

North Truckee Drain
Realignment Project
Estes Terminals LLC
APN: 034-392-01

TEMPORARY CONSTRUCTION EASEMENT

THIS AGREEMENT, entered into this 12th day of SEPTEMBER, 2016, by and between ESTES TERMINALS LLC, hereinafter referred to as OWNERS and the City of Sparks, a municipal corporation hereinafter referred to as CITY.

WITNESSETH:

WHEREAS, Estes Terminal LLC is vested with fee simple title to certain real property situated in the City of Sparks, Washoe County, State of Nevada, and further identified as Assessor's Parcel No.034-392-01 and 1650 Kleppes Lane, Sparks, Nevada.

WHEREAS, CITY, is acquiring property rights necessary for the construction of North Truckee Drain Realignment Project in the City of Sparks, Washoe County, State of Nevada ; and

WHEREAS, pursuant to the provisions of NRS 268 and 277 and the Sparks City Charter, CITY may enter into construction, maintenance, and such agreements which will benefit the public; and

WHEREAS, CITY proposes to construct and reconstruct a segment of the North Truckee Drain; and

WHEREAS, the construction and reconstruction of the North Truckee Drain is in the best interest of the public.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

ARTICLE I – CITY AGREES:

1. To construct and reconstruct or have constructed or reconstructed a portion of the North Truckee Drain more particularly described as Exhibit "A" and depicted as Exhibit "B" attached hereto, and made a part hereof by reference with said construction and reconstruction to be accomplished by CITY and CITY agree that the term of this agreement shall be three (3) years commencing on the 1st day of OCTOBER, 2016, and terminating on the 30th day of SEPTEMBER, 2019, unless extended in writing by the parties.

2. To leave that portion of said tract of land upon which entry is required in as neat and presentable condition as existed prior to such entry, with all fences, structures and other property belonging to OWNERS which the CITY, may remove or relocate in order to construct or reconstruct the North Truckee Drain in their original condition and position as is reasonably possible. City shall repair or replace all improvements including paving, landscaping and fencing removed or damaged during the construction process at City's expense. Said improvements shall be repaired or replaced with similar quality improvements leaving the use of the site, including parking, ingress/egress, etc. unchanged. City, at City's expense, shall take reasonable steps to ensure that Owner's property is secure at all times during the term of the construction period.

3. The function/utility of the building improvements on the site will not be affected by the construction project

or the new drainage improvements that will occupy the easement area. All construction shall remain exclusively in the easement area and will not interfere with Owner's or Owner's Tenant's occupancy, operations or ingress/egress on the remainder of Owner's parcel.

4. To indemnify, and hold harmless and defend OWNERS and OWNER'S LEASEHOLD TENANTS from any liability, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of CITY, its employees or agents arising by reason of any use or condition of the premises.

ARTICLE II – OWNER AGREES:

1. To grant a temporary easement to CITY, and to its authorized Agents and Contractors, for entry upon OWNERS land described as a portion of APN: 034-392-01 as more particularly designated as Exhibit "A" and depicted on Exhibit "B" attached hereto for the purposes herein stated.

2. To indemnify, hold harmless and defend CITY, from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the gross negligence, or intentional misconduct of Owners and Owner's Leasehold Tenants or its employees or agents arising by reason of any use or condition of the Temporary Construction Area described in Exhibit A and Exhibit B.

ARTICLE III - MUTUALLY AGREED:

1. CITY shall be responsible for the maintenance of the improvement after construction.
2. City's access to the Temporary Construction Area shall be through the access easement outlined in Exhibit A and Exhibit B only and shall not enter any other area of Owner's premises without obtaining prior written permission from Owner.
3. The laws of the State of Nevada shall be applied in interpreting and construing this Agreement. The parties consent to the exclusive jurisdiction of the Nevada district courts for enforcement of this agreement.
4. This agreement shall constitute the entire contract between the parties hereto, and no modification hereof shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
5. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns, as the case may be, of the respective parties.
6. The regulations pertaining to nondiscrimination and Title VI of the Civil Rights Act of 1964, as contained in Title 23, Code of Federal Regulations Part 200, and Title 49, Code of Federal Regulations Part 21, are hereby incorporated by reference and made a part of this Agreement.
7. The parties hereto 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 undertake the duties and obligations set forth herein.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

Estes Terminals LLC

By: 

Angela J. Maidment
President

Date: 9/12/16

City of Sparks

By: _____ Date _____
John Martini, P.E.
Community Services Director

APPROVED AS TO FORM

By: _____
Shirle T. Eiting
Sr. Assistant City Attorney

EXHIBIT "A"
Temporary Construction Easement
Legal Description
(APN: 34-392-01)

A temporary construction easement over and across a portion of that certain real property as described by Deed Document Number 2919343 of the Official Records of Washoe County, Nevada, Assessors Parcel Number 34-392-01 situate within North One-half (1/2) of the Southwest One-quarter (1/4) of Section 11, Township 19 North, Range 20 East, Mount Diablo Meridian, being more particularly described as follows:

Beginning at the Northwesterly corner of the aforementioned real property thence along the Northerly line of said real property the following 3 courses South 81°38'46" East a distance of 608.05 feet; thence South 08°21'12" West a distance of 70.00 feet; thence South 81°38'46" East a distance of 219.70 feet to the Northeasterly corner of said real property; thence along the Easterly line of said real property South 08°21'12" West a distance of 30.00 feet; thence departing said Easterly line North 81°38'46" West a distance of 827.75 feet to a point on the Westerly line of the above mentioned real property; thence along said Westerly line North 08°21'12" East a distance of 100.00 feet more or less to the **True Point of Beginning**.

Containing 67,396 square feet of land more or less.

See Exhibit Map B attached hereto and made a part of this description by reference.

The Basis of Bearings for this description being the NAD 83/94 Nevada State Plane Coordinate System (West Zone).

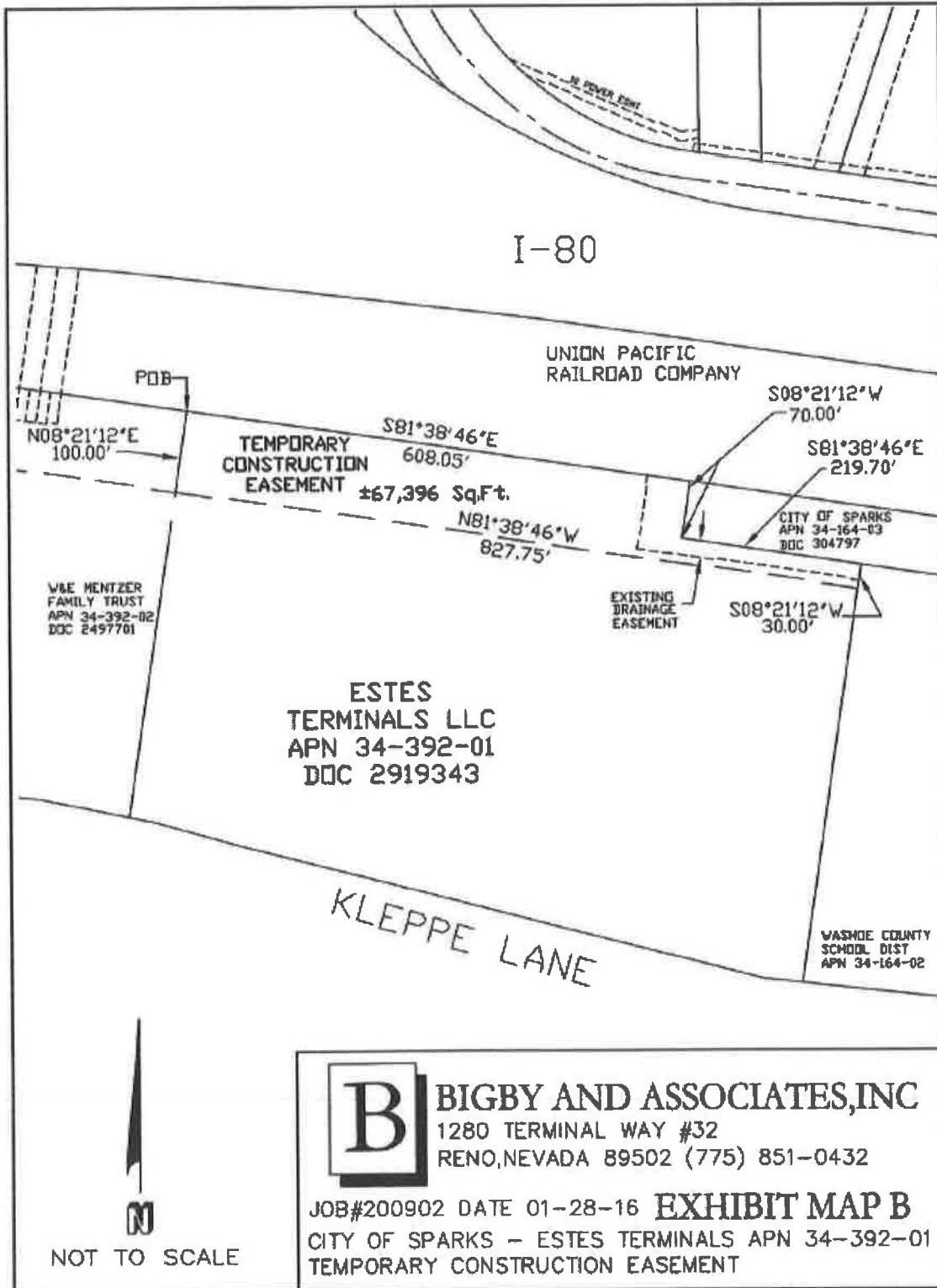
Prepared By;

Bigby and Associates, Inc.
1280 Terminal Way #32
Reno, Nevada 89502

Gregory A. Bigby, P.L.S. 9102



EXHIBIT "B"



B BIGBY AND ASSOCIATES, INC
 1280 TERMINAL WAY #32
 RENO, NEVADA 89502 (775) 851-0432

JOB #200902 DATE 01-28-16 **EXHIBIT MAP B**
 CITY OF SPARKS - ESTES TERMINALS APN 34-392-01
 TEMPORARY CONSTRUCTION EASEMENT