



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** April 15, 2021

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a draft license agreement template and license fee methodology, which is proposed to be a per square foot charge calculated by multiplying 50 percent of the Assessor's taxable value per square foot of the adjoining owner's parcel(s) multiplied by the prime interest rate plus two percent, to be utilized for granting licenses for use of the City's right-of-way for purposes other than landscaping, sidewalks, ingress and egress, and authorization for the City Engineer or designee to execute license agreements with adjacent property owners and adjust the license fee in accordance with the approved license fee methodology. (Dan Stucky, DStucky@carson.org; and Robert Nellis, RNellis@carson.org).

Staff Summary: Pursuant to Highway Agreement No. R386-04-002 with the Nevada Department of Transportation ("NDOT"), Carson City agreed to take ownership of right-of-way along South Carson Street extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive. Through the transfer of ownership, Carson City owns some portions of the South Carson Street right-of-way in fee simple and owns others as easements. Much of the right-of-way is located outside of the active roadway prism and is utilized by adjacent commercial property owners for, among other things, parking or landscape areas. In August 20, 2020, the Board of Supervisors directed staff to license the use of surplus right-of-way by the adjoining property owners. Since the meeting, staff has created a draft license agreement template for the Board of Supervisors' consideration along with a proposed license fee methodology that may be applied to similar encroachments citywide. Encroachment permits have been granted to the affected property owners pending the Board of Supervisors' direction on licensing agreements.

Agenda Action: Formal Action / Motion **Time Requested:** 15 minutes

Proposed Motion

I move to approve the license agreement template and license fee methodology, authorize the City Engineer or designee to execute license agreements with affected property owners, and authorize the City Engineer or designee to adjust the license fee each year in accordance with the approved license fee methodology.

Board's Strategic Goal

Economic Development

Previous Action

April 1, 1997 - the Board of Supervisors and NDOT entered into Agreement No. R159-97-060 to facilitate the construction of Phase 1 of the Carson City Freeway (Carson City Bypass), which included preliminary engineering, right-of-way acquisition, construction, and construction engineering.

October 14, 2004 - the Board of Supervisors and NDOT entered into Agreement No. R386-04-002, constituting Amendment No. 1 to Agreement No. R159-97-060, for the purpose of addressing construction of Phase 2 of the Carson City Freeway (Carson City Bypass) and addressing Carson City's financial contribution to Phase 2.

December 27, 2007 - the Board of Supervisors and NDOT entered into Amendment No. 2 to Agreement No. R159-97-060 as amended by Agreement No. R386-04-002, in order to modify Carson City's remaining Phase 1 funding obligation by identifying certain portions of State highways, along with attendant maintenance responsibilities to be relinquished to Carson City by NDOT.

September 4, 2009 - the Board of Supervisors and NDOT entered into Amendment No. 3 to Agreement No. R159-97-060 as amended by Agreement No. R386-04-002, in order to modify Carson City's remaining Phase 2 funding obligation, whereby State highways, along with attendant maintenance responsibilities, were relinquished to Carson City.

August 10, 2016 - the Board of Supervisors and NDOT entered into Amendment No. 4 to Agreement R159-97-060 as amended by Highway Agreement No. R386-04-002, to provide for the transfer from NDOT to Carson City of portions of State Highways and their attendant maintenance duties, obligations, and responsibilities, and in order to modify Carson City's remaining funding obligations for Phase 2 of the Carson City Freeway.

October 18, 2018 - the Board of Supervisors adopted four resolutions consenting to relinquishments and land transfer agreements between Carson City and NDOT. This land transfer included:

1. Approximately 1.83 miles of South Carson Street including portions of frontage road extending from the northerly right-of-way line of IR-580 to the southerly right-of-way line of Fairview Drive;
2. Approximately 1,485 feet of frontage road extending from Arthur Street to south of Clear Creek Avenue;
3. Approximately one mile of Snyder Avenue extending east from the easterly line of South Carson Street; and
4. Eighteen (18) surplus parcels located along the IR-580 corridor from Colorado Street to South Carson Street.

March 19, 2020 - the Board of Supervisors discussed the process to implement the South Carson Street Neighborhood Improvement District ("SCNID") and determined to not create the SCNID in 2020 and not assess the property owners in fiscal year 2021. The Board further directed staff to continue working on the SCNID, but to first bring back a future agenda item to discuss the disposition of the South Carson Street surplus right-of-way or "NDOT" parcels along the corridor to see how the disposition of those properties would factor into the SCNID.

August 20, 2020 - the Board of Supervisors directed staff to manage surplus right-of-way along South Carson Street by focusing on the licensing option for the surplus properties. Specifically, the Board directed staff to develop a license agreement template to bring back for consideration and approval at a future Board of Supervisors' meeting.

March 4, 2021 - the Board of Supervisors reviewed the license agreement template and requested modifications to the template that were read into the record. The Board of Supervisors directed that payments from businesses in the SCNID be directed to the SCNID to reduce the overall annual assessment.

April 1, 2021 - the Board of Supervisors approved the Business Impact Statement (BIS).

Background/Issues & Analysis

In November 2018, NDOT completed the process to relinquish South Carson Street right-of-way between Appion Way and Fairview Drive to Carson City. NDOT leased most of these parcels and charged a fee for the area of encroachment excluding any landscaped areas or clear zones. NDOT terminated most of the leases in

January 2019. Ownership of 18 parcels within the right-of-way was conveyed to the City as part of the relinquishment and the City granted temporary encroachment permits for the parcels.

At the direction of the BOS, staff has developed the attached license agreement template for review and consideration, including a recommended license fee methodology for the surplus properties along South Carson Street. The license agreement template will be a standalone document that will work in conjunction with the encroachment permits to provide certain enhanced protections for the City.

In order to determine the license fee to be charged to the adjoining owners through the license agreements, staff first reviewed the methodology utilized by NDOT. NDOT's methodology utilizes the Assessor's Taxable Value of the adjoining owner's parcel(s)' land value and divides that value by the square footage of the adjoining owner's parcel(s). For example, the current Assessor's Taxable Value per square foot of many parcels is approximately \$11.40. The Assessor's Taxable Value per SF is then multiplied by the prime interest rate in January of each year +2% pursuant to NRS 99.040(1), which equals 5.25% as of January 2021. This calculates to an average annual license fee of $\$11.40 * 5.25\% = 60 \text{ cents } (\$0.60)$ per SF, which is then multiplied by the square footage of the area to be licensed.

After reviewing NDOT's methodology, the Carson City Municipal Code ("CCMC") and market rates with local commercial real estate experts and appraisers, staff recommends a modified approach to NDOT's determination of a license fee. Initially, staff recommends not charging a license fee for area that is landscaping, sidewalks, ingress and egress. These uses are already covered by encroachment permits under CCMC Chapter 11.12, and staff proposes continuing to require an encroachment permit for these uses in addition to a license agreement for uses covered by the license agreement.

Staff also recommends modifying NDOT's methodology to determine the license fee by reducing it by 50%. Justification for this reduction includes the parcels being too narrow to be marketed as buildable parcels for other commercial uses such as office space; the City not investing in developing the improvements on the parcels; and the parcels being similarly encumbered as easements on City properties. For these reasons, staff recommends charging a license fee to the adjoining property owners equivalent to what the City would charge for an easement on City property of equal utility.

Staff's recommended methodology for valuing an easement on City property is similar to NDOT's methodology, with the exception that 50% of the Assessor's Taxable Value of the adjoining owner's parcel(s)' land value would be utilized rather than 100%, divided by the SF of the area to be licensed. The average current Assessor's Taxable Value per SF of many parcels along South Carson Street is approximately \$11.40. $\$11.40 * 50\% = \5.70 per SF. Utilizing the same interest rate above (the prime interest rate as of January each year plus 2%), $\$5.70 * 5.25\% = 30 \text{ cents } (\$0.30)$ per SF. This calculation would be performed individually for every license to take into account the specific Assessor's Taxable Value of the licensee's property.

Staff also recommends the Board of Supervisor's approval for the City Engineer to adjust the license fee each year in accordance with the Board's approved license fee methodology.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 244.290 and 244.281; CCMC 17.15

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Regional Transportation Fund: Lease Revenue (Account # 2503080-463010), proceeds will be transferred to the new South Carson Neighborhood Improvement District Special Revenue Fund to be created FY 2022.

Is it currently budgeted? No

Explanation of Fiscal Impact: There would be no immediate fiscal impact from approval of the license agreement template, but if approved by the Board of Supervisors at a later date, City staff will prepare license agreements for affected property owners based on the proposed fee methodology in the license agreement template for each encroachment within the City's right-of-way. License fees will vary depending on the nature of each encroachment and the amount of square footage occupied by the adjoining property owners. The Board of Supervisors has directed staff to apply any annual license fees collected from properties within the boundaries of the SCNID to be applied towards reducing the overall annual assessment for all property owners within the SCNID.

Alternatives

Do not approve the license agreement template with proposed license fee methodology and/or provide alternative direction to staff.

Attachments:

[ROW License Agreement Template v6 redline.pdf](#)

[ROW License Agreement Template v6 \(clean\).pdf](#)

[Email_Shelly Aldean.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

APNs: XXXXX
Property Address: XXXXX

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

MAIL TAX STATEMENTS TO:
[OWNER]
[OWNER ADDRESS]
[OWNER CITY STATE ZIP]

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made and entered into by and between Carson City, a consolidated municipality and political subdivision of the State of Nevada, (“City”) and _____, a _____ (“Owner”). City and Owner may be individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS:

WHEREAS, City is the owner of real property, easements, or other interests comprising right-of-way adjacent to property owned by Owner located at:

Address: _____,

APN: _____

(“Owner’s Property”); and

WHEREAS, Owner’s existing or desired use of Owner’s Property extends into City right-of-way, as further described in Exhibit A, which is incorporated by reference into this Agreement (the “ROW”); and

WHEREAS, the requested use of the ROW does not interfere with City’s maintenance and operation of the public roadway and will benefit Owner and City; and

WHEREAS, under NRS 244.270 the Carson City Board of Supervisors may control and manage the real property belonging to Carson City;

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

1. License.

Subject to the terms and conditions of this Agreement, City does hereby grant to Owner a non-exclusive license to use and occupy the ROW.

2. Use of ROW.

2.1 The Owner will use the ROW exclusively for the following purpose(s):

(Mark all that apply, and list the square feet of surface area that the activity encompasses)

<u>Purpose</u>	<u>Square feet</u>
<input type="checkbox"/> Parking	_____
<input type="checkbox"/> Lanes or drive-through	_____
<input type="checkbox"/> Other Approved Use (describe below)	_____

2.2 Use of the ROW for landscaping, sidewalks, ingress, and egress is not governed by this Agreement. Landscaping, sidewalks, ingress, and egress in the ROW is governed by an encroachment permit that may be obtained from the City’s Public Works Department. This Agreement governs all other uses. Both an encroachment permit and a license agreement must be obtained if the use includes mixed use landscaping, sidewalks, ingress, or egress and parking, driving lanes, drive-through, or other uses.

2.3 Owner may not use the ROW for any unlawful purpose or for any purpose not expressly authorized by this Agreement. Any change in the use of the ROW must be approved through the issuance of a new encroachment permit or license agreement, as appropriate. Use of the ROW inconsistent with the uses stated in this Agreement is a breach of this Agreement.

3. Conditions of License.

3.1 The permit or license granted by this Agreement is subject to any and all existing utility easements, whether of record or not, located within the ROW, and any other easements, conditions, covenants, or restrictions of record. The ROW is provided in its “AS-IS” condition.

3.2 Owner may not place or permit to be placed any sign, marquee, awning, decoration or other temporary or permanent structure or attachment on the ROW without first obtaining any applicable City permit and the written consent of City as a party to this Agreement. Owner further agrees that City may, without prior permission or liability, enter onto the ROW and remove any such sign, marquee, awning, decoration or other temporary or permanent structure or attachment affixed in violation of this section. Owner further agrees to pay all costs incurred by City for the removal.

4. No Interest in Land; No Vested Right.

Notwithstanding any expenditure of time, money, or labor by Owner on the ROW, Owner acknowledges and agrees that this Agreement does not create an interest or estate in Owner’s favor in City’s ROW, nor shall this Agreement be construed to create an assignment coupled with an interest or any vested right in favor of Owner. City retains legal possession of the full boundaries of City’s right-of-way and this Agreement only grants to Owner a personal right to use the ROW for the duration of this Agreement. Any time, money, or labor that the Owner expends on the ROW is at Owner’s own risk.

5. Personal Property.

Owner shall be solely responsible for its personal property and for implementing any security measures necessary to secure any personal property placed in the ROW by Owner. City is not responsible for any damaged, stolen, or vandalized personal property of Owner.

6. Term.

The initial term of this Agreement and the license granted by this Agreement shall commence on the date of the last required, authorized signature, and shall continue until the following June 30. Upon expiration of the initial term, the term of this Agreement shall renew for a subsequent five-year term beginning on July 1 following expiration of the initial term. If this Agreement is fully executed on July 1 of any given year, the term shall be five years. This Agreement may be terminated sooner in accordance with the terms of this Agreement.

7. Consideration.

7.1 In exchange for a license permitting Owner’s use of the ROW, Owner agrees to pay City the following sum:

- A fee for the initial term of \$_____; and
- An annual fee during each year of the subsequent 5 year term of: \$_____

7.2 The initial fee is due upon commencement of this Agreement. The annual fee is due on the subsequent July 1, and July 1 of each year thereafter. The fee for the initial term is prorated from the annual fee.

7.3 The amount of the annual fee is determined by the Carson City Board of Supervisors.

7.4 City reserves the right to change the annual fee once each year. Any change in the annual fee must be approved by the Board of Supervisors. City must provide Owner with 90 days advance, written notice of a fee change before the payment is due.

8. Payment.

Owner must include the APN of the Owner’s Property and the APN #of the ROW, if an APN has been assigned to the ROW, on any payment. Payments must be sent to:

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

9. Late Charges, Interest; Dishonored Checks; Liens.

9.1 If any payment is not received by City within 30 calendar days after the date due, OWNER agrees to pay a late charge equal to 2 percent of such overdue amount, with a minimum charge of \$100. The Parties 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 OWNER.

9.2 If any payment is not received by City within 90 calendar days after the date due, the amount due City shall bear simple interest at the rate of 1/2 percent per month. Interest will not be payable on late charges or interest. Payment of interest shall not excuse or cure any default by Owner under this License.

9.3 If any payment is made by check and the check is returned to City for any reason, including without limitation, insufficient funds in Owner's account, Owner shall be assessed a fee equal to the lesser of \$30.00 or the maximum permitted by applicable law, in addition to any other late charge or any other fee which may be applicable.

9.4 In addition to any other remedies available to City, Owner hereby grants to City a lien on Owner's Property for any amounts due and owing under this Agreement, including penalties and interest. City shall perfect a lien by providing Owner with a 30-day notice of intent to file a lien and, upon Owner's failure to pay any amounts due and owing, recording a lien for any amounts due and owing.

10. Taxes.

10.1 Owner shall pay all taxes and assessments imposed by any governmental agency that are legally assessed on the ROW, or on any improvements or equipment placed by Owner on the ROW. Any taxes due shall not reduce the license fees payable to City.

10.2 Any taxes assessed by Carson City may be remitted to:

Treasurer's Office

Carson City

201 N Carson Street, Suite 5

Carson City, NV 89701

10.11. Termination.

4011.1 This Agreement is personal to Owner and shall terminate if Owner dies, is dissolved, is subject to an assignment by operation of law, makes an assignment for the benefit of creditors, is placed in receivership, is adjudicated bankrupt, sells Owner's Property, or otherwise disposes of or assigns Owner's Property such that Owner is no longer the owner of Owner's Property, unless City agrees in writing to the assignment of this Agreement.

4011.2 City may terminate this License in its sole discretion at any time if the Board of Supervisors determines that the ROW is needed for street widening or other projects ~~concerning South Carson Street or adjacent roadways~~, or the best interests of City are to use the ROW in a different manner.

4011.3 Owner may terminate this License at any time by giving City 30 days' advance, written notice of Owner's intent to terminate this License. If Owner is required to maintain the use of the ROW stated above for any reason other than this Agreement, Owner must obtain ~~a variance or other permission~~ any required approvals for Owner's desired use, or non-use, of the ROW before changing the use of the ROW.

4011.4 If the entirety of the ROW is taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this License is automatically terminated as of the date of taking. If only a portion of the ROW is taken, City may terminate this License 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 Owner written notice that the License will be terminated. If there is a taking of the ROW for temporary use, this License shall continue in full force and effect, and Owner must continue to comply with Owner's obligations under this License except to the extent compliance is rendered impossible or impracticable by reason of the taking. Owner shall have no claim based on this Agreement in law or equity to

compensation awarded upon condemnation or taking of the ROW. Owner hereby expressly waives any interest based on this Agreement in a condemnation proceeding or litigation.

11.12. Effect of Termination.

11.12.1 If this License is terminated under section 1011.1, Owner must, if required by the City, replace any improvements with landscaping, sidewalks, ingress, or egress under Section 11.3 unless Owner's successor in interest enters into a new License with the City.

12.2 If this License is terminated under sections 1011.2 or 1011.4, Owner must remove any personal property from ROW and satisfy any other obligations that may have arisen on or before the termination date under Sections 7, 9, 11.2, 11.5, 11.6, 11.8, 11.9, or 25-26 of this Agreement.

12.3 If this License is terminated under section 1011.3, Owner must, if required by the City and at Owners own expense, remove any improvements in the ROW and replace the improvements with landscaping, sidewalks, ingress, or egress, as approved by the City's Community Development Department, subject to an encroachment permit issued by the City. If Owner fails to do so, City shall have the right to perform such removal and replacement at Owner's expense. On demand from City, Owner shall pay to City the costs that City incurred to perform such removal and replacement, and City's costs are subject to the provisions of section 9 of this Agreement.

12.4 Owner shall not be entitled to receive a refund of any portion of any fee paid to City under this Agreement, unless City terminates this Agreement under section 1011.2. If City terminates this Agreement, City shall refund to Owner the prorated portion of any fee paid to City under this Agreement for the remainder of the then existing term. If this Agreement is terminated and a subsequent license agreement will be substituted in its place, City must use any previously paid fees or any refunds due Owner as the initial payment toward the subsequent Agreement.

12.5 Upon termination of this Agreement for any reason, Owner is responsible for and must pay all liens, taxes, and assessments, real and personal, levied against the ROW or any improvements in the ROW. City's and Owner's obligations in Sections 7, 9, 12, 15, 16, 18, 19, or 26 ~~11, 14, 15, 17, 18, or 25~~ of this Agreement shall survive the termination of this Agreement as they relate to actions or events that occurred during the term of this Agreement.

12.13. Reservation of Right of Entry.

12.13.1 City and its employees or agents, and any person or entity holding a City utility franchise, (collectively "Entities") have the right to enter and disturb the ROW for any reasonable purpose, including, without limitation, for inspections, utility installations, repairs, maintenance, construction, and reconstruction.

12.13.2 Except where an Entity's City's entry is for a purpose that will not disturb Owner's use and enjoyment of the ROW or is for an emergency purpose, the Entity entering the ROW City will must provide Owner 14 days' notice, or if 14 days' notice is not possible, notice that is reasonable under the circumstances that the Entity City will enter the ROW.

12.13.3 The Entity City shall not be subject to liability, including, without limitation, compensation or damages, for any inconvenience, annoyance, injury to, or interference with Owner's business operations arising from or relating to the Entity's City's entry on the ROW.

13.4 If the Entity disturbs the ROW, the Entity must restore the disturbed ROW to its original condition before vacating the ROW.

13.14. Operations, Improvements, Repairs, and Maintenance

4314.1 Owner is responsible for maintenance or repair of the ROW or any improvements on the ROW. If Owner fails to maintain or repair the ROW or any improvements on the ROW, City shall have the right to perform such maintenance or repair at Owner's expense. On demand from City, Owner shall pay to City the costs that City incurred to perform such maintenance or repair, and City's costs are subject to the provisions of section 9 of this Agreement.

4314.2 All costs, charges, or expenses of any nature, including, without limitation, any lien that is imposed against the ROW, relating to Owner's use, occupancy, operation, installation, construction, maintenance, or repair of the ROW or any improvements on the ROW are the sole responsibility of the Owner.

4314.3 Owner agrees it must apply for and obtain any and all necessary special use permits or variances, as applicable, that may be required pursuant to the City's zoning regulations set forth in the Carson City Municipal Code, and any other licenses or permits required under local, state or federal laws or regulations, for Owner's use, occupancy, operation, installation, construction, maintenance, or repair of the ROW or any improvements on the ROW.

4314.4 Owner agrees that any alteration, addition, improvement or repair that is made to the ROW becomes the exclusive property of City upon termination of this Agreement, and Owner shall have no claim for compensation or reimbursement, or of title or interest. This provision does not apply to any movable trade fixtures or fixtures that may be removed from the ROW without damaging the ROW.

4314.5 Owner shall ensure at all times that the ROW is kept free and clear of any liens or encumbrances that are caused by any act or omission of Owner or its 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 Owner.

14.15. Hazardous Substances

4415.1 At such time that Owner knows, or has reasonable cause to believe, that a reportable quantity of a hazardous substance, as determined by applicable federal or state law, has come to be located in, on, under or about the ROW, other than as previously consented to by City, OWNER 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. Owner must also report to City less than a reportable quantity of a hazardous substance if any significant amount of the hazardous substance, more than mere drips, flakes, or minor leaks, has pooled or is deposited on the ROW and Owner is unable to clean it up.

4415.2 Owner shall not cause or permit any hazardous substance to be spilled or released in, on, under or about the ROW, and shall promptly, at Owner's expense, comply with all applicable federal, state and local requirements and recommendations of City's engineers or consultants, and take all investigatory and remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security or monitoring of, the ROW or neighboring properties, that was caused or materially contributed to by Owner, or pertaining to or involving any hazardous substance brought onto the ROW during the term of this Agreement, by or for Owner, or any third party.

4415.3 Owner shall indemnify, defend and hold City, its public officers, employees and

agents, harmless from and against any and all loss or damages, liabilities, judgments, claims, expenses, penalties and attorneys' and consultants' fees arising from or relating to any hazardous substance brought on the ROW by or for Owner, or any third party. Owner's obligations shall include, without limitation, the effects of any contamination or injury to person, property or the environment created or suffered by Owner, and the cost of investigation, removal, remediation, restoration and abatement, and shall survive the expiration or termination of this Agreement. No termination, cancellation or release agreement entered into by City and Owner shall release Owner from its obligations under this Agreement with respect to hazardous substances, unless specifically so agreed by City in writing at the time of such agreement.

4415.4 As used in this Section 4415, "hazardous substance" means any product, substance or waste, including, without limitation, hydrocarbons, petroleum, gasoline, crude oil or any byproducts or fraction thereof, whose presence, use, manufacture, disposal, transportation or release, either by itself or in combination with other materials expected to be on the ROW, is: (1) potentially injurious to the public health, safety or welfare, the environment or the ROW; (2) regulated or monitored by any governmental authority; or (3) a basis for potential liability of City to any governmental agency or third party under any applicable statute or common law theory.

15.5 If Owner is subject to any permit or requirements by NDEP or any other regulatory agency relating to Hazardous Substances, Owner must comply with the permit or requirements at all times during this Agreement.

15.16. Indemnification.

4516.1 Owner will indemnify, defend, and hold City harmless, not excluding the City's right to participate, from and against all claims, actions, demands, costs, losses, reasonable attorney fees, damages, expenses, or payments arising out of or in relation to (a) Owner's possession, use, occupancy, management, repair, maintenance, or control of the ROW or any portion thereof; (b) any injury, death, or disease to any person or any injury, damage, destruction, or loss of use of any property whatsoever, occurring in or on the ROW or occurring as a result of the use of the ROW or any improvements anywhere on the ROW; (c) any alleged negligent or willful acts or omissions of Owner, its officers, employees and agents; and (d) any default, breach, violation or non-performance of this Agreement or any provision of the Agreement by Owner. The Owner's duty to defend, indemnify, and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

4516.2 City will indemnify, defend, and hold Owner harmless, not excluding Owner's right to participate, from and against all claims, actions, demands, costs, losses, reasonable attorney fees, damages, expenses, or payments in any action involving the sole negligence or sole willful misconduct of the City, its agents, officers or employees, or where City failed to abide by the terms of this Agreement.

16.17. Limitation of Liability.

4617.1 Except for loss or damage caused by City or its agents, City shall not be liable to Owner or to Owner's sublessees, subtenants, customers, employees, agents, guests, or invitees, or to any other person whomever, for any injury to persons or damage to real or personal property on or about the ROW or on Owner's property adjacent to the ROW; or for liability arising from

Owner's, or Owner's sublessee's or subtenant's, possession, use, occupancy, management, repair, maintenance, or control of the ROW or any portion thereof, or of Tenant's property adjacent to the ROW; or for any loss or damage from any natural or manmade disaster, including, but not limited to, acts of God, acts of a public enemy, wind, rain, sleet, ice, floods, water, fire, gas, steam, riots, sabotage, or the bursting, stoppage or leakage of pipes.

~~4617.2~~ Neither Party shall be liable to the other, or any of their respective agents, representatives, employees, or customers for any lost revenue or profits; incidental, punitive, indirect, special, or consequential damages; or interruption or loss of use of service, whether under theory of contract, tort, or otherwise.

~~4617.3~~ City does not waive and intends to assert any available NRS Chapter 41 liability limitations in all cases.

~~17-18.~~ **Insurance.**

~~4718.1~~ Owner must, at its own expense, provide and pay for, or cause to be provided and paid for, a general liability insurance policy with a minimum limit of one million and no/100 dollars (\$1,000,000.00) per occurrence and two million and no/100 dollars (\$2,000,000.00) aggregate for bodily injury or death resulting therefrom, or for damage to the ROW, and written by insurers acceptable to City in its reasonable discretion. The policy shall name City as an additional insured by endorsement. This policy of insurance must be primary coverage for all claims and losses arising from the use, occupancy and operation of the ROW under this Agreement. Owner must deliver to City's Risk Manager 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.

~~4718.2~~ The policies of insurance required herein must not be suspended, voided, canceled or reduced in coverage without the prior written consent of City. Owner must provide written notice of cancellation or of any material change in a policy not less than 30 days in advance of the effective date thereof. The suspension, voidance, termination, cancelation, or reduction in coverage below the amounts required by the Agreement of a required insurance policy is a breach of this Agreement, and City may, at its option, terminate this Agreement when City becomes aware of such suspension, voidance, termination, cancelation, or reduction in coverage.

~~18-19.~~ **Default.**

~~4819.1~~ A default of this Agreement includes, but is not limited to, the following individual events: (1) insolvency, including the filing or acquiescence to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding; (2) ~~failure to~~ use the ROW for ~~the~~ purposes other than those described herein; (3) failure to manage, repair, or maintain the ROW as described in this Agreement; (4) failure to make annual payment or any other charge required to be paid by Owner under this Agreement when the payment or charge is due and payable and remains unpaid for 30 days; (5) failure to maintain the required insurance; and (6) failure to perform any other duty or obligation required to be performed by Owner under this Agreement and the failure remains uncorrected 10 days after the date on which written notice from the City is received.

~~4819.2~~ Except as otherwise provided in this Agreement, in the event of Owner's default or breach of any term or condition of this Agreement, City may provide 30 days' written notice to Owner of City's intention to cancel or terminate this Agreement. A written notice must specify the

breach or default and the date of termination. If, at the expiration of the notice period, the Owner has not cured the breach ~~or~~ default, or if such cure cannot reasonably be made within the notice period and the Owner is not diligently pursuing such cure to completion, the City may elect to immediately terminate ~~term of~~ this Agreement ~~automatically terminates~~. Upon such automatic termination, Owner must immediately, and at its own expense, replace any improvements with landscaping, sidewalks, ingress, or egress as further provided under Section ~~412~~.3.

~~48~~19.3. In lieu of terminating this Agreement, City may elect to notify the Owner of any default and demand that Owner remedy the default, but continue this Agreement. In such case, any amounts due under this Agreement will continue to accrue, and are subject to Section 9 of this Agreement.

~~48~~19.4 If this License is terminated under this section, Owner shall not be entitled to any refund, and Section ~~412~~.5 shall apply.

19.20. Compliance with the law.

Owner 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.

20.21. Notices.

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

CITY:	Real Property Manager Carson City Public Works 3505 Butti Way, Carson City, Nevada 89701 Phone: (775) 887-2355 Email: Fax: (775) 887-2112	OWNER:	[Name] [Title] [Company] [Address] [City, State, Zip] Phone: Email: Fax:
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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.

21.22. Amendments and Modification.

Unless otherwise expressly authorized by the terms of this Agreement, no modification, revocation, or amendment to this Agreement is binding upon the Parties unless it is in writing and signed by the Parties.

22.23. Entire Agreement.

This Agreement 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 Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement must be construed consistent with the terms of this Agreement.

23-24. Choice of Law; Jurisdiction.

The law of the State of Nevada applies in interpreting and construing this Agreement. 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.

24-25. No Third-Party Beneficiary.

None of the provisions of this Agreement, 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 Agreement, or any provision of this Agreement. The Parties intend that this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their respective assigns.

25-26. Attorney Fees.

The prevailing Party in any action or proceeding regarding or arising out of this Agreement has the right to collect from the other Party its reasonable costs and attorney's fees incurred in initiating or defending the action or proceeding. In the event that a Party is awarded attorney's fees under this Agreement for any reason, the Parties agree that the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour. Notwithstanding anything to the contrary, attorney fees attributable to the employees or in-house counsel of the Parties shall not be included in such costs and attorney's fees.

26-27. Waiver.

The failure of a Party to declare a breach or insist upon strict performance of any of the covenants, terms or provisions of this Agreement or to exercise any option herein, shall not operate as a waiver or relinquishment of that Party's rights or remedies as to any other breach. A waiver of any default or right is not valid or binding unless it is in made in writing.

27-28. Remedies.

The remedies in this Agreement are cumulative, and the exercise of any one remedy is not to the exclusion of any other remedy.

28-29. Force Majeure.

Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, civil or military authority, act of public enemy, accidents, fires, pandemic, 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 Agreement after the intervening cause ceases.

29-30. Severability.

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement 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 Agreement unenforceable.

30-31. Independent Entities.

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement 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.

31-32. Assignment; Non-Transferability of License.

The License granted by this Agreement is personal to Owner and may not be transferred or assigned without City’s prior, written consent. Owner may permit its tenants or sub-tenants to use and enjoy the ROW as long as Owner is in good standing under this Agreement and Owner and its tenants or sub-tenants comply with the provisions of this Agreement.

32-33. Required Approvals.

Any modifications to this ~~This~~ Agreement must be approved by the Carson City Board of Supervisors.

33-34. Recording.

City shall record this Agreement.

34-35. Proper Authority.

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

35-36. Counterparts.

This Agreement 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.

36-37. Public Records.

Pursuant to NRS 239.010, the City’s information or documents, including this Agreement, 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.

38. Addendum.

If checked, Owner must also comply with the terms of any addendum attached to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this LICENSE on the date of the last authorized signature.

CARSON CITY:

[Name of Owner]

Randall Rice
City Engineer

[Name of Signatory]
[Title of Signatory, if any]

Date

Date

APNs: XXXXX
Property Address: XXXXX

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

MAIL TAX STATEMENTS TO:
[OWNER]
[OWNER ADDRESS]
[OWNER CITY STATE ZIP]

LICENSE AGREEMENT

This License Agreement (“Agreement”) is made and entered into by and between Carson City, a consolidated municipality and political subdivision of the State of Nevada, (“City”) and _____, a _____ (“Owner”). City and Owner may be individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS:

WHEREAS, City is the owner of real property, easements, or other interests comprising right-of-way adjacent to property owned by Owner located at:

Address: _____,

APN: _____

(“Owner’s Property”); and

WHEREAS, Owner’s existing or desired use of Owner’s Property extends into City right-of-way, as further described in Exhibit A, which is incorporated by reference into this Agreement (the “ROW”); and

WHEREAS, the requested use of the ROW does not interfere with City’s maintenance and operation of the public roadway and will benefit Owner and City; and

WHEREAS, under NRS 244.270 the Carson City Board of Supervisors may control and manage the real property belonging to Carson City;

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

1. License.

Subject to the terms and conditions of this Agreement, City does hereby grant to Owner a non-exclusive license to use and occupy the ROW.

2. Use of ROW.

2.1 The Owner will use the ROW exclusively for the following purpose(s):

(Mark all that apply, and list the square feet of surface area that the activity encompasses)

<u>Purpose</u>	<u>Square feet</u>
<input type="checkbox"/> Parking	_____
<input type="checkbox"/> Lanes or drive-through	_____
<input type="checkbox"/> Other Approved Use (describe below)	_____

2.2 Use of the ROW for landscaping, sidewalks, ingress, and egress is not governed by this Agreement. Landscaping, sidewalks, ingress, and egress in the ROW is governed by an encroachment permit that may be obtained from the City’s Public Works Department. This Agreement governs all other uses. Both an encroachment permit and a license agreement must be obtained if the use includes mixed use landscaping, sidewalks, ingress, or egress and parking, driving lanes, drive-through, or other uses.

2.3 Owner may not use the ROW for any unlawful purpose or for any purpose not expressly authorized by this Agreement. Any change in the use of the ROW must be approved through the issuance of a new encroachment permit or license agreement, as appropriate. Use of the ROW inconsistent with the uses stated in this Agreement is a breach of this Agreement.

3. Conditions of License.

3.1 The permit or license granted by this Agreement is subject to any and all existing utility easements, whether of record or not, located within the ROW, and any other easements, conditions, covenants, or restrictions of record. The ROW is provided in its “AS-IS” condition.

3.2 Owner may not place or permit to be placed any sign, marquee, awning, decoration or other temporary or permanent structure or attachment on the ROW without first obtaining any applicable City permit and the written consent of City as a party to this Agreement. Owner further agrees that City may, without prior permission or liability, enter onto the ROW and remove any such sign, marquee, awning, decoration or other temporary or permanent structure or attachment affixed in violation of this section. Owner further agrees to pay all costs incurred by City for the removal.

4. No Interest in Land; No Vested Right.

Notwithstanding any expenditure of time, money, or labor by Owner on the ROW, Owner acknowledges and agrees that this Agreement does not create an interest or estate in Owner’s favor in City’s ROW, nor shall this Agreement be construed to create an assignment coupled with an interest or any vested right in favor of Owner. City retains legal possession of the full boundaries of City’s right-of-way and this Agreement only grants to Owner a personal right to use the ROW for the duration of this Agreement. Any time, money, or labor that the Owner expends on the ROW is at Owner’s own risk.

5. Personal Property.

Owner shall be solely responsible for its personal property and for implementing any security measures necessary to secure any personal property placed in the ROW by Owner. City is not responsible for any damaged, stolen, or vandalized personal property of Owner.

6. Term.

The initial term of this Agreement and the license granted by this Agreement shall commence on the date of the last required, authorized signature, and shall continue until the following June 30. Upon expiration of the initial term, the term of this Agreement shall renew for a subsequent five-year term beginning on July 1 following expiration of the initial term. If this Agreement is fully executed on July 1 of any given year, the term shall be five years. This Agreement may be terminated sooner in accordance with the terms of this Agreement.

7. Consideration.

7.1 In exchange for a license permitting Owner’s use of the ROW, Owner agrees to pay City the following sum:

- A fee for the initial term of \$ _____; and
- An annual fee during each year of the subsequent 5 year term of: \$ _____

7.2 The initial fee is due upon commencement of this Agreement. The annual fee is due on the subsequent July 1, and July 1 of each year thereafter. The fee for the initial term is prorated from the annual fee.

7.3 The amount of the annual fee is determined by the Carson City Board of Supervisors.

7.4 City reserves the right to change the annual fee once each year. Any change in the annual fee must be approved by the Board of Supervisors. City must provide Owner with 90 days advance, written notice of a fee change before the payment is due.

8. Payment.

Owner must include the APN of the Owner’s Property and the APN of the ROW, if an APN has been assigned to the ROW, on any payment. Payments must be sent to:

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

9. Late Charges, Interest; Dishonored Checks; Liens.

9.1 If any payment is not received by City within 30 calendar days after the date due, OWNER agrees to pay a late charge equal to 2 percent of such overdue amount, with a minimum charge of \$100. The Parties 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 OWNER.

9.2 If any payment is not received by City within 90 calendar days after the date due, the amount due City shall bear simple interest at the rate of 1/2 percent per month. Interest will not be payable on late charges or interest. Payment of interest shall not excuse or cure any default by Owner under this License.

9.3 If any payment is made by check and the check is returned to City for any reason, including without limitation, insufficient funds in Owner's account, Owner shall be assessed a fee equal to the lesser of \$30.00 or the maximum permitted by applicable law, in addition to any other late charge or any other fee which may be applicable.

9.4 In addition to any other remedies available to City, Owner hereby grants to City a lien on Owner's Property for any amounts due and owing under this Agreement, including penalties and interest. City shall perfect a lien by providing Owner with a 30-day notice of intent to file a lien and, upon Owner's failure to pay any amounts due and owing, recording a lien for any amounts due and owing.

10. Taxes.

10.1 Owner shall pay all taxes and assessments imposed by any governmental agency that are legally assessed on the ROW, or on any improvements or equipment placed by Owner on the ROW. Any taxes due shall not reduce the license fees payable to City.

10.2 Any taxes assessed by Carson City may be remitted to:

Treasurer's Office
Carson City
201 N Carson Street, Suite 5
Carson City, NV 89701

11. Termination.

11.1 This Agreement is personal to Owner and shall terminate if Owner dies, is dissolved, is subject to an assignment by operation of law, makes an assignment for the benefit of creditors, is placed in receivership, is adjudicated bankrupt, sells Owner's Property, or otherwise disposes of or assigns Owner's Property such that Owner is no longer the owner of Owner's Property, unless City agrees in writing to the assignment of this Agreement.

11.2 City may terminate this License in its sole discretion at any time if the Board of Supervisors determines that the ROW is needed for street widening or other projects, or the best interests of City are to use the ROW in a different manner.

11.3 Owner may terminate this License at any time by giving City 30 days' advance, written notice of Owner's intent to terminate this License. If Owner is required to maintain the use of the ROW stated above for any reason other than this Agreement, Owner must obtain any required approvals for Owner's desired use, or non-use, of the ROW before changing the use of the ROW.

11.4 If the entirety of the ROW is taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this License is automatically terminated as of the date of taking. If only a portion of the ROW is taken, City may terminate this License 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 Owner written notice that the License will be terminated. If there is a taking of the ROW for temporary use, this License shall continue in full force and effect, and Owner must continue to comply with Owner's obligations under this License except to the extent compliance is rendered impossible or impracticable by reason of the taking. Owner shall have no claim based on this Agreement in law or equity to

compensation awarded upon condemnation or taking of the ROW. Owner hereby expressly waives any interest based on this Agreement in a condemnation proceeding or litigation.

12. Effect of Termination.

12.1 If this License is terminated under section 11.1, Owner must, if required by the City, replace any improvements with landscaping, sidewalks, ingress, or egress under Section 11.3 unless Owner's successor in interest enters into a new License with the City.

12.2 If this License is terminated under sections 11.2 or 11.4, Owner must remove any personal property from ROW and satisfy any other obligations that may have arisen on or before the termination date under Sections 7, 9, 12, 15, 16, 18, 19, or 26 of this Agreement.

12.3 If this License is terminated under section 11.3, Owner must, if required by the City and at Owners own expense, remove any improvements in the ROW and replace the improvements with landscaping, sidewalks, ingress, or egress, as approved by the City's Community Development Department, subject to an encroachment permit issued by the City. If Owner fails to do so, City shall have the right to perform such removal and replacement at Owner's expense. On demand from City, Owner shall pay to City the costs that City incurred to perform such removal and replacement, and City's costs are subject to the provisions of section 9 of this Agreement.

12.4 Owner shall not be entitled to receive a refund of any portion of any fee paid to City under this Agreement, unless City terminates this Agreement under section 11.2. If City terminates this Agreement, City shall refund to Owner the prorated portion of any fee paid to City under this Agreement for the remainder of the then existing term. If this Agreement is terminated and a subsequent license agreement will be substituted in its place, City must use any previously paid fees or any refunds due Owner as the initial payment toward the subsequent Agreement.

12.5 Upon termination of this Agreement for any reason, Owner is responsible for and must pay all liens, taxes, and assessments, real and personal, levied against the ROW or any improvements in the ROW. City's and Owner's obligations in Sections 7, 9, 12, 15, 16, 18, 19, or 26 of this Agreement shall survive the termination of this Agreement as they relate to actions or events that occurred during the term of this Agreement.

13. Reservation of Right of Entry.

13.1 City and its employees or agents, and any person or entity holding a City utility franchise, (collectively "Entities") have the right to enter and disturb the ROW for any reasonable purpose, including, without limitation, for inspections, utility installations, repairs, maintenance, construction, and reconstruction.

13.2 Except where an Entity's entry is for a purpose that will not disturb Owner's use and enjoyment of the ROW or is for an emergency purpose, the Entity entering the ROW must provide Owner 14 days' notice, or if 14 days' notice is not possible, notice that is reasonable under the circumstances that the Entity will enter the ROW.

13.3 The Entity shall not be subject to liability, including, without limitation, compensation or damages, for any inconvenience, annoyance, injury to, or interference with Owner's business operations arising from or relating to the Entity's entry on the ROW.

13.4 If the Entity disturbs the ROW, the Entity must restore the disturbed ROW to its original condition before vacating the ROW.

14. Operations, Improvements, Repairs, and Maintenance

14.1 Owner is responsible for maintenance or repair of the ROW or any improvements on the ROW. If Owner fails to maintain or repair the ROW or any improvements on the ROW, City shall have the right to perform such maintenance or repair at Owner's expense. On demand from City, Owner shall pay to City the costs that City incurred to perform such maintenance or repair, and City's costs are subject to the provisions of section 9 of this Agreement.

14.2 All costs, charges, or expenses of any nature, including, without limitation, any lien that is imposed against the ROW, relating to Owner's use, occupancy, operation, installation, construction, maintenance, or repair of the ROW or any improvements on the ROW are the sole responsibility of the Owner.

14.3 Owner agrees it must apply for and obtain any and all necessary special use permits or variances, as applicable, that may be required pursuant to the City's zoning regulations set forth in the Carson City Municipal Code, and any other licenses or permits required under local, state or federal laws or regulations, for Owner's use, occupancy, operation, installation, construction, maintenance, or repair of the ROW or any improvements on the ROW.

14.4 Owner agrees that any alteration, addition, improvement or repair that is made to the ROW becomes the exclusive property of City upon termination of this Agreement, and Owner shall have no claim for compensation or reimbursement, or of title or interest. This provision does not apply to any movable trade fixtures or fixtures that may be removed from the ROW without damaging the ROW.

14.5 Owner shall ensure at all times that the ROW is kept free and clear of any liens or encumbrances that are caused by any act or omission of Owner or its 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 Owner.

15. Hazardous Substances

15.1 At such time that Owner knows, or has reasonable cause to believe, that a reportable quantity of a hazardous substance, as determined by applicable federal or state law, has come to be located in, on, under or about the ROW, other than as previously consented to by City, OWNER 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. Owner must also report to City less than a reportable quantity of a hazardous substance if any significant amount of the hazardous substance, more than mere drips, flakes, or minor leaks, has pooled or is deposited on the ROW and Owner is unable to clean it up.

15.2 Owner shall not cause or permit any hazardous substance to be spilled or released in, on, under or about the ROW, and shall promptly, at Owner's expense, comply with all applicable federal, state and local requirements and recommendations of City's engineers or consultants, and take all investigatory and remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security or monitoring of, the ROW or neighboring properties, that was caused or materially contributed to by Owner, or pertaining to or involving any hazardous substance brought onto the ROW during the term of this Agreement, by or for Owner, or any third party.

15.3 Owner shall indemnify, defend and hold City, its public officers, employees and agents, harmless from and against any and all loss or damages, liabilities, judgments, claims,

expenses, penalties and attorneys' and consultants' fees arising from or relating to any hazardous substance brought on the ROW by or for Owner, or any third party. Owner's obligations shall include, without limitation, the effects of any contamination or injury to person, property or the environment created or suffered by Owner, and the cost of investigation, removal, remediation, restoration and abatement, and shall survive the expiration or termination of this Agreement. No termination, cancellation or release agreement entered into by City and Owner shall release Owner from its obligations under this Agreement with respect to hazardous substances, unless specifically so agreed by City in writing at the time of such agreement.

15.4 As used in this Section 15, "hazardous substance" means any product, substance or waste, including, without limitation, hydrocarbons, petroleum, gasoline, crude oil or any byproducts or fraction thereof, whose presence, use, manufacture, disposal, transportation or release, either by itself or in combination with other materials expected to be on the ROW, is: (1) potentially injurious to the public health, safety or welfare, the environment or the ROW; (2) regulated or monitored by any governmental authority; or (3) a basis for potential liability of City to any governmental agency or third party under any applicable statute or common law theory.

15.5 If Owner is subject to any permit or requirements by NDEP or any other regulatory agency relating to Hazardous Substances, Owner must comply with the permit or requirements at all times during this Agreement.

16. Indemnification.

16.1 Owner will indemnify, defend, and hold City harmless, not excluding the City's right to participate, from and against all claims, actions, demands, costs, losses, reasonable attorney fees, damages, expenses, or payments arising out of or in relation to (a) Owner's possession, use, occupancy, management, repair, maintenance, or control of the ROW or any portion thereof; (b) any injury, death, or disease to any person or any injury, damage, destruction, or loss of use of any property whatsoever, occurring in or on the ROW or occurring as a result of the use of the ROW or any improvements anywhere on the ROW; (c) any alleged negligent or willful acts or omissions of Owner, its officers, employees and agents; and (d) any default, breach, violation or non-performance of this Agreement or any provision of the Agreement by Owner. The Owner's duty to defend, indemnify, and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees.

16.2 City will indemnify, defend, and hold Owner harmless, not excluding Owner's right to participate, from and against all claims, actions, demands, costs, losses, reasonable attorney fees, damages, expenses, or payments in any action involving the sole negligence or sole willful misconduct of the City, its agents, officers or employees, or where City failed to abide by the terms of this Agreement.

17. Limitation of Liability.

17.1 Except for loss or damage caused by City or its agents, City shall not be liable to Owner or to Owner's sublessees, subtenants, customers, employees, agents, guests, or invitees, or to any other person whomever, for any injury to persons or damage to real or personal property on or about the ROW or on Owner's property adjacent to the ROW; or for liability arising from Owner's, or Owner's sublessee's or subtenant's, possession, use, occupancy, management, repair, maintenance, or control of the ROW or any portion thereof, or of Tenant's property adjacent

to the ROW; or for any loss or damage from any natural or manmade disaster, including, but not limited to, acts of God, acts of a public enemy, wind, rain, sleet, ice, floods, water, fire, gas, steam, riots, sabotage, or the bursting, stoppage or leakage of pipes.

17.2 Neither Party shall be liable to the other, or any of their respective agents, representatives, employees, or customers for any lost revenue or profits; incidental, punitive, indirect, special, or consequential damages; or interruption or loss of use of service, whether under theory of contract, tort, or otherwise.

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

18. Insurance.

18.1 Owner must, at its own expense, provide and pay for, or cause to be provided and paid for, a general liability insurance policy with a minimum limit of one million and no/100 dollars (\$1,000,000.00) per occurrence and two million and no/100 dollars (\$2,000,000.00) aggregate for bodily injury or death resulting therefrom, or for damage to the ROW, and written by insurers acceptable to City in its reasonable discretion. The policy shall name City as an additional insured by endorsement. This policy of insurance must be primary coverage for all claims and losses arising from the use, occupancy and operation of the ROW under this Agreement. Owner must deliver to City's Risk Manager 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.

18.2 The policies of insurance required herein must not be suspended, voided, canceled or reduced in coverage without the prior written consent of City. Owner must provide written notice of cancellation or of any material change in a policy not less than 30 days in advance of the effective date thereof. The suspension, voidance, termination, cancelation, or reduction in coverage below the amounts required by the Agreement of a required insurance policy is a breach of this Agreement, and City may, at its option, terminate this Agreement when City becomes aware of such suspension, voidance, termination, cancelation, or reduction in coverage.

19. Default.

19.1 A default of this Agreement includes, but is not limited to, the following individual events: (1) insolvency, including the filing or acquiescence to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding; (2) use the ROW for purposes other than those described herein; (3) failure to manage, repair, or maintain the ROW as described in this Agreement; (4) failure to make annual payment or any other charge required to be paid by Owner under this Agreement when the payment or charge is due and payable and remains unpaid for 30 days; (5) failure to maintain the required insurance; and (6) failure to perform any other duty or obligation required to be performed by Owner under this Agreement and the failure remains uncorrected 10 days after the date on which written notice from the City is received.

19.2 Except as otherwise provided in this Agreement, in the event of Owner's default or breach of any term or condition of this Agreement, City may provide 30 days' written notice to Owner of City's intention to cancel or terminate this Agreement. A written notice must specify the breach or default and the date of termination. If, at the expiration of the notice period, the Owner has not cured the breach or default, or if such cure cannot reasonably be made within the notice

period and the Owner is not diligently pursuing such cure to completion, the City may elect to immediately terminate this Agreement. Upon such termination, Owner must immediately, and at its own expense, replace any improvements with landscaping, sidewalks, ingress, or egress as further provided under Section 12.3.

19.3. In lieu of terminating this Agreement, City may elect to notify the Owner of any default and demand that Owner remedy the default, but continue this Agreement. In such case, any amounts due under this Agreement will continue to accrue, and are subject to Section 9 of this Agreement.

19.4 If this License is terminated under this section, Owner shall not be entitled to any refund, and Section 12.5 shall apply.

20. Compliance with the law.

Owner 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.

21. Notices.

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

CITY:	Real Property Manager Carson City Public Works 3505 Butti Way, Carson City, Nevada 89701 Phone: (775) 887-2355 Email: Fax: (775) 887-2112	OWNER:	[Name] [Title] [Company] [Address] [City, State, Zip] Phone: Email: Fax:
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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.

22. Amendments and Modification.

Unless otherwise expressly authorized by the terms of this Agreement, no modification, revocation, or amendment to this Agreement is binding upon the Parties unless it is in writing and signed by the Parties.

23. Entire Agreement.

This Agreement 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 Agreement specifically displays a mutual intent to amend a particular part of

this Agreement, general conflicts in language between any such attachment and this Agreement must be construed consistent with the terms of this Agreement.

24. Choice of Law; Jurisdiction.

The law of the State of Nevada applies in interpreting and construing this Agreement. 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.

25. No Third-Party Beneficiary.

None of the provisions of this Agreement, 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 Agreement, or any provision of this Agreement. The Parties intend that this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their respective assigns.

26. Attorney Fees.

The prevailing Party in any action or proceeding regarding or arising out of this Agreement has the right to collect from the other Party its reasonable costs and attorney's fees incurred in initiating or defending the action or proceeding. In the event that a Party is awarded attorney's fees under this Agreement for any reason, the Parties agree that the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour. Notwithstanding anything to the contrary, attorney fees attributable to the employees or in-house counsel of the Parties shall not be included in such costs and attorney's fees.

27. Waiver.

The failure of a Party to declare a breach or insist upon strict performance of any of the covenants, terms or provisions of this Agreement or to exercise any option herein, shall not operate as a waiver or relinquishment of that Party's rights or remedies as to any other breach. A waiver of any default or right is not valid or binding unless it is in made in writing.

28. Remedies.

The remedies in this Agreement are cumulative, and the exercise of any one remedy is not to the exclusion of any other remedy.

29. Force Majeure.

Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, civil or military authority, act of public enemy, accidents, fires, pandemic, 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 Agreement after the intervening cause ceases.

30. Severability.

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement 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 Agreement unenforceable.

31. Independent Entities.

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement 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.

32. Assignment; Non-Transferability of License.

The License granted by this Agreement is personal to Owner and may not be transferred or assigned without City's prior, written consent. Owner may permit its tenants or sub-tenants to use and enjoy the ROW as long as Owner is in good standing under this Agreement and Owner and its tenants or sub-tenants comply with the provisions of this Agreement.

33. Required Approvals.

Any modifications to this Agreement must be approved by the Carson City Board of Supervisors.

34. Recording.

City shall record this Agreement.

35. Proper Authority.

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

36. Counterparts.

This Agreement 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.

37. Public Records.

Pursuant to NRS 239.010, the City's information or documents, including this Agreement, 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.

38. Addendum.

If checked, Owner must also comply with the terms of any addendum attached to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this LICENSE on the date of the last authorized signature.

CARSON CITY:

[Name of Owner]

Randall Rice
City Engineer

[Name of Signatory]
[Title of Signatory, if any]

Date

Date

From: shelly@tristatecommercial.com
To: [Robert Nellis](#)
Subject: Draft License Agreement for Use of Rights-of-Way Along So. Carson Street
Date: Wednesday, March 10, 2021 5:19:16 PM

This message originated outside of Carson City's email system. Use caution if this message contains attachments, links, or requests for information.

Good afternoon Robert. First of all, I'd like to thank the City and, more specifically, the Public Works Department, for re-evaluating the fee previously charged our company for the use of the right-of-way west of our commercial building on South Carson Street (Parcel #009-125-26). Rarely are charges reduced, so this was a very pleasant surprise.

I have reviewed the draft License Agreement prepared by the City and would like to ask some questions and share some comments.

Section 7. Consideration

Will the City invoice permittees annually or will it be incumbent upon the permittees to create a tickler file for payment of this fee? If there will be no billing, then it might be wise to disclose this in the agreement so there is no reliance on the part of the permittees. Conversely, if the City will be invoicing the permittees, then perhaps this too should be disclosed.

Section 8. Payment

Should read "...and the APN **of** the ROW...

-

Section 9. Late Charges, Interest; Dishonored Checks; Liens

9.1 A \$100 late charge, especially for the smaller accounts, seems quite high given that the consequence for writing a bad check under the agreement (which is against the law) is only \$30 or less.

Section 10. Termination

10.4 In the event of a temporary taking, when the use of the right-of-way is impaired, shouldn't the permittee receive a prorated refund of their annual fee? I assume, in a case like ours, where the property is actively used for customer parking, if the temporary taking throws us into noncompliance with the City's parking requirements, that there will be a suspension of these requirements pending restoration of the use.

Section 11. Effect of Termination

11.4 If it is agreed that a prorated refund of the annual fee is warranted in the event of a temporary taking, then this would also be an exception to the "no refund" rule.

Section 12. Reservation of Right of Way

12.3 I would like to suggest that the following language be added to the end of this section: "City shall not be subject to liability, including, without limitation, compensation or damages, for any inconvenience, annoyance, injury to, or interference with Owner's business operations arising from

or relating to City's entry on the ROW, **although City shall have a duty to restore the disturbed right-of-way to its original condition before vacating the property**".

Section 13 Operations, Improvements, Repairs and Maintenance

Section 13.1 First sentence should read "Owner is responsible **for** maintenance or repair"

Section 14. Hazardous Substances

Since the right of way that is appurtenant to our property is used for the parking of automobiles there is bound to be some minor leaking of oil and/or gas onto the pavement at times. I assume the release of such minor amounts of petroleum products will be exempt from this provision?

Section 18. Default

18.2 Second sentence should read "If, at the expiration of the notice period, the Owner has not cured the Breach **or** default ..."

Thank you Robert for taking the time to discuss this matter in greater detail with me over the phone this afternoon. I look forward to your feedback once the DA's office has had a chance to review my comments and suggested changes.

Shelly

Shelly Aldean
Vice-President/ Corporate Broker
Eden Managements
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