

MEMORANDUM

TO: Board of Trustees

THROUGH: Indra Windquest
District General Manager

Paul Navazio
Director of Finance

FROM: Mike Bandelin
Diamond Peak General Manager

SUBJECT: Review, discuss and possibly approve:

- A. Sole Source Finding
- B. Procurement Contract for a Replacement Ski lift Haul Rope – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project # 3462HE1711; Vendor: Fatzer LTD. in the amount of \$71,293.59
- C. Procurement Contract for a Replacement Ski lift Haul Rope Services – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project # 3462HE1711; Vendor: Wire Rope Services in the amount of \$24,600.
- D. Budget augmentation of \$100,000 for CIP Project # 3462HE1711 (Lodgepole Ski Lift Maintenance and Improvements) - Ski Fund (340) from available Community Services Fund (Fund 300) reserves, to support total project costs
- E. Staff to execute all purchase documents based on a review by Legal Counsel and Staff

DATE: August 3, 2021

I. RECOMMENDATIONS

That the Board of Trustees makes a motion to:

A. Make the following sole source finding:

Review, discuss and possibly approve a Sole Source Finding, and review, discuss and possibly authorize a Procurement Contract for a Replacement Ski Lift Haul Rope – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project #3462HE1711; Vendor: Fatzer LTD. in the amount of \$71,293

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August 3, 2021

IVGID's purchase of a replacement Lodgepole Ski Lift Wire Rope from Fatzer LTD. is exempt from competitive bidding for the following reasons:

1. This purchase is from the result the occurrence of a disaster, including but not limited to, fire, flood, hurricane, riot, power outage or disease (NRS 332.112.1.a). The proposed purchase is a result of an electrical discharge associated with lightning in the vicinity of the ski lift.
 2. May lead to impairment of the health, safety or welfare of the public if not immediately attended to (NRS 332.112.1.b). The Wire Rope Service inspection report #21213 dated July 15, 2021 stated (It is highly recommended to replace the entire Lodgepole haul rope immediately).
 3. This purchase is for items which may only be contracted from a sole source (NRS 332.115.1.a). Fatzer LTD. provided a manufacturing and delivery date of the wire rope that may meet the required date for installation where as other manufacturer contacted were unable to meet the desired delivery date.
 4. 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 ski lift system use of wire ropes is predominantly Fatzer LTD.
- B. Authorize a procurement contract with Fatzer LTD. In the amount of \$71,293.
- C. Authorize a procurement contract with Wire Rope Services in the amount of \$24,600.
- D. Authorize a budget augmentation of \$100,000 for CIP Project # 3462HE1711 (Lodgepole Ski Lift Maintenance and Improvements) Ski Fund (340) from available Community Services Fund (Fund 300) reserves, to support total project costs.

Review, discuss and possibly approve a Sole Source Finding, and review, discuss and possibly authorize a Procurement Contract for a Replacement Ski Lift Haul Rope – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project #3462HE1711; Vendor: Fatzer LTD. in the amount of \$71,293

- E. Authorize Staff to execute all purchase documents based on a review by Legal Counsel and Staff.

II. BACKGROUND

The general purpose of this project is to maintain Diamond Peak Ski Area operations through a necessary replacement of the Lodgepole ski lift haul rope. The haul rope is the term used for the wire rope or cable that the ski lift carriers are attached to.

During a thunderstorm on June 29, 2021, the haul rope was damaged in four locations by an electrical discharge from lightning (an unanticipated act of nature) in the vicinity of the ski lift. The haul rope was inspected by Wire Rope Service on July 15, 2021 and the field meet revealed that intense heat melted the rope core material and the steel wires in each rope strand have become hard and brittle and will break in the near future. (see attached visual rope inspection report).

Due to the nature of this incident and the requirements for timely replacement of the Lodgepole Ski Lift haul rope, the project is exempt from competitive bidding. In addition, as the supply vendor has provided a 32-week lead time for delivery of the new haul rope, a procurement contract needs to be issued as soon as possible in order for the work to be completed prior to, or as close to, the start of the 2021/22 ski season.

The estimated project budget based on price quotes from supply and installation contractors is listed in the table below.

Estimated Project Budget

Description	Vendor	Amount
Procurement of wire rope	Fatzer LTD.	\$71,293
Wire rope removal and installation	Wire Rope Service	\$19,800
Splicing on new wire rope	Wire Rope Service	\$4,800
Estimated Project Total		\$95,893

Due to the nature of this incident, District Staff has submitted a claim with our property insurance provider, and on July 28, 2021 a representative from Envista Forensics provided field inspection of the damaged haul rope. At this time, Staff has not received a determination as to whether the replacement of the haul rope will be covered under the District’s insurance policy.

Review, discuss and possibly approve a Sole Source Finding, and review, discuss and possibly authorize a Procurement Contract for a Replacement Ski Lift Haul Rope – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski Ski; Project #3462HE1711; Vendor: Fatzer LTD. in the amount of \$71,293

III. BID RESULTS

The proposed procurement agreement, in compliance with NRS 332.115, is a sole source and Staff did not seek competitive bids for the proposed purchase.

IV. FINANCIAL IMPACT AND BUDGET

The estimated cost to replace the Lodgepole Ski Lift haul rope is \$95,893, Funding to support this work is proposed through a recommended budget augmentation of \$100, 000 from available Community Services Fund reserves.

The approved FY2021/22 Capital budget includes funding in the amount \$55,000 for CIP Project #3462HE1711 (Lodgepole Ski Lift Maintenance and Improvements) for planned capital equipment improvements. However, as the proposed replacement of the haul rope due to a lightning is an unanticipated capital replacement, and necessitates expanding the scope of the approved FY2021/22 capital project as well as a budget augmentation to supplement capital project appropriations included in the FY2021/22 budget. The proposed budget augmentation would come from available reserves within the District's Community Services Enterprise Fund.

Should the District's insurance claim prove successful, any insurance proceeds would be used to replenish the reserve funding currently recommended to support this project.

(It should be noted that due to the transition of the Community Services Fund from Special Revenue to Enterprise fund-type for FY2021/22), the recommended budget augmentation requires only approval by a majority of the Board of Trustees. No formal Board resolution is required, nor would the budget augmentation required subsequent approval by the State Department of Taxation).

V. ALTERNATIVES

The Board could not authorize the procurement contract and defer or eliminate replacement of the proposed project. Doing so puts the District at risk of high maintenance expenses and increased equipment down time or complete loss of equipment usage during Diamond Peak's operating season.

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August 3, 2021

VI. 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.

VII. ATTACHMENTS

- A. Wire Rope Service Lodgepole ski lift inspection report
- B. Fatzer LTD. Lodgepole ski lift wire rope purchase quote and agreement
- C. Wire Rope Service Lodgepole ski lift rope installation and splicing quote

VISUAL ROPE INSPECTION (VRI) REPORT of DAMAGED AREAS

Date 7/15/21
Location DIAMOND PEAK SKI RESORT
1210 SKI WAY
INCLINE VILLAGE, NV 89451
Installation LODGEPOLE QUAD

LIFT DATA

Manufacturer DOPPELMAYR
Type FIXED QUAD CHAIRLIFT
Drive UPPER STATION
Tension/ System LOWER STATION/ HYDRAULIC
Year installed 1996

WIRE ROPE SPECIFICATIONS

Manufacturer FATZER
Diameter nominal 38 mm
Construction 6x25 RIGHT LANG LAY
Wire finish BRIGHT
Core Material POLYPROPYLENE
Lubricant ELASKON
Year installed 1996
Last resplice 2014
Last inspection 2020 DIGITALIZED VISUAL ROPE INSPECTION (DVRI)

INSPECTION SPECIFICATIONS

Participants JOHN OLSON
Conditions 28 °C, SUNNY
Location LOWER & UPPER STATION

GENERAL ANALYSIS

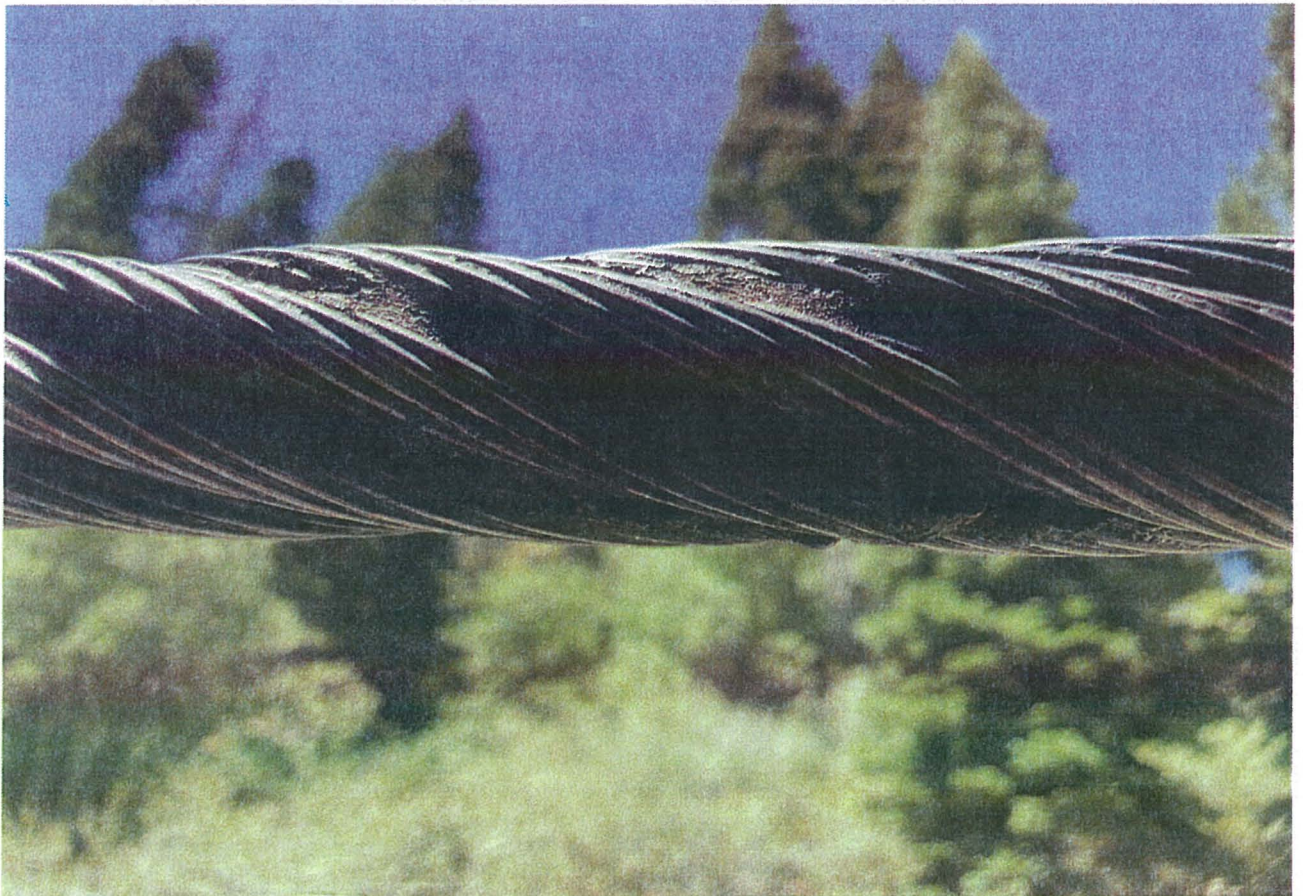
The damaged areas was visually inspected on July 15th.
The rope core melted at four differend locations of the cable.
These locations are the rope entrance and the rope exit at the bullwheels of lower station, and upper station.
Each area with melted core is between 10cm and 20cm long.
Intense heat made the core melt. Also the steel of the wires changed due to the same heat.
Martensite occurred. The wires became hard and brittle. They will most likely break in the very near future.

IT IS HIGHLY RECOMMENDED TO REPLACE THE ENTIRE ROPE IMMEDIATELY.

Jorg Tonett /// wire rope service

INSPECTIONS BY WIRE ROPE SERVICE, INC. PROVIDE A DIAGNOSTIC EVALUATION OF THE ROPE AT THE TIME OF INSPECTION ONLY AND CANNOT BE USED AS A WARRANTY OF THE ROPE'S FUTURE CONDITION.

PICTURES



Quotation

Lodgepole Quad

19.07.2021

Diamond Peak Ski Resort
1210 Ski Way
US-89451 Incline Village

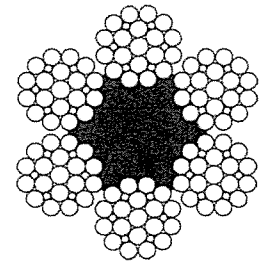
your contact John Olson
Phone +1 775 832 1129
E-Mail jgo@ivgid.org

our contact PhilippENZler
Phone +41 71 466 81 41
E-Mail philipp.enzler@fatzer.com

Sir, dear John,

We are pleased in submitting our quotation, basing on actual tariffs & rates

10 STABILO Haul rope		38.0gr625nb177fp
Length	[m] 1342	
Length	[ft] 4402	
Nominal-Ø	[mm] 38	
Nominal-Ø	[inch] 1 1/2	
Rope design	6x25 Filler Wire	
Core material	FULLPLAST solid plastic core	
Lubrication	Slightly lubricated with Elaskon 20 BB/94	
Type of lay and direction	right Lang lay	
Execution	preformed, pretensioned	
Wire finish	bright-uncoated	
Tensile strenght	[N/mm ²] 1770	
Metallic cross section	[mm ²] 593	
Mass	[kg/m] 5.23	
Mass	[lb/ft] 3.5	
Calculated breaking load	[kN] 1050	
Calculated breaking load	[lb] 236200	
Minimum breaking load	[kN] 914	
Minimum breaking load	[lb] 205500	
Conformity / Standards	EN12385-8	
Conformity & Test certificate	ANSI B77.1 - Country specific internal report (ANSI B77.1)	
Initial splice	1x Splice tape 60d + TRUsplice included, w/o works	
Packaging	1x non-returnable steel reel(s)	
Shipping weight (gross / net)	[kg] ~7748 / 7020	
Price	[USD] 71'293.59	[USD/m] 53.12



*When replacing a rope or new rope, the grooves of the sheaves must be adapted to the new rope.
 Traction and hoisting ropes : R groove = 0.53-0.54 x nominal Ø, depth 20-35% x nom-Ø
 Inappropriate groove geometry can cause premature rope +splice discard*

Quotation

Lodgepole Quad

19.07.2021

FATZER AG • Hofstrasse 44 • 8590 Romanshorn / Schweiz 
Tel. +41 71 466 81 11 • www.fatzer.com • info@fatzer.com

FATZER 
BRUGG

29. FATZER'S obligation to eliminate the defects is conditional on the CLIENT giving FATZER written notice of the relevant defects during the warranty period within 7 days after receiving the SUPPLIES (see clause 23) or, in the case of concealed defects, within 7 days of their discovery.
30. FATZER shall only bear the costs of remedial action that it incurs through its own work. All other costs shall be chargeable to the CLIENT. In the event that a "warranty claim" is not covered by the warranty, the CLIENT shall bear all costs arising for FATZER as a result of the assertion of the respective claim.
31. Any involvement by FATZER in investigating or rectifying defects shall have no impact on the existence and scope of the warranty.
32. The warranty period shall be 12 months from the date of delivery of the relevant SUPPLIES. In the event that SUPPLIES are replaced or repaired by FATZER, the relevant 12-month period shall commence upon delivery of the original SUPPLIES.
33. The CLIENT shall not be entitled to any rights and claims in relation to defects or the absence of any warranted quality (properties) except as expressly specified in the clauses 26-33. This limitation of warranty claims and liability shall not apply in the event of gross negligence, unlawful intent or fraudulent concealment by FATZER, or to the extent otherwise excluded by mandatory law.
- Services**
34. The object and scope of the SERVICES shall be specified exhaustively in the relevant contract. Additional terms and conditions may apply to the SERVICES. The SERVICES provided by FATZER in the area of assembly or supervision of the assembly of the SUPPLIES shall be governed on a subsidiary basis by separate conditions of assembly and instructions for vicarious agents/rope assembly/splicing.
35. The CLIENT shall examine the SERVICES promptly after they have been provided and notify FATZER of any complaints in writing immediately and under no circumstances within more than 7 days from the provision of the SERVICES (date of the postmark is decisive). In the event that the CLIENT fails to make such a notification, the SERVICES shall be deemed to have been accepted.
36. Unless expressly agreed otherwise, FATZER shall be liable to the CLIENT only for performing the SERVICES with due care, and thus shall not be liable for specific results, especially not in the case of consulting services related to the SUPPLIES. FATZER shall provide consultancy services to the best of its knowledge and belief, but does not warrant that the SUPPLIES are suitable for their intended usage by the CLIENT. The SERVICES of FATZER shall be based on the documentation of the CLIENT or of third parties made available. The CLIENT is responsible for ensuring that the documentation is up to date, complete and correct. FATZER does not accept any liability for deficient documentation or instructions. Otherwise, liability shall be determined in accordance with the clauses 39-42 (Liability, limitation of liability).
37. Clauses 26-33 (Warranty) shall apply *mutatis mutandis* in the event that liability as to specific results is expressly agreed to by FATZER.
- Retention of title**
38. The SUPPLIES shall remain the property of FATZER until the CLIENT has complied with the duty to make payment and FATZER has received in full all payments in accordance with this contract. The CLIENT shall be obliged to cooperate promptly in any action to uphold the ownership of FATZER. The CLIENT also authorises FATZER to enter its right of ownership in the relevant register of retention of title, in the event that FATZER wishes such an entry to be made.
- Liability, limitation of liability**
39. FATZER's liability arising out of or in connection with this contract or the improper performance thereof shall be limited to a total amount of 50% of the agreed contract price. This includes, in particular, any claims relating to delayed performance under clause 19.
40. The CLIENT shall not be entitled to claim compensation for indirect, collateral and consequential damages, loss of profit and unrealised savings, irrespective of the legal basis for claiming such damages. The same shall apply for damages attributable to the causes regulated under clause 27 (the CLIENT's own fault, improper assembly, ordinary wear and tear, etc.) as well as actions and omissions of vicarious agents.
41. All rights and claims of the CLIENT under or in relation to the contract or its deficient performance, irrespective of the legal basis, are expressly and exhaustively specified in these TERMS. There shall be no further rights and claims.
42. These limitations of liability shall not apply in the event of gross negligence or of unlawful intent by FATZER, or to the extent otherwise excluded by mandatory law.
- Return of (parts of the) supplies**
43. Subject to a prior written agreement, FATZER agrees to take back any or all of the SUPPLIES under the terms and conditions set forth in such agreement.
- Data protection**
44. FATZER processes particular personal data of its CLIENTS in relation to the contractual relationship or prior to entering into a contract. Data are processed by FATZER in accordance with the relevant provisions of the EU General Data Protection Regulation (GDPR), taking into account of the relevant national data protection law. All relevant information relating to data processing is set out in the document CRM 1215-200 (Data protection guidelines), which may be downloaded from the FATZER website at www.fatzer.com/dataprotectionguidelines, and may also be made available to the CLIENT upon request.
- Involvement of third parties**
45. FATZER shall be entitled to involve third parties in contractual performance. FATZER shall bear responsibility for the services of any third parties involved in the same manner as for its own.
- Intellectual property rights**
46. FATZER or any licensors shall retain all rights over all SUPPLIES and SERVICES, descriptions, brochures, plans, documents and data carriers, including rights under patent law and copyright or any other intellectual property rights. The CLIENT acknowledges these rights of FATZER or its licensors.
47. FATZER confirms that, as far as it is aware, the descriptions of SUPPLIES and SERVICES, brochures, plans, documents and data carriers provided to the CLIENT do not infringe any third party rights.
- Severability clause**
48. Should any individual terms of these TERMS be invalid or unenforceable, this shall not affect the validity of the remaining terms and of these TERMS as a whole. The invalid or unenforceable term shall be replaced by a valid term that comes as close as possible to the economic purpose of the invalid or unenforceable term.
- Jurisdiction and applicable law**
49. The exclusive place of jurisdiction shall be Romanshorn, Switzerland. FATZER shall however also be entitled to take action against the CLIENT at the CLIENT's domicile/registered office. If the CLIENT has its domicile/registered office abroad, Romanshorn, Switzerland shall also be the place of debt enforcement.
50. The legal relationship shall be governed by substantive Swiss law, to the exclusion of conflict of law principles and the UN Convention of 11 April 1980 on the international sale of goods (Vienna Sales Convention, CISG).

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT PURCHASE AGREEMENT

This Equipment Purchase Agreement (“Agreement”) is entered into on **Date** by and between the Incline Village General Improvement District, a Nevada general improvement district (“District”), and **Fatzer, LTD.**, with its principal place of business at **Hofstrasse 44, 8590 Romanshorn, Switzerland** (“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, Contractor’s **Proposal dated July 19, 2021** provided by Contractor, 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, unsatisfactory, 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 one year, 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
- D. Repay to District the purchase price of the defective Equipment.
- E. 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.
- F. 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 foregoing warranties.
- G. 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. Compensation shall be as indicated in Exhibit A, with a total amount of **Seventy-One Thousand Two Hundred Ninety-Three Dollars and Fifty-Nine Cents (\$71,293.59)**, to be billed as a fixed fee based on percentage complete measured against the estimated time schedule set forth in Exhibit A. In no event shall compensation for any Activity identified in Exhibit A exceed the amount set forth in the attachment. The fixed fee shall include Reimbursable Expenses and all charges for packing, freight and transportation to destination, and Contractor shall not request or receive any additional payments for such expenses.

Section 6 - Changes.

District, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, District's requirements and specifications. 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 AP@IVGID.ORG, with a copy to MLB@IVGID.ORG.
- B. If progress milestones have been specified within Exhibit A, then payments for the Equipment will be made as the requirements of such progress milestones are met. Progress payments for the Equipment will be made by District upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit A. Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit A and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit A or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other format and support documents for invoices will be determined by District in advance of the first invoice cycle.
- C. Payments otherwise due may be withheld by District on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, 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.

D. Payment of the final progress milestone or any retention will be made by District upon:

1. Submission of an invoice for satisfactory completion of the requirements of a progress milestone as defined in Exhibit A and in the amount associated with the progress milestone;
2. Written acceptance of the Equipment by District;
3. Delivery of all drawings and specifications, if required by District;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. 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.
6. 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.

E. Acceptance by Contractor of payment of the final progress milestone pursuant to Section 7 - D 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. 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 \$100.00 for each calendar day for which the Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit A.

- 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).

Section 9 - Taxes.

- A. Per Section 2.B.9, prices quoted for the Equipment must be exclusive of Federal and State taxes, as the District is exempt from such taxes.
- 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 complete 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 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. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
- B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the District, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse District and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its officials, officers, employees, agents or volunteers.

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. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the District or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the District, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.
- 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 commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

- E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15 - Liens.

- A. Contractor, subcontractors and suppliers 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, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.
- 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 and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. 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 its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by 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. 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 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.
- B. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- C. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- D. 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.

- E. Governing Law. This Agreement shall be governed by the laws of the State of Nevada. Venue shall be in Washoe County.
- F. 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.
- G. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- H. 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.
- I. 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.
- J. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- K. District's Right to Employ Other Contractors. District reserves its right to employ other contractors in connection with the Equipment.
- L. 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.
- M. 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 set their hands the day and date of the year first set forth above.

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

CONTRACTOR:
FATZER LTD.
Agreed to:

By: _____
Michael Bandelin
Diamond Peak General Manager

By: _____
Signature of Authorized Agent

Print or Type Name and Title

Date

Date

Approved as to Form:

Joshua Nelson
District General Counsel

If Contractor is a corporation, attach evidence of authority to sign.

Date

Owner's address for giving notice:
INCLINE VILLAGE G. I. D.
893 Southwood Boulevard
Incline Village, Nevada 89451
775-832-1267- Engineering Division

Contractor's address for giving notice:
FATZER AG
Hofstrasse 44
8590 Romanshorn
Switzerland

August 2, 2021

Diamond Peak Ski Resort
ATTN John Olson
1210 Ski Way
Incline Village, NV 89451
jgo@ivgid.org

LOGEPOLE QUAD - ROPE REPLACEMENT 1,340m - SCHEDULED FOR FALL 2021

description	amount in USD
Taking cable of the towers, Rigging of old cable, Construction splice (old with new cable), Spooling rope, Rigging of new cable, Putting new cable back on towers after splicing including Horizontal Spooler, Chain Spooler and all other equipment	\$ 19,800.00
Splicing of new 38mm cable, including tools & Splicing Certificate	\$ 4,800.00

- . **Wire Rope Service is sending 1-2 service representatives to perform the work.**
- . **Travel, travel time, room & board are included in this bid.**
- . **The bid is based on project demands up to 3 days on job site.**
- . **Rigging equipment, splicing tools, spool stand, horizontal spooler, chain spooler incl. delivery are included in this bid.**
- . **DIAMOND PEAK needs to provide a fork lift to unload and load equipment.**
- . **DIAMOND PEAK needs to provide**
 - 4-6 employees while rigging and derigging,**
 - 6 employees while rope pull,**
 - 10-12 employees for first third of splicing,**
 - 7 employees for the other two thirds of splicing.**
- . **DIAMOND PEAK is responsible to recycle the old rope.**
- . **Any waiting period or downtime spent on site (safety trainings, ...) that cannot be used directly for changing or splicing the rope will be invoiced at \$ 300 per hour.**

This bid shall remain binding upon Wire Rope Service, Inc. for fourteen (14) days from the date of hereof. If you have any questions contact (530) 412-0601 or by email at office@tonett.net .

LOOKING FORWARD FOR YOUR BUSINESS!

Sincerely yours,



Jorg Tonett /// wire rope service

This service order expressly incorporates herein by reference all terms and conditions included in that certain Agreement for Services previously entered into between Client and WRS.

The above proposal is accepted according to the terms hereof by Client's authorized representative.

[Redacted] SIGNATURE [Redacted] DATE [Redacted]

[Redacted] PRINT NAME [Redacted] PO# [Redacted]

[Redacted] TITLE