

RESOLUTION NO. 1632  
A RESOLUTION ESTABLISHING POLICY GOVERNING  
THE RELINQUISHMENT AND ACQUISITION OF UTILITY EASEMENTS  
AND ENCROACHMENT AGREEMENTS

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

WHEREAS, the Incline Village General Improvement District ("IVGID") is engaged in providing utility services within its service areas, under the authority vested in it by NRS 318.116(10) and (14) and Washoe County Ordinance No. 97 (As Amended May 20, 1961); and,

WHEREAS, IVGID is the Owner and holder of certain perpetual easement(s) and right(s) of way over and through the lands within IVGID's jurisdictional boundaries; and,

WHEREAS, a number of the sewer and water mains, pipelines and other utility facilities are fully outside of or partially outside of the above-described IVGID easements; and,

WHEREAS, numerous instances of landowner caused improvements exist within the rights of way, easements and line locations which obstruct or, with the passage of time, will obstruct IVGID's ability to service of maintain its sewer and water mains; that a vast majority of said improvements are of a landscaping nature including, but not limited to, fencing, patios, rock gardens and planting areas; that it is expected that these owner caused encroachments would add substantially to the cost of maintenance if IVGID were to be responsible for same; and,

WHEREAS, it is necessary and appropriate for IVGID to

enter into encroachment agreements with land owners wherein the costs associated with removal and replacement of encroaching improvements are borne by the landowner thereby minimizing costs that would inevitably be borne by all District users; and,

WHEREAS, it is necessary and appropriate for IVGID to abandon portions of some of the existing easements, and, in some cases, all portions thereof, or to realign or re-establish the existing easement(s) on the same parcel or parcels under a common ownership; and,

WHEREAS, pursuant to NRS 318.160, which governs IVGID's acquisition, disposal and transfer of real property, including easements and rights-of-way, the IVGID Board of Trustees wish to authorize IVGID's Director of Utilities to negotiate the complete or partial abandonment/relinquishment of existing easement(s) and rights-of-way or encroachment agreement items, in consideration of IVGID's obtaining of entirely new or partially new easement or right-of-way routes or agreements by landowners, such authority to include said Director's right, on behalf of IVGID, to sign and execute such abandonment/acquisition and encroachment agreements, subject to the Board's right to question and object to same, as provided for hereunder. The sample Encroachment Agreement and the sample Quitclaim Deed, same to be utilized in these transactions are attached hereto and incorporated herein as Exhibits "A" and "B," respectively. Any such transactions

shall be subject to any IVGID Board Member's right to request Board review, consideration and possible reconsideration of any such proposed abandonment/acquisition or encroachment agreement; and,

WHEREAS, it is anticipated that all or substantially all of said easement negotiations and relocations will be made without the exchange of monetary or other legal consideration from IVGID beyond that which is inherently a part of the exchange of the relinquished easement(s) and the new or modified one(s); that this Board believes that any exchanges that may require any additional legal consideration, beyond Two Thousand Dollars (\$2,000.00), be subject to this Board's prior approval.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED as follows:

1. That, under NRS 318.160 this Board has the authority to acquire, transfer and dispose of real property, including easements.

2. That, on the request of IVGID's Utility Department, this Board determines that there exists numerous situations in which IVGID utility improvements upon servient properties owned by IVGID utility users are actually located partially outside of, with a number entirely outside of their respective easements; that IVGID correspondingly determines that it is in IVGID's best interest to abandon/relinquish any such existing easements which are no longer necessary or useful in IVGID's

utility operations or for future expansion of IVGID utility systems.

3. That, this Board further determines that the foregoing action is both necessary and appropriate to allow the effective negotiation by IVGID with the same property owners whose property is subject to the existing easements as well as the sought-after new or modified easements that do contain existing utility improvements or will contain such, or which are otherwise for the operation and maintenance of IVGID utility systems.

4. That, due to this Board's already burdened calendar/agenda, which burden is expected to increase even without the routine consideration of matters such as these, and for purposes of economics and expediency in general, this Board conditionally delegates its authority to enter into the abandonment and acquisition of utility easements and execution of encroachment agreements, to IVGID's Director of Utilities so that the Director may negotiate with the respective property owner(s) and consummate said agreements, subject to the provisions hereunder. Any such proposed agreement shall be subject to the right of any Board member to request Board review of and possible reconsideration of the appropriateness or propriety of the proposed agreement. Such reconsideration shall include the right of this Board to confirm or modify the proposed Agreement in whole or in part.

5. That, a summary of any such referenced deed or

agreement, as the case may be, showing the nature of the proposed transaction, with the salient facts, shall be furnished to each member of this Board, at least ten (10) days prior to the Utility Director's execution of same, so that each member will have the opportunity to place the question of the appropriateness or propriety of such agreement on a regular Board meeting agenda, such agendizing to comply with the prescriptions of Chapter 241 of Nevada Revised Statutes. Absent any such request, the Utility Director shall then have the right to execute any documents essential to the consummation of the transaction.

6. That, amongst other appropriate provisions, any such agreement(s) shall require that the respective User/Property Owner shall indemnify and hold harmless IVGID and its directors, officers and employees from and against any and all actions, causes of action or suits, costs, claims, demands, expense, loss or liability for any injury to or death of any persons, or damage to any property, including IVGID's, User's or any third party, arising out of or in any way connected with the common use or occupancy of the said right(s) of way, easement(s)/location(s).

7. Any such agreements shall, amongst other things, further provide that the benefits and burdens of the Agreement(s) run with the land.

8. Notwithstanding anything herein contained to the contrary, it is further resolved that any proposed exchanges

and proposed agreements that involve an exchange of pecuniary or other legal consideration, in an amount exceeding Two Thousand Dollars (\$2,000.00), which additional consideration is potentially payable by IVGID, shall be first reviewed by this Board as a condition precedent to their being executed.

\* \* \* \* \*

I hereby certify that the foregoing is a true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Trustees of the Incline Village General Improvement District on the 12th day of November, 1992, by the following vote:

AYES:                           John Bevel  
                                    Bennie Ferrari  
                                    Joe Marson  
                                    Cliff McGough  
                                    Bob Wolf

NAYES:                          None  
                                    \_\_\_\_\_

ABSENT:                         None  
                                    \_\_\_\_\_

*Ronald W. Way*   SECRETARY

**AFTER RECORDING, Mail to:      Incline Village General Improvement District**  
893 Southwood Boulevard, Incline Village, Nevada 89451  
Attention: Jim Woods

**ENCROACHMENT AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_\_, 19 \_\_\_\_, by and between INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a political subdivision of the State of Nevada, hereinafter referred to as "IVGID", and (), hereinafter referred to as "User".

**WITNESSETH:**

WHEREAS, User is the owner of the following described property: (); and

WHEREAS, IVGID is engaged in providing utility services within its service areas and is the owner and holder of certain perpetual easement and right of way over and through the following described property of User: (); and

WHEREAS, User desires to construct, use and maintain certain improvements within and upon the easement area(s) owned and possessed by IVGID, said improvements consisting of: (); and

WHEREAS, IVGID is willing to consent to the construction, use and maintenance of the above-described improvements by User, within the right of way(s) of IVGID's easement(s), subject to the following promises, terms, conditions and limitations:

NOW, THEREFORE, in consideration of the mutual promises, detriments, covenants and conditions herein contained, IVGID and User agree and follows;

1. **Easement Ownership:** User recognizes without qualification IVGID's priority of title and ownership of the hereinabove described easement(s) location(s), acknowledging the exclusivity of the easement(s) location(s).
2. **User Liability:** User shall be liable for and promptly pay all costs of demolition and removal of said improvements, including any excavation or other work, materials and costs needed and made necessary by the presence of the improvements, should IVGID need to open said easement(s)/location(s) for new construction or maintenance, repair and replacement of existing pipelines/mains and related facilities.
3. **Hold Harmless; Indemnifications:** User shall indemnify and hold harmless IVGID and its directors, officers and employees from and against any and all actions, suits, causes of action or suits, costs, claims, demands, expense, loss or liability for any injury to or death of any persons, or damage to any property, including IVGID's or User's, arising out of or in any way connected with the common use or occupancy of the said right(s) of way, easement(s)/location(s).
4. **Running of Benefits and Burdens:** All provisions of this Agreement including the benefits and burdens shall run with the land described and are binding upon and inure to the parties hereto, their heirs, personal representatives, tenants, successors and assigns.

**EXHIBIT A**

5. Attorney's Fees: Either party hereto may enforce this Agreement by appropriate legal action. The prevailing party in any such action shall recover its costs and reasonable attorney's fees.

6. Entire Agreement: This document contains the entire Agreement between the parties relating to the rights and obligations herein contained and any oral representations or modifications concerning this instrument shall be of no force and effect. This Agreement may be modified only by a writing signed and executed by all parties hereto.

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

INCLINE VILLAGE GENERAL IMPROVEMENT  
DISTRICT, a political subdivision:

By: \_\_\_\_\_

User:

By: \_\_\_\_\_

By: \_\_\_\_\_



STATE OF )  
 ) ss  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_, personally appeared before me, a Notary Public in and for the said County and State, \_\_\_\_\_, a duly authorized representative of Incline Village General Improvement District, known to me to be the persons described herein and who executed the foregoing instrument and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes mentioned therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first written above in this certificate.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF )  
 ) ss  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_, personally appeared before me, a Notary Public in and for the said County and State, \_\_\_\_\_, known as User herein, known to me to be the persons described herein and who executed the foregoing instrument and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes mentioned therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first written above in this certificate.

\_\_\_\_\_  
NOTARY PUBLIC

QUITCLAIM DEED

THIS INDENTURE WITNESSETH:

That the Incline Village General Improvement District, a political subdivision of the State of Nevada, (hereinafter "IVGID"), as Grantor, for good and valuable consideration the receipt of which is hereby acknowledged, does hereby remise, release and forever quitclaim to \_\_\_\_\_

\_\_\_\_\_, as \_\_\_\_\_, all of its interest in and to that certain property described as:

\_\_\_\_\_, Incline Village, Washoe County, Nevada, Assessor's Parcel Number \_\_\_\_\_, and more particularly described as follows:

**See Exhibit "A" attached hereto and incorporated herein by reference.**

**A.P.N. # \_\_\_\_\_.**

To Have and to hold, all and singular the premises, together with the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof.

IN WITNESS WHEREOF, \_\_\_\_\_,  
Director of Utilities of Incline Village General Improvement District, has hereunto signed on the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
DIRECTOR OF UTILITIES

**EXHIBIT B**

STATE OF NEVADA        )  
                          ) ss:  
COUNTY OF WASHOE     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, personally appeared before me, a Notary Public, in and for said County and State, \_\_\_\_\_, Director of Utilities, known to me to be the person described in and who executed the foregoing document, who acknowledged to me that \_he executed the same freely, voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC