding Arbitration. Any action to enforce, interpret or which otherwise arises from or relates to this Agreement, shall be resolved through *binding* arbitration as provided herein, it being the parties' intention to obtain the quickest, fairest, and least expensive resolution possible. The process shall be initiated by written notice (the "Arbitration Notice") served by any party hereto. The arbitration shall occur in Carson City, Nevada, before a single arbitrator on whom the parties can agree. If the parties are unable to agree on an arbitrator within ten (10) days after service of the Arbitration Notice, the arbitrator shall be selected in accordance with the American Arbitration Association ("AAA") procedures, which selection shall be binding on the parties. The arbitration shall be administered by the AAA in accordance with its Commercial Arbitration Rules (or any successor rules). The arbitrator is empowered, and shall have the authority to, award equitable relief and/or damages, such as punitive, exemplary or statutory damages, in addition to compensatory damages, and the arbitrator's decision(s) shall be final and binding and may be reduced to a legally-enforceable judgment in any court of competent jurisdiction.

The initial costs of the arbitration, including the fees and expenses of the arbitrator(s), the administration fees, and the facilities costs, if any, shall be borne by the parties in equal shares. However, the arbitrator shall award the prevailing party their costs and fees as provided herein.

2.12 Further Assurances. Each party hereto shall execute and deliver such instruments and take such other actions as any other party may reasonably require in order to carry out the intent of this Agreement.

2.13 Termination. This Agreement shall continue in perpetuity and may not be terminated except: (1) by mutual, written agreement of the parties hereto, or (2) in the event the Channel is eliminated or otherwise ceases to exist.

2.14 Agreement Nonassignable. Carson City shall not assign this Agreement without NCC's and NDOT's written consent. Any purported assignment of this Agreement or of any interest in this Agreement without NCC's and NDOT's written consent, shall be void and of no effect.

2.15 Binding Effect. This Agreement shall be binding on and shall inure to the benefit of the parties' respective members, managers, owners, principals, officers, employees, agents, spouses, heirs, executors, administrators, successors, next-of-kin, estates and assigns.

WITNESS the hands and seals of the parties hereto, as to the date signed above.

CARSON CITY, NEVADA  
201 No. Carson Street  
Carson City, NV 89701

NORTH CARSON CROSSING, LLC  
ATTN: Kent Witt  
Post Office Box 20430  
Reno, Nevada 89515-0430

By: \_\_\_\_\_  
Marv Teixeira, Mayor

By: Kent Witt  
Kent Witt, Managing Member

Approved as to form:

\_\_\_\_\_  
Deputy District Attorney

Recommended:

\_\_\_\_\_  
Andrew Burnham, Public Works Director

**LEGAL DESCRIPTION  
NORTH CARSON CROSSING LLC SHOPPING CENTER SITE  
(Includes Home Depot site)  
9-14-07**

The land referred to herein is situated in the State of Nevada, County of Carson City, described as follows:

**PARCEL-1**

ALL THAT CERTAIN REAL PROPERTY LOCATED WITHIN A PORTION OF THE SE 1/4 OF SECTION 5, TOWNSHIP 15 NORTH, RANGE 20 EAST, M.D.B.&M., BEING A PORTION OF PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR STEINHEIMER TRUST, FILED IN BOOK 5 OF MAPS, PAGE 1284 AS FILE NO. 47221, OFFICIAL RECORDS OF CARSON CITY, STATE OF NEVADA AND FURTHER DESCRIBED IN THAT CERTAIN BOUNDARY LINE ADJUSTMENT RECORDED SEPTEMBER 14, 2007 AS DOCUMENT NO. 371909, OFFICIAL RECORDS OF CARSON CITY, STATE OF NEVADA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 2 N.00°49'15"E., 1,256.45 FEET TO THE SOUTHERLY LINE OF COLLEGE PARKWAY; THENCE ALONG SAID SOUTHERLY LINE OF COLLEGE PARKWAY, S.89°10'48"E., 82.48 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF THE N.D.O.T. FUTURE HIGHWAY, SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST, FROM WHICH A RADIAL LINE BEARS S.45°14'17"W., AND HAVING A RADIUS OF 100.00 FEET; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING (4) COURSES: (1.) ALONG SAID CURVE 47.22 FEET, THROUGH A CENTRAL ANGLE OF 27°03'15"; TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 475.00 FEET; (2.) ALONG LAST SAID REVERSE CURVE 343.72 FEET, THROUGH A CENTRAL ANGLE OF 41°27'37"; (3.) S.59°10'05"E., 609.37 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1,425.00 FEET; (4.) ALONG SAID CURVE 36.66 FEET, THROUGH A CENTRAL ANGLE OF 1°28'27"; THENCE LEAVING SAID SOUTHWESTERLY LINE N.89°04'29"W., 401.44 FEET; THENCE S.00°55'31"W., 341.88 FEET; THENCE S.89°04'29"E., 33.50 FEET; THENCE S.00°55'31"W., 292.62 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE ALONG LAST SAID LINE OF N.89°04'29"W., 510.19 FEET TO THE POINT OF BEGINNING.

Containing 558,648 square feet or 12.82 acres, more or less.

REFERENCE IS ALSO MADE TO ADJUSTED PARCEL "A" ON RECORD OF SURVEY RECORDED IN THE OFFICE OF THE CARSON CITY RECORDER ON SEPTEMBER 14, 2007 IN BOOK 10 OF MAPS, PAGE 2669 AS DOCUMENT NO. 371910, OFFICIAL RECORDS OF CARSON CITY, STATE OF NEVADA.

A PORTION OF ASSESSOR'S PARCEL NUMBERS 2-755-12 and 2-755-13

**EXHIBIT "A"**