

MEMORANDUM

TO: Board of Trustees

FROM: Mike Bandelin
Interim District General Manager

SUBJECT: Review, discuss and possibly approve an Amendment and Restated Site Use License Agreement with NV Energy for Use of Diamond Peak Ski Resort Parking Lot to Prohibit Helicopter Operations.

DATE: December 13, 2023

I. RECOMMENDATION

That the Board of Trustees makes a motion to:

1. Approve an Amendment and Restated Site Use License Agreement with NV Energy for Use of Diamond Peak Ski Resort Parking Lot to Prohibit Helicopter Operations.

II. BACKGROUND

The Incline Village General Improvement District entered into a License Agreement with NV Energy on June 16, 2023. The site license agreement includes NV Energy contractors using ground space for staging of trucks and equipment at Diamond Peak. The site agreement also allows the use of the school yard ski trail for helicopter operations including landing timber fuels removed from the vicinity of power lines. Helicopter operations also included transporting of NV Energy replacement power line equipment.

At your meeting on November 8, 2023 the Board of Trustees approved an agenda item to direct the Interim General Manager and District Counsel to negotiate an amendment of the Site Use License Agreement with NV Energy to provide for an alternative location for the Helicopter operations not at Diamond Peak Ski Resort.

As per the approval, General Counsel and the Interim General Manager engaged in a discussion with NV Energy referencing the amendment to the agreement. The discussion resulted in an agreed upon amendment and a restated Site Use License Agreement with NV Energy for Use of Diamond Peak Parking Lot to Prohibit Helicopter Operations.

III. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

IV. ATTACHMENTS

Site License Agreement with NV Energy and IVGID

**AMENDED AND RESTATED
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
SITE USE LICENSE AGREEMENT
WITH NV ENERGY**

RECITALS

WHEREAS, Incline Village General Improvement District (“IVGID”) and Sierra Pacific Power, d/b/a NV Energy, Inc., a Nevada corporation (“NV Energy” or “Licensee”) entered into that certain Site Use License Agreement dated as of June 20, 2023 (“Site Use License Agreement”).

WHEREAS, the Parties wish to amend the Site License Use Agreement to eliminate helicopter uses within the License Area, including all previously permitted uses as a landing zone and refueling location, but to continue to permit non-aerial operations by the Licensee.

AGREEMENT

1. PARTIES AND DATE; AMENDED AND RESTATED AGREEMENT.

This Amended and Restated Site Use License Agreement (“Agreement”) is entered into as of December 13, 2023, by and between IVGID and Licensee. All parties are at times referred to collectively as “Parties” and individually as “Party” herein. Upon execution, this Agreement shall supersede the Site Use License Agreement dated June 20, 2023 in all respects, and shall form the sole agreement between the parties with respect to the subject matter stated herein.

All parties are at times referred to collectively as “Parties” and individually as “Party” herein.

2. LICENSE AREA.

2.1 IVGID owns certain real property commonly known as the Diamond Peak Ski Resort (“Diamond Peak”). Diamond Peak includes a certain area adjacent to the Diamond Peak parking lot which is depicted in Exhibit A, attached hereto and incorporated by this reference (“License Area”).

2.2 Licensee wishes to utilize the License Area for employee and contractor parking and materials storage. IVGID is willing to grant to Licensee the right to use the License Area, under the terms and conditions set forth herein. Licensee shall not use the License Area for helicopter or other aerial operations, including but not limited to landing and takeoff.

3. TERMS.

3.1 Recitals. The above recitals are hereby incorporated into the Agreement by reference.

3.2 License. IVGID hereby grants to Licensee a license in, on, across, and over the License Area, for the purpose of permitting employee and contractor parking and construction materials storage and staging by Licensee's employees and contractors. Licensee may not store or use any hazardous materials as defined by applicable law in the License Area. Licensee may not use the License Area for any helicopter or other aerial operations, including but not limited to landing and takeoff. Licensee shall not use the Licensee Area for refueling or storage of fuel of any kind.

3.3 Term & Termination.

3.3.1 Term. This Agreement shall remain in effect through October 14, 2027. Licensee may only use the License Area from May 1 through October 14 of each year of the Term.

3.3.2 Termination of License. Either Party may terminate this Agreement with ninety (90) days written notice to the other Party. Upon termination of the Agreement, Licensee shall surrender the License Area in substantially the same condition as when received, including removing any dust or debris from its use of the License Area.

3.4 License Fee. In exchange for the license and other rights granted by this Agreement, Licensee shall pay IVGID \$1,000.00 per week ("License Fee") during the months of actual use during the Term, which shall run from May 1 through October 14. The License Fee shall be prorated for any partial month of use. The License Fee shall be paid on or by the first of each month or first day of use during each partial month during this Agreement.

3.5 Pavement Degradation Fee. IVGID shall, at its own expense, provide Licensee with a pavement assessment prior to Licensee occupying the site ("First Pavement Assessment"). Within 15 days of the end of each construction season, for the duration of this Agreement, IVGID shall, at its own expense, provide Licensee with an updated pavement assessment ("Subsequent Pavement Assessment") that determines the level of pavement degradation that occurred during the Term, ordinary wear and tear excepted, and the reasonable estimate associated with repair of the pavement to the original quality, ordinary wear and tear excepted, as established by the First Pavement Assessment. Within 45 days of receipt of each Subsequent Pavement Assessment, Licensee shall pay to IVGID an amount totaling 50% of the estimated pavement restoration cost set forth in said Subsequent Pavement Assessment for the area which is generally depicted in **Exhibit B**, attached hereto and incorporated by this reference.

3.6 Public Notification. Licensee shall follow all applicable laws pertaining to public notification. Licensee shall specifically provide written notice of its anticipated activities each year to residents in the following residential areas: Bitterbrush I (Tahoe Chaparral), Bitterbrush II, Tyrolian Village (Upper), and Tyrolian Village (Lower). Licensee shall be responsible for responding to any and all public inquiries that result from their activities as set forth in this Agreement.

3.7 Reserved.

3.8 Indemnification. To the full extent permitted by law, Licensee shall indemnify, defend (with counsel acceptable to IVGID) and hold IVGID, its officials, officers, employees, contractors, volunteers and agents free and harmless from and against any and all losses, claims, damages, or injuries to the License Area caused by or arising out of Licensee's use of the Parking Area or this Agreement, expressly including, but not limited to, any storage or use of hazardous materials. Licensee shall be responsible for conducting, at its own expense, any clean-up and associated remediation that results from a release, escape, seepage, leakage, discharge, or migration, at or from the License Area, of any hazardous materials, whether or not such condition was known or unknown to Licensee. At the conclusion of the Term of this Agreement, Licensee shall be responsible for removing any stored materials, hazardous or otherwise, from the License Area, and returning the License Area to its original condition as of the commencement date of the Agreement. Notwithstanding anything to the contrary contained in this Section 3.5, Licensee shall have no obligation to indemnify IVGID to the extent of any losses, claims, damages or injuries that may arise out of the gross negligence or willful misconduct of IVGID.

3.9 Insurance. Licensee shall maintain in full force and effect during its use of the License Area during the effective months of the Term: (a) commercial general liability insurance in the amount of \$3,000,000 per occurrence; and (b) property damage insurance in the amount of \$3,000,000. Licensee may satisfy these requirements partially or wholly through self-insurance and will provide IVGID with a letter to that effect. Such insurance shall name IVGID as an additional insured, shall be primary with respect to any insurance or self-insurance programs maintained by IVGID, and shall not be materially changed, terminated or allowed to expire except on thirty (30) days' prior written notice to IVGID. Proof of IVGID being named as an additional insured must be included as part of the submission of proof of insurance, which may include providing a statement to that effect in any letter of self-insurance. Licensee shall not commence use of the License Area until it has provided evidence satisfactory to IVGID that it has secured all insurance required under this section.

3.10 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. The terms and conditions of this Agreement may be altered, changed or amended only by written agreement of the Parties hereto. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.

3.11 Governing Law. This Agreement shall be governed by the laws of the State of Nevada.

3.12 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.13 Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address or at such other address as the respective Parties may provide in writing for this purpose:

IVGID: Incline Village General Improvement District
Attn: District Clerk
893 Southwood Boulevard
Incline Village, Nevada 89451

LICENSEE: NV Energy
Land Resources
Attn: Manager
6100 Neil Rd., MS S4B20
Reno, NV 89511

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at the applicable address.

3.14 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

SIERRA PACIFIC POWER COMPANY,

d/b/a NV Energy,

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT

William Kruger
Manager, Land Resources

Mike Bandelin
Interim General Manager

Date

Date

Reviewed as to Form:

Sergio Rudin
District General Counsel

EXHIBIT "A"

**APPROXIMATE GRAPHICAL DEPICTION OF
THE LICENSE AREA**



EXHIBIT "B"

**APPROXIMATE GRAPHICAL DEPICTION OF
THE PAVEMENT DEGRADATION AREA**

