



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: February 1, 2018

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: To approve a Non-Exclusive Utility Easement agreement between the State of Nevada, Division of State Lands and Carson City for a sewer lift station and sewer lines located on APN 010-281-46 at the Northern Nevada Correctional Facility. (Stephanie Hicks; SHicks@carson.org)

Staff Summary: The subject easement is located at the Northern Nevada Correctional Center on APN 010-281-46, a parcel owned by the State of Nevada. The lease agreement was recorded in 1997 for the replacement of a sewer lift station and installation of associated sewer lines. The current lease expired March 2017, with an option for a 20-year extension. The lease was recently re-evaluated by State Lands. State Lands determined that a Non-Exclusive Easement is the preferred authorization document over the prior Lease/Easement. Additionally, the easement annual use fee has been increased from \$250.00 to \$4,400.00 per year for the next 5 years. The easement totals approximately 82,628 square feet and is necessary in order to allow Carson City to maintain the existing sewer system.

Agenda Action: Formal Action/Motion

Time Requested: Consent

Proposed Motion

Move to approve a Non-Exclusive Utility Easement agreement between the State of Nevada, Division of State Lands and Carson City for a sewer lift station and sewer lines located on APN 010-281-46 at the Northern Nevada Correctional Facility.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

March 24, 1997. Recorded lease agreement between Carson City and the State of Nevada, Division of State Lands for a new sewer lift station at the Northern Nevada Correctional Center.

Background/Issues & Analysis

In March 1997, Carson City entered into a lease agreement with the State of Nevada Division of State Lands for the purpose of replacing a sewer lift station and constructing and installing associated sewer lines to the benefit of the State of Nevada and Carson City. During the State's review of the lease for rental re-evaluation, it was noted that the associated sewer lines were not included in the lease. It was further noted that the appropriate document for the occupancy and use of State property in this manner is through a Non-Exclusive Easement. The easement annual use fee has been increased from \$250.00 to \$4,400.00 per year for the next 5 years. The easement totals approximately 82,628 square feet and is necessary in order to allow Carson City to maintain the existing sewer system.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 322 Use of State Lands

Financial Information

Is there a fiscal impact? ☒ Yes ☐ No

If yes, account name/number: 510-3201-434.04-90 Property Services – Fees and Permits

Is it currently budgeted? ☒ Yes ☐ No

Explanation of Fiscal Impact: The cost to the City for this easement has been \$250.00 annually since 1997.

Alternatives

Do not approve a Non-Exclusive Utility Easement agreement between the State of Nevada, Division of State Lands and Carson City for a sewer lift station and sewer lines located on APN 010-281-46 at the Northern Nevada Correctional Facility.

Propose modified motion.

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)



PRIS 2DMM/5626/14965
Carson City A.P.N.: 10-281-46

Recording Requested by and Return To:
DIVISION OF STATE LANDS
901 S. STEWART STREET, SUITE 5003
CARSON CITY, NV 89701-5246

NON-EXCLUSIVE UTILITY EASEMENT
CARSON CITY SEWER LIFT STATION AND SEWER LINES
NORTHERN NEVADA CORRECTIONAL FACILITY

This Non-Exclusive Easement is made and entered into this ____ day of _____, 20____ by and between the STATE OF NEVADA, acting through the NEVADA DIVISION OF STATE LANDS, for and on behalf of the STATE OF NEVADA, DEPARTMENT OF CORRECTIONS, hereinafter referred to as GRANTOR, and CARSON CITY, a Consolidated Municipality, hereinafter referred to as GRANTEE:

WHEREAS, GRANTOR owns Carson City Assessor's parcel number 10-281-46; and

WHEREAS, the GRANTOR and GRANTEE entered into a Lease Agreement recorded with the Carson City Recorder's Office, Carson City, Nevada as Document No. 200454 on March 24, 1997 for the purpose of replacing a sewer lift station and constructing and installing associated sewer lines to benefit the State of Nevada and the citizens of Carson City; and

WHEREAS, the aforementioned Lease Agreement contained language in part that read "LESSEE agrees to pay LESSOR an annual rental fee for use of said property in the sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS per year beginning November 1, 1996, and each

November 1st thereafter. Said annual fee to be adjusted to reflect current fair market value every FIVE (5) years;" and

WHEREAS, during the review of the recent rental re-evaluation it was noted from the 1996 application the associated sewer lines were not included in the Lease. It was further determined the appropriate authorization document for the occupancy and use of state property in this manner is through a Non-Exclusive Easement; and

WHEREAS, NRS 322.050 and 322.060 gives the Administrator of the Division of State Lands the authority to grant easements over or upon any land owned by the State of Nevada;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, GRANTOR does hereby grant to GRANTEE a Non-Exclusive Easement for the purposes stated above, hereinafter referred to as "the Project," upon the following described property, together with the right to enter upon the property to construct, reconstruct, inspect, maintain, and repair structures and to remove bushes, undergrowth or other obstructions interfering with the location, construction and maintenance, in whole or in part, at will upon a portion of that certain property situate in the West-half (W ½) of Section 4, Township 14 North, Range 20 East, as described in the legal descriptions attached hereto as **EXHIBITS A and B**.

IN FURTHER CONSIDERATION for the granting of this Non-Exclusive Easement, GRANTEE, its successors and assigns and/or its agent(s) and contractor(s), understands and agrees to the following specific conditions:

1. PURPOSE: The property described herein may be used by GRANTEE solely for the Project. The Project shall be executed in accordance with the Carson City Public Works Dept.

Sewer Line Easement dated November 2017 incorporated herein and by reference made a part hereof.

2. JURISDICTION OF STATE: The Non-Exclusive Easement for the Project extends only to the areas described in **EXHIBITS A and B** and shall not be construed to authorize access across private lands. If GRANTEE needs to utilize other portions of the property not granted to it through this Non-Exclusive Easement, a permit, license, easement or other authorization to do so is required.

3. CONSIDERATION: For and in consideration of the Project, GRANTEE, its successors and assigns, hereby agree to pay an annual use fee in the amount of FORTY-FOUR HUNDRED AND NO/100 DOLLARS (\$4,400.00) per year to the GRANTOR for the Project [NRS 321.003(2), 322.060(2)]. Said fees are to be paid in advance commencing on the execution date of this Non-Exclusive Easement and on or before NOVEMBER 1, 2017 and on or before NOVEMBER 1ST every year thereafter for the entire duration of said Non-Exclusive Easement. This is payable to the STATE OF NEVADA, DIVISION OF STATE LANDS, and is to be mailed to:

**DIVISION OF STATE LANDS
901 S. STEWART ST., SUITE 5003
CARSON CITY, NV 89701**

The GRANTOR reserves the right to reevaluate, reassess and adjust the Non-Exclusive Easement fee for the Project every five (5) years. Should GRANTEE dispute a proposed fee increase, the dispute may be resolved by an appraisal of the fair market value of the Non-Exclusive Easement and other actions as required by law. The parties may by mutual agreement select an

independent licensed appraiser to determine the fair market value. The GRANTEE shall pay for the appraisal and any associated costs.

4. **LATE PAYMENT FEE:** The annual use fee shall be paid in advance to GRANTOR and shall be due on or before the due date provided herein. Any payment made after this due date shall be subject to a late payment fee in the amount of TWO HUNDRED TWENTY AND NO/100 DOLLARS. If fees, including late fees, become more than SIXTY (60) days in arrears, the Non-Exclusive Easement may be terminated by GRANTOR.

5. **PERMITS:** This Non-Exclusive Easement is subject to the acquisition of all local, regional, state and federal permits and approvals as required by law. GRANTEE agrees to obtain and adhere to the conditions of the necessary permits.

6. **INDEMNIFICATION:** GRANTEE, its successors and assigns, and/or agent(s) or contractor(s) as Indemnitors agrees to indemnify, defend and hold harmless the State of Nevada and its agents from and against any and all liability for personal injuries, claims, actions, damages, expenses, or for loss of life or property resulting from, or in any way connected with the conditions or use of the premises covered herein, including any hazard, deficiency, defect, or other matter, known or unknown, or connected with the installation and maintenance of the Project. This indemnification does not exclude the State of Nevada's right to participate in its defense of a matter subject to this indemnification.

7. **LIMITED LIABILITY:** GRANTOR will not waive and intends to assert all available immunities and statutory limitations in all cases, including, without limitation, the provisions of Nevada Revised Statutes Chapter 41.

8. INSURANCE; CONTRACTORS AND SUB-CONTRACTORS: This provision is applicable to all Non-Governmental Entities engaged to work on the premises granted by this Non-Exclusive Easement and does not apply to any GRANTEE considered a Public Entity. GRANTEE agrees to carry and to require their contractors and sub-contractors to carry their own General Liability Insurance Policy issued by an insurance company authorized to do business in the State of Nevada and which is currently rated by A. M. Best as A-VII or better. The insurance policy is to be kept in full force and effect during the term of this Non-Exclusive Easement. Such insurance policy shall be at the minimum, in the amount of \$1,000,000 per occurrence for bodily injury and property damage and shall via an endorsement, name the *State of Nevada, its officers, employees and agents as additional insureds* for all liability arising from the use of state land. Each liability insurance policy shall also provide for a waiver of subrogation as to all additional insured's. GRANTEE agrees to provide and to require their contractors and sub-contractors to provide to the State of Nevada the Accord 25 Certificate of Insurance as proof of the insurance and an Additional Insured Endorsement, signed by an authorized insurance company representative, to evidence the endorsement of the State as additional insured. **The Certificate of Insurance and Additional Insured Endorsement shall be provided by each contractor and sub-contractor prior to their entry upon state property and be sent to:**

**Deann McKay, State Land Agent
Nevada Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, Nevada 89701**

9. PLANS AND PHOTOGRAPHS: The Project and related activities must be completed in accordance with the approved application and plans on file in the office of the Division of State Lands. The Division of State Lands must be notified if any alterations to the

approved plans which would substantially affect the land are made or proposed prior to commencement of or during any work on the Project and related activities. The Division of State Lands reserves the right to prohibit said alterations.

10. INSPECTION: GRANTOR retains the right to inspect the Project at any time. GRANTEE agrees to notify GRANTOR at least **TWO (2)** business days prior to the commencement and termination of any activities on the property to allow interested agencies the opportunity to inspect the Project.

11. EXISTING EASEMENTS: GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees to require contractors to use caution when constructing and placing the Project and supporting equipment because of the possibility of additional utility laterals not known, and to be responsible for damage caused to any other utilities located upon state land. The legally required offsets from any existing gas, electric, water and/or communication lines shall be maintained at all times.

12. HISTORIC DISCOVERIES: If prehistoric or historic remains or artifacts are discovered during any work performed within the Non-Exclusive Easement, work will be temporarily halted and the State Historic Preservation Office at (775) 684-3448 as well as the Division of State Lands at (775) 684-2720 shall be notified. GRANTEE will heed to the responsibilities required under Section 106 of the National Historic Preservation Act of 1966, as amended.

13. DAMAGE TO STATE LAND: GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees to pay for and be responsible for all direct or indirect damages to the real property, improvements, and personal property of GRANTOR

caused by GRANTEE during any construction, re-location, installation, use, operation, inspection, future maintenance, repairs, reconstruction and removal of the Project, and further agrees to return the land to its pre-project condition upon completion of the work.

14. MAINTENANCE: GRANTEE, its successors and assigns, shall be responsible for all maintenance of the Project owned by GRANTEE and within the Non-Exclusive Easement and understands and agrees that the Project must be maintained in good repair at all times.

15. ENVIRONMENTAL CONDITIONS: GRANTEE, its successors and/or its agent(s) or contractor(s) understands and agrees to maintain the Project within the Nevada Division of Environmental Protection's Best Management Practices guidelines.

16. WARRANTIES: GRANTOR makes no warranty as to the condition of or the adequacy of the property for the proposed uses of GRANTEE.

17. NOTICES: All notices under this Non-Exclusive Easement shall be in writing and delivered in person or sent by certified mail, return receipt requested, to GRANTOR and to GRANTEE at their respective addresses set forth below or to such other address as may hereafter be designated by either party in writing:

GRANTOR'S ADDRESS:

Division of State Lands
901 S. Stewart St., Ste. 5003
Carson City, Nevada 89701

GRANTEE'S ADDRESS:

Carson City Dept. Public Works
3505 Butti Way
Carson City, Nevada 89701

18. FURTHER AUTHORIZATIONS: Further authorization from the Division of State Lands is required prior to commencement of any future work or activities at locations other than that described in **EXHIBITS A & B.**

19. TERMINATION: Either party shall have the right to terminate this Non-Exclusive Easement in whole or in part any time during the term hereof, provided, however, that either party shall give NINETY (90) days written notice of election to terminate. Upon termination, the land will be returned to as near as its original condition as possible. The GRANTEE, its successors and assigns, understands and agrees that at the termination of this Non-Exclusive Easement the Project will be removed by GRANTEE, if so requested by GRANTOR, and the land restored to its pre-project condition. Any and all right, title or interest must be quitclaimed by instrument to the GRANTOR within a reasonable time, without claim or demand of any kind from GRANTOR. Except as might otherwise be provided for, any expenses for removal of the Project and for the restoration of the land will be borne by GRANTEE, its successors and assigns at no expense or cost to the GRANTOR.

20. TERM AND DISCONTINUATION: This Non-Exclusive Easement shall continue so long as the same may be necessary and required for the purposes for which it was granted unless terminated sooner by another provision. If at any time the GRANTEE should discontinue said use for a period of ONE (1) year this Non-Exclusive Easement shall thereupon terminate and all right, title and interest therein shall revert to GRANTOR, its successors and assigns.

21. COMPLIANCE TO CONDITIONS: Failure to concur with or comply with any of the conditions contained herein will cause this Non-Exclusive Easement to become invalid and shall require the removal of the Project and appurtenances. All right, title and interest in the Non-

Exclusive Easement shall revert to GRANTOR. GRANTEE agrees to provide a copy of this Non-Exclusive Easement to its contractors prior to entering and beginning any work on the property described herein.

22. WAIVER: The failure of GRANTOR to insist upon strict performance of any of the covenants and agreements to this Non-Exclusive Easement or to exercise any option herein conferred in anyone or more instance, shall not be construed to be a waiver or relinquishment of any such covenants and agreements.

23. SURVIVAL: This Non-Exclusive Easement, and all of the terms hereof, shall inure to the benefit of, and be binding upon, the heirs, assigns and successors of the parties hereto, and the rights and obligations of the GRANTEE are, and shall continue to be, joint and several.

24. ENTIRE AGREEMENT: This Non-Exclusive Easement and conditions incorporated herein contain all of the agreements between the parties with respect to the matters contained herein. No prior agreement, understanding or verbal statement made by any party is a part hereof. No provisions of the Non-Exclusive Easement may be amended or modified in any manner whatsoever unless incorporated in writing and executed by both parties. When executed by the GRANTOR and GRANTEE, this Non-Exclusive Easement shall be binding upon GRANTOR and GRANTEE, their successors and assigns.

25. AMENDMENT OR MODIFICATION: This Non-Exclusive Easement may be amended or modified at any time with the mutual consent of the parties hereto, which amendment or modification must be in writing, executed and dated by the parties hereto.

26. SEVERABILITY: If any term or provision of this Non-Exclusive Easement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial

order or decision to be invalid or unenforceable, the remainder of this Non-Exclusive Easement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable shall not be affected thereby, and each term and provision of this Non-Exclusive Easement shall be valid and shall be enforced to the fullest extent permitted by law.

27. GOVERNING LAW: This Non-Exclusive Easement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

28. VENUE: Any lawsuit brought to resolve a dispute arising from this Non-Exclusive Easement must be brought either in the location of the Project or in Carson City, Nevada.

29. ASSIGNMENT OF EASEMENT: This easement may not be assigned or transferred without prior written approval of the GRANTOR. Such approval will not be unreasonably withheld.

30. RECORDING: This Non-Exclusive Easement may be recorded in the official real estate records of the county in which the property is located. GRANTEE shall be responsible for all recording fees.

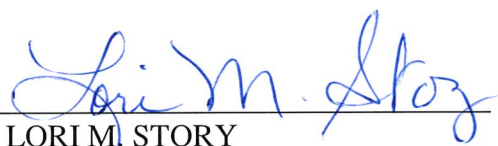
All covenants and agreements herein contained shall extend to and be a binding contract upon the successors and assigns as the case may be of the respective parties. Authorization given by the Division of State Lands does not obviate the necessity of obtaining other local, regional, or federal assent to the work authorized.

IN WITNESS WHEREOF, the parties hereto have executed this Non-Exclusive Easement as of the day and year first above written.

GRANTOR:
STATE OF NEVADA
Division of State Lands

By: _____
CHARLES DONOHUE
Administrator and State Land Registrar

APPROVED as to Form:
ADAM PAUL LAXALT
Attorney General

By: 
LORI M. STORY
Senior Deputy Attorney General

Date: Nov. 30, 2017

APPROVED:
NEVADA DEPT. OF CORRECTIONS

By: 
JAMES A. DZURENDA
Director **E.**

Date: 12/22/17

GRANTEE:
CARSON CITY,
A Consolidated Municipality

REVIEWED AND RECOMMENDED BY:

By: _____
DAN STUCKY
City Engineer

Date: _____

APPROVED FOR LEGALITY AND FORM:

By: _____
Carson City District Attorney

Date: _____

ATTEST:

By: _____
SUSAN MERRIWETHER
Clerk-Recorder

Date: _____

BOARD APPROVED BY:
CARSON CITY
A Municipal Corporation

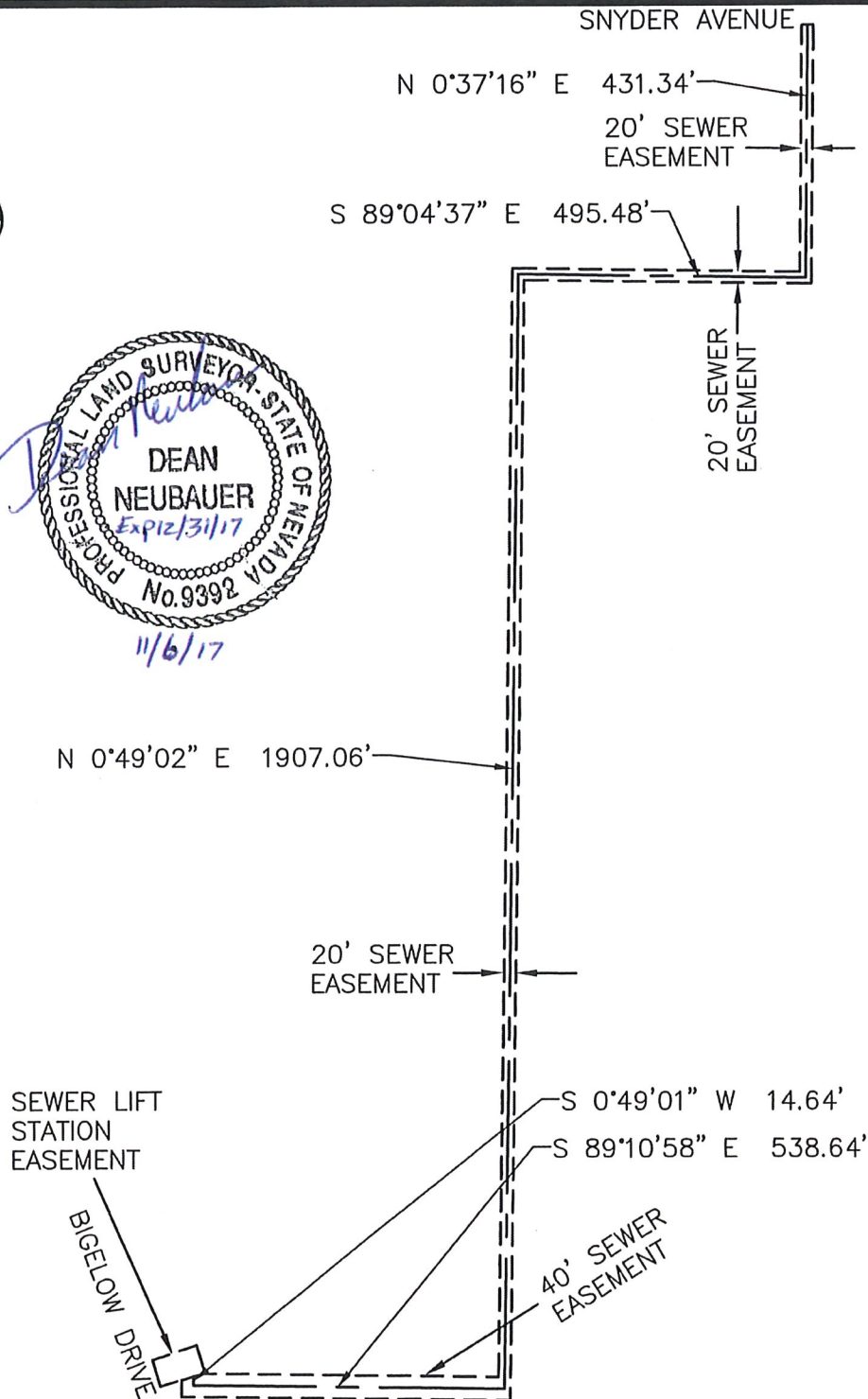
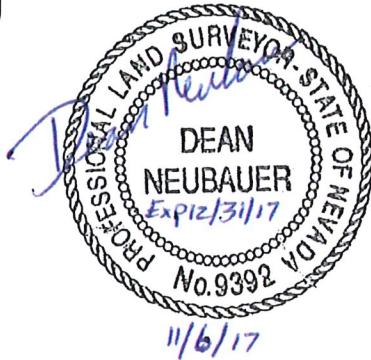
By: _____
 ROBERT L. CROWELL
 Mayor

Date: _____

STATE OF _____)
 : ss
COUNTY OF _____)

On _____, 20____ personally appeared before me, a notary public, ROBERT L. CROWELL, Mayor, Carson City, Nevada who acknowledged that he executed the above document.

NOTARY PUBLIC



LUMOS
& ASSOCIATES
800 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706
PH. (775) 883-7077 FAX (775) 883-7114

EXHIBIT "B"
CARSON CITY PUBLIC WORKS DEPT.
SEWER LINE EASEMENT
PORTION OF SEC. 4, T14N, R20E, MDM
CARSON CITY NEVADA

Date: NOV. 2017
Scale: 1" = 300'
Job No: 9242.000

EXHIBIT B

LIFT STATION EASEMENT

An easement for the construction , maintenance of and access to a sanitary sewer lift station over a portion of the northwest 1/4 of Section 4, T.14 N., R.20 E., M.D.M. more particularly described as follows:

Beginning at a point on a curve in the centerline of bigelow drive from which the west 1/4 corner of said Section 4 bears S.67°07'37" W., 623.69';

Thence along said curve, concave west, having a central angle of 2°06'55", a radius of 1274.40', an arc length of 47.05, and a chord bearing N.17°07'49" W., 47.05';

Thence, leaving said centerline, N.71°48'43" E., 80.00 feet;

Thence S.17°07'49" E., 50.00 feet;

Thence S.73°55'38" W., 80.00 feet to the point of beginning having an area of 3874 Sq. Feet.



**EXHIBIT A
LEGAL DESCRIPTION
SEWER LINE EASEMENT**

APN 10-281-46

A 40 wide sewer easement situated in the West half of Section 4 in Township 14 North, Range 20 East, M.D.B.& M., Carson City, Nevada, the centerline of which is more particularly described as follows:

BEGINNING at a point on the south line of the lift station easement from which the west quarter corner of Section 4, a 3 inch BLM brass cap, bears S.67°42'55"W., 682.49 feet distant;

THENCE S.00°49'01"W., 14.64 feet;

THENCE S.89°10'58"E., 538.64 feet to a point on the centerline of the following 20' wide easement. The side lines of said easement to be shortened or lengthened to terminate at the intersection with the following/ previous easement.

A 20 wide sewer easement situated in the West half of Section 4 in Township 14 North, Range 20 East, M.D.B.& M., Carson City, Nevada, the centerline of which is more particularly described as follows:

BEGINNING at the point of terminus of the previously described easement from which the west quarter corner of Section 4, a 3 inch BLM brass cap, bears S.78°34'19"W., 1193.55 feet distant;

THENCE N.00°49'02"E., 1907.06 feet;

THENCE S.89°04'37"E., 495.48 feet;

THENCE N.00°37'16"E., 431.34 feet to the south line of Snyder Avenue and the point of terminus. The side lines of said easement to be shortened or lengthened to terminate at the intersection with the previous easement and Snyder Avenue.

The above described easements contain 78,808 square feet more or less.

The basis of bearings for this legal description is based upon the Nevada Coordinate System of 1983, West Zone, NAD 83/94, 2010 Carson City Control Network.

Prepared under the supervision of
Dean Neubauer, P.L.S. 9392
800 E. College Parkway
Carson City, NV 89706

