

**Carson City Board of Supervisors  
Agenda Report**

**Date Submitted:** April 15, 2011

**Agenda Date Requested:** May 5, 2011  
**Time Requested:** Consent

**To:** Mayor and Supervisors

**From:** Public Works

**Subject Title:** Action to approve an agreement for the City to purchase a permanent utility easement and temporary construction easement from property owners James H. Wheeler II and Mala J. Wheeler, to allow construction of public sanitary sewer and storm drain improvements across 4600 Conte Drive, APN 010-192-09, associated with the North/South Water Transmission Main Project – Phase 2. (Sharp)

**Staff Summary:** The City intends to construct public sanitary sewer and storm drain mains through the subject property in order to convey domestic sewage and stormwater runoff from Conte Drive to South Edmonds Drive. There are not currently sufficient available public rights of way or easements suitable for locating these gravity public utilities due to the existing topography. The owners will waive replacement of significant existing landscaping, irrigation and concrete slab improvements as a part of the financial consideration to be paid by the City as specified in the agreement.

**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 an agreement for the City to purchase a permanent utility easement and temporary construction easement from property owners James H. Wheeler II and Mala J. Wheeler, to allow construction of public sanitary sewer and storm drain improvements across 4600 Conte Drive, APN 010-192-09, associated with the North/South Water Transmission Main Project – Phase 2.

**Explanation for Recommended Board Action:** See staff summary above.

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

**Fiscal Impact:** \$24,640.

**Explanation of Impact:** N/A

**Funding Source:** North/South Transmission Main water capital improvements fund.

**Alternatives:** None.

**Supporting Material:** Agreement; Exhibit A Utility Easement Deed And Temporary Easement; Exhibit A to Exhibit A legal description; Exhibit B to Exhibit A map.

**Prepared By:** Jeff Sharp, City Engineer



Reviewed By:   
(Public Works Director)

Date: 4-26-11

  
(City Manager)

Date: 4/26/11

  
(District Attorney)

Date: 4/26/11

Board Action Taken:

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

- |          | Aye/Nay |
|----------|---------|
| 1) _____ | _____   |
| 2) _____ | _____   |
| 3) _____ | _____   |
| 4) _____ | _____   |
| 5) _____ | _____   |

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

Ptn APN 010-192-09

AFTER RECORDING RETURN TO:  
JEFF SHARP  
CARSON CITY  
3505 BUTTI WAY  
CARSON CITY, NV 89701-3498  
APN 010-192-09

#### AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between JAMES H. WHEELER II and MALA J. WHEELER, husband and wife as joint, hereinafter called the OWNER, and CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called the CITY,

#### WITNESSETH:

1. The OWNER, for and in consideration of the covenants and payments to be performed and paid as hereinafter provided agrees as follows:

- (a) To convey a permanent utility easement and temporary construction easement for the purpose of constructing a sewer line and storm drain and associated improvements upon over and across the subject property (APN 010-192-09) to the CITY, its assigns; said easement situate, lying and being in Carson City, State of Nevada, and more particularly described in EXHIBIT "A" attached hereto and made a part hereof.
- (b) To deliver to the CITY a utility easement and temporary easement for the property described in section 1 (a) of this Agreement.
- (c) To be responsible for said premises, including risk and liability for loss or damage including all repairs and/or maintenance to said premises until such date as OWNER has delivered the before mentioned deed to the CITY, or such date as OWNER has given physical possession of said premises to the CITY.
- (d) To permit the CITY or its authorized agents, assignees and contractors to enter in and upon OWNER's before mentioned lands, which are herein agreed to be conveyed for the purposes of inspection, land survey, environmental analysis and engineering upon execution of this agreement.

(e) To the fullest extent permitted by law, OWNER shall indemnify, hold harmless and defend, not excluding the CITY's right to participate, the CITY from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of OWNER, their officers, employees and/or agents arising out of performance of the AGREEMENT. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This Indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys fees and costs for the indemnified party's chosen right to participate with legal counsel.

2. The CITY, in consideration of the promises and covenants of the OWNER hereinabove set forth, agrees as follows:

(a) To pay the OWNER in the manner hereinafter provided the sum of **TWENTY-FOUR THOUSAND, SIX HUNDRED FORTY DOLLARS (\$24,640.00)**, which shall be the total purchase price for all said real property and property rights to be conveyed.

(b) To the fullest extent permitted by law, CITY shall indemnify, hold harmless and defend, not excluding the OWNER's right to participate, the OWNER from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of CITY, their officers, employees and/or agents arising out of performance of the AGREEMENT. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This Indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys fees and costs for the indemnified party's chosen right to participate with legal counsel.

3. It is mutually agreed and understood by the CITY and by the OWNER as follows:

(a) That CITY will install or cause to be installed, at CITY expense, a sanitary sewer lateral stub-out from the sanitary sewer main to the north edge of the permanent easement for OWNER's future use. OWNER to pay any and all costs associated with connecting to the sanitary sewer lateral stub-out including any applicable connection fees and installation costs.

(b) CITY will remove and replace the concrete apron between Conte Drive and OWNER's southern driveway. OWNER, at OWNER's discretion, may work with CITY's contractor in determining the final location of said apron.

(c) CITY will remove and haul away all landscaping along the south property line of OWNER's property between the proposed sewer line and said property line at no cost to OWNER.

(d) Concrete must be removed in OWNER's rear yard to accommodate construction. CITY agrees to minimize said removal. Owner agrees to pay any replacement costs of the removed concrete.

(e) CITY will remove and replace the chain link fencing along the south property line of OWNER's property at no cost to OWNER.

(f) That all of the facilities and improvements constructed within this agreement shall be designed and constructed in accordance with Carson City Development Standards.

(g) CITY and OWNER will coordinate and cooperate with each other in scheduling the construction of improvements.

(h) If OWNER or CITY fails, neglects, or refuses to do or perform any act or thing herein covenanted and agreed to be done or performed, such failure, neglect, or refusal will constitute a default breach of this Agreement. If OWNER or CITY fails, neglects, or refuses to cure the default upon the request of the other party, such other party, at its option, may correct such default and thereupon recover from the other party the cost thereof or may require the specific performance by the other party of all terms, conditions, and covenants of this agreement. The foregoing will be in addition to and exclusive of any other remedy now or hereafter provided by law, and the pursuit of any right or remedy will not be construed as an election.

(i) The illegality or invalidity of any provision or portion of this agreement shall not affect the validity of any remaining provision.

(j) The laws of the State of Nevada shall be applied in interpreting and construing this Agreement.

(k) This agreement shall constitute the entire contract between the parties hereto, and no modification hereof shall be binding unless endorsed hereon in writing.

(l) All property descriptions are approximate and subject to slight adjustment as necessary to meet construction requirements.

(m) All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns, as the case may be, of the respective parties.

(n) As used herein the term OWNER shall include the plural as well as the singular, and the feminine as well as the masculine and the neuter.

(o) That CITY shall have the right to adapt and improve the whole or any part of said property in accordance with the provisions of N.R.S. 271.265.

(p) The regulations pertaining to nondiscrimination and Title VI of the Civil Rights Act of 1964, as contained in Title 23, Code of Federal Regulations Part 200, and Title 49, Code of Federal Regulations Part 21, are hereby incorporated by reference and made a part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

OWNER:

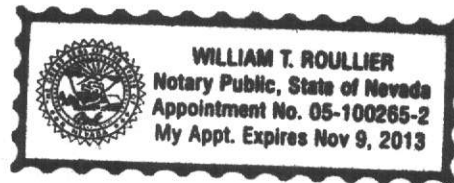
JAMES H. WHEELER II and MALA J. WHEELER

By James H. Wheeler II  
JAMES H. WHEELER II Date

STATE OF NEVADA )  
COUNTY OF CLATSOP ) SS.

This instrument was acknowledged before me on APRIL 11, 2011, by JAMES H. WHEELER II.

[Signature]  
NOTARY PUBLIC



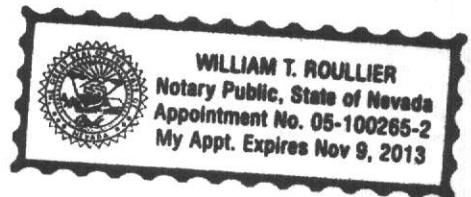
Ptn APN 010-192-09

By: Mala J. Wheeler  
MALA J. WHEELER Date

STATE OF NEVADA )  
COUNTY OF CLATSOP ) SS.

This instrument was acknowledged before me on APRIL 11, 2011, by MALA J. WHEELER.

[Signature]  
NOTARY PUBLIC



CITY:

REVIEWED AND RECOMMENDED BY:

[Signature] 4-15-11  
JEFF SHARP Date  
City Engineer

APPROVED FOR LEGALITY AND FORM:

[Signature] EDDA 4/26/11  
Carson City District Attorney Date

\_\_\_\_\_  
Robert Crowell, Mayor Date

ATTEST:

\_\_\_\_\_  
ALAN GLOVER, Clerk-Recorder Date

APN 010-192-09

AFTER RECORDING RETURN TO  
JEFF SHARP  
CARSON CITY PUBLIC WORKS  
3505 BUTTI WAY  
CARSON CITY, NV 89701-3498

UTILITY EASEMENT DEED  
AND  
TEMPORARY EASEMENT

THIS DEED, made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between JAMES H. WHEELER II and MALA J. WHEELER, husband and wife as joint, hereinafter called GRANTOR, and CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called CITY,

WITNESSETH:

UTILITY EASEMENT

That the GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant unto the CITY and to its assigns forever, for those purposes as contained in Chapter 271 of the Nevada Revised Statutes, a permanent easement for public purposes upon, over and across certain real property to the CITY; said easement is shown and more fully described in Exhibits "A" and "B", attached hereto and made a part hereof:

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; with the exception of any and all reservations as are previously hereinabove expressly excepted from this conveyance.

TEMPORARY EASEMENT

That the GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell unto the CITY and to its assigns, for those purposes as contained in Chapter 271 of the Nevada Revised Statutes, a temporary construction easement, upon, over and across said real property situate, lying and being in Carson City, State of Nevada, said easement is shown and more fully described in Exhibits "A" and "B", attached hereto and made a part hereof:

The above described temporary rights granted by this instrument shall commence with written notice from CITY and shall terminate ten (10) months later.

TO HAVE AND TO HOLD all and singular the said property, together with the appurtenances, unto the said CITY and to any heirs, successors and assigns forever.



APN 010-192-09

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

OWNER:

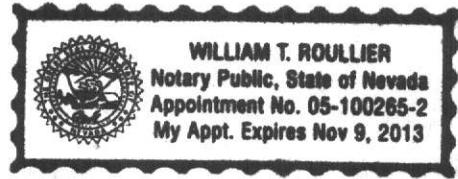
JAMES H. WHEELER II and MALA J. WHEELER

By: James H. Wheeler II  
JAMES H. WHEELER II Date

STATE OF NEVADA )  
COUNTY OF CLATSOP ) SS.

This instrument was acknowledged before me on APRIL 11, 2011,  
by JAMES H. WHEELER II.

[Signature]  
NOTARY PUBLIC

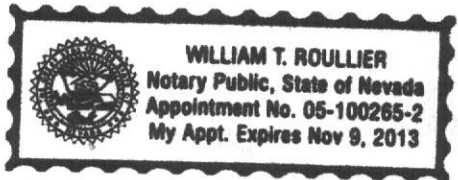


By: Mala J. Wheeler  
MALA J. WHEELER Date

STATE OF NEVADA )  
COUNTY OF CLATSOP ) SS.

This instrument was acknowledged before me on APRIL 11, 2011,  
by MALA J. WHEELER.


[Signature]  
NOTARY PUBLIC



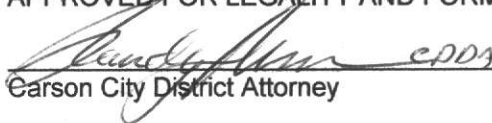
APN 010-192-09

CITY:

REVIEWED AND RECOMMENDED BY:

  
\_\_\_\_\_  
JEFF SHARP  
City Engineer  
4-15-11  
Date

APPROVED FOR LEGALITY AND FORM:

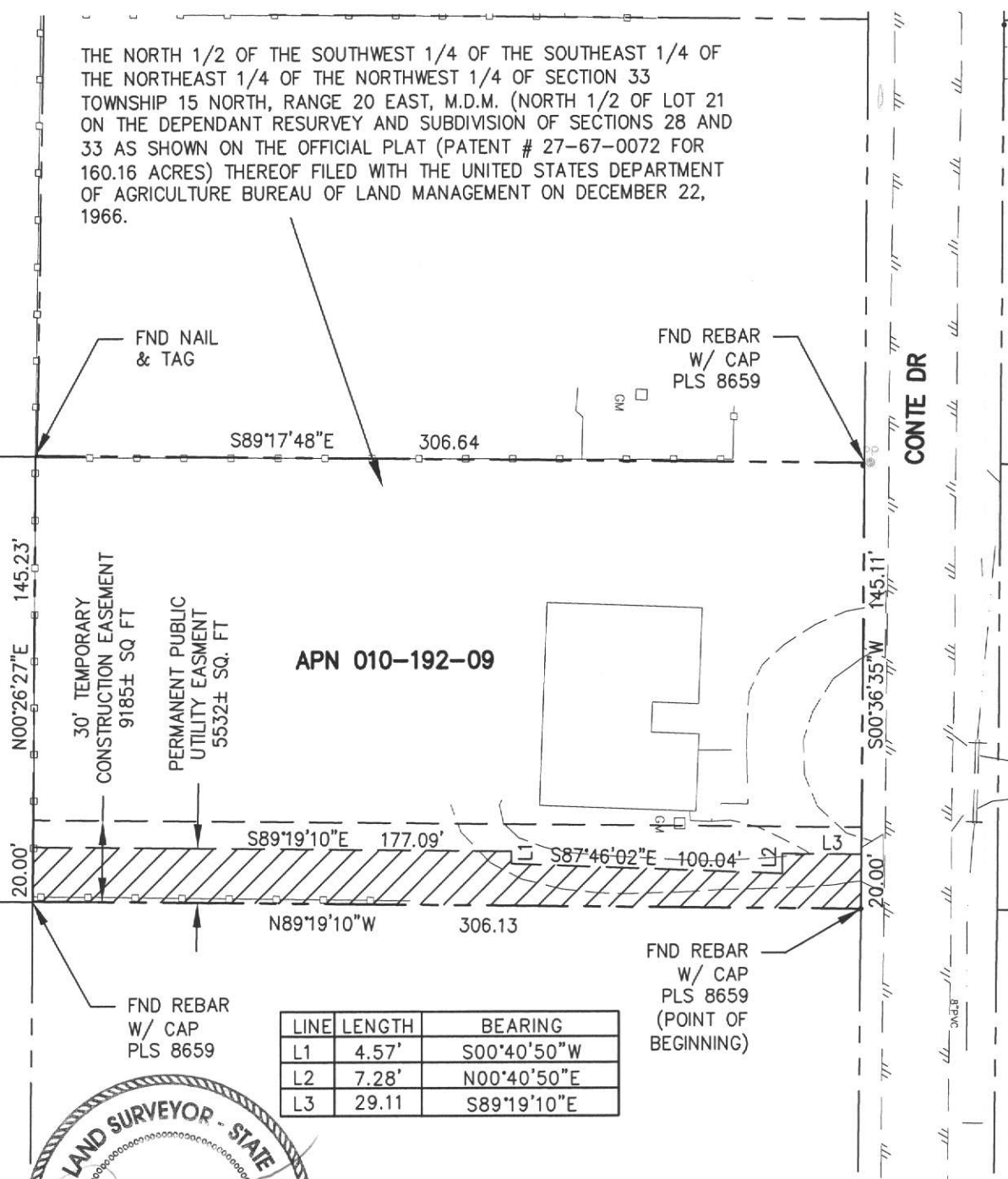
  
\_\_\_\_\_  
Randy Allen  
Carson City District Attorney  
4/26/11  
Date

\_\_\_\_\_  
Robert Crowell, Mayor  
Date

ATTEST:

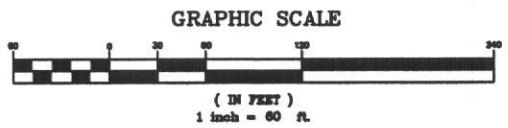
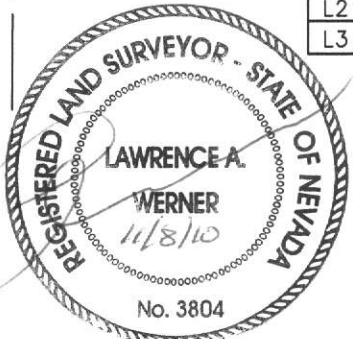
\_\_\_\_\_  
ALAN GLOVER, Clerk-Recorder  
Date

THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33 TOWNSHIP 15 NORTH, RANGE 20 EAST, M.D.M. (NORTH 1/2 OF LOT 21 ON THE DEPENDANT RESURVEY AND SUBDIVISION OF SECTIONS 28 AND 33 AS SHOWN ON THE OFFICIAL PLAT (PATENT # 27-67-0072 FOR 160.16 ACRES) THEREOF FILED WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE BUREAU OF LAND MANAGEMENT ON DECEMBER 22, 1966.



APN 010-192-09

LINE	LENGTH	BEARING
L1	4.57'	S00°40'50\"W
L2	7.28'	N00°40'50\"E
L3	29.11	S89°19'10\"E



DWG NO: 02-6021EASE-WHEELER2010OCT20.dwg

<p><b>CARSON CITY PUBLIC WORKS DEPARTMENT</b></p> <p>3505 BUTTI WAY CARSON CITY, NEVADA 89701 PH: 887-2355 FAX: 887-2112</p>	<p><b>APN 010-192-09</b></p> <p><b>PROPOSED PUBLIC UTILITY EASEMENT</b></p>	<p>DESIGNED BY: <u>BD</u></p> <p>DRAWN BY: <u>BD</u></p> <p>CHECKED BY: <u>LW</u></p> <p>SCALE (HORIZ): <u>1"=60'</u></p> <p>DATE: <u>OCT 20, 2010</u></p>	<p><b>FIGURE</b></p> <p><b>1</b></p>
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H:\projects\02-6021-EASE-Phase VII\dwg\02-6021EASE-WHEELER2010OCT14.dwg, Layout1, 11/9/2010, 9:18:28 AM, B.David

October 20, 2010  
Project No. 02-6021

**WHEELER TO CARSON CITY**

A portion of the North one-half of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 33, Township 15 North, Range 20 East, M.D.M. in the County and City of Carson City, State of Nevada, lying westerly of Conte Drive, a City street, also shown as a portion of the North one-half of Lot 21 on the Department Resurvey and Subdivision of Sections 28 and 33 as shown on the Official Plat thereof filed with the United States Department of Agriculture Bureau of Land Management on December 22, 1966, lying within the following two described parcels of Land:

**Temporary Construction Easement**

A strip of land 30.00 feet in width lying northerly of and adjoining the southerly line of the North one-half of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 33, Township 15 North, Range 20 East, M.D.M. in the County and City of Carson City, State of Nevada.

**Permanent Easement**

Beginning at the Southeast corner of said North one-half of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 33, Township 15 North, Range 20 East, M.D.M.; thence, along the Southerly line of said North one-half, North 89°19'10" West 306.13 feet, to the Southwest corner of said North one-half, thence, along the Westerly line of said North one-half, North 00°26'27" East 20.00 feet; thence South 89°19'10" East 177.09 feet; thence, South 00°40'50" West 4.57 feet; thence, South 87°46'02" East 100.04 feet; thence North 00°40'50" East 7.28 feet; thence, South; thence South 89°19'10" East 29.11 feet, to the Easterly line of said North one-half; thence, along said Easterly line, South 0°36'35" West 20.00 feet, to the point of beginning.

Containing 5,532 square feet more or less.

The basis of bearings for this description is the southerly line of said North one-half of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of the Northwest one-quarter of Section 33, Township 15 North, Range 20 East, M.D.M. taken as North 89°19'10" West.

