

- B.9** Staff Report (For Possible Action): Approval of a Landscape Agreement for sidewalk maintenance by the Comstock Cottages homeowners' association (HOA).

STAFF REPORT

Date: December 6, 2023

To: Mayor and City Council

Thru: Doug Thornley, City Manager

Subject: Staff Report (For Possible Action): Approval of a Landscape Agreement for sidewalk maintenance by the Comstock Cottages homeowners' association (HOA).

From: Michael Mischel, Engineering Manager

Department: Development Services - Engineering

Summary:

Council is being asked to approve a Landscape Agreement that will allow the homeowners' association (HOA) for Comstock Cottages to maintain the sidewalk and landscape within the portion of George Sullivan Parkway that was acquired by the developer from the Truckee Meadows Water Authority (TMWA) and subsequently offered for dedication to the City from the developer. George Sullivan Parkway is the main access for the Comstock Cottages Phase 1 subdivision. It also serves several subdivisions to the west and north of it. A portion of George Sullivan Parkway bisects a parcel of land owned by TMWA. The developer of Comstock Cottages Phase 1 purchased a portion of TMWA's property so it could be conveyed to the City for George Sullivan Parkway. The developer in turn has irrevocably offered to dedicate this purchased property to the City. This property is 49 feet in width, 36 feet of which are for asphalt, curb, and gutter, and 13 feet are for the parkway. The parkway is comprised of an 8-foot sidewalk and 5 feet of landscape. These 13 feet of parkway are subject to the Landscape Agreement being considered by Council with this action. All the parkway within George Sullivan Parkway is maintained by the subdivision's HOA. The subject Landscape Agreement will allow the HOA to maintain the sidewalk and landscape within the parkway of the portion of George Sullivan Parkway that the developer acquired from TMWA and subsequently offered to the City. This is in accordance with the conditions of approval for the Comstock Cottages tentative map.

Consent Review	Yes	No
1. Is this item an annual or standard item that comes before Council for regular approval?		X
2. Is this item an agreement required based on an item previously approved by Council?		X
3. Is this item included in the current budget approved and adopted by Council?		X
Other Considerations		
What percent of the total City budget does this item represent?	N/A	

Alignment with Strategic Plan:

Economic and Community Development

Previous Council Action:

There is no recent Council action relevant to this item.

Background:

George Sullivan Parkway is the main access for the Comstock Cottages Phase 1 subdivision. It also serves Phase 2 of the Comstock Cottages tentative map and the Mountain West subdivisions to the west and north. A portion of George Sullivan Parkway within Phase 1 bisects a parcel of land owned by TMWA. The alignment of George Sullivan Parkway was established with the approval of the tentative map for Comstock Cottages. This includes the portion of George Sullivan Parkway through TMWA property. The developer of Comstock Cottages Phase 1 purchased a portion of TMWA's property so it could be dedicated to the City for George Sullivan Parkway. The purchased portion is consistent with the width and alignment established by the tentative map. The developer in turn has irrevocably offered to dedicate this property to the City to satisfy the conditions of approval for the Comstock Cottages tentative map. This irrevocably offered property for George Sullivan Parkway is 49 feet in width, 36 feet of which are for the street itself and 13 feet for the parkway. The parkway is comprised of an 8-foot sidewalk and 5 feet of landscape. This configuration of street width, sidewalk width, and landscape width is consistent throughout the entire Comstock Cottages tentative map. The tentative map conditions of approval for the Comstock Cottages tentative map require the HOA to maintain the parkway along George Sullivan Parkway. This includes the sidewalk and landscape. The Landscape Agreement, subject to this Council action, allows the HOA to maintain the sidewalk and landscape within the parkway area for the portion of George Sullivan Parkway that the developer acquired from TMWA and subsequently offered to the City. The portions of George Sullivan Parkway outside this subject area and within this tentative map area will be maintained by the HOA.

Discussion:

The alignment and width of George Sullivan Parkway, including the parkway, were established

with the approval of the Comstock Cottages tentative map. All sidewalk and parkway landscape along George Sullivan Parkway is required to be maintained by the HOA. This is in accordance with the conditions of approval for the tentative map. The offer of dedication for George Sullivan Parkway is recorded and will be accepted by Council once constructed to City standard.

Financial Implications:

No financial impact will result from this action. All maintenance costs associated with this Council action are being covered by the HOA.

Legal Implications:

Legal review completed for compliance with City procedures and Nevada law.

Recommendation:

Staff recommends Council approval of the subject agreement.

Proposed Motion:

I move to approve staff recommendation.

Attachments:

Vicinity Map Landscape Agreement



FUTURE
PHASE II

FUTURE TEMPORARY
EMERGENCY ACCESS
EASEMENT (REF.
FINAL MAP)

FUTURE
PHASE II

SLUICE ST
(PROPOSED/
PRIVATE)

WINZE WAY
(PROPOSED/PUBLIC)

SANITARY SEWER/EMERGENCY ACCESS ROAD

APN
02-030-12
(TMWA)

EXISTING TMWA
WATER TANK

TMWA ACCESS ROAD

49' OFFER TO THE CITY
OF RENO ~ ACQUIRED
FROM TMWA

TMWA ACCESS ROAD

S.S.L.S.
(PRIVATE)

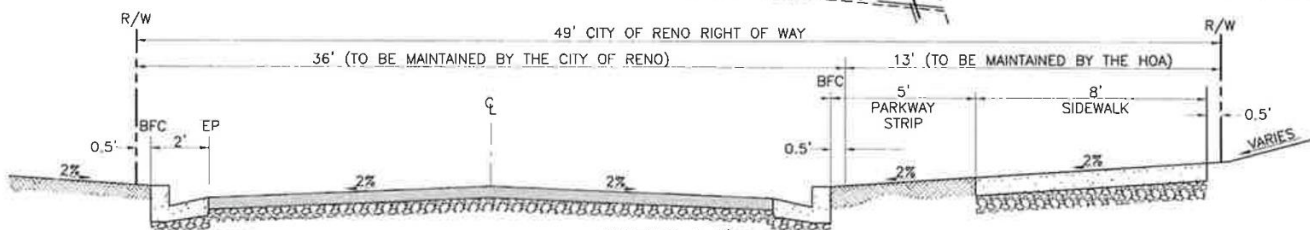
MAINTENANCE RD

PRIVATE
DETENTION
POND

COMSTOCK DR
(EXISTING/PUBLIC)

KANE COURT
(EXISTING/PUBLIC)

TO
U.N.R.



SECTION A-A'

GEORGE SULLIVAN PARKWAY (PUBLIC)
TO BE OFFERED FOR DEDICATION BY TMWA WITHIN APN 02-030-12
(49' IN WIDTH)

EXHIBIT "C"
LANDSCAPE AGREEMENT

This Landscape Agreement ("Agreement") is entered into on this day of 11-7-23, _____ by and between the City of Reno, a municipal corporation, hereinafter referred to as "City," and Northern Nevada Homes, LLC, a Nevada limited liability company, and/or its assigns ("NNH" or "Licensee").

RECITALS:

City is the owner of certain thirteen (13) foot wide real property strip situated on George Sullivan Parkway in the City of Reno, County of Washoe, Nevada, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property"); and

NNH is a Nevada limited liability company established in accordance with the laws of the State of Nevada;

NNH is willing and able to maintain the Property in connection with the public right-of-way at George Sullivan Parkway.

The City agrees to grant a license to NNH to maintain the Property pursuant to the terms and conditions provided for herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License. City grants to NNH and/or its assigns including without limitation the applicable community association or HOA, its employees, agents, and contractors, a license (hereafter referred to as the "License") to perform the following acts on the Property: maintenance and care for landscaping, irrigation, and related improvements including a sidewalk and any associated utilities installed for the purpose of serving these improvements and all costs associated therewith. NNH shall maintain the landscaping and sidewalk in reasonably good and clean condition.

2. Scope. No legal title or leasehold interest in the Property is created or vested in Licensee by the grant of this License. Use of the Property shall be limited to the scope of this License.

3. Compliance with Law. Licensee shall not use the Property which will in any way materially conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

4. Liens. NNH shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by NNH.

5. Revocation. City may not revoke this License or terminate this Agreement, and this License and Agreement shall remain in full force and effect, unless NNH fails to maintain the Property, including the landscaping and sidewalk, in a good and clean condition. If NNH fails to maintain the Property in a clean and good condition, City may revoke this License or terminate this Agreement on thirty (30) days prior written notice and opportunity to cure. In the event this License is revoked or this Agreement is terminated after thirty (30) days' notice and opportunity to cure, there is no guarantee that the City will maintain the landscaped area.

6. Landscaping and Sidewalk Improvements. All landscaping and sidewalk improvements placed within the Property are in and on public property. City will not accept nor consider claims for compensation or damages in the event such landscaping or sidewalk improvements are damaged, stolen, destroyed or removed by any party to this Landscape Agreement or any other person.

7. Indemnity. NNH, as a material part of the consideration to be rendered under this License waives all claims against City for damages to all personal property in, on, or about the Property, and for injuries to persons in or about the Property, caused by NNH in performance of the terms of the License. Furthermore, NNH agrees to indemnify defend (not excluding the City's right to participate) and hold City, its officers, agents and employees, harmless from any and all claims, causes of action or liability arising directly from (a) NNH's use of the Property, and/or (b) the negligence or wrongful misconduct of NNH during the performance of maintenance activities under this License, including, but not limited to, the duty to keep the Property maintained in a clean and good condition. This indemnification includes liability for costs and attorneys' fees. NNH shall not be liable or subject to indemnification to City for City's negligent or wrongful acts with respect to the subject property described in Exhibit A. City shall not be liable to NNH for any damage by or from any act or negligence of any other third party including any unauthorized user of the Property or any occupant of an adjoining or contiguous property. Subject to Section 11 below, this indemnification shall survive the revocation of the License until such time as the statute of limitation expires on all known or unknown claims.

8. Insurance. Subject to Section 11 below, NNH shall maintain with respect to the Property, for a two-year period of time after revocation of this License, comprehensive general liability insurance for limits of not less than two million dollars (\$2,000,000) for bodily injury and property damage, per occurrence, relating to the landscaping of the Property. As evidence of liability insurance coverage, the City will accept certification of insurance issued by an authorized representative of the insurance carrier. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the City as an additional insured.

9. Limited Liability. City will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages.

10. Integration. This License represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This License may not be modified or altered except by written amendment thereto signed by both parties.

11. Assignment. This License is binding on the heirs, successors and assigns of the parties hereto. This License is not to be assigned by either party without prior written consent of the other; provided, however that Licensee shall have the absolute right to assign this License to the Cottages at Comstock Community Association, or any successor HOA or community association, and upon such assignment NNH shall be fully released of any and all obligations and/or responsibilities relating to this License.

12. No Third-Party Beneficiaries. None of the provisions of the License are intended to make any person or entity a third-party beneficiary.

13. Invalid Provisions. If any provision of this License is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The License shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the License. The remaining provisions of the License shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this License.

15. Headings. Headings used in this License are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this License.

16. Force Majeure. Neither party shall be deemed to be in violation of this License if it is prevented from performing any of its obligations hereunder due to accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this License after the intervening cause ceases.

17. Attorney's Fees. If any legal action or proceeding arising out of or relating to this License is brought by either party, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

18. Notices. Any and all notices requests, demands or other communications to or upon a party in connection with this License shall be in writing and shall be personally delivered or sent by electronic transmission or by certified mail postage prepaid to the respective designated representative and at the following address or an address for each party as designated from time to time:

CITY:

Director Development Services

1 E. 1st Street, Reno, NV 89505

NNH:

Northern Nevada Homes, LLC
Attn: Robert Fitzgerald
P.O. Box 8070
Reno, NV 89507
Email: rob.fitzgerald@nnhomes.com

19. Interpretation; Authority. This License shall not be construed for or against a party by virtue of which party drafted the terms and conditions of this Agreement. This Agreement shall be construed and interpreted under the laws of the State of Nevada. The parties hereto each represent that they have full authority to sign this License.

CITY OF RENO


By: _____
Its:

APPROVED AS TO LEGAL FORM


Deputy City Attorney

Northern Nevada Homes, LLC



By: Robert Fitzgerald, Manager of
NNH Group, LLC, which is the
Manager of Northern Nevada Homes, LLC

EXHIBIT "A"

DESCRIPTION OF THE OFFER OF DEDICATION WITH LANDSCAPE AGREEMENT

A portion of Parcel B shown on Record of Survey 6315, Record of Survey in Support of a Boundary Line Adjustment for Northern Nevada Homes, LLC and Truckee Meadows Water Authority, Recorded December 8, 2021 as File No. 5256428 in the Official Records of Washoe County, Nevada, situate in the Northeast One-Quarter of the Southwest One-Quarter (NE1/4 SW1/4) of Section 35, Township 20 North, Range 19 East, Mount Diablo Base and Meridian, more particularly described as follows:

COMMENCING at the Southwest corner of said Parcel B, marked with a 5/8" rebar with cap stamped "PLS 17044";

THENCE along the westerly line of said Parcel B, North 01°12'15" East, a distance of 152.68 feet to the POINT OF BEGINNING;

THENCE continuing along said westerly line, North 01°12'15" East, a distance of 16.26 feet to the beginning of a non-tangent curve to the left, from which the radius point bears North 38°41'12" East a radial distance of 493.00 feet;

THENCE departing said westerly line, southeasterly along the arc of said curve, 171.57 feet through a central angle of 19°56'22";

THENCE South 71°15'10" East, a distance of 105.86 feet, to a point on the easterly line of said Parcel B;

THENCE along said easterly line, South 15°20'53" West, a distance of 13.02 feet;

THENCE departing said easterly line, North 71°15'10" West, a distance of 106.63 feet, to the beginning of a tangent curve to the right with a radius of 506.00 feet;

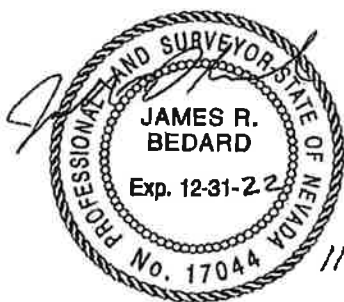
THENCE northwesterly along the arc of said curve, 166.20 feet through a central angle of 18°49'08", to the POINT OF BEGINNING.

Containing 3,576 square feet.

Basis of Bearings: Grid North, NAD83(94) Nevada State Plane Coordinate System, West Zone, based on GPS observations of Washoe County control points R347 and R351, resulting in a bearing of South 48°53'21" East between said monuments as calculated from the published coordinate values.

Prepared by:
MAPCA Surveys, Inc.
580 Mt. Rose Street
Reno, NV 89509
(775) 432-2067

James R. Bedard
PLS 17044



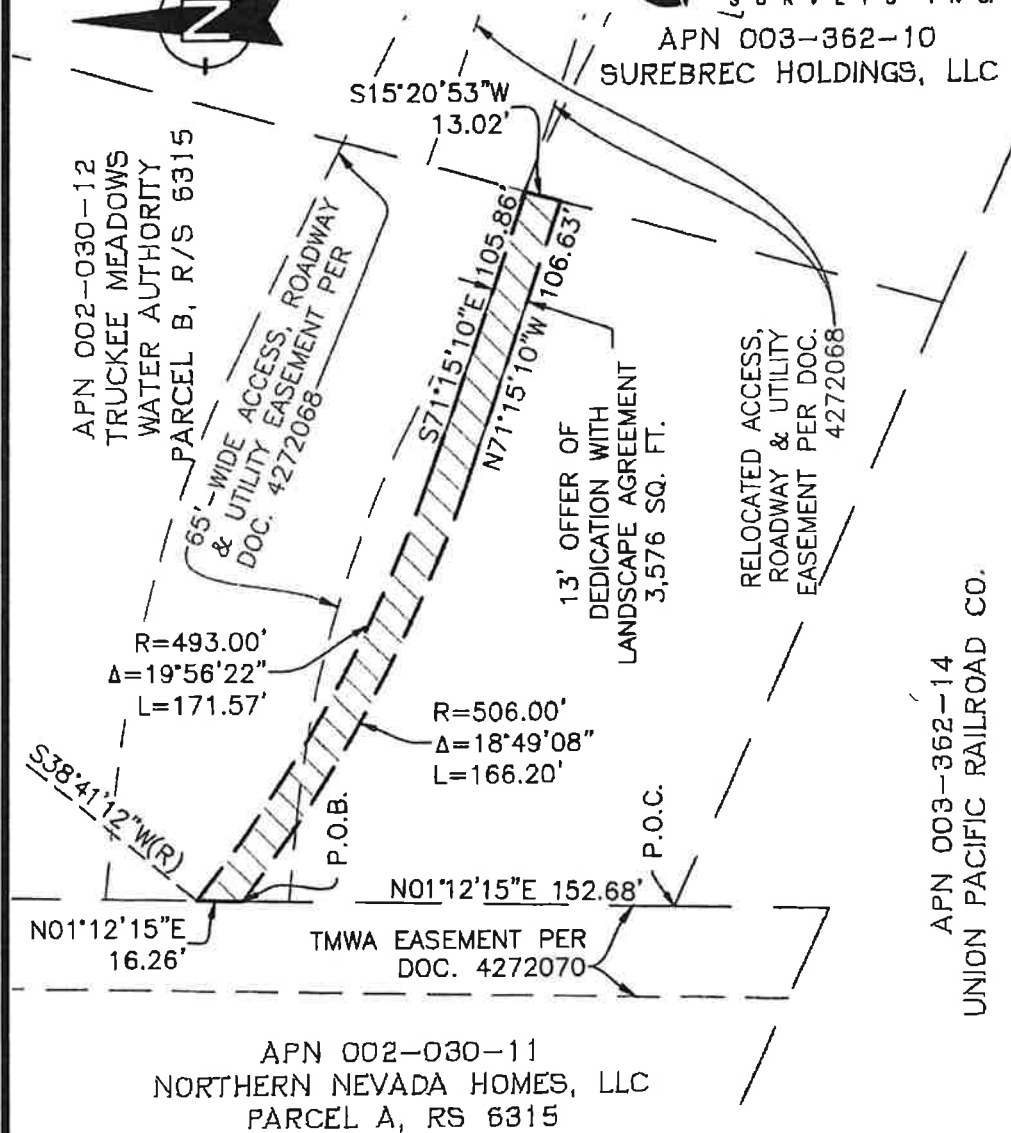
11/1/2022

SCALE:
1"=60'



MAPCA
SURVEYS INC.

APN 003-362-10
SUREBREC HOLDINGS, LLC



**DEPICTION OF THE OFFER OF DEDICATION WITH
LANDSCAPE AGREEMENT**

PORTION OF PARCEL B, RS 6315

RENO - WASHOE COUNTY - NEVADA

SOUTHWEST 1/4 OF SECTION 35

T.20N., R.19E., M.D.M

PAGE 1 OF 1