

**RESOLUTION OF THE GOVERNING BODY
OF THE
WASHOE TRIBE OF NEVADA AND CALIFORNIA**

WHEREAS, the Washoe Tribe of Nevada and California (the “Tribe”) is a federally recognized Indian tribe and is organized under the provisions of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984) as amended, to exercise certain rights of home rule and be responsible for the general welfare of its membership; and

WHEREAS, the Tribe is governed by the Washoe Tribal Council (the “Tribal Council”) pursuant to the Tribal Constitution adopted by the Tribe and approved by the Secretary of the Interior; and the Tribal Council is empowered to establish Tribal policies, enact Tribal laws and act for the Tribe; and,

WHEREAS, Under Article VI, Section 1 (a) and (c) of its Constitution and Bylaws, The Tribal Council has the power and authority to (a) execute contracts and agreements with individuals; and, (c) approve any encumbrances on Tribal lands; and,

WHEREAS, at its April, 2020 virtual Council meeting, the Tribe received a formal, in-person request from Doug Curtis, an individual who owns real property adjacent to Tribal lands in the Stewart Community. He asked to purchase an underground utility easement connecting a Nevada Energy power pole on Stewart to his personal property approximately 175’ away; and,

WHEREAS, after consideration and discussion of the proposal, the Tribal Council voted by voice vote to accept the offer and to assign Tribal Administration to negotiate and draft a formal written agreement between the Parties; and,

WHEREAS, the formal written agreement having been negotiated, written and attached hereto, entitled “Agreement for the Grant of an Easement for Utility”. It contains the deal points approved by Council consisting of compensation; scope of easement and the requirement that the Curtis application for BIA approval of an easement be submitted first to the Washoe Tribal Council for review and approval before the transaction is complete and before the application may be submitted to the BIA.

NOW THEREFORE, BE IT RESOLVED, the Tribal Council hereby approves and ratifies the written “Agreement for the Grant of an Easement for Utility” between the Washoe Tribe of Nevada and California and Doug Curtis, an individual; and,

BE IT FURTHER RESOLVED that the Washoe Tribal Chairman, Vice-Chairman and or Secretary-Treasurer is authorized to sign the “Agreement for the Grant of An Easement for Utility” on behalf of the Washoe Tribe of Nevada and California and to support and work with Doug Curtis in his efforts to obtain BIA approval of the right of way and utility easement.

CERTIFICATION

It is hereby certified that the Washoe Tribal Council is the governing body of the Washoe Tribe of Nevada and California composed of twelve (12) members of whom eight (8), constituting a quorum, were present at a meeting duly held on the 10th day of July, 2020, and that the foregoing resolution was adopted by the affirmative vote of five (5) for, one (1) against, and two (2) abstentions pursuant to the authority contained in Article VI, Section 1(h) of the Amended Constitution and Bylaws of the Washoe Tribe of Nevada and California.

Autumn Burt
Autumn Burtt
Secretary-Treasurer
Washoe Tribe of Nevada and California

7/13/2020
Date



AGREEMENT FOR THE GRANT OF AN EASEMENT FOR UTILITY

This Agreement for the Grant of an Easement for Installation of Electric Utility (“Agreement”) is made by and between the Washoe Tribe of Nevada and California (the “Washoe Tribe”) and Doug Curtis and Dana Curtis, husband and wife (collectively “Curtis”), for themselves and for their heirs, successors and assigns, who owns certain real property adjacent to Tribal trust lands located in Douglas County, State of Nevada. The Washoe Tribe and Curtis are sometimes collectively referred to as the “Parties” or individually as a or the “Party”.

Recitals

WHEREAS, the Washoe Tribe of Nevada and California is a recognized Federal Tribe under the provisions of the Indian Reorganization Act of June 18, 1934, as amended, and is authorized and empowered to exercise certain rights of home rule and to be responsible for the general welfare of its members; and,

WHEREAS, included among its tribal trust lands is the parcel commonly known as the Stewart Community and more specifically described as having been assigned the County APN of 1419-00-002-035. Within this parcel, Nevada Energy has a pre-existing utility easement consisting of a series of electrical utility poles along which are strung electrical power lines which provide electricity to the Tribe and community; and,

WHEREAS, Curtis owns fee lands adjacent to this Tribal trust Land and more specifically described as having been assigned the County APN of 1419-00-002-036. (“Subject Property” or “Curtis Property”). The Curtis Property has no electrical power source within its boundaries. The nearest source of electrical power for the Curtis property is one of the electrical power poles located on the above described Tribal Trust lands. The Parties calculate that the approximate straight line distance from the nearest electric power pole on trust property to the Curtis property is one hundred and seventy five (175’) feet; and,

WHEREAS, the Washoe Tribe has received a request from Curtis to dig and install a permanent underground electrical utility conduit under, across and within that portion of Tribal trust land (and in no way would the conduit or any part of it or the easement include waste water or any other utilities) which would be for the benefit of the Subject Parcel and for the private use thereon which is intended to consist of no more than one (1) personal residence along with one ranch house; and,

WHEREAS, Curtis through this Agreement seeks the grant of easement on behalf of themselves and their heirs, successors and assigns; and intends that they and all be bound herein; and,

WHEREAS, rights of way on Indian lands are governed by Federal Regulations, 25 CFR Part 169; and,

WHEREAS, pursuant to the federal regulations, the Washoe Tribe must agree that the compensation paid by Curtis for the right-of-way is satisfactory, acceptable and in the Washoe Tribe's best interests.

NOW THEREOFRE BE IT RESOLVED, the Washoe Tribe, subject to the terms and conditions set forth more herein, consents to the grant to Doug and Dana Curtis, their heirs, successors and assigns, of an easement Right-of-Way ("Grant of an Easement for Right-of-Way"), subject to the approval of the Bureau of Indian Affairs.

1. Statement of Intentions and Conditions

A. The parties clearly state their intention that the only permitted use of the utility easement is to provide electrical power solely for the subject parcel of land which is restricted to a single family residence and out-buildings related to and in support of ranch work.

B. The parties do not intend or desire to hereby ever provide electrical power for any other parcel of land, wherever located; power for an expansion of the existing parcel; or provide power for any use(s) beyond single family residential and related ranch use.

C. Conversely, nothing in this Agreement may be construed to restrict the Washoe Tribe from unfettered use or development of its Trust Lands. Any subsequent use of Tribal lands may not be used as a pretext to justify expansion of this easement.

D. The Tribe may initiate legal proceedings to terminate the easement if the purposes or scope of the grant are violated.

2. Bureau of Indian Affairs Approval

A. Curtis is fully aware that the grant of an easement on Tribal Trust Lands is subject to the review, study and approval of the Bureau of Indian Affairs of the United States Department of the Interior (“BIA”). Curtis has worked in Indian Country throughout his career, and he is well aware of the intricacies and requirements therein. Accordingly, Curtis agrees to undertake the BIA approval process on his own volition, and he agrees to see the process through until a final determination is issued by the BIA.

B. Curtis agrees that he is solely responsible for the time, efforts, costs, including legal costs if any, which may be incurred during the BIA approval process. Curtis acknowledges that the Washoe Tribe has not warranted, guaranteed or in any manner expressed any opinion on the likely result or outcome of the BIA’s response to the Curtis application.

C. For its part, the Washoe Tribe agrees to informally advise Curtis on his application with the BIA and to provide any direction or suggestions which it thinks may be helpful. Tribe will cooperate with the BIA as called upon to do so. But the foregoing notwithstanding, the Washoe Tribe shall not be held liable in any manner for the final BIA determination.

D. Curtis is solely responsible for all aspects of the application process, including costs. At no time shall Tribe be obligated to pay for any cost associated therewith.

E. Within thirty (30) days of receipt of the written approval by the BIA, Curtis shall cause a copy of the easement to be recorded in the Office of the Douglas County Recorder, and he shall serve a conformed copy of the filing on the Washoe Tribe.

3. Installation, Obligation and Cost

A. Upon formal grant of easement by the Bureau of Indian Affairs, Curtis may commence installation of the easement. Curtis shall survey the land, and in conjunction with Tribal personnel, establish the line along which the easement will run. From power pole to property line, he shall dig a trench 24” wide, 48” deep, and 175’ long. At the bottom of the trench will be placed the power line inside an insulated conduit.

B. Without limitation, Curtis shall:

- Obtain an entry permit from Tribal Administration before commencing any work.
- Obtain and pay for all permits required for any portion of the project.
- Interface with Nevada Energy, pay its required fees, and obtain from them all necessary permits, permissions, and specifications for connecting with the electric utility pole located on Tribal lands, and all metering thereafter.
- Ensure that all work done on the easement from utility pole to the subject parcel is performed and completed up to code and in a workmanlike manner.
- Ensure that all parts and mechanisms used on the easement are state of the art;
- Dig the easement trench in the areas designated by Tribal personnel and in near as a straight line to ensure economy of usage of Tribal lands;
- Cooperate at all times with Tribal officials assigned to the project.
- Cooperate at all times with and follow the directions of the cultural monitor during the digging and installation process;
- Pay the cultural monitor upon presentation of an invoice;
- Return the surface land on Tribal property to its previous state of pristine and natural beauty.
- After installation and fill in are complete, mark the location of the easement pursuant to current industry standards so as to ensure the safety and security of surface creatures.

C. Curtis acknowledges that the foregoing is not intended as an exhaustive list but rather as an illustration of the breadth of duties. He will be solely responsible for all aspects of installing and maintaining the easement and electric service.

4. Compensation

A. The Parties agree that adequate compensation for the Washoe Tribe’s consent, permission, cooperation, advice and assistance in Curtis’s obtaining a permanent underground

utility easement as described herein and for the installation of an underground electrical conduit from the BIA of the United States Department of the Interior (“BIA”), is the payment of the sum of twenty thousand (\$20,000.00) dollars to the Washoe Tribe.

B. This sum shall be paid in two installments: the first payment of ten thousand (\$10,000.00) payable at the time this document is fully executed; and the second payment of ten thousand (\$10,000.00) payable within thirty (30) days of the BIA authorizing and executing a perpetual Grant of an Easement for Right-of-Way to Curtis capable of being recorded in the Office of the Douglas County Recorder.

2. Curtis shall also assume and be responsible for the payment of costs associated with the retention of a cultural monitor who will be on-site during the excavation of land necessary to the laying of the electrical conduit, and as otherwise specified and provided for in this Agreement and by Tribal law.

3. No additional consideration, express or implied, is expected to be offered or paid by Curtis or anticipated to be received by the Washoe Tribe related to Curtis’s application to the BIA for a Grant of Easement for Right of Way for the underground electrical conduit and related facilities.

5. The Spoils Pile

A. In addition to the foregoing, the Washoe Tribe shall also permit Curtis to have and take possession of a large mound of dirt, filler and discarded construction material commonly referred to as “the spoils pile”. The parties acknowledge that each is aware of where the spoils pile is located.

B. Curtis shall be entitled to have and take possession of the spoils pile any time from and after he makes the first installment payment of \$15,000.00 as required in this Agreement. He may enter upon Tribal lands to remove the spoils pile subject to the issuance of an Entry Permit as required by Tribal law. An on-site Tribal cultural monitor must also be in attendance during all removal activities. In any event, he must complete the removal of the spoils pile by the time he has finished the easement installation.

C. Curtis shall be solely responsible for all costs incurred in removing the spoils

pile from Tribal lands to his own property, including the costs of a cultural monitor. Further, he shall restore the surface area left behind after the spoils pile removal to its original pristine and natural state.

6. Conditions Precedent to Curtis's Submission of an Application for the Grant of the Easement for Right-of-Way

A. The Parties agree that the Washoe Tribe reserves the right to set forth certain reasonable conditions precedent to the submission of the application to the BIA for the Grant of an Easement for Right-of-Way to Curtis. Those conditions precedent shall be set forth by resolution executed at a duly held meeting of the Washoe Tribe's Tribal Council and include, but may not be limited to:

- 1) Entering into an agreement with the Washoe Tribe for cultural monitoring services, wherein the Tribe will provide on-site monitoring during digging and installation of the underground electrical utility conduit. Curtis will be responsible for paying the standard hourly labor rates as well as vehicle mileage costs incurred by the cultural monitor relating to such site monitoring; and,
- 2) Curtis will coordinate with the Washoe Tribe during any environmental review process required by the BIA; and,
- 3) Obtaining Tribal Council approval of the right-of-way application package prior to its submission to the BIA.

Miscellaneous Provisions

- 1) *Mutual Good Faith.* Throughout the term of this Agreement, the Parties agree to exercise good faith and to observe the covenants contained herein.
- 2) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

3) Digitally or electronically transmitted signatures shall be considered as effective as originals.

4) *Severability.* Any provision of this Agreement which is ever prohibited or deemed unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

5) *Notices.* Any notices, communications and waivers under this Agreement shall be in writing and delivered by first class mail to Doug Curtis or to the Chair of the Washoe Tribe at its Headquarters.

6) *No Waiver; Cumulative Remedies.* No failure or delay on the part of a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7) *Amendments.* This Agreement may be amended only by written instrument signed by the Parties.

8) *Advice from Independent Counsel.* Each Party hereto represents to the other that it has received legal advice from the legal counsel of its choice regarding the meaning and legal significance of this Agreement and that each is individually satisfied with its legal counsel and the advice so received.

9) *Binding Effect; Assignment; No Third Party Beneficiaries.* This Agreement shall be binding upon and inure to the benefit of the Washoe Tribe and Doug and Dana Curtis, and any subsequent owner of the Curtis property. No person shall be or become a third-party beneficiary to this Agreement.

10) *Mutual Drafting.* The Parties agree that this Agreement has been mutually drafted and authored by the Parties and that it shall not be construed against any one Party.

11) *Authority to Execute.* Each Party hereto possesses due authority to execute and enter into this Agreement. Curtis acknowledges that he is signing this Agreement on behalf of himself as well as for any and all of his heirs, successors and assigns.

12) *Indemnify and Hold Harmless.* Curtis agrees to indemnify and hold the Washoe Tribe harmless on account of all claims, damages and or causes of action which may occur or arise from any aspect of this agreement, including without limitation, all attorney fees and legal costs which the Tribe may reasonably incur in negotiating or litigating any claim arising herefrom.

13) *Venue; Governing Law.* This Agreement shall be governed and interpreted pursuant to Washoe Tribal Law. Venue for any cause and action arising hereunder shall be in the Washoe Tribe Tribal Court.

14) *Washoe Tribal Sovereign Immunity.* The Parties hereto expressly affirm the Sovereign Immunity of the Washoe Tribe. Nothing in this Agreement is intended to or may interpreted to waive any portion of the Tribe's Sovereign Immunity.

IN WITNESS WHEREOF, the undersigned have executed this Agreement for the Grant of an Easement for Right-of-Way this _____ day of July, 2020

for the **Washoe Tribe of Nevada and California**

SERRELL SMOKEY, Chairman (date)

By Doug Curtis, an individual, on behalf of himself, his heirs, successors and assigns:

DOUG CURTIS, an individual (date)

By Dana Curtis, an individual, on behalf of herself, her heirs, successors and assigns:

DANA CURTIS, an individual (date)