



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** April 18, 2019

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding adoption of a Resolution: (1) determining that the lease of approximately 31 square feet of Carson City right-of-way adjacent to 123 West 2nd Street, APN 003-112-06, to the Lopiccio Family 1998 Trust, dba Lopiccio Investments LLC, for an automated teller machine (ATM) is in the best interest of Carson City and that the parcel is too small to establish an economically viable use by anyone other than the Lopiccio Family 1998 Trust, dba Lopiccio Investments LLC; and (2) authorizing the execution of such a lease agreement for a term of five years, subject to renewals of additional five-year terms, at a monthly rent of up to \$400. (Dan Stucky, DStucky@carson.org; Stephanie Hicks, SHicks@carson.org)

Staff Summary: Wells Fargo Bank has closed or will be closing their branch on East Musser Street and is looking for an ATM location within the downtown corridor to serve its customers. Wells Fargo has identified a location on West 2nd Street next to the Coldwell Banker building owned by the Lopiccio Family 1998 Trust. The ATM will be installed against the building and will be located on a portion of the Lopiccio Family 1998 Trust's property. The ATM will also extend onto a portion of the sidewalk in the City right-of-way, and therefore requires a lease for use of the City's right-of-way. Under NRS 244.281(1)(e)(1), the City may, without having property appraised, lease property to an adjacent property owner if the lease is in the best interest of the City and the leased property is too small to establish an economically viable use by anyone other than the person who owns the property adjacent to the leased property.

Agenda Action: Resolution **Time Requested:** 10 minutes

Proposed Motion

I move to adopt Resolution 2019-R-_____.

Board's Strategic Goal

Economic Development

Previous Action

None

Background/Issues & Analysis

Wells Fargo Bank has closed or will be closing their branch on E. Musser Street and is looking for an ATM location within the downtown corridor to serve its customers. Wells Fargo has identified a location on West 2nd Street next to the Coldwell Banker building owned by the Lopiccio Family 1998 Trust. This location is in proximity to many of the downtown businesses and the McFadden Plaza. The ATM will be installed against the Coldwell Banker building and will be located on a portion of the Lopiccio Family 1998 Trust's property. However, the ATM will also extend onto a portion of the sidewalk in the City's right-of-way. Mrs. Lopiccio

originally asked for an easement of this area; however, staff has determined that a lease of the right-of-way would be more appropriate.

NRS 244.281(1)(e)(1) allows for the lease of City property when it is in the best interest of the City and as a result of its size, the property is too small to establish and economically viable use by anyone other than the person who owns real property adjacent to the real property for lease.

The lease agreement proposes the lease of 31 square feet of City right-of-way for \$400 per month. The lease will be valid for a term of 5 years and approximately two-and-a-half months.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.281 (1)(e)(1)(II).

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Lease Revenue - 250-0000-363-01-00

Is it currently budgeted? No

Explanation of Fiscal Impact: The lease will provide \$4,800 of annual income to the City. Additionally, upon lease of the property, the property will no longer be tax exempt and property taxes will be collected by the City.

Alternatives

1. Decline to to adopt a resolution for the lease between Carson City and the Lopiccolo Family 1998 Trust.
2. Provide other direction to staff.
3. Propose modified motion.

Attachments:

[19.04.08 ATM Lease Agreement.doc](#)

[ATM Lease Exhibit A.PDF](#)

[ATM Lease Resolution.docx](#)

[ATM Lease Resolution Exhibit A.pdf](#)

[Carson City OPT A DWGs rev181024.pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

APN's:

Property Address:

AFTER RECORDING RETURN TO:
CARSON CITY PUBLIC WORKS
ATTN: STEPHANIE HICKS
REAL PROPERTY MANAGER
3505 BUTTI WAY
CARSON CITY, NV 89701

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this ____ day of _____, 2019, by and between Carson City ("City"), a consolidated municipality, and the Lopiccolo Family 1998 Trust dba Lopiccolo Family Investments LLC ("Tenant") regarding the lease of City right of way for an automated teller machine ("ATM"). City and Tenant may be individually referred to as "Party" and collectively referred to as "Parties."

RECITALS:

WHEREAS, City is the owner of the right of way located on the 100 block of West 2nd Street, near the corner of South Carson Street; and

WHEREAS, Tenant owns the property adjacent to the City's right of way located at 123 West 2nd Street, APN 003-112-06, and desires to place an ATM in a location straddling Tenant's property and City's right of way adjacent to Tenant's property in a location on West 2nd Street near the corner of South Carson Street, as further described on the attached Exhibit A; and

WHEREAS, said premises needed for the installation of the ATM, approximately 31 square feet currently used as sidewalk, are not currently needed for any public purpose of the City, an ATM located on the premises would benefit the residents of the City, and City is willing to lease the Premises to Tenant; and

WHEREAS, NRS 244.281(1)(e)(1) authorizes the Carson City Board of Supervisors to lease City-owned property to an adjacent property owner without obtaining an appraisal or complying with the provisions of NRS 244.283 if the premises to be leased, as a result of its size, is too small to establish an economically viable use by anyone other than the

adjacent property owner, and the lease of the premises is in the best interest of Carson City; and

WHEREAS, the Carson City Board of Supervisors, in Resolution No. 2019-_____, determined that the lease of the premises meets the statutory requirements established by NRS 244.281(1)(e)(1), has resolved that the Premises be leased to Tenant, and has authorized the Mayor to enter into this Lease of the premises;

NOW, THEREFORE in consideration of the mutual covenants contained herein, the Parties mutually agree as follows:

1. Lease of Premises.

1.1 City does hereby lease to Tenant, and Tenant does hereby lease from City, the following premises, generally described as approximately 31 square feet of City's right of way, currently used as sidewalk, on West 2nd Street near the corner of South Carson Street, adjacent 123 West 2nd Street, APN 003-112-06, as further identified and described on the attached Exhibit A ("Premises").

1.2 Tenant agrees to accept the premises in its "AS-IS" condition.

2. Term and Termination.

2.1. **Initial Term of Lease.** The initial term of this Lease shall be for five years and approximately two-and-a-half months, commencing April 18, 2019 and expiring June 30, 2024.

2.2. Lease Extension.

2.2.1. Upon the expiration of the initial term of this Lease, or upon the expiration of any subsequent five-year term, Tenant may request to extend this Lease for a subsequent five-year term. To request an extension, Tenant must provide to City notice of its desire to remain on the premises for a subsequent five-year term, not less than 90 calendar days before the date of expiration of the current term of this Lease. The notice must be made in writing and, if applicable, must state any proposed changes or modifications to the existing terms and conditions of this Lease.

2.2.2. The Carson City Board of Supervisors must approve each extension of this Lease. Tenant expressly acknowledges and agrees that Tenant has no right or reasonable expectation that a request for an extension of this Lease will be granted, and further acknowledges and agrees that the Carson City Board of Supervisors may base its decision whether to extend this Lease on a number of factors, including, without limitation, a need by the City to use the premises for a different purpose and the Tenant's performance under the terms of this Lease.

2.3. **Unilateral Termination.** If Tenant is unable to utilize the Premises for an ATM, Tenant may terminate this Lease upon 90 days prior written notice to City. If Tenant

is not utilizing the Premises for an ATM, or if City determines that there is a need to use the Premises for a public purpose, City may terminate this Lease upon 90 days prior written notice to Tenant. Either City or Tenant may terminate this Lease with 90 days prior written notice if City or Tenant determines that the purpose of this Lease is substantially impaired or obstructed by any unforeseen event, occurrence or circumstance outside the control of City or Tenant. Such unilateral terminations are not defined as a breach of this Lease and are without prejudice or penalty to either Party, except for the obligation to pay such rent as is owed for the remainder of the Lease.

2.4. **Mutual Termination.** The Parties may mutually agree to terminate this Lease at any time.

2.5. **Surrender.** This Lease may not be surrendered or otherwise terminated except in accordance with the Lease provisions.

2.6. **Holding Over.** Tenant has no right to retain possession of the Premises beyond the expiration or termination of this Lease. If Tenant, with City's consent, remains in possession of the Premises after the expiration of the initial or any extended term, then such possession shall be deemed to be a tenancy from month-to-month on the same terms and conditions herein as could reasonably be construed to apply, except that the monthly rent shall be 125% of the rent in effect on the last day of the initial or extended term preceding the holdover period. Either Party may terminate such a month-to-month tenancy upon 30 days prior written notice.

2.7. **Effect of Termination.** Upon termination, City may terminate all or any existing subleases, subtenancies, or concessions, or may, at its sole option and discretion, accept any and all such subleases, subtenancies, or concessions as being legally binding and enforceable. If there are no existing subleases, subtenancies, or concessions, or if City terminates all existing subleases, subtenancies, or concessions, Tenant shall bear the costs, if any, of the removal of the ATM and any signage or fixtures attached to the Premises in conjunction with the placement of the ATM, and of restoration of any City facilities. Tenant must restore the Premises to as good of a condition as received at the beginning of this Lease, except for normal wear and tear. If the ATM and any signage or fixtures are not removed and/or the Premises is not restored within 30 days after the termination of this Lease, the City may, at its option, remove the ATM and any signage or fixtures and restore the Premises, and shall be reimbursed by Tenant for the City's costs of removal and restoration. A copy of this Lease must be provided to any subleasee, subtenant, or concessionaire, who must provide a written acknowledgement of this Section 2.7 Effect of Termination.

3. **Rent, Payments, and Late Charges.**

3.1. As rental for the Premises, Tenant agreed to pay City the following:

- for any month in which Tenant earns rental income from the placement of an ATM on the Premises, the sum of \$400 (four hundred dollars) per month; or
- for any month in which Tenant does not earn rental income from the placement of an ATM on the Premises, the sum of \$1 (one dollar) per month.

3.2 The first payment is due and payable the 1st day of May 2019, and then the 1st day of each month thereafter during the initial or any extended term of this Lease. Payments may be sent to:

Treasurer's Office
Carson City
201 N. Carson Street
Carson City, Nevada 89701

Any payment should reference that it is a rent payment under this agreement. Tenant may also make rent payments under this Lease via Automated Clearing House ("ACH"). City agrees to cooperate with Tenant to complete all necessary forms in order to accomplish such method of payment, within thirty (30) days of City's receipt of such forms. Tenant may also make payment via the City's online payment portal. Tenant shall have the right from time to time to change its method of rental payment upon written notice to City.

3.3. Except as otherwise provided in this Lease, if any payment of a sum due from Tenant is not received by City within 10 calendar days from the date due, then in addition to the overdue payment Tenant must pay to City a late charge equal to 10% of the overdue amount. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs that City will incur by reason of the late payment by Tenant. A \$50 fee will be charged for all returned checks.

4. **Use of the Premises.** The Premises are leased to Tenant exclusively for the placement of an ATM upon the Premises. Any change in the use of the Premises is strictly prohibited and in breach of this Lease unless Tenant first obtains the written consent of City, approved by the Carson City Board of Supervisors.

5. **Tenant's Operation of the Premises; Repairs, Maintenance; or Alterations**

5.1. Except as otherwise expressly provided in this Lease, Tenant, or Tenant's sublessee or subtenant, is responsible for all costs of operation, renovation of the Premises, and charges or expenses of any nature whatsoever, including, without limitation, any lien that is imposed that arises from or is related to the operation of and on the Premises. Tenant shall ensure at all times that the Premises are kept free and clear of any liens or encumbrances that may be caused by any act or omission of Tenant or its sublessees or

subtenants, employees, agents, volunteers, contractors or invitees, including, without limitation, any liens arising from or relating to any work performed, materials furnished, or obligations incurred by Tenant, or Tenant's sublessees or subtenants.

5.2. Tenant, and Tenant's sublessee or subtenant, shall comply with all applicable local, state and federal laws and regulations, including, without limitation, rules, orders, building codes, ordinances, policies, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), the Nevada Occupational Safety and Health Act, federal occupational safety and health standards which the Secretary of Labor promulgates or amends, and any other requirements.

5.3. Tenant, or Tenant's sublessee or subtenant, must obtain all required licenses, permits, and approvals from the City prior to the installation of an ATM and, if necessary, must obtain all required licenses, permits, and approvals prior to making any alterations or additions to the ATM installation.

5.4. Tenant, or Tenant's sublessee or subtenant, is responsible for any repairs or maintenance to the Premises or to any installed ATM. Snow removal is the responsibility of the Tenant, or Tenant's sublessee or subtenant.

5.5. Tenant, or Tenant's sublessee or subtenant, shall provide for the confidentiality of ATM customer information. City shall have no responsibility for such information, nor any right to any such information.

5.6. Tenant, or Tenant's sublessee or subtenant, shall supply all utilities to the ATM, including electrical power, data lines, heating, and ventilation. City shall have no responsibility for such utilities and is not liable for any interruption in service.

5.7. Tenant, or Tenant's sublessee or subtenant, is responsible for security and lighting for the ATM. City shall not be liable for security or lighting.

6. Entry, Repairs, Maintenance, or Alterations by City.

6.1. City will provide whatever normal and routine maintenance to the area surrounding the Premises that City would otherwise provide to any other City-owned sidewalk, if in the sole discretion of City, any is needed.

6.2. City and its employees or agents shall have the right to enter or obstruct the Premises for any reasonable purpose, including, without limitation, for: inspections; repair, maintenance, or construction in the sidewalk or road; and utility construction, repair, or installation.

6.3. City shall have the right to, at its sole discretion, make alterations to the sidewalk or road that may require the temporary or permanent relocation or closure of the ATM, such as redevelopment, construction, reconstruction, or repair of the sidewalk or roadway, or the utilities associated therewith. Any relocation of the ATM must be mutually acceptable to the Parties. The costs of relocating the ATM will be borne by City or another entity causing the relocation. If City's alterations to the sidewalk or road necessitates the

permanent relocation of the ATM, and agreement cannot be reached on a new location, City may terminate this Lease with 90 days prior written notice.

7. **Tenant's Property.** City shall have no responsibility for any repairs, maintenance, alterations, upkeep, or for any expense related to Tenant's property adjacent to the Premises.

8. **Signage.**

8.1. Tenant, or Tenant's sublessee or subtenant, at its option and expense, shall have the right to place on the ATM, the adjacent portions of Tenant's property, and on City property, where applicable, all appropriate and required information and promotional signage. Such signage shall be subject to federal and state law and regulation, and municipal ordinance. The placement of all signage shall be subject to all required permits, variances, or similar government approvals necessary for installation of the signage. All such signage must be identified in any proposed plans submitted to the City when obtaining any and all appropriate permits, variances, or other approvals.

8.2 Once placed, Tenant, or Tenant's sublessee or subtenant, may repair or replace its signage with like signage without City's prior written approval. Any and all appropriate permits, variances, or other approvals must be obtained to change the signage.

9. **Hazardous Substances.** If Tenant knows, or has reasonable cause to believe, that a hazardous substance has come to be located in, on, under, or about the premises, Tenant must immediately give written notice of such fact to City and provide City with a copy of any report, notice, claim or other documentation which it has concerning the presence of such hazardous substance. Tenant shall be responsible for the removal and remediation of hazardous substances that are introduced to the Premises by reason of Tenant's, or Tenant's sublessee's or subtenant's, occupancy or the operation of an ATM upon the Premises. Any remediation shall take place in accordance with all applicable laws, regulations and ordinances.

10. **Taxes.** Tenant, or Tenant's sublessee or subtenant, is liable for all taxes assessed by any taxing authority (including sales taxes) which are attributable to Tenant's occupancy of the Premises or operation of an ATM facility, and Tenant shall ensure that all taxes, including personal property taxes assessed on Tenant's, or Tenant's sublessee's or subtenant's, fixtures, equipment, and machinery, or on the operation of an ATM, are paid.

11. **Indemnification.**

11.1. To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, City shall indemnify, hold harmless, and defend, not excluding Tenant's right to participate, Tenant from and against all liability, claims, actions, damages, losses,

and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of City, its officers, employees and agents, or City's failure to abide by this Lease.

11.2 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, Tenant shall indemnify, hold harmless, and defend, not excluding City's right to participate, City from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of: (1) any alleged negligent or willful acts or omissions of Tenant, its officers, employees, and agents; (2) Tenant's failure to abide by this Lease; (3) Tenant's, or Tenant's sublessee's or subtenant's, possession, use, occupancy, management, repair, maintenance, or control of the Premises or any portion thereof; or (4) Tenant's possession, use, occupancy, management, repair, maintenance, or control of Tenant's property adjacent to the Premises.

11.3. The indemnification obligations are conditioned upon receipt by the indemnifying Party of written notice requesting indemnification. The indemnifying Party shall not be liable to indemnify or hold harmless any attorney's fees and costs incurred by the indemnified Party prior to receipt of written notice requesting indemnification. The indemnifying Party shall also not be liable to indemnify or hold harmless any fees or costs incurred by any additional counsel for the indemnified Party, including counsel through which the indemnified Party might voluntarily choose to participate in its defense of the matter.

12. **Limited Liability.**

12.1. City shall not be liable to Tenant or to Tenant's sublessees, subtenants, customers, employees, agents, guests, or invitees, or to any other person whomever, for any injury to persons or damage to property on or about the Premises or on Tenant's property adjacent to the Premises, or for liability arising from Tenant's, or Tenant's sublessee's or subtenant's, possession, use, occupancy, management, repair, maintenance, or control of the Premises or any portion thereof, or of Tenant's property adjacent to the Premises, except to the extent caused by City or its agents or employees.

12.2. City does not waive and intends to assert any available NRS Chapter 41 liability limitations in all cases.

13. **Insurance.** City and Tenant at all times during the Lease shall each, at its own expense, keep in full force and effect comprehensive general liability insurance with minimum limits of One Million and no/100 Dollars (\$1,000,000) per occurrence and Two Million and no/100 Dollars (\$2,000,000) aggregate for bodily injury or death resulting therefrom, and \$500,000 on account of damage to property, in form and content, and written by insurers acceptable to the other party in its reasonable discretion. Tenant's policy shall name City as an additional insured by endorsement. These policies of insurance must

be primary coverage for all claims and losses arising from the use, occupancy and operation of the premises under this Lease. Notwithstanding the foregoing, or any other contrary or inconsistent provision herein contained, City shall have the right to satisfy the insurance requirements herein set forth via a program of self-insurance, or by membership in the Nevada Public Agency Insurance Pool. Tenant must, prior to occupancy of the premises, deliver to City copies of the policies of insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses reasonably satisfactory to City.

14. **Waiver of Subrogation.** City and Tenant shall, to the extent obtainable, each procure a clause in, or endorsement on, any property insurance carried by it, pursuant to which the insurance company waives its right of subrogation against the other party to this Lease and its agents and employees or consents to a waiver of the right of recovery against the other party to this Lease and its agents and employees. If an additional premium is required for the waiver or consent, the other party shall be advised of that amount and may, but is not obligated to, pay the same. If that party elects not to pay the additional premium, the waiver or consent shall not be required in favor of that party. This section applies to a self-insured Party. Provided its right of full recovery under its insurance policy is not adversely affected, City and Tenant each hereby releases the other, and its agents and employees, with respect to any claim, including a claim for negligence, it may have against the other for damage or loss covered by its property insurance, including business interruption and loss of rent.

15. **Default by Tenant.**

15.1 Each of the following individual events constitutes a default of this Lease:

15.1.1. Insolvency, including an assignment for the benefit of creditors or the filing or acquiescence to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding.

15.1.2. Assignment by operation of law.

15.1.3. Failure to pay any installment of rent, if applicable, or any other charge required to be paid by Tenant under this Lease when due and payable and said failure remains uncorrected ten (10) days after the date on which written notice from the City is received.

15.1.4. Failure to perform any other duty or obligation required to be performed by Tenant under this Lease and the failure remains uncorrected ten (10) days after the date on which written notice from the City is received.

15.2. In the event of default by Tenant for breach of any term or condition of this Lease, City may by written notice advise Tenant of the breach, upon which notice Tenant has 30 days to cure the breach, unless the nature of the default is such that more than 30 days are required to cure it, in which case there shall be no event of default so long as

Tenant promptly commences to cure the default and thereafter diligently proceeds to cure the default. If, at the expiration of the notice period, the Tenant has not cured the default, City shall have the option to pursue any one or more of the remedies set forth in this section without additional notice or demand

15.2.1. Without declaring the Lease terminated, City may relet the Premises and Tenant agrees to pay City on demand any deficiency that may arise by reason of any reletting of the Premises. Further, Tenant agrees to reimburse City for any expenditures made by it in order to relet the Premises, including, but not limited to, repair costs.

15.2.2. City may terminate this Lease, in which event Tenant shall immediately surrender the Premises to City. Tenant agrees to pay on demand the amount of all loss and damage which City may suffer for any reason due to the termination of this Lease under this Section, including, without limitation, loss and damage due to the failure to Tenant to maintain and/or repair the Premises as required hereunder and/or due to the inability of City to relet the Premises on satisfactory terms or otherwise.

15.3. In addition to any other remedy set forth in this Lease, City shall have all rights and remedies available pursuant to Nevada law. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by City only by written notice of such termination given in accordance with the notice provision hereof, and no other act or omission of City shall be construed as a termination of this Lease.

16. **Default by City.** City shall perform all conditions and covenants required to be performed by City, as set forth in this Lease. Notwithstanding anything herein to the contrary, City shall not be deemed to be in default under this Lease unless and until Tenant has given written notice to City of any such default by City, and City has failed to cure such default within 30 days after City received notice thereof; but if the nature of the default is such that more than 30 days are required to cure it, then there shall be no event of default so long as City promptly commences to cure the default and thereafter diligently proceeds to cure the default. In the event City should be in default of any obligation under this Lease, and the applicable cure period has expired, Tenant shall be entitled to cure the default, at Tenant's option, including the payment of monies directly to the party to whom the obligation is owed, or Tenant may terminate this Lease by notice to City at any time before the default is cured, or Tenant may pursue any other remedy now or hereafter permitted or available to Tenant under the laws of the State of Nevada. In the event of any such payment by Tenant, Tenant shall receive credit toward any rent due to City to the extent of any payment made. Tenant shall be entitled to a fair and reasonable abatement of rent during the time and to the extent that the Premises are untenable as a result of City's failure to perform any condition or covenant required by this Lease to be performed by City.

17. **Eminent Domain.**

17.1 If the entirety of the Premises is taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this Lease is automatically canceled as of the date of taking. If only a portion of the Premises is taken, City may terminate this Lease at its sole discretion. The option to terminate pursuant to a partial taking may be elected by City not more than six months after the date of the taking by providing to Tenant written notice that the Lease will be terminated.

17.2. If there is a taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant must continue to comply with Tenant's obligations under this Lease except to the extent compliance is rendered impossible or impracticable by reason of the taking. All compensation awarded upon the condemnation or taking belongs to City and Tenant, or Tenant's sublessee or subtenant, shall have no claim thereto in law or equity. Tenant hereby expressly waives any interest in a condemnation proceeding or litigation.

18. **Independent Entities.** The Parties are associated with each other only for the purposes and to the extent set forth in this Lease. Except as otherwise expressly stated in this Lease, nothing contained in this Lease may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, to convey ownership of any asset, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party.

19. **Successors; Assignment; and Subleasing.** This Lease shall bind the successors and assigns of the Parties. Tenant shall not assign, sublet, transfer or hypothecate, in whole or in part, this Lease or the Premises, by operation of law or otherwise, without the prior written consent of City. Notwithstanding the foregoing, City agrees that Tenant may sublease the Premises for the placement of an ATM on the Premises. Tenant must obtain from the City written approval of any lease or sublease for the placement of an ATM, and City's approval may not unreasonably be withheld.

20. **Quiet Enjoyment.** City agrees that so long as Tenant is in full compliance with the provisions of this Lease, Tenant is entitled to quietly enjoy the Premises for the full term of this Lease.

21. **Public Records; Confidentiality.** Pursuant to NRS 239.010, the City's information or documents, including this Lease, may be open to public inspection and copying. The City will have the duty to disclose, unless particular information or documents are made confidential by law or a common law balancing of interest. Tenant may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that Tenant thereby agrees to indemnify and defend City for honoring such a designation. The failure to so label any document that is released by City shall

constitute a complete waiver of any and all claims for damages caused by any release of the records. To the extent that information or documents are made confidential, the Parties shall keep such information or documents confidential.

22. **Intellectual Property.** The name, trade name, logo, trademark, or service mark of a Party are the sole property of that Party, this Lease does not permit any Party to use the another Party's intellectual property, and unless otherwise expressly provided herein, no Party shall use another Party's intellectual property in any marketing or advertisement.

23. **Records; Retention.** The Parties agree to keep and maintain, under general accepted accounting principles, full, true and complete records, agreements, books, and documents pertaining to this Lease, and at the request of the other Party agree to present, at any reasonable time, such records, agreements, books, and documents for inspection, examination, review, audit, and copying at any office where such records, agreements, books, and documents are maintained. The Parties further agree to, upon reasonable request of the other Party, provide any requested records, agreements, books, and documents that may be necessary for the performance or renegotiation of this Lease, or for any other reason pertaining to this Lease. The Parties agree to retain all records, agreements, books, and documents pertaining to the Lease for a period of six years.

24. **Required Approvals.** For City, this Lease must be approved by the Carson City Board of Supervisors.

25. **Proper Authority.** The Parties represent and warrant that the person executing this Lease on behalf of each Party has full power and authority to enter into this Lease and that the Parties are authorized by law to engage in the cooperative action set forth in this Lease.

26. **Counterparts.** This Lease may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

27. **Severability.** If any provision contained in this Lease is held to be unenforceable by a court of law or equity, this Lease will be construed as if such provision did not exist and the non-enforceability of the provision will not render any other provision or provisions of this Lease unenforceable.

28. **Force Majeure.** Neither Party shall be deemed to be in violation of this Lease if it is prevented from performing any of its obligations hereunder due to strikes, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause

must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Lease after the intervening cause ceases.

29. **Governing Law; Jurisdiction.** This Lease and the rights and obligations of the Parties shall be governed by and construed according to the laws of the State of Nevada. The Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State Of Nevada in Carson City.

30. **Remedies.** Except as otherwise provided for by law or this Lease, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing Party reasonable attorney's fees and costs. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees by the court, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour. The contract liability of the Parties under this Lease does not include punitive damages. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Lease.

31. **Notice.** All notices or other communications required or permitted to be given under this Lease must be in writing and will be deemed given if delivered: personally by hand; by facsimile with simultaneous regular mail; or mailed certified mail, return receipt requested, and addressed to the other Party at the following address:

LOPICCOLO FAMILY 1998 TRUST, dba LOPICCOLO FAMILY INVESTMENTS LLC

Jennifer Lopiccolo, Trustee
123 West 2nd Street
Carson City, Nevada 89701
(775) 772-9579
Jenny.Lopiccolo@cbselectre.com

CARSON CITY

Real Property Manager
Carson City Public Works
3505 Butti Way
Carson City, Nevada 89701
(775) 887-2355

Either Party may, by notice in writing sent to the other Party as described above, designate a different mailing address to which or a different person to whose attention all such notices or demands must thereafter be addressed.

32. **No Third-Party Beneficiary.** None of the provisions of this Lease, express or implied, are intended or will be construed to give the public; any member of the public; any other local or state government department, entity, agency, or political subdivision; or any other person or entity the status of a third-party beneficiary or any legal or equitable right, benefit, remedy, or claim of any nature under or with respect to this Lease, or any provision of this Lease. The Parties intend that this Lease and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Lease and their respective successors and assigns.

33. **No Waiver of Breach.** Failure to declare a breach or the actual waiver of any particular breach of this Lease or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.

34. **Mutual Drafting.** The terms and conditions of this Lease were negotiated by both Parties; therefore, a court or any other person interpreting any ambiguity in this Lease may not apply the rule of construction that a document is to be construed against the drafter.

35. **Amendments and Modification.** Unless otherwise expressly authorized by the terms of this Lease, no modification or amendment to this Lease is binding upon the Parties unless it is in writing and signed by the Parties.

36. **Entire Agreement.** With respect to the subject matter of this Lease, this Lease and its integrated attachments constitute the entire agreement of the Parties; is the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made; and supersedes all prior negotiations, discussions, and representations between the Parties. Unless an integrated attachment to this Lease specifically displays a mutual intent to amend a particular part of this Lease, general conflicts in language between any such attachment and this Lease must be construed consistent with the terms of this Lease.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be signed and intend to be legally bound thereby.

CARSON CITY

Approved as to Form:

By: _____
Robert Crowell
Mayor

By: _____
Deputy District Attorney

Dated: _____

Dated: _____

ATTEST:

By: _____
Aubrey Rowlett
Carson City Clerk

Dated: _____

LOPICCOLO FAMILY 1998 TRUST, dba LOPICCOLO FAMILY INVESTMENTS LLC

By: _____
Jennifer Lopiccoco
Trustee

Dated: _____

EXHIBIT “ ___ ”

All that certain parcel of land situate in the Northwest 1/4 of the Southwest 1/4 of Section 17, T.15N., R.20E., M.D.M., City of Carson, State of Nevada, and being more particularly described as follows:

COMMENCING at the Northeast Corner of Lot 1 of Block 15, of the Sears-Thompson & Sears Subdivision, as shown on said Subdivision Map, File Number 60864, filed in the Records of Ormsby County (Carson City) on the April 25, 1963;

THENCE along the North line of said Lot 1 of Block 15, North 89°02'30" West, 3.13 feet to the **POINT OF BEGINNING**;

THENCE leaving said Point of Beginning and continuing along said North line, North 89°02'30" West, 4.42 feet;

Lot THENCE leaving said North line, along a line perpendicular to said North line of said Lot 1, North 00°57'30" East, 7.05 feet;

THENCE along a line parallel to said North line of said Lot 1, South 89°02'30" East, 4.42 feet;

THENCE along a line perpendicular to said North line of said Lot 1, South 00°57'30" West, 7.05 feet, to the **POINT OF BEGINNING**.

Containing 31 Square Feet, more or less.

SURVEYOR'S CERTIFICATE

I hereby certify that the attached description was prepared by me or under my direct supervision and is accurate to the best of my knowledge and belief.

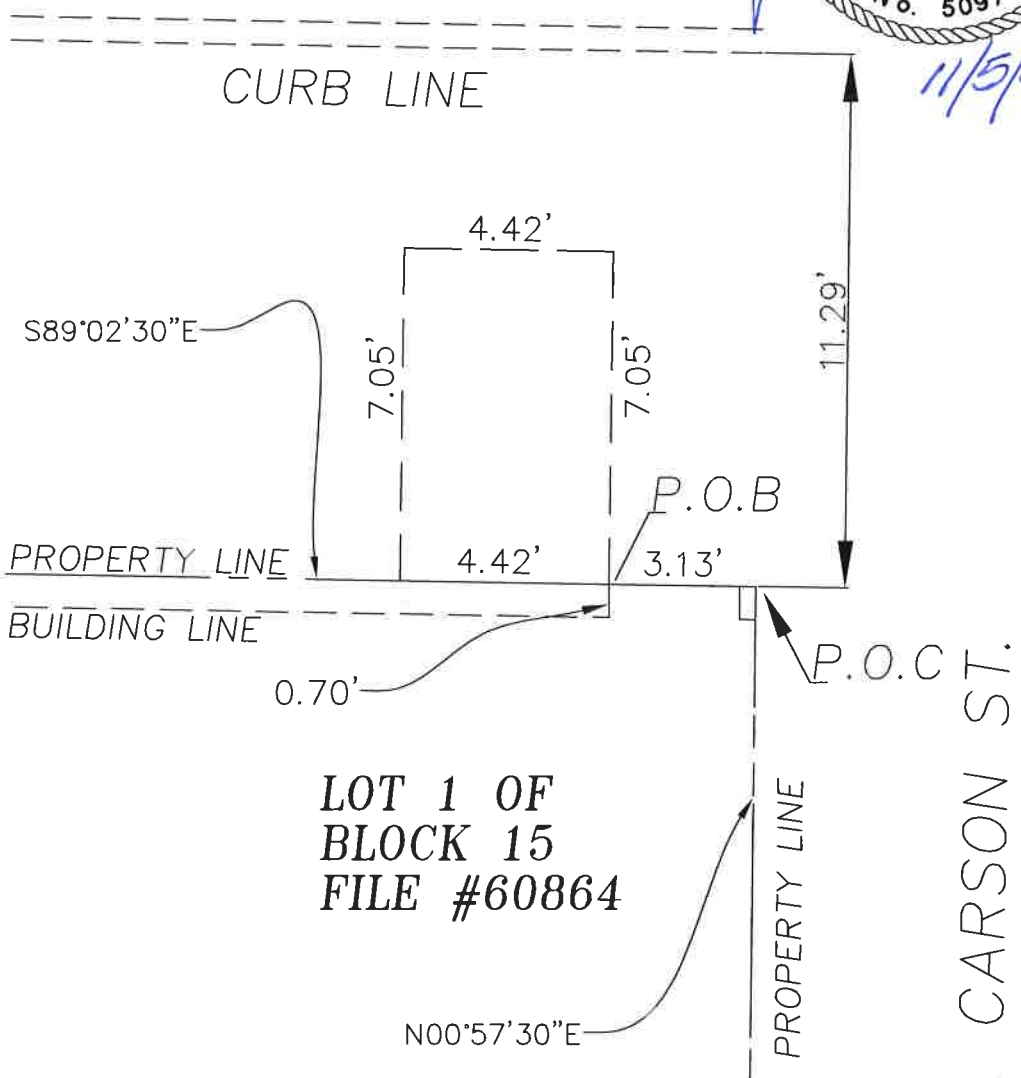
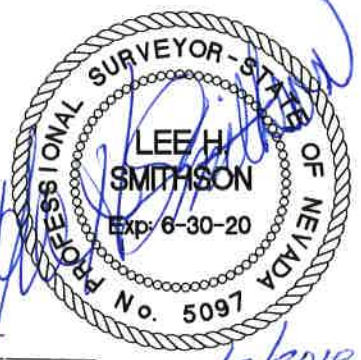
Lee H. Smithson
Nevada PLS 5097
For and on behalf of



RENO, NEVADA 89521
(775) 321-6528



W. SECOND ST.



9850 Double R Blvd Suite 101 Reno, NV 89521 tel: (775) 748-3500 fax: (775) 748-3520 www.manhard.com
Civil Engineers - Surveyors - Water Resources Engineers - Water & Wastewater Engineers
Construction Managers - Environmental Scientists - Landscape Architects - Planners

WELLS FARGO	
CARSON CITY, NEVADA	
ATM EASEMENT	
PROJ MGR: <u>LHS</u>	SHEET 1 OF 1
DRAWN BY: <u>LHS</u>	EXHIBIT #####
DATE: <u>NOV. 2018</u>	
SCALE: <u>NTS</u>	01

RESOLUTION NO. 2019-_____

**RESOLUTION OF THE CARSON CITY BOARD OF SUPERVISORS
AUTHORIZING THE LEASE OF CITY RIGHT OF WAY.**

WHEREAS, the City is the owner of the right of way located on the 100 block of West 2nd Street, near the corner of South Carson Street; and

WHEREAS, the Lopiccolo Family 1998 Trust owns the property adjacent the City's right of way located at 123 West 2nd Street, APN 003-112-06, and desires to place an automated teller machine ("ATM") in a location partially upon City's right of way adjacent to the property on West 2nd Street near the corner of South Carson Street, as further described on the attached Exhibit A ("Premises"); and

WHEREAS, said Premises needed for the installation of the ATM, approximately 31 square feet currently used as sidewalk, are not currently needed for any municipal purpose, an ATM located on the Premises would benefit the residents of the City, and City is willing to lease the Premises to the Lopiccolo Family 1998 Trust, dba Lopiccolo Family Investments LLC; and

WHEREAS, NRS 244.281(1)(e)(1) authorizes the Carson City Board of Supervisors to lease City-owned property to an adjacent property owner without complying with the provisions of NRS 244.283;

NOW, THEREFORE, be it hereby resolved by the Carson City Board of Supervisors that:

1. said Premises, as a result of its size, is too small to establish an economically viable use by anyone other than the Lopiccolo Family 1998 Trust, which owns real property adjacent to the real property for lease; and
2. the lease of said Premises to the Lopiccolo Family 1998 Trust, dba Lopiccolo Family Investments LLC, is in the best interest of Carson City; and
3. the Carson City Board of Supervisors hereby determines that the lease of said Premises meets the statutory requirements established by NRS 244.281(1)(e)(1) and an appraisal of the property is hereby waived; and

4. the Mayor is authorized to enter into a lease agreement concerning the Premises with the Lopiccolo Family 1998 Trust, dba Lopiccolo Family Investments LLC.

ADOPTED this _____ day of _____, 2019.

VOTE: AYES: Supervisors _____

NAYS: Supervisors _____

ABSENT: Supervisors _____

Robert Crowell, Mayor
Carson City, Nevada

ATTEST:

AUBREY ROWLATT, Clerk/Recorder
Carson City, Nevada

EXHIBIT “ ___ ”

All that certain parcel of land situate in the Northwest 1/4 of the Southwest 1/4 of Section 17, T.15N., R.20E., M.D.M., City of Carson, State of Nevada, and being more particularly described as follows:

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SURVEYOR'S CERTIFICATE

I hereby certify that the attached description was prepared by me or under my direct supervision and is accurate to the best of my knowledge and belief.

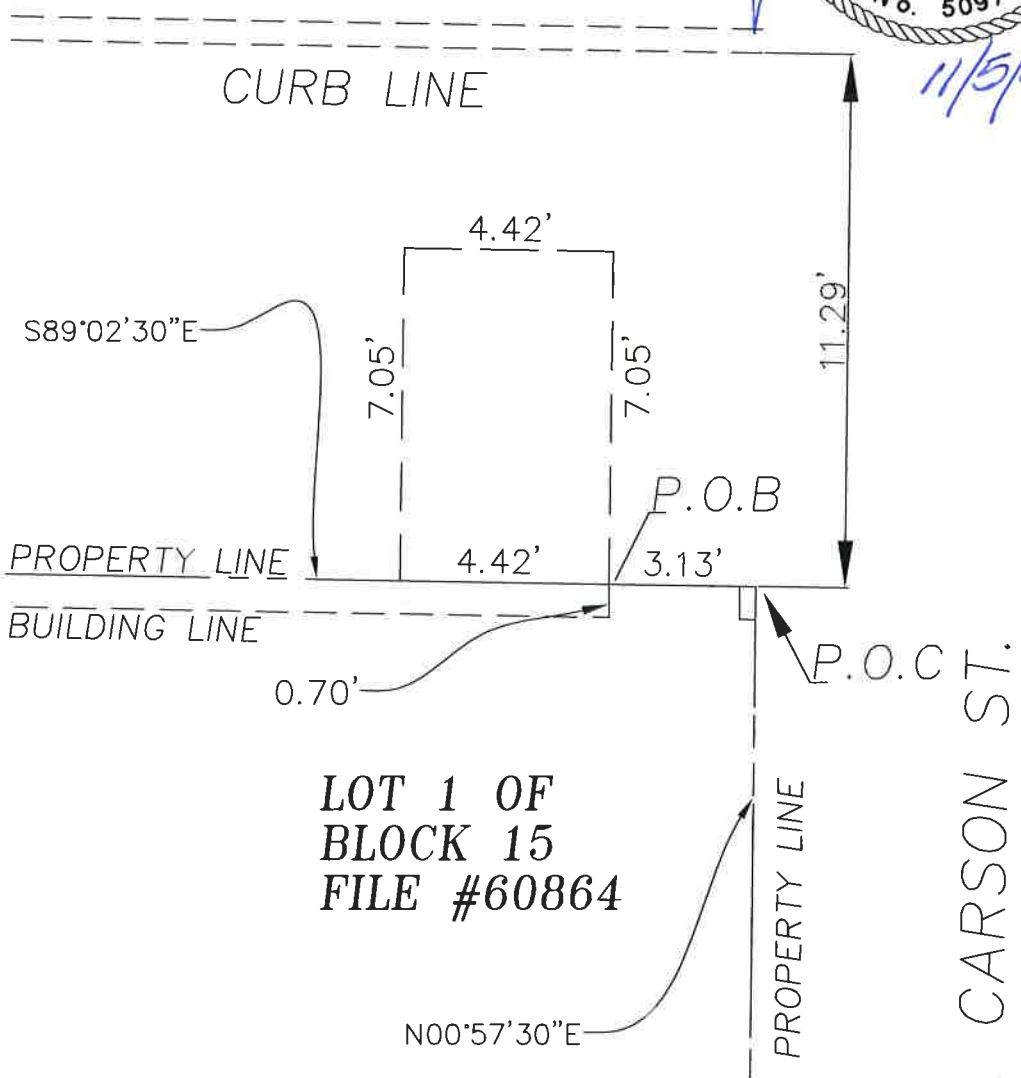
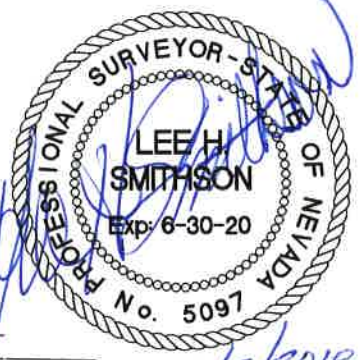
Lee H. Smithson
Nevada PLS 5097
For and on behalf of



RENO, NEVADA 89521
(775) 321-6528

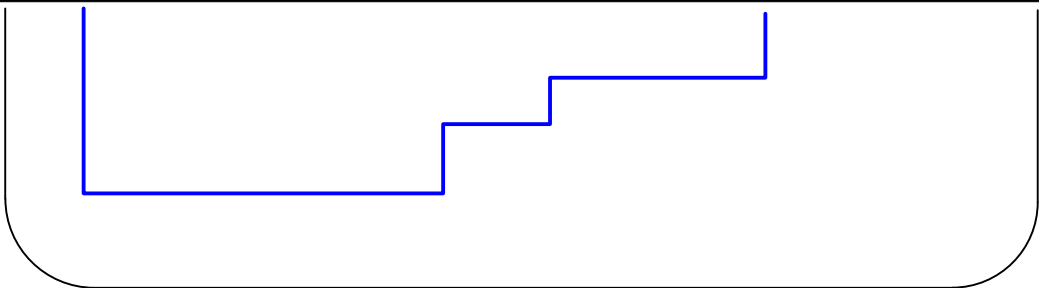


W. SECOND ST.



9850 Double R Blvd Suite 101 Reno, NV 89521 tel: (775) 748-3500 fax: (775) 748-3520 www.manhard.com
 Civil Engineers - Surveyors - Water Resources Engineers - Water & Wastewater Engineers
 Construction Managers - Environmental Scientists - Landscape Architects - Planners

WELLS FARGO	
CARSON CITY, NEVADA	
ATM EASEMENT	
PROJ MGR: <u>LHS</u>	SHEET 1 OF 1
DRAWN BY: <u>LHS</u>	EXHIBIT #####
DATE: <u>NOV. 2018</u>	
SCALE: <u>NTS</u>	01



WEST 2ND STREET

OPT A

C CARSON ST

S CURRY ST

PARKING LOT

PARKING LOT

MPOE

ELEC

110'

100'

Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM

SITE PLAN

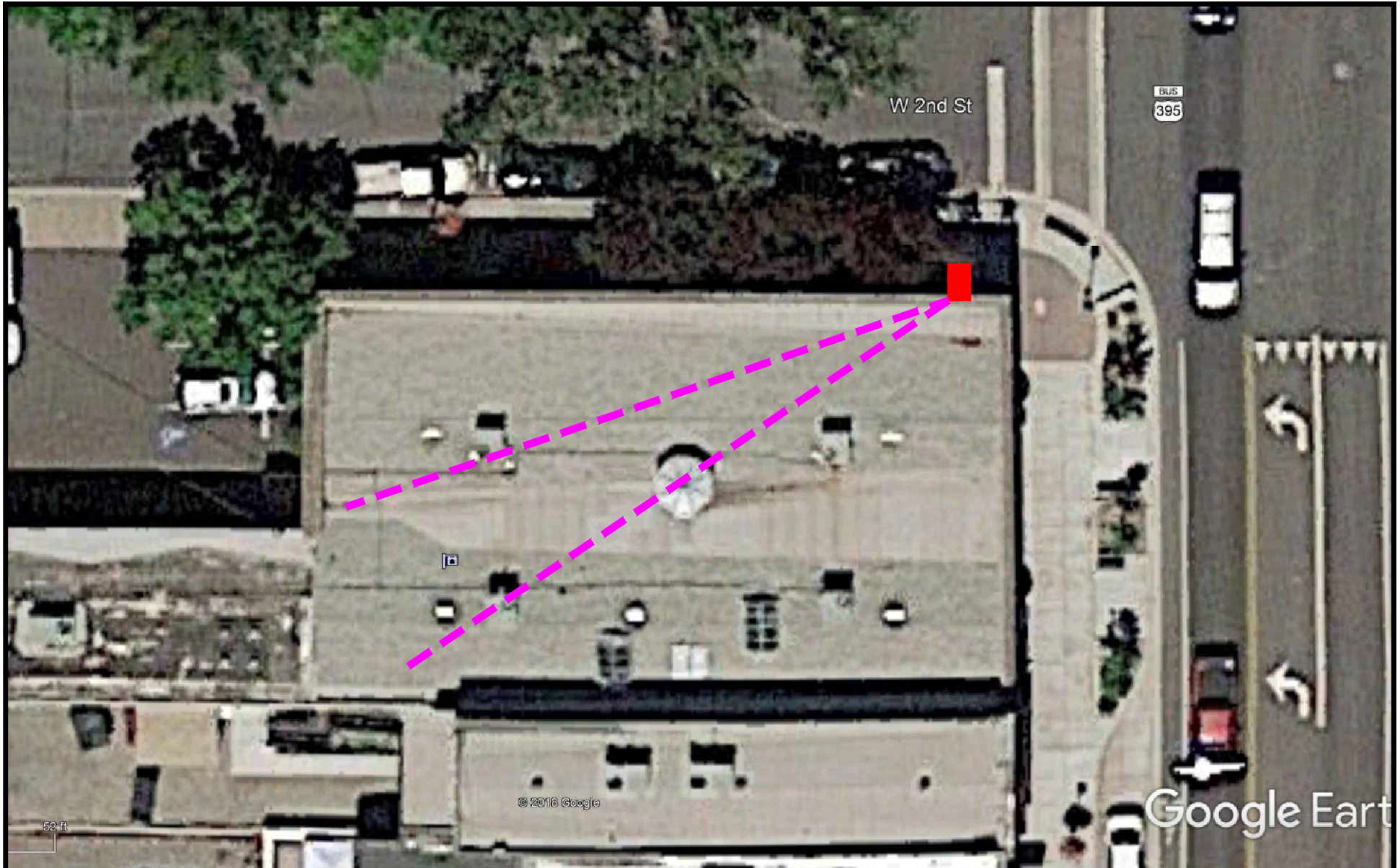
REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
Not to Scale

10/01/18

Page 1 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM

ARIAL VIEW

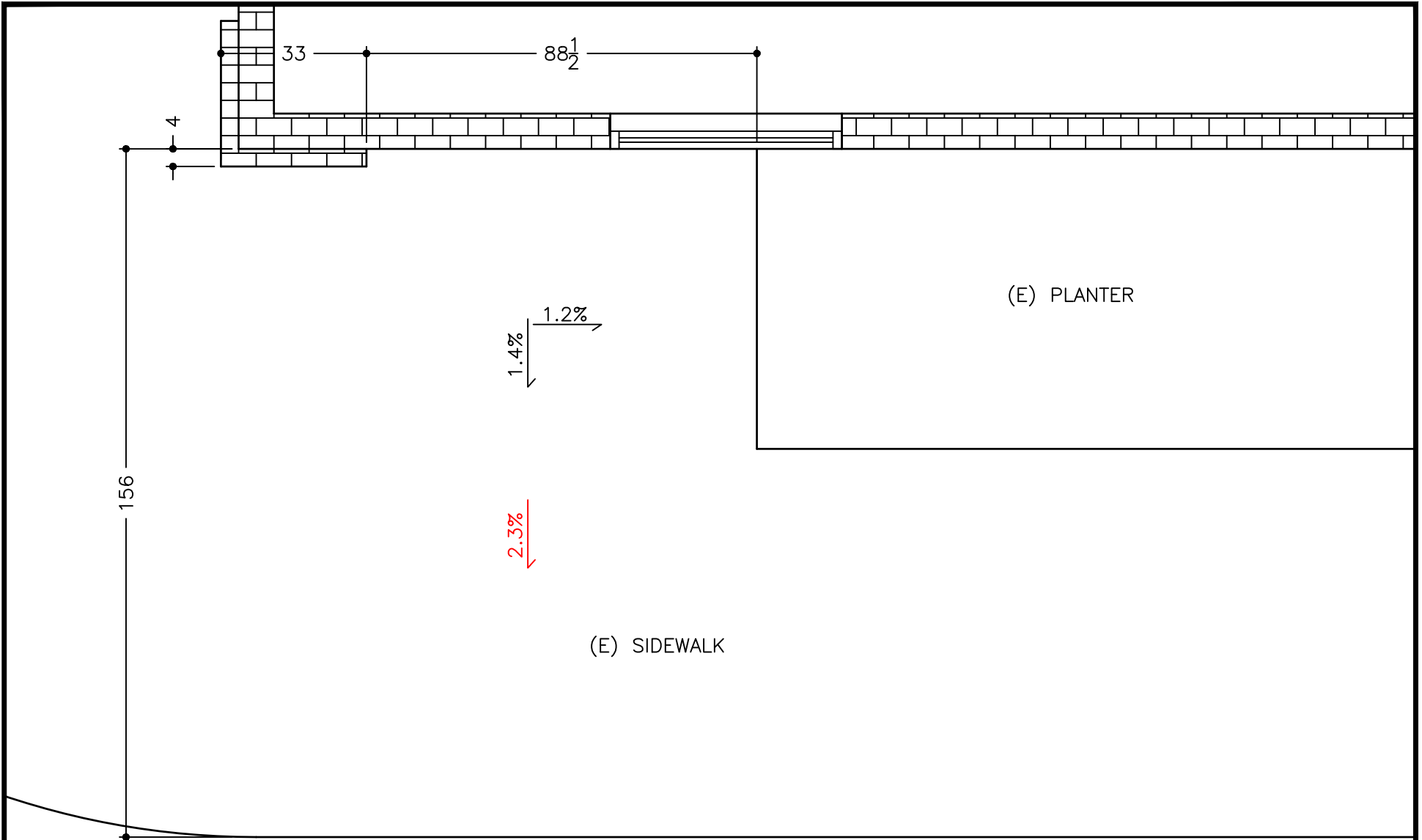
REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
Not to Scale

10/01/18

Page 2 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



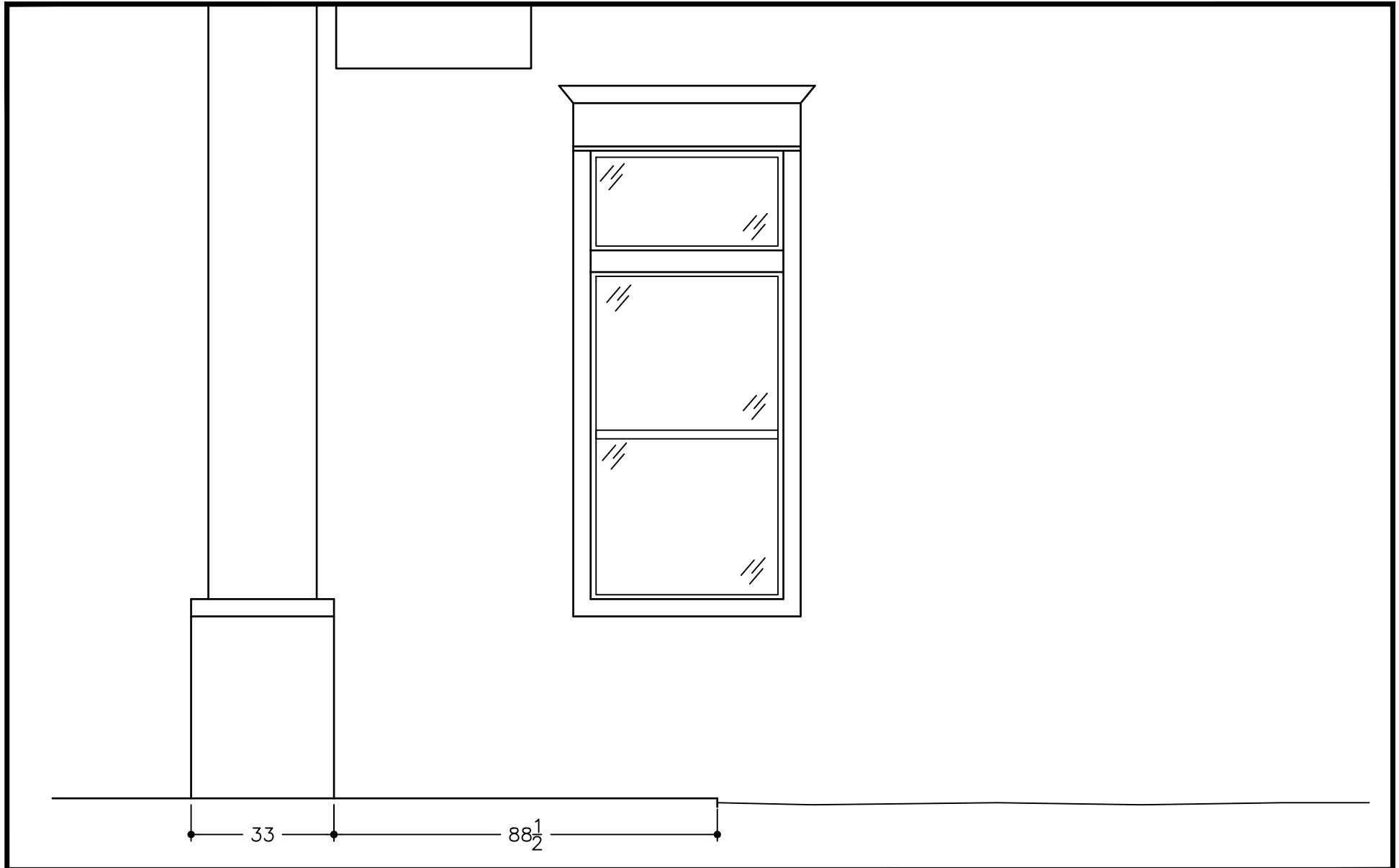
Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM
-
Existing Plan View

REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
3/8"=1'-0"
10/01/18
Page 3 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



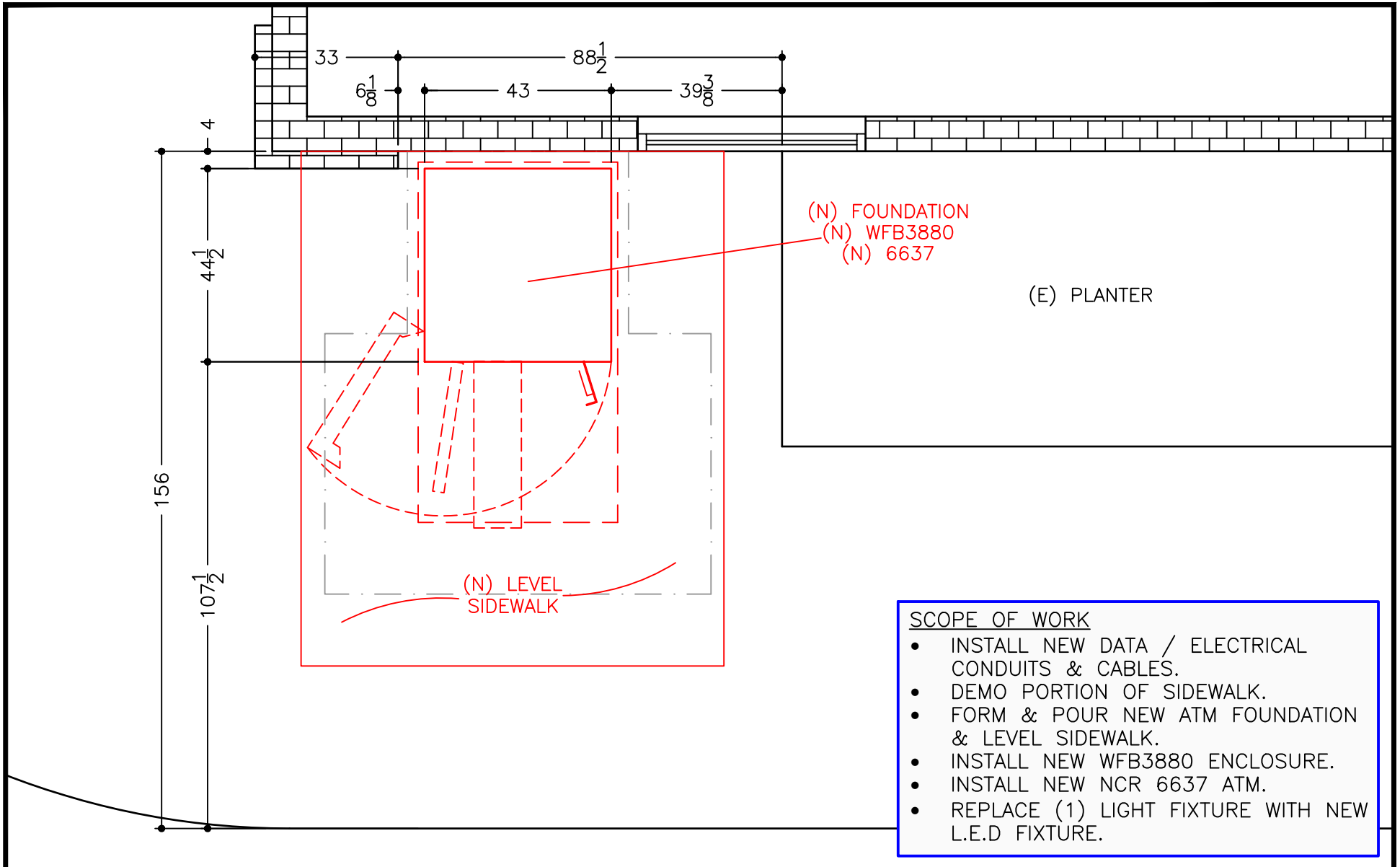
Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM
-
Existing Elevation

REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
3/16"=1'-0"
10/01/18
Page 4 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM

Proposed Plan View

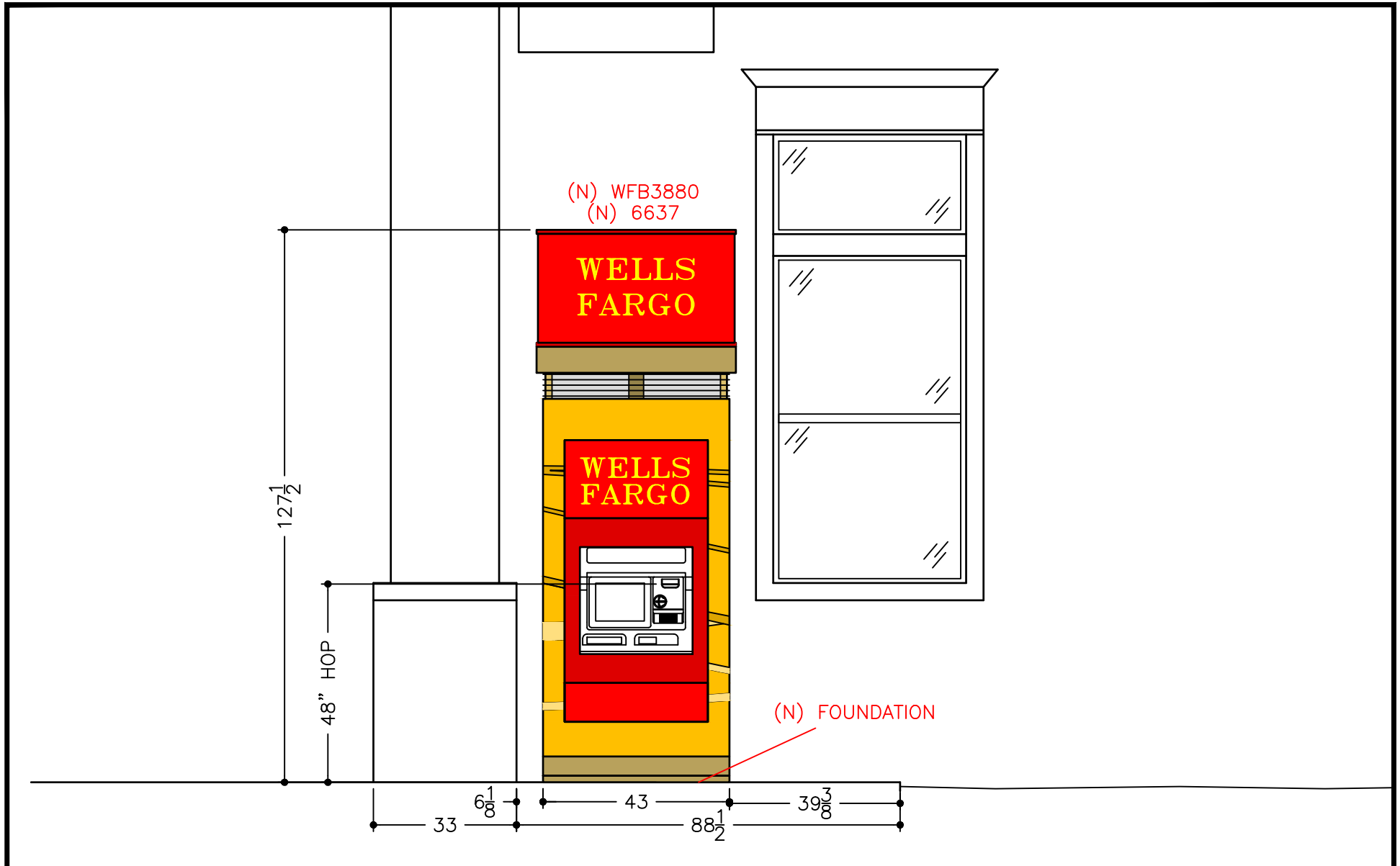
REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
1/4"=1'-0"

10/01/18

Page 5 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM
-
Proposed Elevation

REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
3/16"=1'-0"
10/01/18
Page 6 of 7



Implementation Solution Services Inc.



1101 S. Acacia Ave
Fullerton, CA 92831
714.738.7935



Carson City
West 2nd Street
Carson City, NV 89701

NEW ATM
-
RENDERING

REVISED
10/24/18

OPTION A
Ext Lobby

SCALE:
Not To Scale

10/01/18
Page 7 of 7