

MEMORANDUM

TO: Board of Trustees

THROUGH: Indra Winqest, District General Manager

FROM: Brad Underwood, Director of Public Works

SUBJECT: Review, discuss and possibly approve a Site Use License Agreement with NV Energy (Requesting Staff Member: Director of Public Works Brad Underwood)

RELATED STRATEGIC PLAN BUDGET INITIATIVE(S): **LONG RANGE PRINCIPLE #5 – ASSETS AND INFRASTRUCTURE**
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.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES Not Applicable

DATE: May 25, 2023

I. RECOMMENDATION

Review, discuss and possibly approve a Site Use License Agreement with NV Energy for property at Diamond Peak Ski Resort, and authorize the General Manager to execute the agreement.

II. BACKGROUND

NV Energy has planned to upgrade some facilities serving power to Incline Village. These improvements are divided into three distinct projects as follows:

1. Incline Substation Upgrade: to help accommodate the forecasted load growth in the area; increase reliability through replacement of aging substation infrastructure; implement natural disaster mitigation measures to reduce wildland fire risk by installing substation hardening controls.
2. NVE Reconductor Project for Overhead (OH) Line along SR-28: replace poles and reconductor OH copper line to OH covered conductor as a part of NVE Natural Disaster Mitigation and System Hardening programs for fire prevention; system improvement to increase reliability.

3. Underground an OH Line through Diamond Peak: Change and OH line to underground as part of NVE Natural Disaster Mitigation and System Hardening programs for fire prevention; system improvement to increase reliability.

To accomplish these projects, NV Energy requires property for employee and contractor parking and materials storage, refueling trucks, helicopter use including landing zone, refueling and material transport. With much of the work taking place at or near the Diamond Peak Ski Resort, NV Energy has requested that IVIGID provide a license agreement for their needs at this location. Since the work is to take place over four construction seasons, the term of the License Agreement is four years with the expiration date set at October 14, 2027. NV Energy will pay a \$1,000 per month fee to IVIGID during the use of the property from May 1st to October 14th each year. This fee was set to cover any limited time that staff spent preparing the agreement and any staff time that may be needed for coordination during the time NV Energy occupies the space. A pavement degradation fee will also be charged to NV Energy based upon the difference in pavement condition at the beginning and end of the lease. The pavement degradation fee is set at 25% due to normal degradation and, IVIGID's Contractor is using parking lot space for similar reasons for the Effluent Pipeline project over the same time span.

This item is placed on the Consent Calendar in accordance with Policy 3.1.0.4.

III. BID RESULTS

There are no bid results associated with this item.

IV. FINANCIAL IMPACT AND BUDGET

NV Energy will be paying a monthly fee for the use of Diamond Peak property in the approximate total amount of \$24,000 over the four-year term. In addition, the District will receive an underdetermined sum of money at the agreement termination for the pavement degradation that occurs.

V. ALTERNATIVES

Not approve the Site Use License Agreement with NV Energy.

VI. COMMENTS

Cooperating with NV Energy on this Site Use License Agreement is positive for the District as they work to make improvements to their facilities that are serving power to Incline Village.

VII. BUSINESS IMPACT/BENEFIT

These improvements by NV Energy are intended to provide the District and property owners of Incline Village with greater reliability and hardening of facilities against potential fire hazards. In doing so, IVIGID facilities will see fewer power interruptions and may then operate at a high level.

VIII. ATTACHMENTS

1. IVGID - Parking license agreement with NV Energy - Final-NVE Signed

IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

Review, discuss and possibly approve a Site Use License Agreement with NV Energy for property at Diamond Peak Ski Resort, and authorize the General Manager to execute the agreement.

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

1. PARTIES AND DATE.

This Parking License Agreement (“Agreement”) is entered into as of _____, 2023 by and between the Incline Village General Improvement District (“IVGID”) and Sierra Pacific Power, a Nevada corporation d/b/a NV Energy, Inc., a Nevada corporation (“Licensee”). All parties are at times referred to collectively as “Parties” and individually as “Party” herein.

2. RECITALS.

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

2.2 Licensee wishes to utilize the License Area for employee and contractor parking and materials storage, refueling trucks, helicopter use including landing zone, refueling and material transport. IVGID is willing to grant to Licensee the right to use the License Area, under the terms and conditions set forth herein.

3. TERMS.

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

3.2 License. IVGID hereby grants to Licensee a license in, on, across, and over the License Area, for the purpose of permitting employee and contractor parking and construction materials storage and staging by Licensee’s employees and contractors. Licensee may not store or use any hazardous materials as defined by applicable law in the License Area.

3.3 Term & Termination.

3.3.1 Term. This Agreement shall remain in effect from May 25, 2023 through October 14, 2027. Licensee may only use the License Area from May 1 through October 14 of each year of the Term.

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

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

3.5 Pavement Degradation Fee. IVGID shall, at its own expense, provide Licensee with a pavement assessment within 15 days of the execution of this Agreement (“First Pavement Assessment”). Within 15 days of the termination of this Agreement, IVGID shall, at its own expense, provide Licensee with an updated pavement assessment (“Second Pavement Assessment”) that determines the level of pavement degradation that occurred during the Term, ordinary wear and tear excepted, and the reasonable estimate associated with repair of the pavement to the original quality, ordinary wear and tear excepted, as established by the First Pavement Assessment. Within 45 days of receipt of the Second Pavement Assessment, Licensee shall pay to IVGID an amount totaling 25% of the estimated pavement restoration cost set forth in said Second Pavement Assessment.

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

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

in any letter of self-insurance. Licensee shall not commence use of the License Area until it has provided evidence satisfactory to IVGID that it has secured all insurance required under this section.

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

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

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

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

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

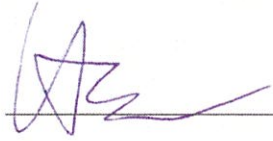
LICENSEE: NV Energy
Land Resources
Attn: Manager
6100 Neil Rd., MS S4B20
Reno, NV 89511

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

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

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

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(Signature)

William Kruger
Manager, Land Resources
SIERRA PACIFIC POWER COMPANY,
a Nevada corporation d/b/a NV Energy

051523

Date

Reviewed as to Form:

Joshua Nelson
District General Counsel

(Signature)

Indra Winqest
General Manager
Incline Village General Improvement
District

Date

EXHIBIT "A"

**APPROXIMATE GRAPHICAL DEPICTION OF
THE LICENSE AREA**



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