

**MEMORANDUM**

**TO:** Board of Trustees

**THROUGH:** Mike Bandelin, Interim General Manager

**FROM:** Mike Bandelin, Interim General Manager

**SUBJECT:** Review, discuss and possibly approve a Sole Source Finding, **and** review, discuss, and possibly authorize an Equipment Purchase Agreement for a replacement PistenBully Snow Grooming Vehicle – 2023/2024 Capital Improvement Project; Fund: Community Services; Division: Ski; Project #3463HE1724; Vendor: Kassbohrer All-Terrain Vehicles, Inc. in the amount of \$562,938.

<b>RELATED STRATEGIC PLAN BUDGET INITIATIVE(S):</b>	<b>LONG RANGE PRINCIPLE #5 – ASSETS AND INFRASTRUCTURE</b> The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation venues, facilities, and services.
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<b>RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES</b>	Capital Planning Multi-Year Capital Planning Policy 12.1.0; Capital Planning Capital Project Budgeting Policy 13.1.0; Capital Planning Capital Expenditures Practice 13.2.0; Purchasing Policy for Goods and Services Policy 20.1.0
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**DATE:** August 30, 2023

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**I. RECOMMENDATION**

That the Board of Trustees makes a motion to:

1. Make the following finding: The District's purchase of a replacement PistenBully snow grooming vehicle and associated fleet management system from Kassbohrer All Terrain Vehicles, Inc. is exempt from competitive solicitation for the following reasons: NRS 332.115.1.(a).
2. Authorize Equipment Purchase Agreement with Kassbohrer All-Terrain Vehicles, Inc. totaling \$567,938.
3. Authorize the Interim General Manager to execute the contract in substantially the form presented.

## **II. BACKGROUND**

The general purpose of this project is to maintain District operations through the necessary maintenance and replacement cycles.

Diamond Peak operates and maintains a fleet of five (5) PistenBully snow grooming vehicles which includes four (4) line grooming machines and one (1) winch assist machine. These machines provide slope grooming, snow management, snowmaking support, chairlift loading and unloading area maintenance, and park features at the District's ski venue. The District's capital replacement program for fleet/rolling stock identifies operating and maintaining each of the five (5) machines for up to ten (10) operating seasons before replacement funding occurs.

Staff will note that two (2) grooming machines were purchased in 2014, including the winch machine #699 and a line grooming machine #700. The Capital replacement program and funding was updated within the FY 2023/24 District Capital Improvement Plan for a proposed replacement of the winch machine after nine (9) years of service to offset the District's funding plan of replacing two (2) machines after the planned ten (10) years of service in FY 2024/25. The District's replacement of the 2014 line grooming machine #700 is identified for replacement within FY 2024/25 Capital Improvement Plan.

The proposed PistenBully grooming vehicle will come equipped with PistenBully's SNOWsat slope and fleet management system. SNOWsat is an integrated system for guiding and real-time monitoring of snow grooming vehicles. The system uses GPS data to produce a mapped image of the slope including all chairlift towers, grade level snowmaking valve stations, snowmaking hydrants, as well as any potential danger spots and the resort boundaries. It also provides maps of individual runs for grooming with real-time snow depth measurements. SNOWsat is included within the five (5) grooming machines that the District owns and operates.

## **III. BID RESULTS**

The District's purchase of a replacement PistenBully snow grooming vehicle and associated fleet management system from Kassbohrer All Terrain Vehicles, Inc. is exempt from competitive bidding for the following reasons:

- A. This purchase is for items which may only be contracted from a sole source (NRS 332.115.1.a). Kassbohrer All-Terrain Vehicles is the exclusive dealer for PistenBully snow grooming equipment for Northern Nevada.
- B. This purchase is for additions to and repairs and maintenance of equipment which may be more effectively added to, repaired or maintained by a certain person (NRS 332.115.1.C). Diamond Peak's snow grooming fleet is exclusively PistenBully snow grooming vehicles,

which are sold exclusively by Kassbohrer All Terrain Vehicles.

- C. The equipment proposed for purchase, by virtue of the training of the personnel or of any inventory of replacement parts maintained by the local government, is compatible with existing equipment (NRS 332.115.1.d). Diamond Peak’s snow grooming fleet is exclusively PistenBully snow grooming vehicles.

The proposed purchase agreement, in compliance with the District's Purchasing Policy for Goods and Services, Policy 20.1.0 – 3.1 and NRS 332.115. is exempt from competitive solicitation requirements. The project is a sole source purchase from Kassbohrer All-Terrain Vehicles, Inc. and Staff did not seek competitive bids for the proposed vehicle. Specific equipment pricing is as listed below:

Description	Amount
2023 PinstenBully 600 Polar Park Winch	\$580,000
V3 ind. LIDAR - PistenBully 600	\$42,938
Trade-In for PistenBully 400 Winch #699	(\$60,000)
Total	\$562,938

The District's Equipment Purchase Agreement (Agreement) is included in Attachment 1. The Agreement has been reviewed and approved by the District's legal counsel.

**IV. FINANCIAL IMPACT AND BUDGET**

The District's Capital Improvement Program Budget for the (340 Ski Fund) in FY 2023/2024 includes funding \$600,000 for the replacement of the PistenBully Grooming Machine under Project # 3463HE1724. The ski fund (340) FY2023/24 includes total capital appropriations of \$1,780,443 for the following projects.

Project	Amount
Base Lodge Kitchen Reconfiguration	\$321,443
Red Fox Ski Lift Maintenance and Improvements	\$64,000
Replace 2014 Winch Grooming Machine	\$600,000
Snowmaking Infrastructure Replacement	\$504,000
Replace 2016 Polaris Ranger	\$22,000
Replace Snowmobiles	\$19,000
Snowflake Lodge - Site Survey, Needs Assessment	\$250,000

## **V. ALTERNATIVES**

The Board of Trustees may not authorize the Equipment Purchase Agreement and defer or eliminate replacement of the proposed snow grooming vehicle.

## **VI. COMMENTS**

In conclusion, the following items have been discussed:

1. The snow grooming machine scheduled for replacement includes a 2014 PistenBully 400 winch – #699. This piece of equipment has operated for nine (9) seasons, with 7,350 total operating hours.
2. The replacement grooming machine project is funded through the 2023/2024 Capital Improvement Project; Fund: Community Services; Division: Ski; Project #3463HE1724; Amount; \$600,000.
3. The proposed equipment purchase agreement for the replacement grooming machine totals - \$562,938.
4. The Agreement, Attachment 1, has been included and has been approved by the District's legal counsel.
5. Provided the proposed equipment purchase agreement is awarded, the District will place its order with Kassbohrer All Terrain Vehicles immediately and will take delivery of the vehicle in late November or early December of 2023. Payment to the vendor does not occur until vehicle delivery.

## **VII. BUSINESS IMPACT/BENEFIT**

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

## **VIII. ATTACHMENTS**

1. 2023 Equipment Purchase Agreement - Kassbohrer
2. 3463HE1724 Datasheet 7.1.2023
3. History - Snow Grooming Machine Replacement

## **IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES**

The decision needed from the Board of Trustee's shall be that of approving the staff recommendation as presented.

**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
EQUIPMENT PURCHASE AGREEMENT**

This Equipment Purchase Agreement (“Agreement”) is entered into as of August 31, 2023, by and between the Incline Village General Improvement District, a Nevada general improvement district (“District”), and Kassbohrer All Terrain Vehicles Inc., a Maine corporation with its principal place of business at 8850 Double Diamond Parkway Reno, Nevada (“Contractor”). District and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**Section 1. DEFINITIONS.**

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to District, ready for approval, testing and/or use as specified in Exhibit A.

**Section 2. MATERIALS AND WORKMANSHIP.**

When Exhibit A specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without District’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit A as equal to any particular standard, District will decide the question of equality. When requested by District, Contractor will furnish District with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at District’s request.

**Section 3. INSPECTIONS AND TESTS.**

District shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit “A,” then without prejudice to any other rights or remedies, District may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair District’s right to reject nonconforming goods, irrespective of District’s failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

**Section 4. WARRANTY.**

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer’s warranty or set forth in Exhibit “A,” from the date of final written acceptance of the Equipment by District as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit A and shall be fit for the purpose intended. District's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from District, at the option of District, and at Contractor's own expense and without cost to District:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. District's plant, office or other location of District where the Equipment was originally performed or delivered; or
3. Repay to District the purchase price of the defective Equipment and District will return the Equipment to Contractor at Contractor's expense.

If District selects repair or replacement, any defects will be remedied without cost to District, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to District.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold District harmless against any and all third party claims resulting from the breach or inaccuracy of any of the warranties within this Section 4(D).

E. In the event of a breach by Contractor of its obligations under this Section 4, District will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law.

**Section 5. PRICES.**

Unless expressly provided otherwise, all prices and fees specified in Exhibit "A," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of District. No extra charges of any kind will be allowed unless specifically agreed to in writing by District's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to District hereunder; and (ii) all charges for packing, freight and transportation to destination.

**Section 6. CHANGES.**

District, at any time, by a written order, and without notice to any surety, may make changes in the Equipment up to the time equipment has been sent into production, including but not limited to, District's requirements and specifications. Contractor will work with Purchaser if changes/modification are possible postproduction. If such changes affect the cost of the Equipment or time required for its

performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between District and Contractor and such change will be authorized by a change order document signed by District and accepted by Contractor.

**Section 7. PAYMENTS.**

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by District after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment. All invoices shall be sent to [invoices@ivgid.org](mailto:invoices@ivgid.org)

B. Payments otherwise due may be withheld by District on account of defective Equipment not remedied, liens or other claims filed, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect District against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, District may remove them at Contractor's expense.

C. Payment of the final Progress Milestone payment or any retention will be made by District upon:

1. Written acceptance of the Equipment by District;
2. Delivery of all drawings and specifications, if required by District;
3. Delivery of executed full releases of any and all liens arising out of this Agreement; and
4. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to District to indemnify District against any claim or lien at no cost to District.

D. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.C will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against District, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement with the exception of the obligations in Sections 12, 13, 14, and 16. However, payment for the final Progress Milestone by District will not constitute a waiver, release or discharge of any claims or demands which District then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

**Section 8. SCHEDULE FOR DELIVERY.**

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit A. Contractor must

immediately notify District in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights District may have under this Agreement or at law, Contractor shall pay District the sum of \$500 per vehicle of Equipment for each calendar day for which the vehicle of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "A," but any payment pursuant to this Section shall not exceed 1% of purchase price.

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that District can maximize the efficient completion of such project(s) so long as District gives sufficient notice to Contractor related to the coordination and or timing of the project.

## **Section 9. TAXES.**

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to District written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

## **Section 10. INDEPENDENT CONTRACTOR.**

Contractor enters into this Agreement as an independent contractor and not as an employee of District. Contractor shall have no power or authority by this Agreement to bind District in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of District. District shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

## **Section 11. SUBCONTRACTS.**

Unless otherwise specified, Contractor must obtain District's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to District, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind District.



**Section 12. TITLE AND RISK OF LOSS.**

Unless otherwise agreed, District will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on District property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the satisfaction of District. Notwithstanding the foregoing, in the event that the District has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then District shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered to District or District has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

**Section 13. INDEMNIFICATION.**

A. Contractor agrees to indemnify, defend and hold District, its officials, officers, employees, volunteers and agents harmless from any losses, damages, claims, expenses (including reasonable attorneys' fees and expenses), judgments or liability, resulting from the construction, delivery or use of the Equipment or the performance of this Agreement, to the extent such losses, damages, claims, expenses, judgments or liability are due to the negligence or willful misconduct of Contractor, its officials, officers, employees, and or agents.

B. District agrees to indemnify, defend and hold Contractor, its officials, officers, employees, and agents harmless from any losses, damages, claims, expenses (including reasonable attorneys' fees and expenses), judgment or liability, resulting from the construction, delivery or use of the Equipment or the performance of this Agreement, to the extent such losses, damages, claims, expenses, judgments or liability are due to the negligence or willful misconduct of District, its officials, officers, employees and or agents.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds.

**Section 14. INSURANCE.**

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage;
2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage;
3. Workers' Compensation in compliance with applicable statutory requirements; and
4. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give District, its officials, officers, employees, agents or volunteers additional insured status. Any available coverage shall be provided to the parties required to

be named as additional insured pursuant to this Agreement; such coverage shall be primary, and any insurance, self-insurance or other coverage maintained by the District shall be secondary.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-VII, licensed to do business in Nevada, and satisfactory to the District.

D. Evidence of Insurance. Contractor shall furnish District with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the District. All certificates and endorsements must be received and approved by the District before delivery

E. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

**Section 15. LIENS.**

A. Contractor will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor expressly waives and relinquishes any and all rights which it now has, or may have.

B. Contractor will save and hold District harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

**Section 16. TERMINATION OF AGREEMENT BY DISTRICT.**

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, District may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event District may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If District's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to District.

B. District may, for justifiable cause, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment only by 15-days prior written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which District may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,

2. Unless otherwise directed by District, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to District; and

3. Deliver only such portions of the Equipment which District deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that District will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, District will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

**Section 17. MISCELLANEOUS PROVISIONS.**

A. Dispute Resolution. If a dispute arises out of or relates to this Agreement or its breach, the Parties agree to first attempt in good faith to settle the dispute through non-binding private mediation before filing any court action. The cost of mediation will be shared equally between the Parties. The Parties agree the mediation will occur in Incline Village, Washoe County, Nevada, and will occur within 90 days of a Party demanding mediation.

B. Delivery of 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:

DISTRICT:  
Incline Village General Improvement District  
893 Southwood Blvd.  
Incline Village, NV 89451  
Attn: Mike Bandelin

CONTRACTOR:  
Kassbohrer All Terrain Vehicles Inc.  
8850 Double Diamond Parkway  
Reno, Nevada 89521  
Attn: Jeb Ellermeyer

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 its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

C. Force Majeure. Neither party will be liable for failure to perform any obligation under this Agreement to the extent such failure is caused by a force majeure event. A force majeure event includes, but is not limited to, acts of God, war, terrorism, strikes, civil unrest, government authority, disaster, pandemic/epidemic illness or outbreak, or any other emergency that makes it impossible, illegal or commercially unfeasible for either party to perform.

D. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the District, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due to Contractor from the District under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the District.

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

F. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

G. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

H. Governing Law. This Agreement shall be governed by the laws of the State of Nevada. Venue shall be in Washoe County.

I. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

J. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

K. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

L. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

M. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

N. District's Right to Employ Other Contractors. District reserves its right to employ other contractors in connection with the Equipment.

O. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

P. Limitation of Liability. In no event shall this Agreement be interpreted to waive the limitations of liability applicable to the District set forth in NRS Chapter 41 or other applicable law.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**OWNER:**  
**INCLINE VILLAGE G. I. D.**  
**Agreed to:**

\_\_\_\_\_  
Matthew Dent, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Noble, Secretary

\_\_\_\_\_  
Date

**Reviewed as to Form:**

\_\_\_\_\_  
Joshua Nelson  
District Legal Counsel

\_\_\_\_\_  
Date

**CONTRACTOR:**

**Agreed to:**

By: \_\_\_\_\_  
*Signature of Authorized Agent*

\_\_\_\_\_  
*Print or Type Name and Title*

\_\_\_\_\_  
Date

If CONTRACTOR is a Corporation, attach evidence of authority to sign.

**EXHIBIT A**  
**EQUIPMENT SPECIFICATIONS AND DELIVERY SCHEDULE**

<b>Description</b>	<b>Amount</b>
PistenBully 600 Polar Park Winch	\$580,000.00
V3 incl. LiDAR for PB 600 (828)	\$42938.00
Trade-in for PistenBully 400 winch WKU5824CQEL011171	(\$60,000.00)
Total	\$562,938.00

Price includes:

- 2023 Pisten Bully Polar Park Winch
- Two year Warranty
- Front mount, park
- Park blade (600), 4.7M
- Park PROflex
- Kombi (6belt), 4.2M for 600
- V3 incl. LiDAR for PB 600 (828)
- Delivery to Diamond Peak

Days to Achieve Delivery of Equipment: Based on mutual agreement, the Equipment is to be delivered to the Point of Destination no later than November 15, 2023. Delivery shall be made between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, excluding holidays, and coordinated with Buyer.



## Project Summary

<b>Project Number:</b>	3463HE1724
<b>Title:</b>	Replace 2014 Winch Cat Grooming vehicle # 699
<b>Project Type:</b>	F - Rolling Stock
<b>Division:</b>	63 - Slope Maintenance
<b>Budget Year:</b>	2024
<b>Finance Options:</b>	
<b>Asset Type:</b>	HV - Heavy Duty Vehicles
<b>Active:</b>	Yes

<b>Project Description</b>				
<p>This project is for the scheduled replacement of Diamond Peak's winch snow cat. This snow cat is a specialized piece of equipment used to groom Diamond Peak's steeper, off camber ski runs that no other piece of equipment in the fleet is capable of doing. It is on a 10-year replacement cycle subject to operating hours, accrued maintenance cost, oil analysis reports, visual inspection, and overall condition. Currently, Diamond Peak operates a total of 5-snowcats on the mountain. This replacement plan calls for replacement of one cat every other year in the line grooming fleet (5 cats). Recent research by staff indicates that our local competitors are averaging 30 acres groomed per night for each cat in their fleet - Diamond Peak is currently grooming 32 acres per night for each of our 5 cats in the line grooming fleet. This snow cat will be moved back in the CIP replacement program if indicators reveal no increased equipment down time or elevated maintenance cost will result by deferring the replacement date.</p>				
<b>Project Internal Staff</b>				
<b>Project Justification</b>				
<p>It is necessary to continue the routine replacement of our grooming equipment so that it is replaced prior to major component failure and to continue to stay abreast of industry changes and improvements to provide the best quality product for our skiing guests. Major component failure can cost more than the actual value of these vehicles as their age increases. These components can cost as much as \$25,000 for an engine or \$20,000 for a drive pump and motor set. There are 4-sets of these pump and motor assemblies on this winch snow cat. Grooming vehicles will only be replaced if serviceability, reliability, performance and economic factors dictate. Our records, as well as those of snow cat manufacturers, indicate that the hourly operating cost of a snow cat increases by more than 60% once they pass it's scheduled life cycle. Additionally, downtime increases in direct proportion, diminishing the quality of our grooming product.</p>				
<b>Forecast</b>				
<b>Budget Year</b>	<b>Total Expense</b>	<b>Total Revenue</b>	<b>Difference</b>	
2024				
Replace Grooming Vehicle #531 (Net of \$28,500 Trade-in Value of Old Equip.)	600,000	0	600,000	
Year Total	600,000	0	600,000	
2034				
Replace Grooming Vehicle #531 (Net of \$28,500 Trade-in Value of Old Equip.)	600,000	0	600,000	
Year Total	600,000	0	600,000	
	<b>1,200,000</b>	<b>0</b>	<b>1,200,000</b>	
<b>Year Identified</b>	<b>Start Date</b>	<b>Est. Completion Date</b>	<b>Manager</b>	<b>Project Partner</b>
2015	Jul 1, 2024	Dec 31, 2024	Fleet Superintendent	Municipal Lease Eligible

**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
CAPITAL IMPROVEMENT PROGRAM HISTORY - SNOW GROOMING MACHINE REPLACEMENT**

YEAR		MANUFACTURER	MODEL	EXPENSE	
1981-1982					
1982-1983	Purchase	Pisten Bully	200	\$95,000	
1983-1984	Purchase	Pisten Bully	200	\$100,000	
1984-1985	Purchase	Pisten Bully	200D - Winch	\$100,000	
1985-1986	Purchase	Pisten Bully	270	\$130,000	
1986-1987					
1987-1988					
1988-1989	Purchase	Pisten Bully	240D	\$115,000	
1989-1990					
1990-1991					
1991-1992					
1992-1993	Purchase	Pisten Bully	240D	\$135,813	
1993-1994					
1994-1995	Purchase	Pisten Bully	260D	\$140,048	
1994-1995	Purchase	Pisten Bully	260D -Winch	\$182,150	
1995-1996	Purchase	Pisten Bully	160 X/C	\$95,000	
1996-1997	Purchase	Pisten Bully	280D	\$157,000	
1997-1998					
1998-1999	Purchase	Pisten Bully	300	\$194,000	
1999-2000					
2000-2001	Purchase	Pisten Bully	300	\$205,000	
2001-2002					
2002-2003	Purchase	Pisten Bully	300 - Winch	\$239,800	
2003-2004					
2004-2005	Purchase	Pisten Bully	300 -Park	\$208,000	
2005-2006					
2006-2007	Purchase	Pisten Bully	300	\$229,100	
2007-2008					
2008-2009	Purchase	Pisten Bully	400	\$239,850	
2009-2010					
2010-2011	Purchase	Pisten Bully	400 - Park	\$241,000	
2011-2012					
2012-2013					
2013-2014					
2014-2015	Purchase	Pisten Bully	400 - Park Pro	\$333,632	
2014-2015	Purchase	Pisten Bully	400 - Winch	\$342,829	
2015-2016					
2016-2017					
2017-2018	Purchase	Pisten Bully	400 - Park Pro	\$328,500	
2018-2019					
2019-2020	Purchase	Pisten Bully	400 - Park Pro	\$374,500	
2020-2021					
2021-2022	Purchase	Pisten Bully	600 - Park Pro	\$400,000	
2022-2023					
2023-2024	Proposed	Pisten Bully	600 - Park Pro Winch	\$600,000	
2024-2025	Planned	Pisten Bully	600 - Park Pro		\$550,000
2025-2026					
2026-2027	Planned	Pisten Bully	600 - Park Pro		\$550,000
2027-2028					
2028-2029	Planned	Pisten Bully	600 - Park Pro		\$600,000
2029-2030					
Total				\$5,186,222	