



KAREN ELLISON, RECORDER

CR-122010-0/IB
Interest: 15871
Project: 6632
Contract: 5127

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

NON-EXCLUSIVE UTILITY EASEMENT

**DOUGLAS COUNTY SCHOOL DISTRICT WAN FIBER PROJECT
CONDUIT CROSSING OVER THE CARSON RIVER**

This Non-Exclusive Easement is made and entered into this 2nd day of October, 2020 by and between the STATE OF NEVADA, acting through the NEVADA DIVISION OF STATE LANDS, hereinafter referred to as GRANTOR, and DOUGLAS COUNTY SCHOOL DISTRICT, hereinafter referred to as GRANTEE. GRANTOR and GRANTEE are referred to individually as "Party" and collectively as the "Parties."

WHEREAS, Attorney General's Opinion #204 dated April 20, 1976, concluded that "The State of Nevada owns the bed and shores of Lake Tahoe and other navigable bodies of water within Nevada to the present ordinary and permanent high water mark." Through formal court proceedings the Carson River and has been determined to be a navigable body of water within Nevada; and

WHEREAS, GRANTEE, is working to connect their existing schools in the Gardnerville Ranchos area with high speed fiber. The installation of fiber conduit will cross over the Carson

River along Riverview Drive west of Highway 395 in Gardnerville area. GRANTEE has made application to obtain from the GRANTOR a Non-Exclusive Easement for an easement and right-of-way to construct, place, inspect, maintain and repair the fiber lines and associated facilities, crossing over the Carson River. Said communication lines will be attached to power line poles along Riverview Drive situated above the Ordinary High Water Mark (OHWM) of the Carson River; 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,” over, and across the property described below, together with the right to enter upon the bed and banks of said land to construct, place, inspect, maintain, and repair structures and to remove bushes, undergrowth or other obstructions interfering with the location, construction and maintenance, in whole or in part, at will upon, over, and across a portion of the Carson River situate in Section 10, Township 12 North, Range 20 East, as shown on Assessor’s Parcel Map depicted in **EXHIBIT A** attached hereto and by reference made a part hereof. The location of the Project is described in the legal description and 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 agents(s) and contractor(s), understands and agrees to the following specific conditions:

1. **PURPOSE:** The property described herein may be used by GRANTEE solely for the Project. The Project shall be executed in accordance to the site plans titled: *Douglas County*

School District WAN Fiber Improvement Plan, Aerial Crossing of the Carson River dated April 21, 2020, made available at the Offices of the Nevada Division of State Lands, incorporated herein and by reference made a part hereof and shall not interfere with the navigability of the Carson River.

2. JURISDICTION OF STATE: GRANTEE understands and agrees that this Non-Exclusive Easement for the Project extends only to the bed and banks of the Carson River, to the ordinary and permanent high water mark and only to the areas described in **EXHIBITS A and B**, and shall not be construed to authorize access across private lands; access to the river shall be by established public routes and/or authorized 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. CARSON RIVER BOUNDARY: The relative sudden displacement of a river's boundary is generally viewed as avulsive in nature by many courts, including the Nevada Supreme Court. Thus, where natural or artificial avulsion has occurred, if any, it is possible that the State's title to bed and banks of the Carson River did not move with the river, so the current ordinary high water mark of the Carson River in the Easement area may not coincide with the true ordinary high water mark owned by the State. As a result, GRANTOR does not make any guarantees or assurances that the sections of the channel included in the Project are in their original location. In other words, the State may not have title to all the bed and banks of the precise area subject to this Easement. The GRANTEE expressly releases any and all claims, known or unknown, against the GRANTOR and the State of Nevada arising from any dispute regarding the title to the bed and banks of the area subject to this Easement. The Parties understand and agree that, if this project alters any portion of the channel by filling, thereby

causing that portion of state land to have a higher elevation than the present ordinary and permanent high water mark, this does not modify State ownership of the bed and banks of the Carson River as it was previous to this Project.

4. CONSIDERATION: For and in consideration of the Project, GRANTEE, its successors and assigns, hereby agree to pay an annual use fee in the amount of TWO HUNDRED FIFTY AND NO/100 (\$250.00) under Contract # 5127 per year to the GRANTOR for the Project [NRS 321.003(2), 322.060(2)]. Said fees are to be paid in advance commencing on the execution date of this Non-Exclusive Easement on or before May 1st every year thereafter for the entire duration of said Non-Exclusive Easement. This is payable to the STATE OF NEVADA, DIVISION OF STATE LANDS, and is to be mailed to:

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

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

5. LATE PAYMENT FEE: The annual use fee shall be paid in advance to GRANTOR and shall be due on or before the due date as provided herein. Any payment made after this due date shall be subject to a late payment fee in the amount of TWENTY FIVE AND NO/100

DOLLARS (\$25.00). If fees, including late fees, become more than SIXTY (60) days in arrears, the Non-Exclusive Easement may be terminated by the GRANTOR.

6. **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.

7. **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.

8. **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.

9. **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 insureds. 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:**

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

10. 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.

11. 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.

12. 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.

13. HISTORIC DISCOVERIES: If prehistoric or historic remains or artifacts are discovered during any work performed within the easement area, 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.

14. 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.

15. 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.

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

GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees that at no time shall any chemical products, petrochemicals, excavated materials, silt, floating debris or foreign debris of any kind be discharged, deposited or allowed to enter into any storm drain or any river channel. GRANTEE, its successors and assigns, and/or its agent(s) or contractor(s) understands and agrees that any tractor, drill rig, backhoe, or other equipment utilized on upland banks adjacent to the Project will be washed and free of any oils, toxins, fuel, and any other foreign substance that could pollute the Carson River and harm its ecosystem. If any component of the Project fails, creates a hazard or causes upstream or downstream impacts, the GRANTEE agrees to repair or mitigate any damage.

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

18. 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:

Douglas County School Dist.
1638 Mono Ave.
Minden, Nevada 89423

19. 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.**

20. 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 or interest in state land 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 and at no expense or cost to the GRANTOR.

21. TERM AND DISCONTINUATION: This Non-Exclusive Easement shall continue so long as the same may be necessary and required for the purposes for which is 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 and interest in state land therein shall revert to GRANTOR, its successors and assigns.

22. 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 rights 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. ENTIRE AGREEMENT: 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:

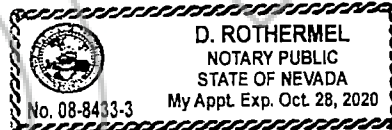
**STATE OF NEVADA
Division of State Lands**

By: Charles Donohue
CHARLES DONOHUE
Administrator and State Land Registrar

STATE OF NEVADA)
 :SS.
CARSON CITY)

On Oct 2, 2020 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.

D. Rothermel
NOTARY PUBLIC



APPROVED as to Form:

**AARON D. FORD
Attorney General**

By: Tori N. Sundheim
TORI N. SUNDHEIM
Deputy Attorney General

Date: 9/11/20

GRANTEE:

DOUGLAS COUNTY SCHOOL DISTRICT

By: *Keith Lewis*
KEITH LEWIS, Superintendent

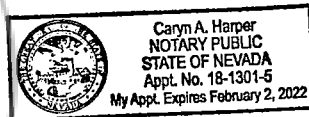
Date: *9-24-2020*

STATE OF NEVADA)
ss.
COUNTY OF DOUGLAS)

Date:

On September 24, 2020, Keith Lewis, Superintendent Douglas County School District, personally appeared before me, a notary public, who acknowledged that (s)he executed the above document.

Caryn A. Harper
NOTARY PUBLIC



**EXHIBIT A:
ASSESSOR'S PARCEL MAP**

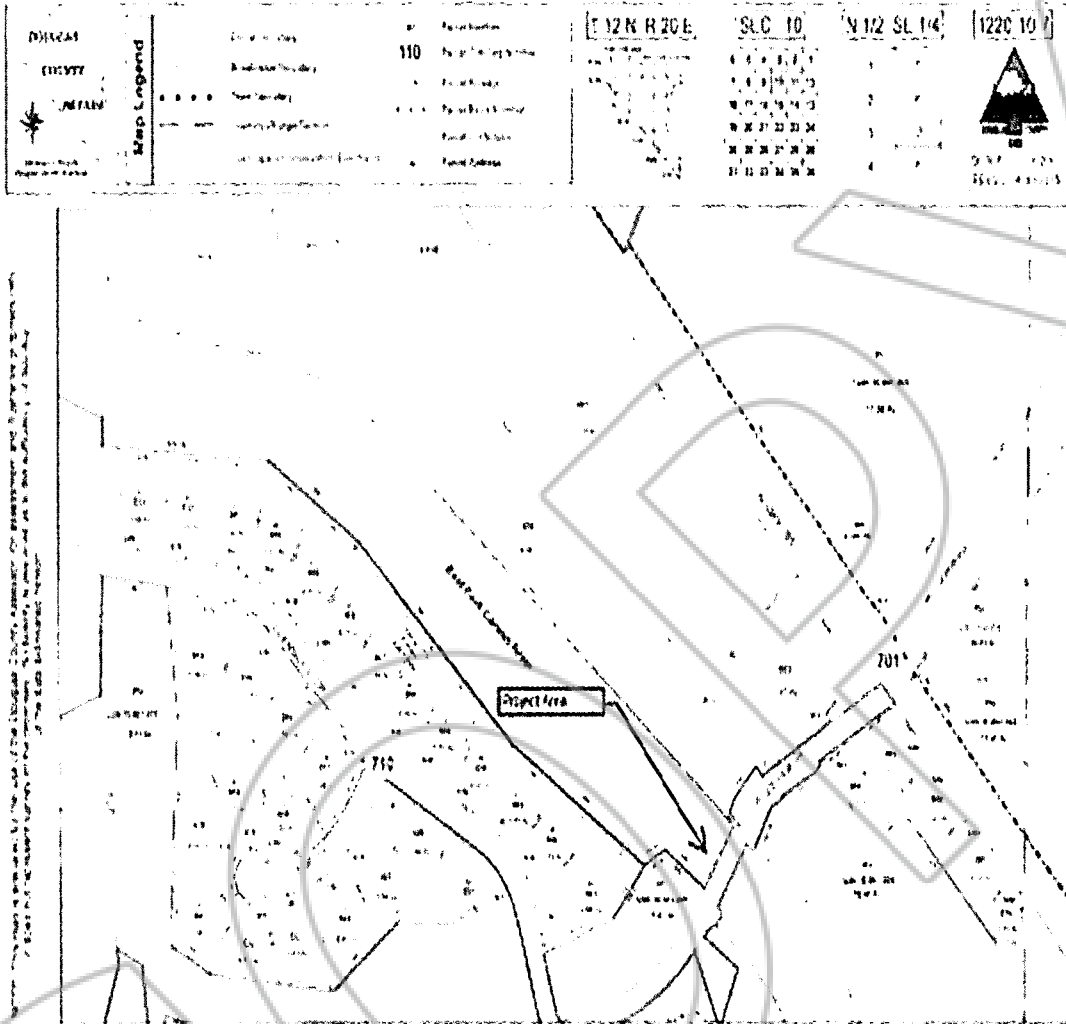


EXHIBIT B
LEGAL DESCRIPTION

0005-136
08/21/2020

**20' EASEMENT
(OVER THE EAST FORK CARSON RIVER)**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A twenty-foot (20') wide strip of land for easement purposes located within a portion of Section 10, Township 12 North, Range 20 East, Mount Diablo Meridian, falling below the ordinary highwater mark of the East Fork of the Carson River, more particularly described as follows:

COMMENCING from the southeast corner of said Section 10, thence North 26°26'37" West, 1,762.64 feet to an utility pole with overhead utility lines;

thence underneath and along with the overhead utility lines, South 35°28'51" West 55.00 feet to a point falling on the approximate easterly ordinary highwater mark of said East Fork of the Carson River, the **POINT OF BEGINNING**;

thence along said approximate easterly ordinary highwater mark of the East Fork of the Carson River, South 43°16'01" East, 10.20 feet;

thence offset 10.00 feet southeasterly and parallel with said overhead utility lines, South 35°28'51" West, 115.72 feet to a point falling on the approximate westerly ordinary highwater mark of said East Fork of the Carson River;

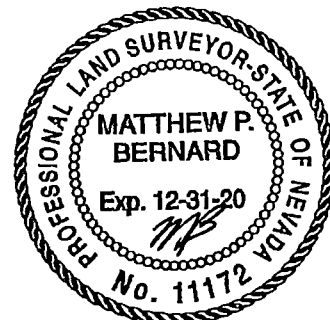
thence along said approximate westerly ordinary highwater mark of the East Fork of the Carson River, North 62°48'18" West, 20.21 feet;

thence offset 10.00 feet northwesterly and parallel with said overhead utility lines, North 35°28'51" East, 119.04 feet to a point falling on said approximate easterly ordinary highwater mark of the East Fork of the Carson River;

thence along said approximate easterly ordinary highwater mark of the East Fork of the Carson River, South 63°28'37" East, 10.12 feet to the **POINT OF BEGINNING**, containing 2,365 square feet, more or less.

The Basis of Bearing of this description is NAD83(EPOCH:2010) Nevada State Plane Coordinates Zone West per OPUS derived solutions dated December 19, 2019.

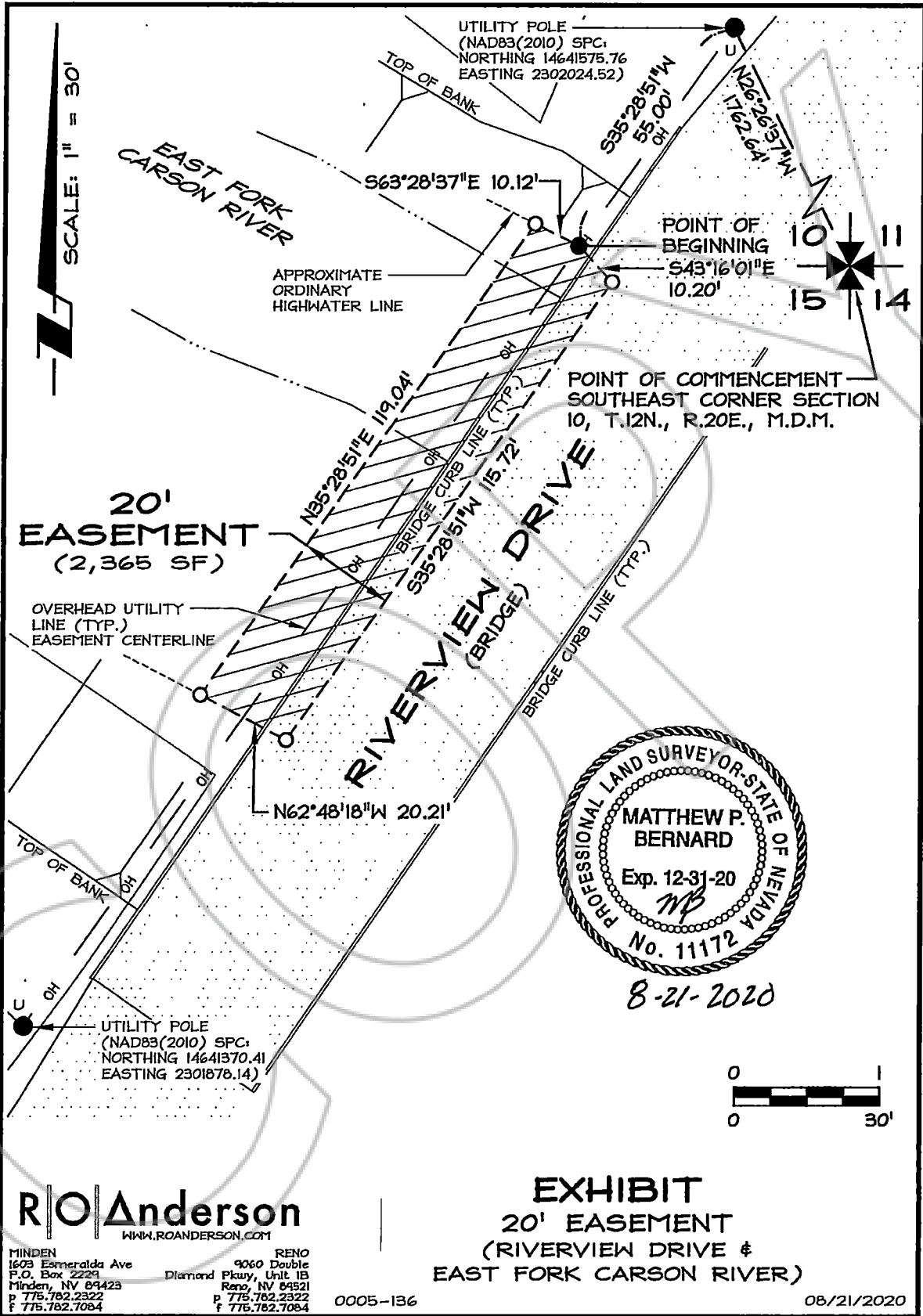
Prepared By: R.O. ANDERSON ENGINEERING, INC.
P.O. Box 2229
Minden, Nevada 89423



8-21-2020

Y:\Client Files\0005\0005-136\Documents\Survey\Descriptions\0005-136 20ft EASE-Description.c...

EXHIBIT B



Y:\Client Files\0005\0005-136\CAD\Survey\Exhibits\0005-136EX.dwg 8/21/2020 1:42:25 PM Jerit Shuman