



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: May 3, 2018

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: To accept a Bureau of Indian Affairs (BIA) Grant of Easement for right-of-way and approve the Washoe Tribe's Terms and Conditions of Consent for Right-of-Way as presented to Carson City by the BIA for sewer line, roadway and drainage improvements needed for the construction and maintenance of the Clear Creek Avenue Sewer Project across BIA Tract Number 672 T-004, also known as APN 009-241-17. (Dan Stucky; DStucky@carson.org and Stephanie Hicks; SHicks@carson.org)

Staff Summary: The Clear Creek Avenue Sewer Project design is at 100% and construction is anticipated for summer of 2018. Carson City staff has been coordinating with the Washoe Tribe, BIA, American Home Baptist Mission Society, and Nevada State Lands to secure the needed easements for sewer line, roadway and drainage improvements. As part of the application for right-of-way to BIA, Carson City staff worked with the Washoe Tribe to prepare a Terms and Conditions of Consent for Right-of-Way which includes their consent for the project and the waiver of an appraisal and just compensation.

Agenda Action: Formal Action/Motion

Time Requested: 10 minutes

Proposed Motion

Move to accept a Bureau of Indian Affairs (BIA) Grant of Easement for right-of-way and approve the Washoe Tribe's Terms and Conditions of Consent for Right-of-Way as presented to Carson City by the BIA for sewer line, roadway and drainage improvements needed for the construction and maintenance of the Clear Creek Avenue Sewer Project across BIA Tract Number 672 T-004, also known as APN 009-241-17.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

Background/Issues & Analysis

The Clear Creek Avenue Sewer Project will install a new upsized sewer main in Clear Creek Avenue from Center Drive to Snyder Avenue. This will allow for the abandonment of the existing sewer line currently adjacent to Clear Creek and will make it easier to access and maintain the sewer line. The project will also improve Clear Creek Avenue, the roadway itself. The proposed improvements include curb/gutter and sidewalk on the south side of the road from Center Drive to Dat So La Lee Way, a cross walk, and the continuation of the curb/gutter and sidewalk on the north side of the road from Dat So La Lee Way to west of Barrington Circle. The new road surface will be from Center Drive to Snyder Avenue and will include bike lanes and parking on the north side of the roadway. Additionally, the project proposes drainage improvements on the south side of the roadway and at the existing detention basin.

While the City sewer line was originally constructed along Clear Creek Avenue and through this parcel, neither the City nor the Washoe Tribe has any documentation of a right-of-way. In order to construct these improvements, the City has been working closely with the Washoe Tribe and is requesting 60 feet of right-of-way along the project site as well as a right-of-way easement over the existing drainage detention area that will be improved as part of the project. Total square footage of the easement request is 67,040 square feet. Carson City will accept all maintenance responsibilities for the roadway, drainage and detention area.

In consideration of the total improvements proposed, the Washoe Tribe has agreed to waive their right to an appraisal and their right to any just compensation for the right-of-way. As an additional benefit, the City will coordinate with the Washoe Tribe to allow for repairs on Dat So La Lee and Bennington Avenue to be completed during construction of the overall project. While the City does not have funding to contribute to the repairs on these side streets, having this completed with the construction of the Clear Creek Avenue Sewer project will allow for an overall cost savings to the Washoe Tribe, including savings for mobilization and demobilization, as well as construction inspection.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 266.265 & 271.265; Development Standards, Street and Traffic, 12.7 Streets along Property Boundaries; Development Standards, Table 12.1, Minimum Right-of-Way Widths.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number:

Is it currently budgeted? Yes No

Explanation of Fiscal Impact:

Alternatives

Do not accept a Bureau of Indian Affairs (BIA) Grant of Easement for right-of-way and approve the Washoe Tribe's Terms and Conditions of Consent for Right-of-Way as presented to Carson City by the BIA for sewer line, roadway and drainage improvements needed for the construction and maintenance of the Clear Creek Avenue Sewer Project across BIA Tract Number 672 T-004, also known as APN 009-241-17.

Propose modified motion.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

TRACT No.: CC-1004
Type of ROW: Sewer/Water
ROW No. 4200079891

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

**GRANT OF EASEMENT FOR SEWER, WATER AND ROADWAY IMPROVEMENT
RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, Acting by and through the Superintendent, Western Nevada Agency, Bureau of Indian Affairs ("BIA"), Department of the Interior, 311 E. Washington St., Carson City, Nevada, 89701, for and on behalf of the Washoe Tribe of Nevada and California ("Tribe"), hereinafter referred to as "GRANTOR", pursuant to the authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, to the Director of BIA by 230 DM 1, to the Western Regional Director by 3 IAM 4, and to the Superintendent by historic Phoenix Area Re-Delegation in 10 BIAM, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323-328), and Title 25 *Code of Federal Regulations* Part 169, which by reference are made a part hereof, DOES HEREBY APPROVE a grant of easement to the City of Carson City, acting by and through its Public Works Department, of 3505 Butti Way, Carson City, Nevada 89701-3498, its successors and assigns, hereinafter referred to as "GRANTEE", an easement for abandonment of existing sewer line and construction of sewer, water and roadway improvements over, across and under Clear Creek Avenue. To be embraced within a right-of-way crossing portions of Tract No. 672 T-1004, which has been agreed to and stated in Tribal Resolution No. 2018-02-WTC-014 dated February 9, 2018, and made part of this grant of easement situated on the following described land:

Clear Creek Avenue Right-of-Way

All that certain real property situate within a portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 32, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being a portion of that certain real property shown as Parcel D on that Plat of Dependent Resurvey, Subdivision and Metes-and-Bounds Survey of a portion of Township 15 North, Range 20 East, M.D.M., accepted by the Bureau of Land Management on December 11, 2007, being more particularly described as follows:

A strip of land 60.00 feet wide, the centerline of which is described as follows:

BEGINNING at a point on the westerly line of said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ from which the South-Center 1/16 corner monumented with a 3.5" BLM brass cap bears, South 0°40'51" West, 27.88 feet;

THENCE North 83°49'04" East, 1060.83 feet to the beginning of a curve to the left, having a radius of 85.00 feet;

THENCE northeasterly along said curve, through a central angle of 44°38'53", a distance of 66.24 feet to the beginning of a line that is perpendicular to the centerline of Snyder Avenue;

THENCE along said line, North 39°10'11" East, 32.29 feet to the southwesterly right of way line of said Snyder Avenue and point of termination.

The westerly sidelines of said 60.00 wide strip of land shall be extended or shortened to terminate at the southerly and westerly lines of said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$. The easterly sidelines of said 60.00 wide strip of land shall have a 20.00 foot radius return concave southerly and northwesterly through central angles of 90°00'00" terminating on the southwesterly right of way line of said Snyder Avenue.

EXCLUDING THEREFROM all that real property lying outside of said Parcel D.

Containing 55,272 square feet, more or less.

The BASIS OF BEARING for this description is based on the Nevada Coordinate System of 1983, West Zone NAD 83/94.

Infiltration Area

All that certain real property situate within a portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 32, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being a portion of that certain real property shown as Parcel D on that Plat of Dependent Resurvey, Subdivision and Metes-and-Bounds Survey of a portion of Township 15 North, Range 20 East, M.D.M., accepted by the Bureau of Land Management on December 11, 2007, being more particularly described as follows:

BEGINNING at a point on the proposed northerly right of way line of Clear Creek Avenue, monumented with a 5/8" rebar and cap, PLS 6200, from which the South-Center 1/16 corner monumented with a 3.5" BLM brass cap bears, South 78°01'07" West, 570.89 feet;

THENCE North 01°02'00" East, 109.80 feet to a point monumented with a 5/8" rebar and cap, PLS 6200;

THENCE North 61°18'30" East, 72.78 feet to a point in a curve concave to the southwest, having a radius of 100.00 feet, the radius point of said curve bears South 41°07'52" West;

THENCE southerly along said curve, through a central angle of 49°34'42", a distance of 86.53 feet;

THENCE South 0°42'34" West, 39.68 feet to the beginning of a curve to the right having a radius of 20.00 feet;

THENCE southwesterly along said curve, through a central angle of 86°06'30", a distance of 29.01 feet to a point monumented with a 5/8" rebar and cap, PLS 6200;

THENCE South 83°49'04" West, 82.18 feet to the POINT OF BEGINNING and the end of this description.

Containing 11,768 square feet, more or less.

The Basis of Bearing for this description is based on the Nevada Coordinate System of 1983, West Zone, NAD 83/94.

Total area of right-of-way is 67,040 square feet or 1.54 acres, more or less.

TO HAVE AND TO HOLD the said easement and right-of-way unto GRANTEE and its successors and assigns subject to the following provisions:

1. GRANTEE agrees and shall comply with the terms and conditions of the Terms and Conditions of Consent for Right-of-Way (see Attachment A).
2. To construct and maintain the right-of-way in a workmanlike manner.
3. To indemnify, the landowners and authorized uses and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
4. To restore the lands and nearly as may be possible to their original condition upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted.
5. To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.

6. To take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.
7. To do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
8. To build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
9. That upon revocation or termination of the right-of-way, the applicant shall, so far as in reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
10. To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal offices.
11. That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.
12. During the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.

This Grant of Easement is subject to any prior valid existing rights or adverse claims and is valid for the term of **perpetual** beginning upon approval by the Superintendent. This right-of-way is valid so long as it shall be used for the purpose above specified:

Provided, that this right-of-way shall be terminable in whole or in part by GRANTOR for any of the following causes upon thirty (30) days written notice and failure of GRANTEE within said notice period to correct the basis for termination pursuant to 25 CFR §169.20;

- A. Failure to comply with any terms or conditions of the grant or the applicable federal regulations;
- B. A non-use of the right-of-way for a consecutive two (2) year period for the purpose for which the right-of-way was granted;
- C. An abandonment of said right-of-way.

The terms and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of GRANTEE.

IN WITNESS WHEREOF, GRANTOR has executed this Grant of Easement for Right-of-Way for Sewer, Water and Roadway improvements and maintenance this 6th day of April, 2018.

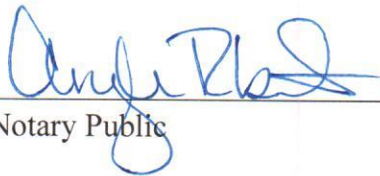
BY: 

**Robert J. Eben, Superintendent
United States Department of the Interior,
Bureau of Indian Affairs, Western Nevada Agency**

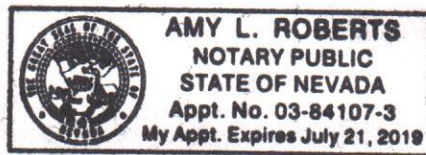
ACKNOWLEDGEMENT

State of Nevada
County of Carson City

Before me, a Notary Public, in and for said County and State, on this 6th day of April, 2018, personally appeared Robert J. Eben, whose name is subscribed to the foregoing Grant of Easement for Right-of-way as Superintendent, Bureau of Indian Affairs, Western Nevada Agency, who acknowledges that he is and was at the time of signing the same, Superintendent, Bureau of Indian Affairs, and he personally acknowledged to me that he executed the said document for Right-of-way as his free and voluntary act and deed for the uses and purposes set forth therein.


Notary Public

My commission expires on: July 21, 2019



Attachment A

TERMS AND CONDITIONS OF CONSENT FOR RIGHT-OF-WAY

WHEREAS, Carson City Public Works Department (“Carson City”) has prepared an application for submission to the Bureau of Indian Affairs (“BIA”), for a right-of-way across the lands of the Washoe Tribe of Nevada and California (“Washoe Tribe”), BIA Tract Number 672 T-1004; and

WHEREAS, the requested right-of-way is 60 feet in width over, across, and under Clear Creek Avenue (50 feet for sewer line and roadway improvements and 10 feet for new drainage improvements) within the area between Center Drive and Snyder Avenue, and will also include the existing drainage detention area, for a total area of approximately 67,040 square feet or approximately 1.539 acres, more fully depicted on Carson City’s application materials; and

WHEREAS, rights-of-way on Indian lands are governed by federal regulations, 25 CFR Part 169; and

WHEREAS, pursuant to 25 CFR § 169.107(a), the Washoe Tribe must consent to the grant of right-of-way, and may impose restrictions or conditions on such consent; and

WHEREAS, the Washoe Tribe conditions its consent to the grant of right-of-way on Carson City’s compliance with the following terms, which shall be incorporated into the grant of right-of-way:

1. Term. The right-of-way will be effective upon approval by the BIA, and the duration will be perpetual.
2. Compensation. The parties agree that the following in-kind benefits and alternative forms of compensation, taken together, constitute fair and adequate compensation to the Washoe Tribe:
 - a. Roadway Improvements. Carson City will pay for all costs associated with the construction and maintenance of various street and roadway improvements to Clear Creek Avenue, including resurfacing the road, and adding curbs, gutters, sidewalks, a crosswalk, bike lanes, and drainage improvements.
 - b. Abandon Use of Existing Sewer Line. Once the new sewer line is installed, Carson City will abandon the existing sewer line that is located along Clear Creek. The abandonment will include capping the sewer line at both ends of the abandonment and filling the line with cement slurry. Carson City will also remove the frame, cover, cone section, and upper barrel sections of the manholes and backfill the void caused by removing the upper sections of the manhole with Class E material to match the existing grade.

- c. Cost Savings to Washoe Tribe for Adjacent Road Improvements. Carson City will assist the Washoe Tribe in obtaining cost savings for its plans to repair and preserve the adjacent streets of Barrington Circle and Dat So La Lee Way through crack filling and sealing (“Tribal Roads Project”), by complying with the following:
 - i. Contracting for Construction Services. The parties shall each use their best efforts to ensure that the construction associated with the right-of-way grant shall occur concurrently with the Tribal Roads Project. In order to minimize construction and mobilization costs, the parties shall use the same contractors to the extent practical and permitted by applicable laws and regulations. Carson City will notify the Washoe Tribe in advance of the date it intends to release an invitation to bid, how long the bidding process will be open, and the name of the company or contractor to which the project is awarded.
 - ii. In-Kind Engineering Services. To provide further cost savings to the Washoe Tribe for the Tribal Roads Project, Carson City agrees to provide in-kind engineering services to the Washoe Tribe, including assisting in the design and development of plans, specifications, and engineering estimates (“PS&Es”) for the Tribal Roads Project. The PS&Es will include cover, legend, demolition, temporary erosion control, temporary traffic control, water run-off collection, use and mitigation, site grading, utility relocation (if necessary), plan and profile sheets, and construction details.
3. Permanent Improvements. Carson City will own and maintain the permanent improvements constructed within the right-of-way, which shall consist of an improved roadway, sewer line, drainage equipment, infiltration gallery, and any related appurtenances or fixtures. Tribal consent must be obtained prior to Carson City’s construction of any additional permanent improvements within the right-of-way.
4. Construction and Maintenance. Construction will not commence until the right-of-way is approved by the BIA. Carson City will ensure that:
 - a. Improvements within the right-of-way are constructed and maintained in a professional manner consistent with industry standards;
 - b. Upon completion of construction, the land is restored as nearly as may be possible to its original condition, to the extent compatible with the proposed uses for the right-of-way;

- c. The right-of-way area will be cleared and kept cleared, to the extent compatible with the purpose of the right-of-way, and all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project is properly disposed of;
 - d. Carson City will coordinate with the Washoe Utility Management Authority as necessary during construction and maintenance of the sewer line and appurtenances;
 - e. Carson City will be responsible for any damages to the land that arise from the construction or maintenance of permanent improvements; and
 - f. Carson City will ensure that all contractors adhere to applicable bonding and insurance requirements, and will require contractors to list the Washoe Tribe as an additional insured.
5. Hazardous and Nuclear Materials. Carson City will not permit the transportation of any hazardous or nuclear materials within the right-of-way area, as those terms are defined in the Tribe's Environmental Protection Code, Title 17 of the Washoe Tribe Law and Order Code, unless the necessary permits are issued pursuant to Title 17.
6. Mitigation Measures. Carson City will take appropriate mitigation measures to protect environmental, biological, and cultural resources within the right-of-way area and any other areas that could potentially be adversely affected by the right-of-way activities, including the following:
- a. Environmental Protection. Carson City will notify the Washoe Tribe immediately in the event of any spills, overflows, leaks, or sewer line issues of concern. Such notice shall be delivered as specified in Section 16, as well as immediate notification to the Washoe Environmental Protection Department, 775-265-8680. In the event of a sewer line spill or similar incident, Carson City will be responsible for all clean-up activities, including costs. The Washoe Tribe reserves the right to be involved in determining how to proceed in resolving environmental matters.
 - b. Cultural Resources Protection. A cultural site monitor will be on-site for all excavation. Carson City will enter into an agreement with the Washoe Tribe for cultural monitoring services, and Carson City will be responsible for hourly labor and vehicle mileage costs incurred relating to site monitoring. Carson City will notify the Washoe Tribe immediately if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the right-of-way. Such notice shall be delivered as specified in Section 16, as well as immediate

notification to the Tribal Historic Preservation Officer, 775-265-8600. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the right-of-way, all construction or maintenance activity in the immediate vicinity of the properties, resources, remains, or items will cease until the Washoe Tribe determines how to proceed.

7. Jurisdiction. The Washoe Tribe will maintain its existing jurisdiction over the land, activities, and persons within the right-of-way and the grant of right-of-way will not diminish to any extent:
 - a. The Washoe Tribe's power to tax the land, any improvements on the land, or any person or activity within, the right-of-way;
 - b. The Washoe Tribe's authority to enforce tribal law of general or particular application on the land subject to and within the right-of-way, as if there were no grant of right-of-way;
 - c. The Washoe Tribe's inherent sovereign power to exercise civil jurisdiction over non-members on Indian land; or
 - d. The character of the land subject to the right-of-way as Indian country under 18 U.S.C. 1151.
8. Laws. Carson City will comply with all applicable tribal and federal laws and regulations, including but not limited to 25 CFR Part 169.
9. Additional Regulatory Provisions. Carson City acknowledges and agrees to comply with the following regulatory provisions:
 - a. Carson City will refrain from interfering with the Washoe Tribe's use of the land, provided that the Washoe Tribe's use of the land is not inconsistent with the right-of-way;
 - b. The Washoe Tribe will retain the right to reasonable access to the right-of-way area to determine Carson City's compliance with consent conditions or to protect public health and safety;
 - c. Carson City will have no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral, and animal resources;
 - d. Carson City will not commit waste; and

- e. Carson City will notify the Washoe Tribe and the BIA if it files for bankruptcy or is placed in receivership.
10. Assignment. Carson City will not assign the right-of-way without obtaining the consent of the Washoe Tribe and the BIA.
 11. Encroachment. Carson City will not unreasonably withhold its consent for a new right-of-way within the right-of-way area that does not interfere with the use or purpose of the right-of-way that will be granted in favor of Carson City.
 12. Amendments. The right-of-way grant will not be amended except as provided in 25 CFR 169.204 – 169.206.
 13. Default. Either party may claim that the other has failed to comply with terms of the right-of-way agreement or applicable laws or regulations by sending written notice of such alleged default to the other party. The party alleged to be in default shall have thirty (30) days from receipt of the notice to cure any defaults, or to request that the parties meet and confer to attempt to resolve the dispute. Nothing in this Section diminishes the authority of BIA to take enforcement action pursuant to 25 CFR Part 169.
 14. Dispute Resolution. If informal dispute resolution pursuant to Section 13 does not resolve any disagreement between Carson City and the Washoe Tribe arising out of the right-of-way, such disputes will be resolved in the Washoe Tribal Court or in the United States District Court for the District of Nevada. Nothing in this Section diminishes the authority of BIA to take enforcement action pursuant to 25 CFR Part 169.
 15. Indemnification. Carson City will:
 - a. Hold the United States and the Washoe Tribe harmless from any loss, liability, or damages resulting from its use or occupation of the premises; and
 - b. Indemnify the United States and the Washoe Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that Carson City is not required to indemnify the Washoe Tribe for liability or cost arising from the Washoe Tribe's negligence or willful misconduct.
 16. Notice. Any notices or communications under this Sublease shall be in writing and shall be delivered via mail, addressed in each case as follows, and (a) delivered in person; (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested; or (c) delivered by overnight express carrier:

a. If to Washoe Tribe: Neil Mortimer, Tribal Chairman
919 Hwy 395 South
Gardnerville, NV 89410
Phone: (775) 265-8600

b. If to Carson City: Carson City Manager
201 N. Carson Street
Carson City, NV 89701
Fax: (775) 887-2286

c. The parties will notify each other and the BIA of any changes to the above-listed contact information.

17. No Waiver of Sovereign Immunity. Nothing in this agreement or in any other document relating to the right-of-way shall be construed as a waiver of the sovereign immunity of the Washoe Tribe of Nevada and California.

Signatures on the following page

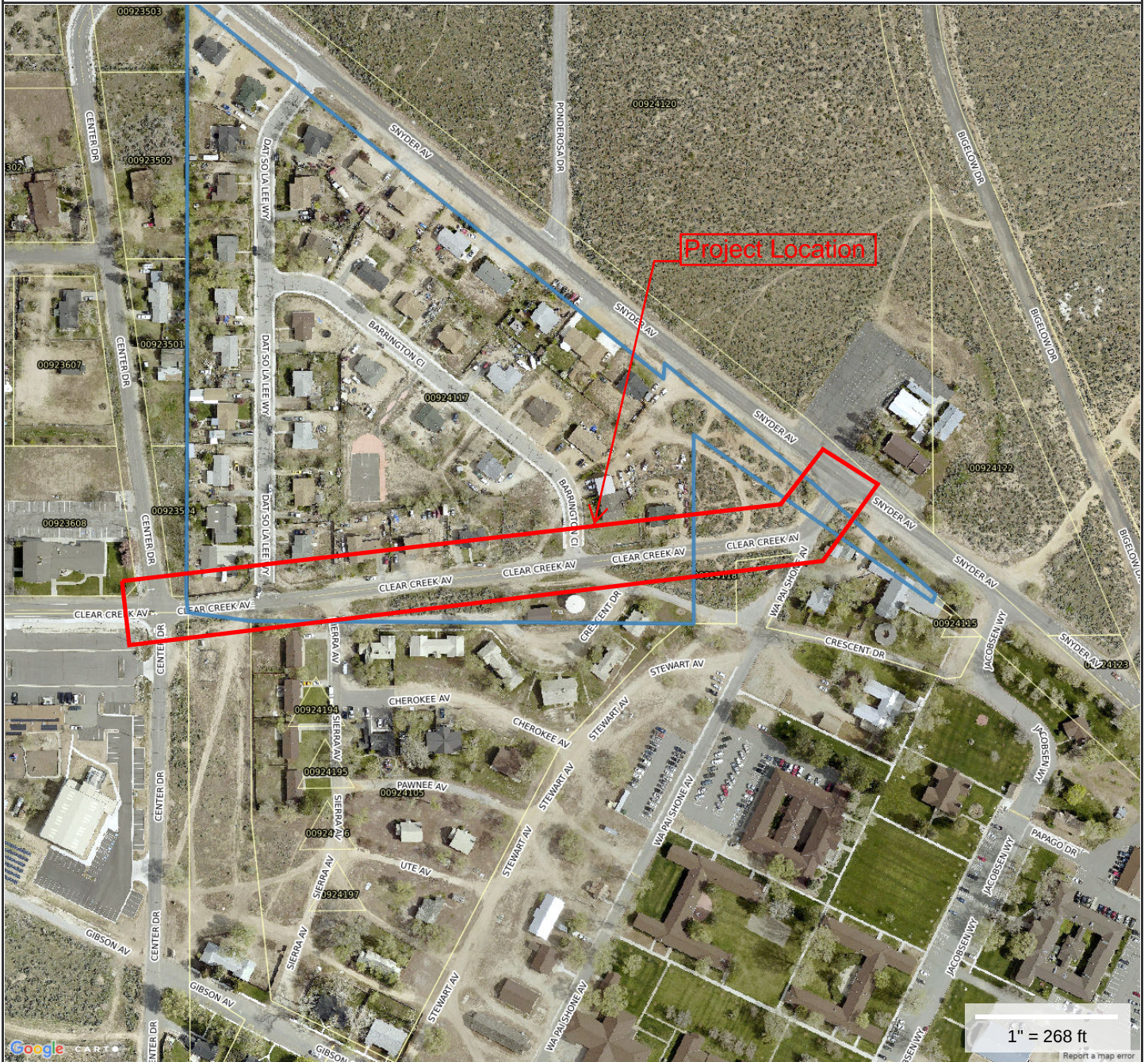
Agreed to this ____ day of _____, 2018:

WASHOE TRIBE OF NEVADA AND CALIFORNIA:

Neil Mortimer, Tribal Chairman

CARSON CITY:

Clear Creek Avenue Sewer Project Location - BIA Washoe Tribe ROW



Property Information

Property ID 00924117
 Location SNYDER AV
 Owner B I A



[CLICK LOGO FOR TUTORIAL](#)

MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

Carson City , NV makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated 04/07/2018
 Properties updated 04/07/2018

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WHEREAS, rights-of-way on Indian lands are governed by federal regulations, 25 CFR Part 169; and

WHEREAS, pursuant to 25 CFR § 169.107(a), the Washoe Tribe must consent to the grant of right-of-way, and may impose restrictions or conditions on such consent; and

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 - c. Cost Savings to Washoe Tribe for Adjacent Road Improvements. Carson City will assist the Washoe Tribe in obtaining cost savings for its plans to repair and preserve

the adjacent streets of Barrington Circle and Dat So La Lee Way through crack filling and sealing (“Tribal Roads Project”), by complying with the following:

- i. Contracting for Construction Services. The parties shall each use their best efforts to ensure that the construction associated with the right-of-way grant shall occur concurrently with the Tribal Roads Project. In order to minimize construction and mobilization costs, the parties shall use the same contractors to the extent practical and permitted by applicable laws and regulations. Carson City will notify the Washoe Tribe in advance of the date it intends to release an invitation to bid, how long the bidding process will be open, and the name of the company or contractor to which the project is awarded.
 - ii. In-Kind Engineering Services. To provide further cost savings to the Washoe Tribe for the Tribal Roads Project, Carson City agrees to provide in-kind engineering services to the Washoe Tribe, including assisting in the design and development of plans, specifications, and engineering estimates (“PS&Es”) for the Tribal Roads Project. The PS&Es will include cover, legend, demolition, temporary erosion control, temporary traffic control, water run-off collection, use and mitigation, site grading, utility relocation (if necessary), plan and profile sheets, and construction details.
3. Permanent Improvements. Carson City will own and maintain the permanent improvements constructed within the right-of-way, which shall consist of an improved roadway, sewer line, drainage equipment, infiltration gallery, and any related appurtenances or fixtures. Tribal consent must be obtained prior to Carson City’s construction of any additional permanent improvements within the right-of-way.
4. Construction and Maintenance. Construction will not commence until the right-of-way is approved by the BIA. Carson City will ensure that:
 - a. Improvements within the right-of-way are constructed and maintained in a professional manner consistent with industry standards;
 - b. Upon completion of construction, the land is restored as nearly as may be possible to its original condition, to the extent compatible with the proposed uses for the right-of-way;
 - c. The right-of-way area will be cleared and kept cleared, to the extent compatible with the purpose of the right-of-way, and all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project is properly disposed of;

- d. Carson City will coordinate with the Washoe Utility Management Authority as necessary during construction and maintenance of the sewer line and appurtenances;
 - e. Carson City will be responsible for any damages to the land that arise from the construction or maintenance of permanent improvements; and
 - f. Carson City will ensure that all contractors adhere to applicable bonding and insurance requirements, and will require contractors to list the Washoe Tribe as an additional insured.
5. Hazardous and Nuclear Materials. Carson City will not permit the transportation of any hazardous or nuclear materials within the right-of-way area, as those terms are defined in the Tribe's Environmental Protection Code, Title 17 of the Washoe Tribe Law and Order Code, unless the necessary permits are issued pursuant to Title 17.
6. Mitigation Measures. Carson City will take appropriate mitigation measures to protect environmental, biological, and cultural resources within the right-of-way area and any other areas that could potentially be adversely affected by the right-of-way activities, including the following:
- a. Environmental Protection. Carson City will notify the Washoe Tribe immediately in the event of any spills, overflows, leaks, or sewer line issues of concern. Such notice shall be delivered as specified in Section 16, as well as immediate notification to the Washoe Environmental Protection Department, 775-265-8680. In the event of a sewer line spill or similar incident, Carson City will be responsible for all clean-up activities, including costs. The Washoe Tribe reserves the right to be involved in determining how to proceed in resolving environmental matters.
 - b. Cultural Resources Protection. A cultural site monitor will be on-site for all excavation. Carson City will enter into an agreement with the Washoe Tribe for cultural monitoring services, and Carson City will be responsible for hourly labor and vehicle mileage costs incurred relating to site monitoring. Carson City will notify the Washoe Tribe immediately if historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the right-of-way. Such notice shall be delivered as specified in Section 16, as well as immediate notification to the Tribal Historic Preservation Officer, 775-265-8600. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the right-of-way, all construction or maintenance activity in the immediate vicinity of the properties, resources, remains, or items will cease until the Washoe Tribe determines how to proceed.

7. Jurisdiction. The Washoe Tribe will maintain its existing jurisdiction over the land, activities, and persons within the right-of-way and the grant of right-of-way will not diminish to any extent:
 - a. The Washoe Tribe's power to tax the land, any improvements on the land, or any person or activity within, the right-of-way;
 - b. The Washoe Tribe's authority to enforce tribal law of general or particular application on the land subject to and within the right-of-way, as if there were no grant of right-of-way;
 - c. The Washoe Tribe's inherent sovereign power to exercise civil jurisdiction over non-members on Indian land; or
 - d. The character of the land subject to the right-of-way as Indian country under 18 U.S.C. 1151.
8. Laws. Carson City will comply with all applicable tribal and federal laws and regulations, including but not limited to 25 CFR Part 169.
9. Additional Regulatory Provisions. Carson City acknowledges and agrees to comply with the following regulatory provisions:
 - a. Carson City will refrain from interfering with the Washoe Tribe's use of the land, provided that the Washoe Tribe's use of the land is not inconsistent with the right-of-way;
 - b. The Washoe Tribe will retain the right to reasonable access to the right-of-way area to determine Carson City's compliance with consent conditions or to protect public health and safety;
 - c. Carson City will have no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral, and animal resources;
 - d. Carson City will not commit waste; and
 - e. Carson City will notify the Washoe Tribe and the BIA if it files for bankruptcy or is placed in receivership.
10. Assignment. Carson City will not assign the right-of-way without obtaining the consent of the Washoe Tribe and the BIA.

11. Encroachment. Carson City will not unreasonably withhold its consent for a new right-of-way within the right-of-way area that does not interfere with the use or purpose of the right-of-way that will be granted in favor of Carson City.
12. Amendments. The right-of-way grant will not be amended except as provided in 25 CFR 169.204 – 169.206.
13. Default. Either party may claim that the other has failed to comply with terms of the right-of-way agreement or applicable laws or regulations by sending written notice of such alleged default to the other party. The party alleged to be in default shall have thirty (30) days from receipt of the notice to cure any defaults, or to request that the parties meet and confer to attempt to resolve the dispute. Nothing in this Section diminishes the authority of BIA to take enforcement action pursuant to 25 CFR Part 169.
14. Dispute Resolution. If informal dispute resolution pursuant to Section 13 does not resolve any disagreement between Carson City and the Washoe Tribe arising out of the right-of-way, such disputes will be resolved in the Washoe Tribal Court or in the United States District Court for the District of Nevada. Nothing in this Section diminishes the authority of BIA to take enforcement action pursuant to 25 CFR Part 169.
15. Indemnification. Carson City will:
 - a. Hold the United States and the Washoe Tribe harmless from any loss, liability, or damages resulting from its use or occupation of the premises; and
 - b. Indemnify the United States and the Washoe Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that Carson City is not required to indemnify the Washoe Tribe for liability or cost arising from the Washoe Tribe's negligence or willful misconduct.
16. Notice. Any notices or communications under this Sublease shall be in writing and shall be delivered via mail, addressed in each case as follows, and (a) delivered in person; (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested; or (c) delivered by overnight express carrier:
 - a. If to Washoe Tribe: Neil Mortimer, Tribal Chairman
919 Hwy 395 South
Gardnerville, NV 89410
Phone: (775) 265-8600
 - b. If to Carson City: Carson City Manager

201 N. Carson Street
Carson City, NV 89701
Fax: (775) 887-2286

- c. The parties will notify each other and the BIA of any changes to the above-listed contact information.

17. No Waiver of Sovereign Immunity. Nothing in this agreement or in any other document relating to the right-of-way shall be construed as a waiver of the sovereign immunity of the Washoe Tribe of Nevada and California.

Signatures on the following page

Agreed to this _____ day of _____, 2018:

WASHOE TRIBE OF NEVADA AND CALIFORNIA:

R. Neil Mortimer 2/23/2018

Neil Mortimer, Tribal Chairman

CARSON CITY:

