



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: November 21, 2019

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a Non-Exclusive Easement agreement between the State of Nevada, Division of State Lands and Carson City for storm drain pipes located on APN 004-012-17 at the Carson City Department of Motor Vehicles Headquarters. (Darren Schulz, DSchulz@carson.org and Dan Stucky, DStucky@carson.org)

Staff Summary: The subject easement is for storm drain pipes located at the Carson City Department of Motor Vehicles Headquarters on APN 004-012-17, a parcel owned by the State of Nevada. Pursuant to NRS 322.140(1), the State Land Registrar has waived the fee for the issuance of this easement since the storm drain project protects and/or promotes public health and/or safety. The easement totals approximately 27,875 square feet and is necessary in order to allow Carson City to maintain the existing storm drain system.

Agenda Action: Formal Action / Motion

Time Requested: 5 minutes

Proposed Motion

I move to approve the Non-Exclusive Easement agreement.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

N/A

Background/Issues & Analysis

In the spring of 2019, Carson City completed a storm drain project in conjunction with the State Public Works Board's asphalt and paving project at the Carson City Department of Motor Vehicles Headquarters. The drainage project included the replacement of an existing, deteriorated 72-inch diameter storm drain pipe and construction of a new parallel 72-inch diameter storm drain pipe as part of a master planned project to improve drainage within the Linear Ditch and South Carson Street corridor. This construction across State land was completed under Right of Entry Authorization that has now expired. The easement totals approximately 27,875 square feet and is necessary in order to allow Carson City to maintain the existing storm drain system. Pursuant to NRS 322.140(1), the State Land Registrar has waived the fee for the issuance of this easement since the storm drain project protects and/or promotes public health and/or safety.

Applicable Statute, Code, Policy, Rule or Regulation

NRS Chapter 322 (Use of State Lands)

Financial Information

Is there a fiscal impact? No

If yes, account name/number: N/A

Is it currently budgeted? No

Explanation of Fiscal Impact: N/A

Alternatives

Do not approve the agreement and provide alternative direction to staff.

Attachments:

[State Lands- DMV Storm Drain Easement.pdf](#)

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)



B&G 111/AE
Interest: 15760
Project: 6519
Contract: 5042
Carson City
A.P.N.: 004-012-17

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

NON-EXCLUSIVE EASEMENT

CARSON CITY PUBLIC WORKS DEPARTMENT LINEAR DITCH STORM DRAIN ENHANCEMENT PROJECT CARSON CITY DMV HEADQUARTERS

This Non-Exclusive Easement is made and entered into this ____ day of _____, 2019 by and between the STATE OF NEVADA, acting through the DIVISION OF STATE LANDS, for and on behalf of the DEPARTMENT OF ADMINISTRATION, PUBLIC WORKS DIVISION, BUILDINGS AND GROUNDS SECTION, 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 004-012-17; and

WHEREAS, GRANTEE, has made application to and wishes to obtain from the GRANTOR an Easement for both a 450 foot long 72 inch wide Corrugated Metal Pipe (CMP) storm drain and a parallel 450 foot long 72 inch wide CMP storm drain located south of the Carson City Department of Motor Vehicles Headquarters in the rear parking lot; and

WHEREAS, the Grantee replaced the existing 450 foot long 72 inch wide CMP storm drain and constructed a parallel 450 foot long 72 inch wide CMP storm drain under a Right of Entry Authorization that expired on December 31, 2018 and was completed in conjunction with the State Public Works Board's asphalt and paving project; 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," on 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 on a portion of that certain property situated in Section 20, Township 15 North, Range 20 East, as shown on **EXHIBIT A** attached hereto and by reference made a part hereof. The location of the Project is described in the legal description attached hereto as **EXHIBIT B** and by reference made a part hereof.

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 was executed in accordance with the Linear Ditch Storm Drain Enhancement Project dated May 4, 2018 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:** Pursuant to NRS 322.140(1) the State Land Registrar has waived the fee for the issuance of this Easement since the Project protects and/or promotes public health and/or safety.

4. **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.

5. **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.

6. **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.

7. 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:**

**Andre Emme, Land Agent I
Nevada Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, Nevada 89701**

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

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

17. 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**.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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

STATE OF NEVADA)
 :SS.
 CARSON CITY)

On _____, 2019, personally appeared before me, a notary public
 CHARLES DONOHUE, Administrator and State Land Registrar, Division of
 State Lands, who acknowledged that he executed the above document.

 NOTARY PUBLIC

APPROVED AS TO FORM:
AARON FORD
Attorney General

By 
 LORI M. STORY
 Senior Deputy Attorney General

Date: August 8, 2019

APPROVED:

**STATE OF NEVADA
Department of Administration
State Public Works Division**

By _____
WARD PATRICK
Administrator

Date: _____

GRANTEE:
CARSON CITY

REVIEWED AND RECOMMENDED BY:

DAN STUCKY, CITY ENGINEER Date

APPROVED FOR LEGALITY AND FORM:

CARSON CITY DISTRICT ATTORNEY Date

BOARD APPROVED BY:

ROBERT L. CROWELL Date
MAYOR

ATTEST:

AUBREY ROWLATT Date
CLERK-RECORDER

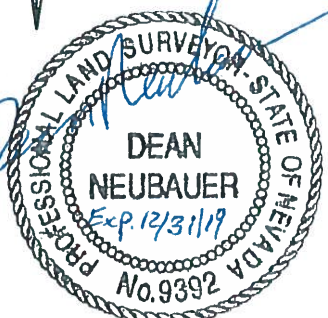
EXHIBIT A



APPROVED

BY *Ante* DATE 7/29/19

NEVADA DIVISION OF STATE LANDS



7/16/2019

WRIGHT WAY

STREET

OREGON STREET

ROOP STREET

EASEMENT
27,875 SQ.FT. +/-

50' STORM DRAIN
EASEMENT

N 38°42'47" E 62.16'
N 38°42'47" E 93.92'

S 87°44'23" E 537.83'
N 87°44'23" W 577.16'

P.O.B.

S 0°29'32" E 50.06'

N 54°08'00" E 266.53'

STEWART

N 17°45'13" E 363.60'

PARCEL 1

STATE OF NEVADA - DMV SITE
(DOC. NO. 88690)

APN 004-012-17

SW COR PARCEL 1

LUMOS



308 N. CURRY ST.,
SUITE 200
CARSON CITY, NV 89703
TEL (775) 883-7077

**STORM DRAIN EASEMENT
STATE OF NEVADA - DMV SITE
PORTION OF SEC. 20, T15N, R20E, MDM**

CARSON CITY

NEVADA

Date: 07/2019

Scale: 1" = 200'

Job No: 9506.000.4

EXHIBIT B

LEGAL DESCRIPTION DMV STORM DRAIN EASEMENT

APN 004-012-17

A strip of land being for the purpose of a fifty-foot wide storm drain easement across that certain parcel of land previously described as Parcel 1 at Document no. 88690 in the Official Records of Carson City, Nevada, said strip of land lying entirely within the Northwest One-Quarter of Section 20, Township 15 North, Range 20 East of the Mount Diablo Meridian, Carson City, Nevada, and being more particularly described as follows:

Commencing at the SW corner of said Parcel 1, also being a point on the Easterly right-of-way line of Stewart Street;

THENCE along the Westerly boundary of said Parcel 1 and the Easterly right-of-way line of Stewart Street for the following three courses:

1. North 17°45'13" East a distance of 363.60 feet;
2. North 54°08'00" East a distance of 266.53 feet;
3. North 38°42'47" East a distance of 93.92 feet to the **POINT OF BEGINNING** of said easement;

THENCE continuing North 38°42'47" East along said Westerly boundary and Easterly right-of-way line a distance of 62.16 feet;

THENCE South 87°44'23" East a distance of 537.83 feet to the East boundary of said Parcel 1;

THENCE South 00°29'32" East along the Easterly boundary of said Parcel 1 a distance of 50.06 feet;

THENCE North 87°44'23" West a distance of 577.16 feet to the **POINT OF BEGINNING**;

The above described easement containing 27,875 square feet, more or less.

Basis of Bearings is the record description of said Parcel 1 as described at Document No. 88690.

Prepared by:

Dean Neubauer, PLS 9392
Lumos & Associates, Inc.
308 North Curry Street, Suite 200
Carson City, NV 89703

