

# NOTICE OF MEETING

The Regular Meeting of the Incline Village General Improvement District (IVGID) Capital Investment Committee will be held starting at 3:30 PM on August 20, 2024 in the Boardroom at 893 Southwood Boulevard, Incline Village, Nevada.

Public Comment is allowed and Members of the Public are Welcome to provide Public Comment via Telephone at (877)853-5247 (the webinar ID will be posted to the IVGID Website on the day of the meeting). The Meeting will be Available for Viewing at <https://livestream.com/accounts/3411104>.

- A. PLEDGE OF ALLEGIANCE\*
- B. ROLL CALL OF TRUSTEES\*
- C. INITIAL PUBLIC COMMENTS - *Unless otherwise determined, the time limit shall be three minutes for each person wishing to make a public comment. Unless otherwise permitted by the Chair, no person shall be allowed to speak more than once on any single agenda item. Not to include comments on General Business items with scheduled public comment. The Board of Trustees may address matters brought up during public comment at the conclusion of the comment period but may not deliberate on any non-agendized item.*
- D. APPROVAL OF AGENDA *(for possible action)*
- The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.*  
*-OR- The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.*
- E. CONSENT CALENDAR (for possible action)
- F. GENERAL BUSINESS (for possible action)
1. **SUBJECT:** Review, discuss and provide feedback on the District's investment of an equipment purchase for a replacement PistenBully Snow Grooming Vehicle - 2024/25 Capital Improvement Project; Fund: Community Services; Division: Ski Venue; Vendor; Kassbohrer All-Terrain Vehicles, Inc. in the amount of \$550,000. (Requesting Staff Member: Diamond Peak General Manager Mike Bandelin) – *pages 3 - 62*

*Recommendation for Action:* That the District's Capital Investment Committee make a Motion to:

1. Authorize Staff to bring this Recommendation forward at a future District's Board of Trustees Meeting for Approval of the Equipment Purchase Agreement with Kassbohrer All-Terrain Vehicles, Inc. Totaling \$550,000.
2. **SUBJECT:** Review, discuss and provide feedback related to the proposed draft Request for Qualifications - to perform a Needs Assessment related to the Districts Snowflake Lodge at the Ski Venue. (Requesting Staff Member: Diamond Peak General Manager Mike Bandelin) – *pages 63 - 77*

## Incline Village General Improvement District

*Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.*

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • EMAIL: [info@ivgid.org](mailto:info@ivgid.org)

[www.yourtahoeplace.com](http://www.yourtahoeplace.com)

# NOTICE OF MEETING

Agenda for the Board Meeting of August 20, 2024 - Page 2

*Recommendation for Action:* That the Districts Capital Investment Committee provide feedback related to the presented Request for Qualifications to perform a Needs Assessment for the Snowflake Lodge Replacement; and Direct Staff to bring this Item forward as a Recommendation to a District's Board of Trustees meeting for approval.

3. **SUBJECT:** Review, Discuss and Provide Feedback Related to the 30% Schematic Design of the Skate Park, Option 1 and Option 2 - FY 2023/24 Capital Improvement Project Fund: General; Division: Parks: Project #4378BD2202; (Requesting Staff Member: Director of Public Works Kate Nelson)  
– *pages 78 - 100*

G. REPORTS TO THE COMMITTEE - Reports are intended to inform the Committee and/or public.

1. **SUBJECT:** Verbal Report on CIP Project Financial Tracking. (Requesting Staff Member: Director of Public Works Kate Nelson)

H. FINAL PUBLIC COMMENTS - Limited to a maximum of three minutes in duration.

I. ADJOURNMENT (for possible action)

## CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before 9:00 A.M. Thursday, August 15, 2024, a copy of this agenda (Capital Improvement Investment Committee Session of August 20, 2024) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were e-mailed to those people who have requested; and a copy was posted, physically or electronically, at the following locations in accordance with Assembly Bill 213:

1. IVGID Anne Vorderbruggen Building (893 Southwood Boulevard, Incline Village, Nevada; Administrative Offices)
2. IVGID's website ([www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas](http://www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas))
3. State of Nevada public noticing website (<https://notice.nv.gov/>)
4. IVGID's Recreation Center (980 Incline Way, Incline Village, Nevada)

Persons may request copies of all agenda materials by contacting the District Clerk or by visiting the Administrative Offices at the address listed above.

/s/ Heidi H. White

Heidi H. White

District Clerk (e-mail: [hwh@ivgid.org](mailto:hwh@ivgid.org)/phone # 775-832-1268)

*Capital Improvement Investment Committee: Raymond Tulloch (Chair), Bill Feast, Sarah Hussong-Johnson, Mike Lefrancois, and Jim Novack*

*Notes: Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (\*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. **IVGID'S agenda packets are available at IVGID's website, [www.yourtahoeplace.com](http://www.yourtahoeplace.com); go to "Board Meetings and Agendas".***

**MEMORANDUM**

**TO:** Capital Investment Committee

**THROUGH:** Raymond Tulloch, Board of Trustees

**FROM:** Mike Bandelin, Diamond Peak Ski Resort General Manager

**SUBJECT:** Review, discuss and provide feedback on the District's investment of an equipment purchase for a replacement PistenBully Snow Grooming Vehicle - 2024/25 Capital Improvement Project; Fund: Community Services; Division: Ski Venue; Vendor; Kassbohrer All-Terrain Vehicles, Inc. in the amount of \$550,000. (Requesting Staff Member: Diamond Peak General Manager Mike Bandelin)

**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**

Capital Planning Multi-Year Capital Planning Policy 12.1.0; Capital Project Budgeting Policy 13.1.0; Capital Expenditures Practice 13.2.0; Purchasing Policy for Goods and Services Policy 21.1.0

**DATE:** August 20, 2024

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**I. RECOMMENDATION**

That the District's Capital Investment Committee make a Motion to:

1. Authorize staff to bring this recommendation forward at a future District's Board of Trustees Meeting for approval of the Equipment Purchase Agreement with Kassbohrer All-Terrain Vehicles, Inc. totaling \$550,000.

**II. BACKGROUND**

This agenda item comes before the Capital Investment Committee for consideration as the District staff is following District best practices and Board of Trustees direction by including an agenda item at the Capital Investment Committees meeting to review District Capital Improvement Projects. 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 line grooming machines and one 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 grooming vehicles up to ten operating seasons before replacement funding occurs.

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:

1. 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.
2. 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.
3. 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 equipment purchase agreement, in compliance with the District's Purchasing Policy for Goods and Services, Policy 21.1.0 – 3.1 and NRS 332.115. The table below provides the description and amount of the proposed purchase.

Description	Amount
2024 PistenBully 600 Park Pro	\$535,000
V3 ind. LIDAR - PB 600	\$45,000
Trade-In for PistenBully 400	(\$30,000)
Total	\$550,000

**IV. FINANCIAL IMPACT AND BUDGET**

The District's Capital Improvement Program Budget for the (340 Ski Fund) in FY 2024/25 includes funding of \$550,000 for the replacement of the PistenBully Grooming vehicle. The ski fund (340) FY2024/25 includes total capital appropriations of \$1,125,000 for the following projects.

Budgeted Amount	Description
\$550,000	Replace Grooming vehicle - Originally purchased in 2014.
\$205,000	This Project Replaces One of the Two 2010 Ski Shuttle Buses.
\$20,000	This Project Replaces a Mountain Operations Snowmobile that is used by staff for transportation on the mountain.
\$100,000	This project consists of the procurement of two snowmaking fan guns that are currently onsite through a demonstration program.
\$175,000	This project replaces the 1966 Electrical Entrance Panels at the ski venue's main lodge.
\$75,000	Replace Red Fox Ski Lift 1979 Counterweight Cable and Haul Rope Carrier Grips

**V. ALTERNATIVES**

**VI. COMMENTS**

In conclusion, the following items have been discussed:

1. The snow grooming vehicle scheduled for replacement includes a 2014 PistenBully 400. This piece of equipment has operated for eleven seasons, including 10,215 total operating hours.
2. The replacement grooming vehicle project is funded through the 2024/25 Capital Improvement Project; Fund: Community Services; Division: Ski Venue; Amount: \$550,000.
3. The proposed equipment purchase agreement for the replacement grooming vehicle totals - \$550,000.
4. The Agreement has been approved by the District's legal counsel.

Provided the proposed investment of the replacement snow grooming vehicle equipment purchase moves forward, the District will place this item on a future District Board Trustees meeting agenda.

**VII. BUSINESS IMPACT/BENEFIT**

**VIII. ATTACHMENTS**

1. Equipment Purchase Agreement Between IVGID - Kassbohrer All Terrain Vehicles
2. 2021 Staff Report - Snow Grooming Machine - Kassbohrer
3. 2023 Staff Report - Replacement Snow Grooming Machine - Kassbohrer

**IX. DECISION POINTS NEEDED FROM THE CAPITAL INVESTMENT COMMITTEE**

## INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is entered into as of 7/18/2024, 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 ap@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:**

\_\_\_\_\_  
Sarah Schmitz, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mikayla Tonking, Secretary

\_\_\_\_\_  
Date

**Reviewed as to Form:**

\_\_\_\_\_  
Sergio Rudin  
District Legal Counsel

\_\_\_\_\_  
Date

**CONTRACTOR:**

**Agreed to:**

By:

  
\_\_\_\_\_  
Signature of Authorized Agent

J. Ellermeyer U.P. Pistenbully  
\_\_\_\_\_  
Print or Type Name and Title

7/18/2024  
\_\_\_\_\_  
Date

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

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

Description	Amount
PistenBully 600 Polar Park	\$535,000.00
V3 incl. LiDAR for PB 600 (828)	\$45,000.00
Trade-in for PistenBully 400 park pro	(\$30,000.00)
Total	\$550,000.00

Price includes:

- 2024 Pisten Bully 600 ParkPro
- Delivery to Diamond Peak
- Two-year warranty
- Park front mount
- Narrow Deck
- Park rear lift frame hitch
- Park Software
- Polar Park Blade
- ProFlex Tiller
- SNOWsat Install

Days to Achieve Delivery of Equipment: Based on mutual agreement, the Equipment is to be delivered to the Point of Destination 1210 Ski Way Incline Village Nevada 894501 no later than November 15, 2024. 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.



## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Indra Windquest  
District General Manager

Paul Navazio  
Director of Finance and Accounting

**FROM:** Mike Bandelin  
Diamond Peak General Manager

**SUBJECT:** Review, discuss and possibly approve a Sole Source Finding, **and** review, discuss and possibly authorize a Procurement Contract for a Replacement PistenBully Snow Grooming Vehicle – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project # 3463HE1728; Vendor: Kassbohrer All Terrain Vehicles, Inc. in the amount of \$400,000

**DATE:** July 1, 2021

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### **I. RECOMMENDATIONS**

That the Board of Trustees makes a motion to:

1. Make the following finding:

IVGID'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.
2. Authorize a procurement contract with Kassbohrer All Terrain Vehicles, Inc. totaling \$400,000.
3. 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 District operations through the necessary maintenance and replacement cycles. The contract proposed for award addresses the end of life cycle replacement of one of the Diamond Peak PistenBully snow grooming vehicles. Diamond Peak maintains a fleet of five PistenBully snow grooming vehicles to provide slope grooming, snow management, snowmaking support, chairlift loading and unloading area maintenance, and park features at Diamond Peak Ski Resort. A reliable and well functioning grooming fleet is a critical component to providing a great customer experience at Diamond Peak.

The equipment scheduled for replacement is a 2010 PistenBully 400 – PistenBully #645. This piece of equipment has operated eleven seasons, has over 9,600 operating hours, and has reached the end of its cost effective service life. It is at a point where the District can expect elevated maintenance and repair costs and increased equipment down time.

Snow grooming vehicles are replaced when serviceability, reliability, performance, and economic factors dictate. The District's current program involves keeping each machine for up to ten operating seasons. The District's service records, as well as those of snowcat manufacturers, indicate that the hourly operating cost of a standard grooming snowcat increases by more than 60% after 10 years of

operating. Downtime increases in direct proportion which impacts the quality of Diamond Peak's groomed product. Additionally, major component failure on a snow grooming vehicle may cost more than the actual value of one of these vehicles as its age increases. A replacement engine can cost as much as \$59,000 and a replacement drive assembly cost is over \$10,000 with each vehicle having three or four drive assemblies depending on the type of equipment.

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 measurement. The position of the snow grooming equipment is conveyed back to Diamond Peak computers in real-time along with snow depth measurements to support and optimize snowmaking and slope maintenance operations. The SNOWsat system allows greater management and quality control of grooming and snowmaking operations, reduces grooming and snowmaking operating costs by improving operational efficiencies, and improves on-mountain safety of the grooming operations. The snow management functionality provided by SNOWsat has been instrumental in providing a Diamond Peak snow surface standard for the past six years to our community and guests.

The District currently expenses one full time ski vehicle mechanic at the ski shop to maintain the over the snow vehicles as well as the off-season maintenance staff vehicles. The expense of one mechanic has proved sufficient in completing proper equipment maintenance and keeping down time acceptable with the current Districts Capital Improvement Equipment Replacement Program for snow grooming machines.

If the proposed contract is awarded, the District will place its order with Kassbohrer All Terrain Vehicles immediately and will take delivery of the vehicle in the fall in order to accommodate manufacturing lead time. Payment to the vendor does not occur until vehicle delivery.

### **III. BID RESULTS**

The proposed procurement contract, in compliance with NRS 332.115, is a sole source purchase from Kassbohrer All Terrain Vehicles, Inc and Staff did not seek

Review, discuss and possibly approve a Sole Source Finding, and review, discuss and possibly authorize a Procurement Contract for a Replacement PistenBully SnowGrooming Vehicle – 2021/2022 Capital Improvement Project; Fund: Community Services; Division: Ski; Project # 3463HE1728; Vendor: Kassbohrer All Terrain Vehicles, Inc. in the amount of \$400,000

-4-

July 1, 2021

competitive bids for the proposed vehicle. Specific equipment pricing is as listed below:

Description	Amount
PistenBully 600 Park Pro with Snowsat	\$444,000
Trade-in for PistenBully #645	(\$44,000)
Total	\$400,000

#### IV. FINANCIAL IMPACT AND BUDGET

A total of \$400,000 is included in the 2021/2022 Capital Improvement Program Budget for the replacement of Pisten Bully #645 under Project # 3463HE1728 (see attached data sheet).

#### V. ALTERNITIVES

The Board could not authorize the procurement contract and defer or eliminate replacement of the proposed snow grooming vehicle. 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.

#### 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. Procurement Agreement - IVGID and Kassbohrer All Terrain Vehicles Inc.
- B. EJCDC P-700 Standard General Conditions For Procurement Contracts
- C. Kassbohrer All Terrain Vehicle – Agreement To Purchase
- D. IVGID – Capital Improvement Program – replace snow grooming machine history
- E. IVGID - Project Summary #3463HE1728 data sheet
- F. Distric Equipment #645 Snow Grooming Machine Cost Analiysis
- G. District Purchase Order

# PROCUREMENT AGREEMENT

**THIS AGREEMENT** is dated as Date by and between the **Incline Village General Improvement District** ("Buyer") and **Kässbohrer All Terrain Vehicles, Inc.** ("Seller"). Buyer and Seller, in consideration of the mutual covenants set forth herein, agree as follows:

## ARTICLE 1 - GOODS AND SPECIAL SERVICES

The Goods and Special Services (Equipment) to be provided under these Procurement Contract Documents are generally described as follows:

A 2021 PistenBully 600 Park Pro with SNOWsat V3, including delivery, solid tires, vehicle fenders, SwitchBlade and hydraulic tiller wings, per Seller's exclusive proposal dated May 2021.

## ARTICLE 2 - POINT OF DESTINATION

The place where the Equipment is to be delivered is defined in the Procurement General Conditions as the Point of Destination and is designated as:

Diamond Peak Ski Resort  
1210 Ski Way  
Incline Village, Nevada 89451

## ARTICLE 3 - CONTRACT TIMES

Time of the Essence: The delivery of Equipment as stated in the Procurement Contract Documents are the essence of the Contract.

Date for Submittal of Shop Drawings: All Shop Drawings and Samples required by the Procurement Contract Documents shall be submitted to Buyer for review and approval within two (2) weeks of the date of Notice to Proceed.

Days to Achieve Delivery of Equipment: Based on mutual agreement, the Equipment is to be delivered to the Point of Destination no later than **Date**. 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.

Liquidated Damages: Buyer and Seller recognize that time is of critical importance in the execution of this Agreement and that Buyer will suffer financial loss if the Equipment is not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in this Article 3, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Equipment is not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$500.00 for each day that expires after the time specified in this Article 3 for delivery of Equipment in accordance with the Procurement Contract Documents. However, no liquidated damages will be assessed against Seller unless Seller is late in delivering Equipment according to the mutually agreed upon delivery schedule and Seller's late delivery adversely impacts Buyer's overall project critical path schedule. Payment of liquidated damages shall be Seller's

sole liability and Buyer's sole remedy for late delivery. In no event shall the total liquidated damages amount pertaining to late delivery exceed ten percent (10%) of the Contract Price.

#### **ARTICLE 4 - CONTRACT PRICE**

Buyer shall pay Seller for furnishing the Equipment in accordance with the Contract Documents in current funds as follows: A Lump Sum of **Four Hundred Thousand Dollars (\$400,000.00)**. This amount includes a trade-in allowance of \$44,000 for a 2010 PistenBully 400.

#### **ARTICLE 5 - PAYMENT PROCEDURES**

Submittal and Processing of Payments: Upon delivery of Equipment, seller shall submit an invoice for full payment to [invoices@ivgid.org](mailto:invoices@ivgid.org), with a copy to [mlb@ivgid.org](mailto:mlb@ivgid.org). Invoices will be processed by Buyer based on submittals by the Seller.

#### **ARTICLE 6 - SELLER'S REPRESENTATIONS**

In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:

- Seller has examined and carefully studied the Procurement Contract Documents
- If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Equipment, Seller has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Equipment.
- Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Equipment.
- Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Procurement Contract Documents.
- Seller has given Buyer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution thereof by Buyer is acceptable to Seller.
- The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Equipment.

#### **ARTICLE 7 – PROCUREMENT CONTRACT DOCUMENTS**

The Contract Documents consist of the following:

- This Procurement Agreement;
- Procurement General Conditions;
- Exhibits to this Procurement Agreement (enumerated as follows):
  - Seller's Exclusive Proposal dated May 2021

The documents listed above are attached to this Agreement, and there are no Contract Documents other than those listed above.

The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the Procurement General Conditions.

## **ARTICLE 8 - MISCELLANEOUS**

Successors and Assigns: Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Procurement Contract Documents.

Severability: Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Procurement Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Other Provisions: In the event of a dispute regarding interpretation, enforcement of, or a parties' performance under the Contract, the parties shall first engage in mediation, initiated by the written request of any part. The parties agree to share equally the cost of any such mediation process; however, they agree to assume the expense of their own counsel. Venue for any mediation shall be within Washoe County, Nevada. Commencement of mediation shall not affect any of the rights or obligations of either party hereunder, all of which shall continue to be performed on a timely basis. If the dispute(s) is (are) not resolved through mediation, and is (are) litigated, the prevailing party shall be entitled to reasonable attorney fees and costs. In the event that any action is filed in relation to this Contract, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and date of the year first set forth above.

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

**SELLER:**  
**Kässbohrer All Terrain Vehicles, Inc.**  
**Agreed to:**

By:

\_\_\_\_\_  
Mike Bandelin  
General Manager, Diamond Peak Ski Resort

By:

\_\_\_\_\_  
*Signature of Authorized Agent*

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

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**Reviewed 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 Div. Phone

Contractor's address for giving notice:  
**Kässbohrer All Terrain Vehicles, Inc.**  
8850 Double Diamond Parkway  
Reno, Nevada 89521  
775-636-4290



# EJCDC STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Those written or graphic instruments issued prior to the opening of Bids in accordance with the Bidding Requirements which clarify or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.

3. *Application for Payment*--The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*--An offer or proposal submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.

5. *Bidder*--A person who submits a Bid directly to Buyer.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Form of Bid security, if any, and Bid Form with any supplements.

8. *Buyer*--The person or public entity purchasing the Goods and Special Services. The words "Buyer" and "Owner" are used interchangeably.

9. *Change Order*--A document recommended by Engineer which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A written demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract.

11. *Contract*--The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--Those items listed in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Files in electronic media format of text, data, graphics, and the like are not Contract Documents, and may not be relied on by Seller. Approved Shop Drawings and other Seller's submittals are not Contract Documents.

13. *Contract Price*--The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.

14. *Contract Times*--The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.

15. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, intent, and character of the Goods and Special Services to be furnished by Seller.

16. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

17. *Engineer*--The person designated as such in the Agreement.

18. *Field Order*--A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.

19. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

20. *Goods*--The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.

21. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

22. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.

23. *Notice of Award*--The written notice by Buyer to the apparent Successful Bidder stating that upon timely compliance by the apparent Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.

24. *Notice to Proceed*-- A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.

25. *Point of Destination* --The specific address of the location where delivery of the Goods shall be made as stated in the Agreement.

26. *Project*--The total undertaking of which the Goods and Special Services to be provided under the Contract are a part.

27. *Project Manual*--The bound documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

28. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and which establish the standards by which such portion of the Goods or Special Services will be judged.

29. *Seller*--The person furnishing the Goods and Special Services.

30. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods or Special Services.

31. *Special Services*--Services associated with the Goods to be furnished by Seller as required by the Contract Documents.

32. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative details applicable thereto.

33. *Successful Bidder*--The lowest responsible Bidder submitting a responsive Bid, to whom Buyer makes an award.

34. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

35. *Written Amendment*--A written statement modifying the Contract Documents, signed by Buyer and Seller on or after the Effective Date of the Agreement and normally dealing with the administrative aspects of the Contract Documents.

## 1.02 Terminology

### A. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods or Special Services. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Goods or Special Services for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.

2. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

3. The word "non-conforming" when modifying the words "Goods" or "Special Services", refers to Goods or Special Services that fail to conform to the Contract Documents.

4. The word "receipt" when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.

### B. *Day*

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 2 - PRELIMINARY MATTERS

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### 2.01 Delivery of Bonds

A. When Seller delivers the executed Agreements to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish.

### 2.02 Copies of Documents

A. Buyer shall furnish Seller up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 Designated Representatives

A. Buyer and Seller shall each designate its representative at the time the Agreement is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

### 2.05 Before Starting Fabrication/Assembly of Goods

A. *Seller's Review of Contract Documents:* Before commencing performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent requirements therein and, if specified, all applicable field measurements. Seller shall promptly report in writing to Buyer and Engineer any conflict, error, ambiguity or discrepancy which Seller may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any work affected thereby.

### 2.06 Progress Schedule – *Not Applicable*

~~A. Within 15 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Contract Documents. No progress payment will be made to Seller until an acceptable schedule is submitted to Buyer and Engineer.~~

~~B. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.~~

### ~~2.07 Preliminary Conference~~

~~A. Within 10 days after the Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A., procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.~~

## ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND AMENDING

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### 3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided, whether or not specifically called for, at no additional cost to Buyer.

C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

### 3.02 Laws and Regulations, Standards, Specifications and Codes

A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Buyer or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be

effective to assign to Buyer or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Seller's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract or of any standard, specification, manual or code, or of any instruction of any supplier, Seller shall promptly report it to Buyer in writing for Engineer's review. Seller shall not proceed with the furnishing of the Goods or Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued. Seller shall not be liable to Buyer or Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Seller knew or reasonably should have known thereof.

B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 Amending and Clarifying Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods or Special Services or to modify the terms and conditions thereof by a Written Amendment or a Change Order.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods or Special Services not affecting Contract Price or Contract Times may be authorized, by one or more of the following ways: 1) a Field Order; 2) Engineer's approval of a Shop Drawing pursuant to Paragraph 5.06.D.2; or 3) Engineer's written interpretation or clarification.

## ARTICLE 4 - BONDS AND INSURANCE

*Not applicable.*

~~A. Seller shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price, to Buyer. The bonds shall be delivered in accordance with Paragraph 2.01 and shall remain in effect at least one year after the date final payment is due, except as provided otherwise by Laws or Regulations.~~

~~B. The bonds shall be issued in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations and shall be executed by a surety named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.~~

~~C. If the surety on a bond is declared bankrupt or becomes insolvent or its right to do business is terminated in the state where the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, Seller shall provide another bond and surety which comply with those requirements within 20 days, at Seller's expense.~~

### 4.02 Insurance

~~A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.~~

## ARTICLE 5 - SELLER'S RESPONSIBILITIES

### 5.01 Supervision and Superintendence

A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures used in performing its obligations. Seller shall be responsible to see that the completed Goods and Special Services conform to the Contract Documents.

### 5.02 Labor, Materials and Equipment

A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.

B. All equipment, products and material incorporated into the Goods shall be as specified, or if not specified, shall be new, of good quality and protected, assembled, used, connected, applied, cleaned and conditioned in accordance with the original manufacturer's instructions, except as otherwise may be provided in the Contract Documents.

### 5.03 Compliance with Laws and Regulations, Standards, Specifications and Codes

A. Seller shall comply with all Laws and Regulations applicable to the furnishing of the Goods and Special Services.

#### 5.04 Or Equals

A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer’s review.

1. If in Engineer’s sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an “or-equal” item.

2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and

b. Seller certifies that: 1) there is no increase in any cost including capital, installation or operating to Buyer; and 2) the proposed item will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

B. *Engineer’s Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraph 5.04.A. Engineer will be the sole judge of acceptability. No “or-equal” will be ordered, manufactured or utilized until Engineer’s review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer’s approval of an “or-equal” item, Seller shall remain obligated to comply with the requirements of the Contract Documents.

C. *Special Guarantee:* Buyer may require Seller to furnish at Seller’s expense a special performance guarantee or other surety with respect to any such proposed “or-equal.”

D. *Data:* Seller shall provide all data in support of any such proposed “or-equal” at Seller’s expense.

#### 5.05 Taxes

A. Seller shall be responsible for all taxes and duties arising out of the sale of the Goods and the furnishing of Special Services. All taxes are included in the Contract Price.

#### 5.06 Shop Drawings and Samples

A. Seller shall submit Shop Drawings and Samples to Buyer for Engineer’s review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide.

B. Where a Shop Drawing or Sample is required by the Contract Documents, any related work performed prior to Engineer’s approval of the pertinent submittal will be at the sole expense and responsibility of Seller.

#### C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:

a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and

b. that all materials are suitable with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.

2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.

3. Each submittal shall include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.

4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

#### D. Engineer’s Review

1. Engineer will review Shop Drawings and Samples within 1 week.

2. Engineer's approval of Shop Drawings or Samples will be subject to the standard of Paragraph 1.02.A.1. Engineer's approval will not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has in writing called Engineer's attention to each such variation at the time of each submittal as required by Paragraph 5.06.C.1. and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval.

#### E. Resubmittal Procedures

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.

#### 5.07 Continuing Performance

A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement.

B. Seller shall carry on the work and adhere to the progress schedule during all disputes or disagreements with Buyer. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

#### 5.08 Seller's Warranties and Guarantees

A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance.

B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Contract Documents, including any Samples approved by Engineer, and the Goods will be of merchantable quality. Engineer shall be entitled to rely on representation of Seller's warranty and guarantee.

C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, improper modification or improper maintenance or operation by persons other than Seller, or
2. normal wear and tear under normal usage.

D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an

acceptance of Goods or Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:

1. observations by Buyer or Engineer;
2. recommendation by Engineer or payment by Buyer of any progress or final payment;
3. use of the Goods by Buyer;
4. any acceptance by Buyer (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
5. the issuance of a notice of acceptance by Buyer pursuant to the provisions of Article 8;
6. any inspection, test or approval by others; or
7. any correction of non-conforming Goods or Special Services by Buyer.

E. Buyer shall within a reasonable time notify Seller of any breach of Seller's warranties or guarantees. If Buyer receives notice of a suit or claim as a result of such breach, Buyer also may give Seller notice in writing to defend such suit or claim. If Seller fails to defend such suit or claim, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit.

#### 5.09 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, shareholders, partners, employees, agents, consultants, contractors and subcontractors from any and all claims, costs, losses, and demands or judgments for damages for claims (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to a negligent act or omission or the breach of any obligation under this Contract by Seller, or its officers, directors, shareholders, partners, employees, agents, consultants, contractors or subcontractors, or anyone for whom Seller is responsible, provided that any such claim, cost, loss, or damage;

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods or Special Services themselves), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of Seller or any individual or entity directly or indirectly employed to furnish any of the Goods or Special Services or anyone for whose acts Seller may be liable, regardless of whether or not caused in part by any

negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. The indemnification obligations of Seller under paragraph 5.09.A shall not extend to the liability of Engineer and Engineer's consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## **ARTICLE 6 - SHIPPING AND DELIVERY**

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### *6.01 Shipping*

A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling and any other costs associated with shipment and delivery.

### *6.02 Delivery*

A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.

B. Seller shall provide written notice to Buyer at least 15 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated hour of delivery.

C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.

D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times set forth in the Agreement, or another date agreed by Buyer and Seller.

E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

### *6.03 Risk of Loss*

A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.

B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods.

## **ARTICLE 7 - CHANGES: SCHEDULE AND DELAY**

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### *7.01 Changes in the Goods and Special Services*

A. Buyer may at any time, without notice to any surety, make changes in the Contract Documents within the general scope of the Contract.

B. If any such change or action by Buyer affects the Contract Price or Contract Times, Seller shall notify Buyer within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Buyer within 45 days after such occurrence. If Seller fails to do so, Seller waives any Claim for such adjustment.

C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments.

### *7.02 Changes in Laws and Regulations*

A. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of furnishing the Goods and Special Services shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.A.

### *7.03 Changing Contract Price or Contract Times*

A. The Contract Price or Contract Times may only be changed by:

1. a Change Order;
2. a Written Amendment; or
3. a written unilateral order of Buyer, in which case Seller shall be entitled to an equitable adjustment in Contract Price or Contract Times for any reasonable and necessary costs or delays incurred by Seller to accommodate such a change.

B. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include fire, floods, epidemics, abnormal weather conditions, acts of God, acts of war, directions by government authority, and other like matters. If such an event occurs and delays

Seller's performance, Seller shall notify Buyer in writing within 15 days of the beginning of the event causing the delay, stating the reason therefor.

C. Contract Times will not be modified for delays within the control of Seller, including labor strife, transportation shortages or delays at Seller's facilities. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.

D. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.

E. Neither Buyer nor Seller shall be entitled to any damages arising from delays which are beyond the control of both Buyer and Seller, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, acts of war, direction by government authority, and other like matters.

## ARTICLE 8 - BUYER'S RIGHTS

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### 8.01 Inspections and Testing

#### A. General

1. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.

2. Seller shall bear all expenses, except for travel, lodging and subsistence expenses of Buyer's representatives, for inspections and tests at Seller's facility, but Buyer shall be entitled to reimbursement from Seller of travel, lodging and subsistence expenses of Buyer's representatives if the Goods are non-conforming.

3. Buyer shall bear all expenses, except for travel, lodging and subsistence expenses of Seller's representatives, for inspections and tests at the Point of Destination, but Buyer shall be entitled to reimbursement from Seller for Buyer's expenses for reinspection or retesting if, on the basis of an initial inspection or testing, the Goods are determined to be non-conforming.

4. Seller shall provide Buyer 30 days written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.

5. Buyer will give Seller timely notice of all specified tests, inspections and approvals of the Goods which are to be conducted at the Point of Destination.

6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.

7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Contract.

#### B. Inspection on Delivery

1. Buyer or Engineer will inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.

2. Within ten days of such inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming.

3. If, on the basis of the inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.

#### C. Final Inspection

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as intended, Buyer or Engineer will make a final inspection.

2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.

3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

### 8.02 Non-Conforming Goods or Special Services

A. If, on the basis of inspections and testing prior to delivery, the Goods appear to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Buyer determines that the Goods are non-conforming, Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either



correct such non-conforming Goods, or, if rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

#### B. Buyer's Rejection of Non-Conforming Goods

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.

2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.

3. Upon rejection of the Goods, Buyer retains a security interest in the Goods or to the extent of any payments made and expenses incurred in their testing and inspection.

#### C. Remedying Non-Conforming Goods or Special Services

1. If Buyer elects to permit the Seller to modify the Goods to remove the non-conformance, Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.

2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.

#### D. Buyer's Acceptance of Non-Conforming Goods

1. Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.

E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods or Special Services, including the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, or the obtaining of conforming Special Services from others.

#### 8.03 Correction Period

A. Seller's responsibility for correcting all non-conformities in the Goods will extend for a period of one year after the earlier of the date on which Buyer has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

### **ARTICLE 9 - ROLE OF ENGINEER**

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#### 9.01 Duties and Responsibilities

A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Contract Documents.

#### 9.02 Clarifications and Interpretations

A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be binding on Buyer and Seller. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

#### 9.03 Authorized Variations

A. Engineer may authorize minor deviations or variations in the Contract Documents by: 1) issuance of approved Shop Drawings when such change or deviation was duly noted by Seller as required in Paragraph 5.06.C.4, or 2) a Field Order.

#### 9.04 Rejecting Non-Conforming Goods and Special Services

A. Engineer will have the authority to disapprove or reject Goods or Special Services which Engineer believes to be non-conforming.

#### 9.05 Decisions on Requirements of Contract Documents

A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.

B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Buyer

or Seller and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

#### 9.06 Claims and Disputes

A. *Notice:* Written notice of each Claim, dispute or other matter relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.

B. *Engineer's Decision:* Engineer will render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, or dispute, or other matter will be final and binding upon Buyer and Seller unless:

1. an appeal from Engineer's decision is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13; or

2. if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by Buyer or Seller to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by Buyer and Seller), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If Engineer does not render a formal decision in writing within the time stated in Paragraph 9.06.B., a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

### ARTICLE 10 - PAYMENT

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*Not applicable; see Contract Agreement.*

#### ~~10.01 Applications for Progress Payments~~

~~—A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.~~

~~1. The first application for Payment will be submitted after review and approval by Engineer of all Shop Drawings and of all Samples required by the Contract Documents.~~

~~2. The second Application for Payment will be submitted after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice or other documentation satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that the Goods are free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights. In the case of multiple deliveries of Goods, additional Applications for Payment accompanied by the required documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.~~

~~—3. The third Application for Payment will be submitted after review and approval of the Operation and Maintenance Manual.~~

#### ~~10.02 Review of Applications for Progress Payments~~

~~—A. Engineer will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Seller may make the necessary corrections and resubmit the Application.~~

~~1. Engineer's recommendation of payment requested in the first Application for Payment will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data, that the Shop Drawings and Samples have been reviewed and approved as required by the Contract Documents and Seller is entitled to payment of the amount recommended.~~

~~2. Engineer's recommendation of payment requested in the Application for Payment submitted upon Buyer's acknowledgment of receipt of the Goods will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data Seller is entitled to payment of the amount recommended. Such recommendation will not constitute a representation~~

~~that Engineer has made a final inspection of the Goods, that the Goods are free from non conformities, acceptable or in conformance with the Contract Documents, that Engineer has made any investigation as to Buyer's title to the Goods, that exhaustive or continuous inspections have been made to check the quality or the quantity of the Goods beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle Seller to additional payments by Buyer or Buyer to withhold payment to Seller.~~

~~3. Engineer may refuse to recommend that all or any part of a progress payment be made, or Engineer may nullify all or any part of any payment previously recommended if, in Engineer's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests Engineer considers such refusal or nullification necessary to protect Buyer from loss because the Contract Price has been reduced, Goods are found to be non conforming, or Seller has failed to furnish acceptable Special Services.~~

#### ~~10.03 Amount and Timing of Progress Payments~~

~~—A. Subject to Paragraph 10.02.A., the amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment with Engineer's recommendation pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30 day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.~~

#### ~~10.04 Suspension of or Reduction in Payment~~

~~—A. Buyer may suspend or reduce the amount of progress payments, even though recommended for payment by Engineer, under the following circumstances:~~

~~1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents;~~

~~2. Buyer has requested in writing assurances from Seller that the Goods or Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.~~

~~—B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall~~

~~promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.~~

#### ~~10.05 Final Application for Payment~~

~~—A. After Seller has corrected all non conformities to the satisfaction of Buyer and Engineer, furnished all Special Services, and delivered all documents required by the Contract Documents, Engineer will issue to Buyer and Seller a notice of acceptability. Seller may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Contract Documents, a list of all unsettled claims and such other data and information as Buyer or Engineer may reasonably require.~~

#### ~~10.06 Final Payment~~

~~—A. If, on the basis of the review of the final Application for Payment and accompanying documentation, Engineer is satisfied that the Goods and Special Services have been furnished in accordance with the Contract Documents, and that Seller's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of Paragraph 10.07 and present the Application to Buyer. Otherwise, Engineer will return the Application to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer.~~

#### ~~10.07 Waiver of Claims~~

~~A. The making and acceptance of final payment will constitute:~~

~~1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens and Claims, from non-conformities in the Goods or Special Services appearing after final payment, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and~~

~~2. a waiver of all Claims by Seller against Buyer other than those previously made in accordance with the requirements herein and expressly noted in writing by Seller as still unsettled in its final Application for Payment.~~

## **ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION**

### *11.01 Cancellation*

A. Buyer has the right to cancel the Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Buyer. Upon cancellation:

1. Buyer shall pay Seller for Goods, specially manufactured for the Project, plus any documented reasonable direct and indirect costs incurred by Seller in producing such Goods not recovered by payment for the reasonable value of the Goods.

2. For Goods which are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

#### *11.02 Suspension of Performance by Buyer*

A. Buyer has the right to suspend performance of the Contract, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Contract Times and Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

#### *11.03 Suspension of Performance by Seller*

A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:

1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract. ("Reasonable grounds" shall not include a pending dispute or disagreement with Buyer) and,

2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

#### *11.04 Breach and Termination*

##### A. Buyer's Breach

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:

a. wrongful rejection or revocation of Buyer's acceptance of the Goods,

b. failure to make payments in accordance with the Contract Documents, or

c. wrongful repudiation of the Contract.

2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure the alleged breach.

##### B. Seller's Breach

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:

a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,

b. wrongful repudiation of the Contract, or

c. delivery or furnishing of non-conforming Goods or Special Services.

2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure the alleged breach.

b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

## **ARTICLE 12 - LICENSES AND FEES**

### *12.01 Intellectual Property and License Fees*

A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual

property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.

B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

#### *12.02 Seller's Infringement*

A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, Engineer and their officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Goods delivered hereunder.

B. In the event of suit or threat of suit for intellectual property infringement, Buyer will notify Seller within a reasonable time of receiving notice thereof.

C. Upon written demand from Buyer, Seller shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Seller fails to defend such suit or claim after written demand by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.

2. If Buyer fails to provide Seller the opportunity to defend such suit or claim after written demand by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.

D. If a determination is made that Seller has infringed upon intellectual property rights of another, Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's own expense.

#### *12.03 Buyer's Infringement*

A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged

infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).

B. In the event of suit or threat of suit for intellectual property infringement, Seller must within a reasonable time after receiving notice thereof notify Buyer.

C. Upon written demand from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.

1. If Buyer fails to defend such suit or claim after written demand by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.

2. If Seller fails to provide Buyer the opportunity to defend such suit or claim after written demand by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.

#### *12.04 Reuse of Documents*

A. Neither Seller nor any other person furnishing any of the Goods or Special Services under a direct or indirect contract with Seller shall: (1) acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions; or (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Seller from retaining copies of the Contract Documents for record purposes.

### **ARTICLE 13 - DISPUTE RESOLUTION**

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#### *13.01 Dispute Resolution Method*

A. Disputes between Buyer and Seller will be resolved as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of Paragraphs 9.05 and 9.06, Buyer and Seller may exercise such rights or remedies as they have under Controlling Law.

## **ARTICLE 14 - MISCELLANEOUS**

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### *14.01 Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### *14.02 Controlling Law*

A. This Contract is to be governed by the law of the state in which the Point of Destination is located.

### *14.03 Computation of Time*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### *14.04 Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### *14.05 Survival of Obligations*

A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Goods or Special Services and termination or completion of the Agreement.



# Agreement to Purchase Contract Addendum

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**Item 1:**

**Item 2:**

**Item 3:**

**Item 4:**

**Item 5:**



## TERMS AND CONDITIONS

1. All prices stated in this Agreement are subject to change to conform to prices of Kässbohrer All Terrain Vehicles, Inc., hereinafter called the "Seller", in effect at the time the vehicle(s) ordered under this Agreement are shipped, and will be increased or decreased if Seller changes its prices before shipment. Seller shall give Buyer written notice of any such increase or decrease in prices, and Buyer shall have the privilege of terminating this order within ten (10) days thereafter for any increase in the sales price only. If this Agreement is terminated because of a sale price increase, Seller shall return Buyer's cash deposit, if any.
2. This Agreement will not be binding on Seller until approved and accepted by Seller in writing indicated by an authorized signature.
3. This Agreement is not assignable or transferable, without Seller's consent.
4. If payment of any part of the price is deferred until after delivery, Buyer shall execute prior to delivery a security agreement and financing statement in a form required by Seller to evidence and secure that amount deferred. Alternatively, Seller may choose to retain title to the vehicles until Buyer pays the full purchase price.
5. If the Buyer fails to accept or take delivery of the equipment within 30 days after the date that the vehicle is available for delivery, at Seller's option the Buyer shall be obligated to pay interest, at Seller's maximum current rate of interest on conditional sales contracts, on the unpaid balance commencing on the thirty-first day after the date on which the vehicle became available for delivery. The Seller, at its option, by notice in writing to the Buyer, may terminate this Agreement and retain the deposit or trade-in as liquidated damages and, not as a penalty, and the Seller may take what other additional remedies that it may have at law.
6. This Agreement shall not be subject to termination by either Buyer or Seller, except as provided herein.
7. Buyer shall be in default under this Agreement if it (1) becomes bankrupt, insolvent, or unable to meet its financial obligations as they materialize during the term of this Purchase Agreement, or (2) is unable to pay Seller the purchase price for the vehicle(s) at the time and place provided that such changes do not adversely affect quality, but the Seller shall have no obligation to make changes or improvement either prior to or after delivery.
8. Without notice to Buyer, Seller may at any time make changes or improvements in the model and/or design of the vehicle(s) or any part thereof, provided that such changes do not adversely affect quality, but Seller shall have no obligation to make changes or improvement either prior to or after delivery.
9. Seller represents that it is the lawful owner of and has full right to sell the vehicle(s) sold under this Agreement, and that it has good title to the vehicle(s), free and clear of any and all liens and encumbrances.
10. Seller shall not be liable for any damages resulting from, and Buyer shall not have the right to terminate this Agreement for Seller's nonperformance or delay in performance due in whole or in part to any causes beyond Seller's control, including without limitation, acts of God, acts of the public enemy, acts of the Government, fires, floods, windstorms, tornadoes, wars, riots, insurrections, strikes, lockouts, sitdowns, slowdowns, or other labor trouble causing cessation or interruption of operations, or inability to procure labor or materials. This Agreement shall be deemed suspended so long as and to the extent that any such cause prevents or delays Seller's performance.
11. Risk of loss to each vehicle sold hereunder shall pass from the Seller to Buyer at the time that each such vehicle is accepted by Buyer. Title to each vehicle sold hereunder shall likewise pass from Seller to Buyer at the time that each such vehicle is accepted by Buyer, unless, however, either Seller shall not then have received the full and entire purchase price due for each such vehicle or unless Buyer shall have executed or be required to execute a security agreement of the nature described in paragraph 4 hereof. Buyer agrees to execute a suitable document on a form approved by Seller evidencing its acceptance of each vehicle sold hereunder.
12. The price stated herein shall be subject to an additional charge to cover any existing or future sales, use or similar tax or other charge which Seller must collect under applicable law.
13. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Maine.

### MATERIAL AND WORKMANSHIP WARRANTY

#### 14. WARRANTY

Seller warrants to the Buyer the products sold by it to be free from defects in material and workmanship under normal use and service. Seller's obligation under this warranty shall be limited to the repair or exchange of any part or parts which prove defective under normal use and service as follows:

**a. New Tracked Vehicles:** within one (1) year from the date of purchase by the Buyer or within the first one thousand (1000) hours of use whichever comes first;

**b. New Equipment:** within ninety (90) days from the date of purchase or date of first use by Buyer whichever comes first;

Seller's obligation under this warranty shall be limited to those parts which its examination shall disclose as defective. Should any failure to conform to this warranty become apparent during the warranty period, Seller shall, upon prompt, written notice and compliance by the Buyer with such instructions as Seller shall give with respect to the return of defective products or parts, correct such non-conformity by repair or replacement of the defective part or parts. Correction in the manner provided above shall constitute a fulfillment of all liabilities of Seller with respect to the quality of the products.

Seller will reimburse Buyer for labor needed for removal and installation and/or repair of warranted parts. Labor costs will be paid in accordance with the hourly rate and repair time guidelines as set forth by Seller at time of failure.

**LIMITATIONS**

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART AND SELLER NEITHER ASSUMES, NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THIS PRODUCT. SELLER MAKES NO WARRANTY WHATSOEVER IN RESPECT TO ACCESSORIES OR PARTS NOT SUPPLIED BY IT. THE TERM "ORIGINAL BUYER" AS USED IN THIS WARRANTY SHALL BE DEEMED TO MEAN THAT PERSON WHO PURCHASES THIS PRODUCT FROM SELLER OR ITS AUTHORIZED DEALER.

Seller shall not be liable for any loss or damage resulting directly or indirectly, from the use or loss of use of the Seller's product. Without limiting the generality of the foregoing this exclusion from liability embraces the Buyer's expenses for downtime or for making up downtime, damages for which the Buyer may be liable to other persons, damages to property, and injury to or death of any persons.

Seller is not responsible for tow charges or related expenses to transport vehicle and/or equipment to Buyer's repair site.

**EXCLUSIONS**

Seller does not warrant normal maintenance items, which includes filters, ignition and tune up parts, belts, lubricants, light bulbs and sealed beam units, antifreeze, repainting or touch-up etc. unless contaminated or damaged by failure of warranted part. Seller does not warrant this machine to meet the requirements of any safety code of any state, municipality, or other jurisdiction, and Buyer assumes all risk and liability whatsoever resulting from the use thereof whether used singly or in combination with other machines or apparatus.

This warranty shall not apply to any of Seller's products, or parts thereof, which have been repaired or altered without Seller's written consent, outside Seller's factory or altered in any way so as, in the judgment of Seller to affect adversely the stability of reliability of the Seller's product, or has been subject to misuse, negligence, or accident, or has not been operated in accordance with Seller's printed instructions or has been operated under conditions more severe than, or otherwise exceeding, those set forth in the specifications for such product. Seller is not responsible for failures resulting from the use of parts not approved by Seller. Seller reserves the right to alter or to improve its products to maintain a "state-of-the-art" product line, without admitting that alteration or improvement admits a product defect.

**SERVICE**

Authorized Seller's dealers will usually provide Seller's authorized warranty service. When possible, Buyer should have warranty service accomplished by Sellers selling dealer.

Upon requesting Seller's warranty service, Buyer must substantiate date of delivery of the equipment. Buyer shall assume all charges for service calls and transportation of the equipment to and from the location of the selling dealer or Seller if a selling dealer does not perform the repair.

**NOTICE**

Buyer must notify Seller by registered mail or certified mail, return receipt requested, of a breach of warranty within thirty (30) days after discovery thereof, but not later than the warranty period; otherwise, such claims shall be deemed waived. No allowance will be granted for any repairs or alterations made by Buyer without Seller's prior written consent.

**15. USED EQUIPMENT & MATERIAL**

USED EQUIPMENT OR MATERIAL IS SOLD AS IS UNLESS OTHERWISE STATED IN WRITING BY SELLER AT THE TIME OF THE SALE.

**CUSTOMER ACCEPTANCE OF TERMS AND CONDITIONS**

Auth. Signature \_\_\_\_\_ Initials \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

**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	Proposed	Pisten Bully	600 Park Pro	\$400,000	
2022-2023					
2023-2024	Planned	Pisten Bully	600 Park Pro		\$415,000
2024-2025					
2025-2026	Planned	Pisten Bully	600 - Winch		\$425,000
				\$4,586,222	



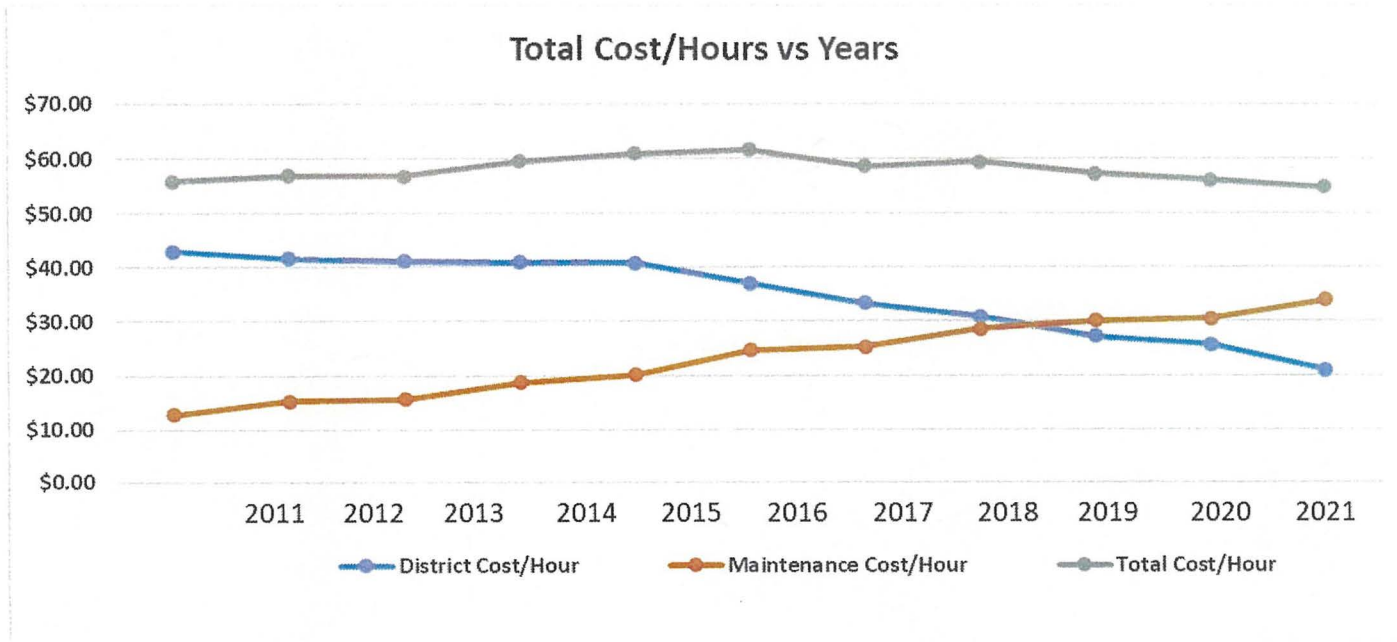
## Project Summary

<b>Project Number:</b>	3463HE1728
<b>Title:</b>	Replacement of 2011 Grooming Vehicle # 645
<b>Project Type:</b>	F - Rolling Stock
<b>Division:</b>	63 - Slope Maintenance
<b>Budget Year:</b>	2022
<b>Finance Option:</b>	Lease Eligible
<b>Asset Type:</b>	HE - Heavy Duty Service Equipment
<b>Active:</b>	Yes

<b>Project Description</b>				
This project funds the scheduled replacement of one of Diamond Peak's snow grooming vehicles. This snow cat 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 grooming machines on the mountain. The capital improvement plan identifies the replacement of a grooming vehicle every other fiscal year for the total of five machines included in the 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 costs as a result of deferring the replacement date.				
<b>Project Internal Staff</b>				
Fleet Maintenance Staff will manage this project				
<b>Project Justification</b>				
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 3-sets to each grooming vehicle. 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 the 8000 to 9000 hour operating range. Additionally, downtime increases in direct proportion, diminishing the quality of our grooming product.				
<b>Forecast</b>				
<b>Budget Year</b>	<b>Total Expense</b>	<b>Total Revenue</b>	<b>Difference</b>	
2022				
Replace Grooming Vehicle	400,000	0	400,000	
Year Total	400,000	0	400,000	
2032				
Replace Grooming Vehicle	425,000	0	425,000	
Year Total	425,000	0	425,000	
	<b>825,000</b>	<b>0</b>	<b>825,000</b>	
<b>Year Identified</b>	<b>Start Date</b>	<b>Est. Completion Date</b>	<b>Manager</b>	<b>Project Partner</b>
2012	Jul 1, 2021	Oct 31, 2021	Fleet Superintendent	Municipal Lease Eligible

## Life Cycle Cost Analysis District Equipment #645 Snow Grooming Machine

Year	Cumulative Hours	OWNERSHIP					OPERATION		Total Cost/Hour	Cumulative Cost
		Purchase Price	Trade-in Value	Misc.	Total District Cost	District Cost/Hour	Cumulative Maint. Cost	Maintenance Cost/Hour		
2011	982 hrs	\$241,000	\$201,720	\$2,920	\$42,200	\$42.97	\$12,547	\$12.78	\$55.75	\$54,747
2012	1,831 hrs	\$241,000	\$167,760	\$3,066	\$76,306	\$41.67	\$27,915	\$15.25	\$56.92	\$104,221
2013	2,659 hrs	\$241,000	\$134,640	\$3,219	\$109,579	\$41.21	\$41,385	\$15.56	\$56.77	\$150,965
2014	3,649 hrs	\$241,000	\$95,040	\$3,380	\$149,340	\$40.93	\$67,890	\$18.61	\$59.53	\$217,231
2015	4,322 hrs	\$241,000	\$68,120	\$3,549	\$176,429	\$40.82	\$86,794	\$20.08	\$60.90	\$263,223
2016	5,433 hrs	\$241,000	\$43,680	\$3,727	\$201,047	\$37.00	\$133,912	\$24.65	\$61.65	\$334,959
2017	6,525 hrs	\$241,000	\$27,040	\$3,913	\$217,873	\$33.39	\$164,356	\$25.19	\$58.58	\$382,229
2018	7,132 hrs	\$241,000	\$25,000	\$4,109	\$220,109	\$30.86	\$202,928	\$28.45	\$59.32	\$423,037
2019	8,238 hrs	\$241,000	\$21,000	\$4,314	\$224,314	\$27.23	\$247,338	\$30.02	\$57.25	\$471,652
2020	8,808 hrs	\$241,000	\$20,000	\$4,530	\$225,530	\$25.61	\$267,959	\$30.42	\$56.03	\$493,489
2021	9,624 hrs	\$241,000	\$44,000	\$4,756	\$201,756	\$20.96	\$325,352	\$33.81	\$54.77	\$527,108





**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**

**PURCHASE ORDER**

P.O. NUMBER	DATE
22-0030	07/07/2022

THIS NUMBER MUST APPEAR ON ALL INVOICE PACKING LISTS, LABELS, BILLS OF LADING AND CORRESPONDENCE.

Vendor Name, Address, and Number	Ship To Address And Phone Number	Please Send Invoices To
1004 <b>Kassbohrer All Terrain Vehicles, Inc.</b> 8850 Double Diamond Parkway Reno, NV 89521	<b>Diamond Peak Ski Resort</b> 1210 Ski Way Incline Village, NV 89451 775-832-1100	<b>Incline Village GID</b> 893 Southwood Blvd. Incline Village, NV 89451 775-832-1100 ap@ivgid.org

**\*\*\* This is Not an Approved PO \*\*\***

LINE NO.	QUANTITY	UOM	ITEM AND DESCRIPTION	UNIT COST	EXTENDED COST	GL Coding
1	1.00	Each	Procurement purchase, 2021/2022 capital improvement project #3463HE1728 replace snow grooming equipment - pending Board of Trustees approval. Vendor: Kassbohrer All Terrain Vehicles, Inc.	\$400,000.00	\$400,000.00	340-34-990-8120 Project #: 3463HE1728

<b>TOTAL</b>	<b>\$ 400,000.00</b>
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Comments:  
JSER ID

The District is granted Tax Exempt Status by the State of Nevada, State ID 88-7600004-K, therefore any goods or services delivered to the District within the boundaries of the State of NV are exempt from NV sales and use tax.

All shipments should be freight prepaid F.O.B. destination. Unauthorized shipments will be returned at the seller's expense Title and risk of loss on all items shipped shall pass to the buyer at the F. O. B. destination.

Payments of all invoices is net 30 unless expressly written and acknowledged in writing by the District's Director of Finance or Controller. IVGID's Federal Tax ID Number is 88-0099974.

CERTIFY THAT THE ABOVE PURCHASE IS FOR AN EXPENDITURE AS DEFINED BY NRS 354.520 OR AN EXPENSE UNDER NRS 354.523 AND THAT THE PURCHASE ORDER HAS BEEN ENCUMBERED AS DEFINED BY NRS 354.516.

  
Sandra Winquest General Manager

**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)
<b>Total</b>	<b>\$562,938</b>

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	

**MEMORANDUM****TO:** Capital Investment Committee**THROUGH:** Raymond Tulloch, Board of Trustees**FROM:** Mike Bandelin, Diamond Peak Ski Resort General Manager**SUBJECT:** Review, discuss and provide feedback related to the proposed draft Request for Qualifications - to perform a Needs Assessment related to the Districts Snowflake Lodge at the Ski Venue. (Requesting Staff Member: Diamond Peak General Manager Mike Bandelin)**RELATED STRATEGIC  
PLAN BUDGET  
INITIATIVE(S):****LONG RANGE PRINCIPLE #1 - SERVICE**

The District will provide superior quality service through responsible stewardship of District resources and assets with an emphasis on the parcel owner and customer experience.

**RELATED DISTRICT  
POLICIES, PRACTICES,  
RESOLUTIONS OR  
ORDINANCES**

**Long Term Initiative #6** - Execute the short and long term strategy as they relate to various District venues, facility master plans and studies as the roadmap for the future.

**DATE:** August 20, 2024**I. RECOMMENDATION**

That the Districts Capital Investment Committee provide feedback related to the presented Request for Qualifications to perform a Needs Assessment for the Snowflake Lodge Replacement; and Direct Staff to bring this Item forward as a Recommendation to a future Board of Trustees meeting for approval.

**II. BACKGROUND**

The District owns two day lodge facilities located at the ski venue. The Main Lodge located in the base area and Snowflake lodge located at the top of the Lakeview chair lift. Both Lodges were constructed in 1966 along with the other infrastructure to accommodate the Ski Incline Ske Area.

The Main Lodge has seen two significant remodels to the facility. In 1986, a project constructed the upstairs bar area and the expansion to the kitchen as well as the customer food court area. In 2008, a substantial project was completed to the facility, including adding restrooms to the bar area, expanded bar area seating, expanded food dry storage area, new main level restrooms, two new food outlets new loft bar deck, newly constructed roofline over the bar area, upgraded fire suppression system, new exterior siding and more.

The Snowflake lodge is today basically the same as constructed in 1966, with the

exception of a project that was completed in 1994 expanding the outdoor seating deck.

This agenda item comes before the Capital Investment Committee for consideration as the District staff has learned from the community and the Board of Trustees that a plan should be put into place to address next steps for the needs and future of the Snowflake Lodge facility.

Staff's intention of obtaining a qualified consulting firm is to assist in the process of assessing;

1. Space use and Programming
2. Capital Expenditures
3. Financial Modeling
4. Community and Stakeholder Collaboration

### **III. BID RESULTS**

Not applicable at this time.

### **IV. FINANCIAL IMPACT AND BUDGET**

The Districts ski venue appropriated funding for the Snowflake Lodge Needs Assessment scope of work within the FY 2023-24 budget in the amount of \$250,000. To date the District has incurred costs of \$5,000 for a site survey of the facility and estimates an expense of \$65,000 to complete a Needs Assessment study of the facility.

### **V. ALTERNATIVES**

Not applicable

### **VI. COMMENTS**

No comments at this time.

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

Not applicable at this point of the process.

### **VIII. ATTACHMENTS**

1. Ski Venue - Snowflake Lodge - Request for Qualifications - Perform Needs Assessment

### **IX. DECISION POINTS NEEDED FROM THE CAPITAL INVESTMENT COMMITTEE**

Not applicable





## **REQUEST FOR QUALIFICATIONS**

### **NEEDS ASSESSMENT for the SNOWFLAKE LODGE REPLACEMENT**

**1210 Ski Way  
Incline Village, Nevada**

**IVGID Project No. 3653BD1502**

**FORMAL SELECTION PROCESS**

**Issue Date: September 12, 2024**

**PUBLIC WORKS DEPARTMENT  
1220 SWEETWATER ROAD · INCLINE VILLAGE NV 89451  
PH: (775) 832-1203 · FAX: (775) 832-1260 · WWW.IVGID.ORG**

**REQUEST FOR QUALIFICATIONS  
NEEDS ASSESSMENT  
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**

September 12, 2024

**Project Identification**

Project Name: Snowflake Lodge Replacement  
Project Address: 1210 Ski Way, Incline Village, NV 89451  
IVGID Project No.: 3653BD1502

**Owner**

Incline Village General Improvement District  
1220 Sweetwater Rd.  
Incline Village, NV 89451

IVGID Project Manager: Bree Waters at [baw@ivgid.org](mailto:baw@ivgid.org) or 775.832.1372

The Design-Build Team shall be qualified to bid on public work in accordance with Nevada Revised Statutes (NRS) Section 338.1379 prior to submitting a response to this Request for Qualifications (RFQ).

All questions with regard to this RFQ shall be directed through the Owner's Planet Bids website; any questions regarding the use of Planet Bids shall be directed to the IVGID RFQ Contact listed above.

**Delivery Deadline**

Statements of Qualification (SOQ) packages from all interested parties will be submitted in PDF electronic format through the Owner's Planet Bids website:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=30437>, and will be subject to the terms, conditions and scope of services herein stipulated and/or attached hereto.

Deadline for receipt of SOQs is 2:00 p.m. Nov. 7, 2024. Planet Bids will automatically refuse any SOQs submitted after this time.

Confidentiality: All documents and other information submitted in response to this RFQ, including, without limitation, a Proposal, are confidential and will not be disclosed until notice of intent to award the contract is issued.

Incline Village General Improvement District (IVGID or District) is requesting competitive proposals for the Needs Assessment for the Snowflake Lodge Replacement (Project). This work will result in a document that will contain the information that will be the foundation for the architectural design, and will contain financial modeling as well as the anticipated financial impact of the proposed project.

The District will evaluate the Proposals submitted in response to this RFQ to identify the successful Consulting Firm to whom the Professional Services Contract for the Project will be awarded, based on a determination of which Proposal provides the best quality of deliverables to the District for the Project. A more detailed description of the selection process is set forth in Article 4, below.

A visit to the site can be arranged by contacting the IVGID Project Manager, Bree Waters.

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## ARTICLE 1 PROJECT DESCRIPTION AND BUDGET

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Project Name:	Snowflake Lodge Replacement
Gross Building Area:	8,500 ± SF
Total Project Budget:	\$10,000,000 ±

### General Project Description:

The Project proposes to demolish an existing approximately x,xxx square foot (SF) building, originally constructed in the 1960's, and replace it with a new lodge. The District aims to create a bridging document that will serve as the foundation for the design of the new lodge.

The Needs Assessment will include the following key components:

1. **Space Use Programming:** Confirm the specific size and range of services to be offered at the new lodge. The current building is outdated and undersized. A capacity analysis of existing winter operations has identified a significant resort-wide seating deficit, particularly at the Snowflake location.
2. **Capital Expenditures Analysis:** Determine the capital costs required to construct the new Snowflake Lodge facility and any related projects.
3. **Financial Modeling:** Explore the revenue potential and operational expenses of the new Snowflake Lodge, and assess its impact on the financial performance of the resort as a

whole.

4. **Stakeholder Collaboration:** Engage with key stakeholders at critical junctures to ensure alignment and address concerns.

## **ARTICLE 2                      SOQ SUBMITTAL REQUIREMENTS**

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The SOQ shall be indexed, shall be separated into the following specific categories, and the information within each category shall be ordered to match those listed in this RFQ.

A cover letter shall be included that addresses pertinent general information as deemed appropriate by the Consulting Firm. The cover letter shall also include the appropriate contact person at the Consulting Firm, along with their phone number and e-mail address.

### 1. Consulting Firm General Information

- a. Firm Information: Provide firm name, business address, year established, type of firm ownership (i.e., single source, joint venture), name and address of parent company, former parent company names, Nevada business license number, name and contact information for principal personnel, areas of responsibility, and total number of personnel.
- b. Firm Organizational Chart: Indicate lines of responsibility and/or communication.

### 2. Key Personnel Qualifications

- a. Provide a resume for each key person that will be assigned to this project. Include their name and title, project assignment, total years of experience, years of experience with this firm, education including degree(s), year and discipline, active registrations and licenses including the number and state, other qualifications, and experience.
- b. Describe the specific role performed on each project listed in the resume, highlighting projects of similar size and scope where the person's role was similar to their role on this project.

### 3. Project Experience

- a. Include experience from a minimum of three (3) of the firm's pertinent projects of similar work. Include project name, project description, client references for each project (including contact name, address, and telephone), completion date, project budget, type of services provided, and other pertinent information.
- b. Include any applicable experience in the State of Nevada.
- c. Include a statement as to whether the proposed key personnel were involved in any of the listed projects.

### 4. Past Performance

For each project listed under project experience (above), provide the following information:

- a. List the name, location, and a general description of each project.
- b. List your firm's record of cost performance (list contract amount versus final statement). Explain

- any cost deviations.
  - c. List your firm’s record of schedule performance (list original schedule versus final completion date). Explain any schedule deviations.
5. Client References  
 Consultant must provide a minimum of four (4) client references. The consultant’s submission of a complete list of references constitutes the consultant’s express consent for IVGID to contact the listed references regarding the qualifications of the consultant.
6. Current Workload  
 Provide a list and a summary paragraph describing the firm’s current workload, including a list of project names, associated contract values and rough percentage of completion.
7. Miscellaneous Submittal Requirements
- a. Nevada Business License – Appendix A
  - b. Prior Breach of Contract – Appendix B
8. A Fee Proposal for the proposed work shall be submitted in a separate email marked confidential. Fee Structure to include a comprehensive fee schedule including a detailed statement of hourly rates for all positions and classifications of individuals involved and reimbursable expenses. The Fee proposal can be broken into: 1) Initial Assessment, 2) Design Development, 3) Construction Documents and 4) Permitting. The Fee Proposal will not be weighted nor a part of the evaluation.

**ARTICLE 3 RFQ SCHEDULE**

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The following dates are tentative and are subject to revision by the Owner:

RFQ for Professional Services Advertised	Sept. 12, 2024
RFQ - Last Day for Questions	Oct. 3, 2024, 5:00 pm
RFQ - Last Day for Addenda	Oct. 15, 2024
SOQ Due	Nov. 7, 2024, 2:00 pm
Consulting Firm Selection	Nov. 26, 2024
Consulting Firm Contract Negotiations	Jan. 7, 2025
IVGID Board of Trustees Approval	Jan. 8, 2024

**ARTICLE 4 SELECTION, EVALUATION AND CRITERIA**

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Evaluation of the Consulting Firms will be based on the information provided in Article 2. Proposals will be evaluated on the following criteria:

- 1. Key Personnel Qualifications 30 Points
- 2. Project Experience (Similar Projects) 40 Points

3. Past Performance	30 Points
<b>Selection Point Total</b>	<b>100 Points</b>

Nevada Business License	Pass/Fail
Prior Breach of Contract	Pass/Fail

The Consulting Firm’s Cost Proposal shall be submitted in a separate email to Bree Waters at [baw@ivgid.org](mailto:baw@ivgid.org), marked confidential with the Firm’s name and title of the Project.

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**ARTICLE 5 WITHDRAWAL OF PROPOSAL**

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The Contractor’s authorized representative may, prior to the date and time set as the deadline for receipt of the SOQs, modify or withdraw a response via Planet Bids. A modification or withdrawal received by IVGID Engineering Division’s Planet Bids website prior 2:00 p.m. (PST) on November 7, 2024, shall be considered timely.

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**ARTICLE 6 TECHNICALLY UNACCEPTABLE/NON-RESPONSIVE**

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Technically unacceptable/non-responsive SOQs will be rejected by IVGID. Unacceptable/non-responsive SOQs are defined as SOQs that do not comply with the RFP terms, conditions, and requirements.

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**ARTICLE 7 ANTI-LOBBYING CLAUSE**

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During the period beginning on the date of issuance of this RFP by IVGID and ending on the date of substantial completion and Project acceptance by IVGID, no person or entity submitting a SOQ in response to this RFP, nor any officer, employee, representative, agent, or consultant representing such person or firm, shall communicate with the IVGID Board of Trustees, advisors, staff, or employees regarding this RFP or the scope of services described herein, except for: (1) communications with IVGID’s Submittal Contact identified in the Owner section above under Designated Contacts and Communication (Ronnie Rector), of this RFP; and (2) communications that are in response to inquiries initiated by IVGID with regard to the written review and modification process, or for purposes of clarifying some element of a Proposal or response; and (3) communications with the Evaluation Committee during the interview process.

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**ARTICLE 8 DISQUALIFICATION OF SOQS**

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Contractors may be disqualified and SOQs may be rejected for any of, but not limited to, the following causes:

1. Lack of signature by an authorized representative on the SOQ
2. Failure to properly complete the SOQ

3. Evidence of collusion among Contractors
4. Violation of Article 12 Anti-Lobbying Clause

IVGID reserves the right to waive any minor informality or irregularity, or to request clarification of such minor informalities or irregularities from any or all Prospective Contractors.

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## **ARTICLE 9                    CONFLICT OF INTEREST**

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No employee, officer, or agent of IVGID shall participate in the selection, or in the award or administration, of the Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when one of the following has a financial or other interest in any firm proposing on or selected for the award:

1. The employee, or an officer or agent of the employee
2. Any member of the employee's immediate family
3. The employee's business partner
4. An organization which employs, or is about to employ, any of the above

IVGID's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, Prospective Contractors, and subcontractors to Contractors whereby the intent could reasonably be inferred as influencing the employee in the performance of his or her duties or was intended as a reward for any official act on his or her part.

Prior to entering into the Pre-Construction Services Agreement, the Contractor is required to inform IVGID of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under an Agreement may, without some restriction on future activities, result in an unfair competitive advantage to the Contractor, or may impact the Contractor's objectivity in performing the Work.

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## **ARTICLE 10                    COLLUSION CLAUSE**

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Any evidence of agreement or collusion among Contractors will render the Proposal of such Contractors void.

Advance disclosures of any information to any particular Contractor, which gives that particular Contractor any advantage over any other Prospective Contractor, in advance of the opening, made or permitted by a member of IVGID or representative thereof, will operate to void all SOQs of that particular bid, solicitation, or request.

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## **ARTICLE 11                    RFQ APPENDIX**

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Only short-listed firms will be asked for a Fee Proposal and to review the Pre-Construction and

Construction Agreements, as well as the General and Supplementary Conditions of the contract for comments. They are included herein for reference.

Appendixes to this RFP are:

Appendix A – Baseline Project Schedule

Appendix B – Certificate of Eligibility

Appendix C– Sample Owner Professional Services Agreement



**APPENDIX A**

**BUSINESS LICENSING INFORMATION**

**BUSINESS LICENSING INFORMATION** All vendors doing business within IVGID are required to obtain and maintain a current business license from Washoe County prior to commencement of work (Sparks Municipal Code Section 5.08.020A). Vendor(s) awarded a contract resulting from this bid shall be required to obtain a current business license if they do not already hold one.

Washoe County Business License Number:
Date Issued:
Date of Expiration:
Name of Licensee:
City, State, Zip Code of Licensee:
Telephone Number of Licensee:
Taxpayer Identification Number:

**APPENDIX B**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS**

**CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS  
(This form to be signed and returned at the time of bid)**

The prospective bidder, \_\_\_\_\_ certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. Any exceptions provided will not necessarily result in denial of award, but will be considered in determining bidder responsibility and whether or not IVGID will enter into contract with the party. For any exception noted, indicate on an attached sheet to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

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Typed Name & Title of Authorized Representative

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Signature of Authorized Representative

Date

I am unable to certify to the above statement. My explanation is attached.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX C**

**PROFESSIONAL SERVICES AGREEMENT EXAMPLE**

**MEMORANDUM**

**TO:** Capital Investment Committee

**THROUGH:** Bobby Magee, District General Manager

**FROM:** Kate Nelson, Director of Public Works

**SUBJECT:** Review, Discuss and Provide Feedback Related to the 30% Schematic Design of the Skate Park, Option 1 and Option 2 - FY 2023/24 Capital Improvement Project Fund: General; Division: Parks: Project #4378BD2202; (Requesting Staff Member: Director of Public Works Kate Nelson)

**RELATED STRATEGIC PLAN BUDGET INITIATIVE(S):**

**LONG RANGE PRINCIPLE #1 - SERVICE**

The District will provide superior quality service through responsible stewardship of District resources and assets with an emphasis on the parcel owner and customer experience.

**Long Term Initiative #6** - Execute the short and long term strategy as they relate to various district venue and facility master plans and studies as the roadmap for the future.

**RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES**

**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.

**Long Term Initiative #2** - Continue to implement top priorities identified in the Community Service Master Plan, priorities as defined by the Board of Trustees.

**DATE:** August 20, 2024

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## **I. RECOMMENDATION**

Not Applicable.

## **II. BACKGROUND**

In April 2000, the Board initiated the design phase for the Incline Skate Park, which was subsequently constructed in the spring of 2001. For over two decades, the Incline Skate Park has been a popular destination for skateboarders of all ages and skill levels. However, the facility no longer adequately meets the needs of its users or the broader community. The park's limited size relative to the number of users exacerbates safety concerns. Compared to surrounding skate parks, the Incline Skate Park is the smallest and lacks sufficient beginner features and variety to support skill development across all levels.

The Incline Skate Park is one of the community's most heavily used facilities, with camps in high demand and consistently selling out shortly after registration opens. The Community Services Master Plan (CSMP), updated in 2019, identifies several recommendations, including the Skate Park Enhancement Project as a Second Tier Recommendation (Pages 132-139). The CSMP states, "The skatepark has the potential to provide a better range of structures to meet both beginner and experienced user needs. The current design is focused more towards experienced users, which reduces overall use." Additionally, the CSMP notes, "The skatepark is adequate but is not designed for multiple age groups/ability levels. Incorporating a variety of elements for beginners, young skaters, and experienced skaters will enhance the facility. These enhancements have community support and could greatly increase the use of community resources."

At the Board Meeting on January 12, 2022 (Item G.4), the Skate Park Enhancement Project was officially designated as a Board Priority Project, with an initial budget allocation of \$190,000 for FY 2022. In the summer of 2022, the staff successfully secured a grant from Washoe County to fund enhancements to the Incline Skate Park. Subsequently, at the Board Meeting on December 14, 2022 (Item G.1), the Board formally accepted a Notice of Subaward (Non-Competitive Grant) from Washoe County in the amount of \$250,000 for the project. During this meeting, staff also noted that while \$190,000 had initially been budgeted for the project in FY 2022, the prevailing construction climate might necessitate additional funding. Further direction was provided at the Board Meeting held on July 25, 2023 (Item G.2), where the Board instructed staff to issue a Request for Proposals (RFP) for a Design-Build team. The selected team will be tasked with developing a 30% Schematic Design for two potential project options:

- Option 1: A smaller footprint project area with a total cost fully covered by

the \$250,000 Washoe County grant.

- Option 2: A larger footprint project area with a total cost of \$500,000.

The RFP solicited bids for total project costs of \$250,000 and \$500,000, encompassing both hard and soft costs. These budgets account for permitting, design, construction, demolition, hazardous materials remediation (if required), new construction, site work, underground utilities, such as drainage, landscaping, site furnishings, and contingencies for two different skate park options: one estimated at approximately 2,000 SF, and the other at approximately 4,000 SF. The intent of the Board was to decide upon a design and related total project budget once the 30% Schematic design has been completed and presented for consideration.

### **III. BID RESULTS**

Not applicable.

### **IV. FINANCIAL IMPACT AND BUDGET**

The FY 2023/24 Budget includes funding in the amount of \$500,000. Project funding is provided through a grant award from Washoe County as well as funding from the General Fund. The Parks Department has indicated that current maintenance requirements for the Skate Park are approximately 75-100 hours per year, which includes tasks such as maintaining hard surfaces and trash removal. It is anticipated that these maintenance hours would increase by approximately 15% for Option 1 and 25% for Option 2, should the park's hard surfaces be expanded.

This summer marks the fourth consecutive year that the Recreation Department has offered Skate Camps. The program includes eight one-week sessions throughout the summer, with the camps wrapping up this week. This year, the camp attracted 81 participants, generating a total revenue of \$19,125. The camp is managed by two employees who are compensated on a commission basis. Of the participants, 69 were residents, and 12 were non-residents. Non-residents are charged an additional \$75 per session compared to residents.

### **V. ALTERNATIVES**

Not applicable.

### **VI. COMMENTS**

As outlined above, Spohn Ranch was selected as the Design-Build team responsible for developing a 30% Schematic Design for two potential project



options:

- Option 1: A smaller project area of approximately 2,000 square feet (SF), with a total cost fully covered by the \$250,000 Washoe County grant.
- Option 2: A larger project area of approximately 4,000 SF, with a total cost of \$500,000.

Following Board approval on April 10, 2024, project design and progress meetings commenced immediately and were held bi-weekly. These meetings included the Design-Build team, District Staff, and members of the Skate Park community, ensuring all stakeholders were actively involved from the outset. The design concepts were continually presented and refined through ongoing collaboration.

Options 1 and 2 are included in Attachment 1.

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

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

## **VIII. ATTACHMENTS**

1. 30% Schematic Design Delivery

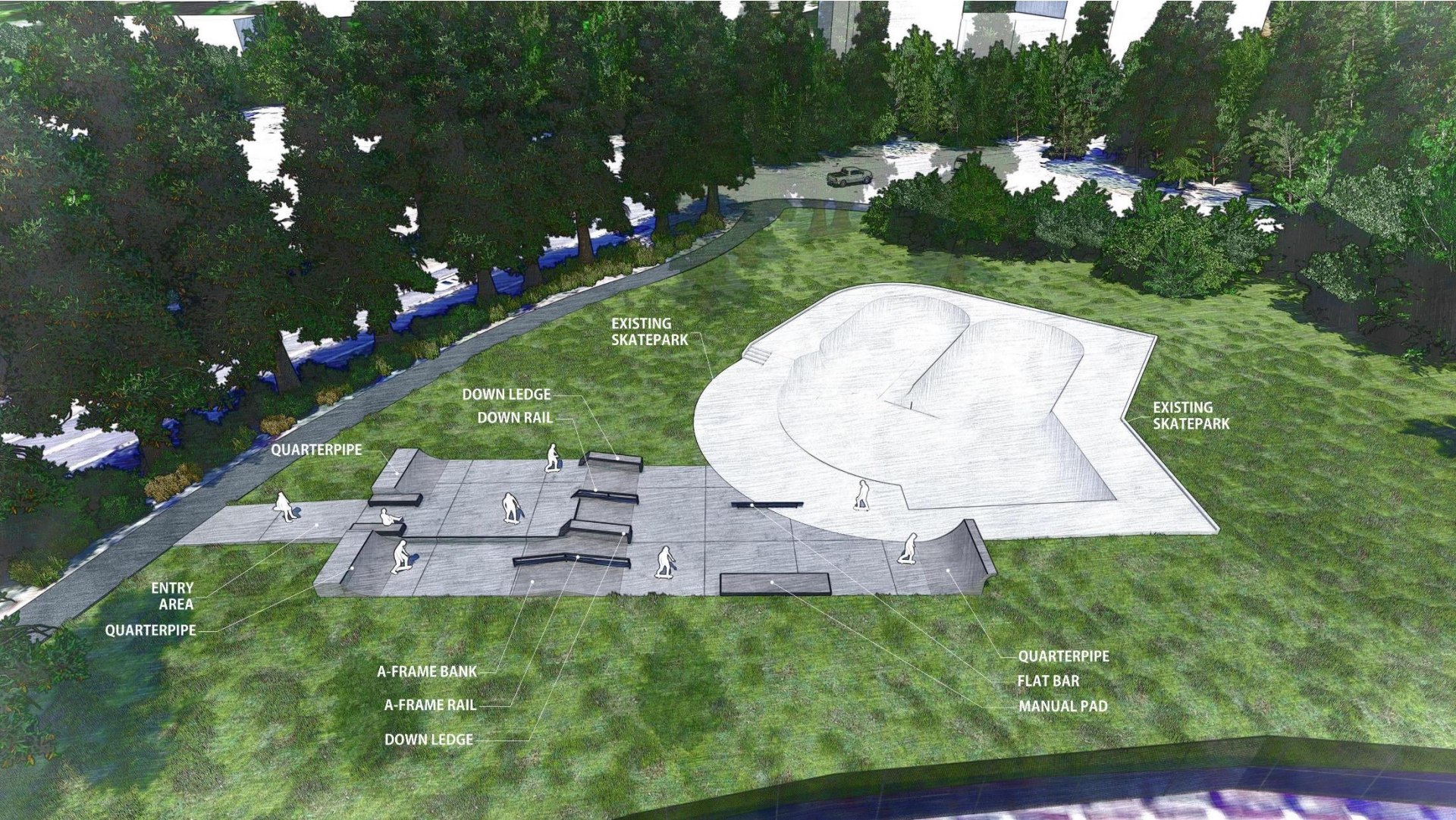
## **IX. DECISION POINTS NEEDED FROM THE CAPITAL INVESTMENT COMMITTEE**

Not applicable.

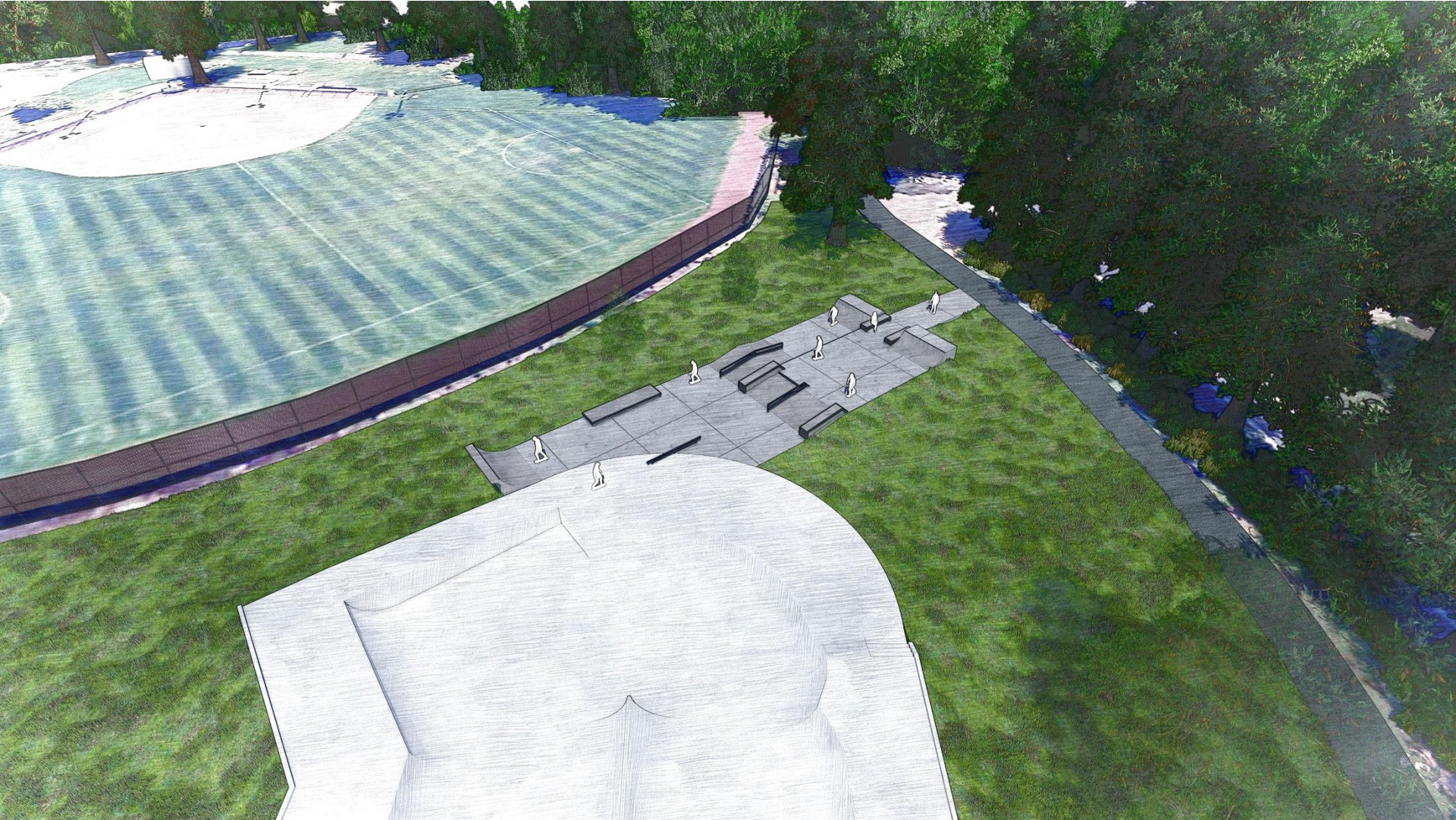


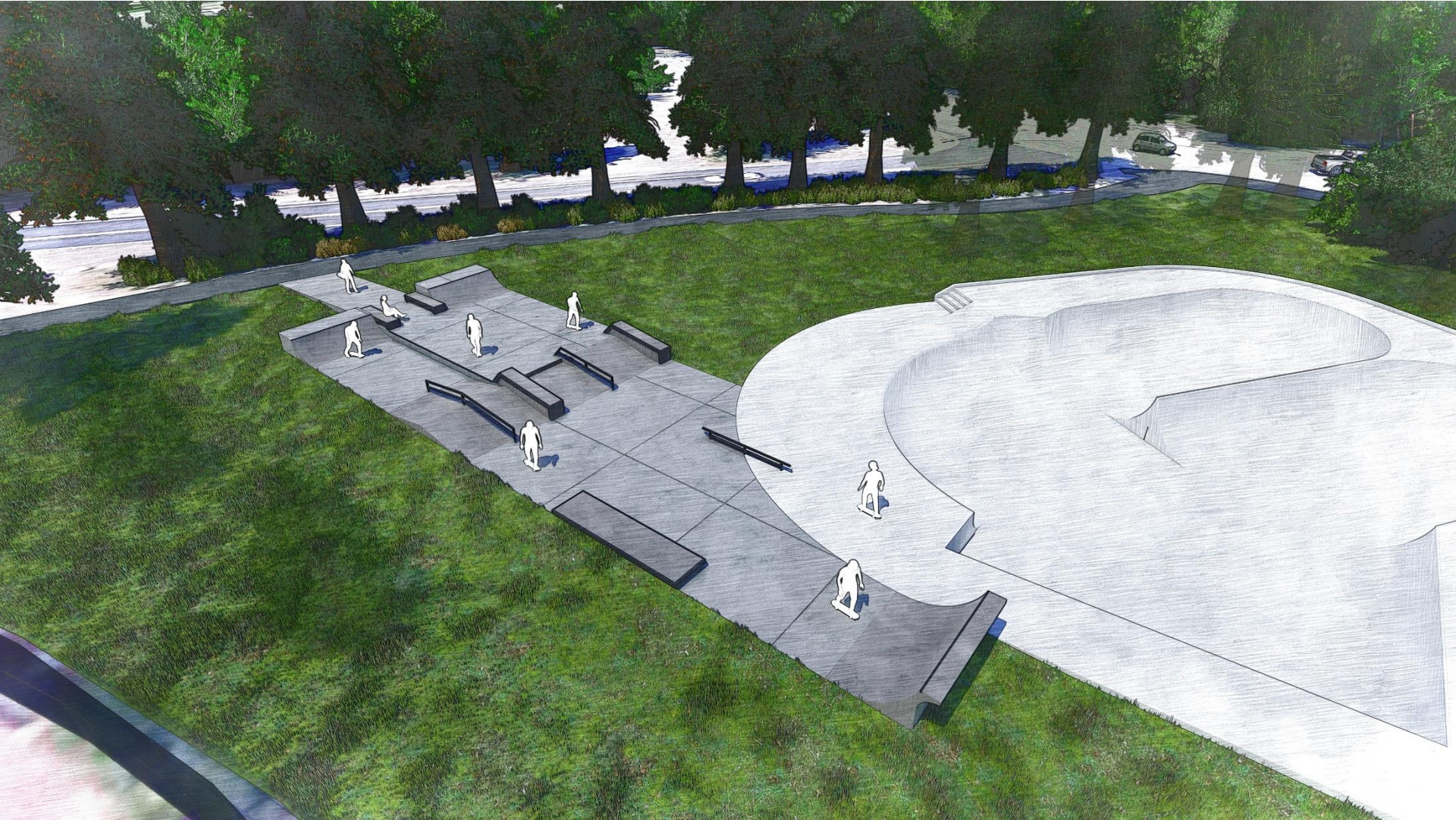
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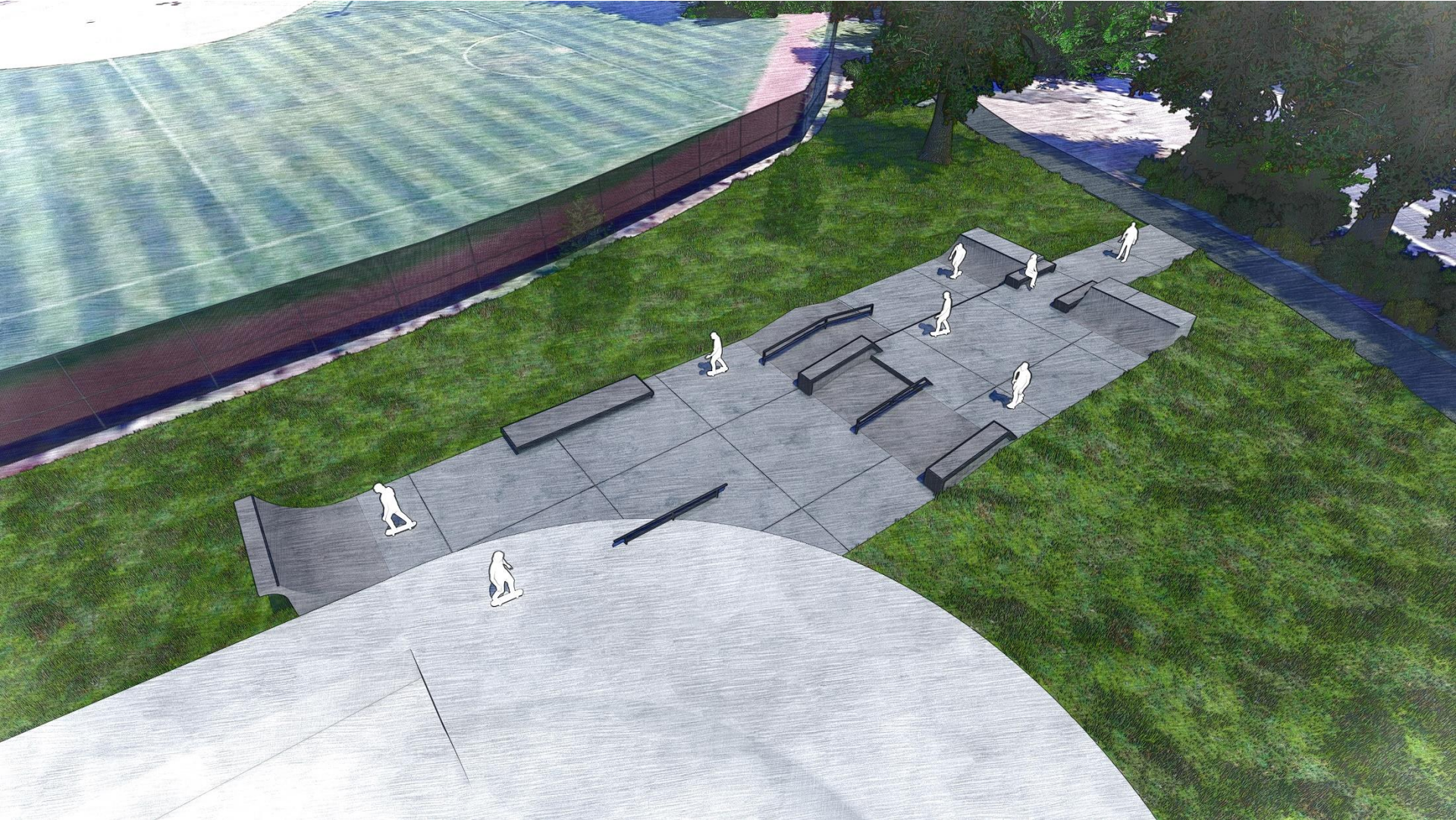
30% SCHEMATIC DESIGN // 7.24.2024





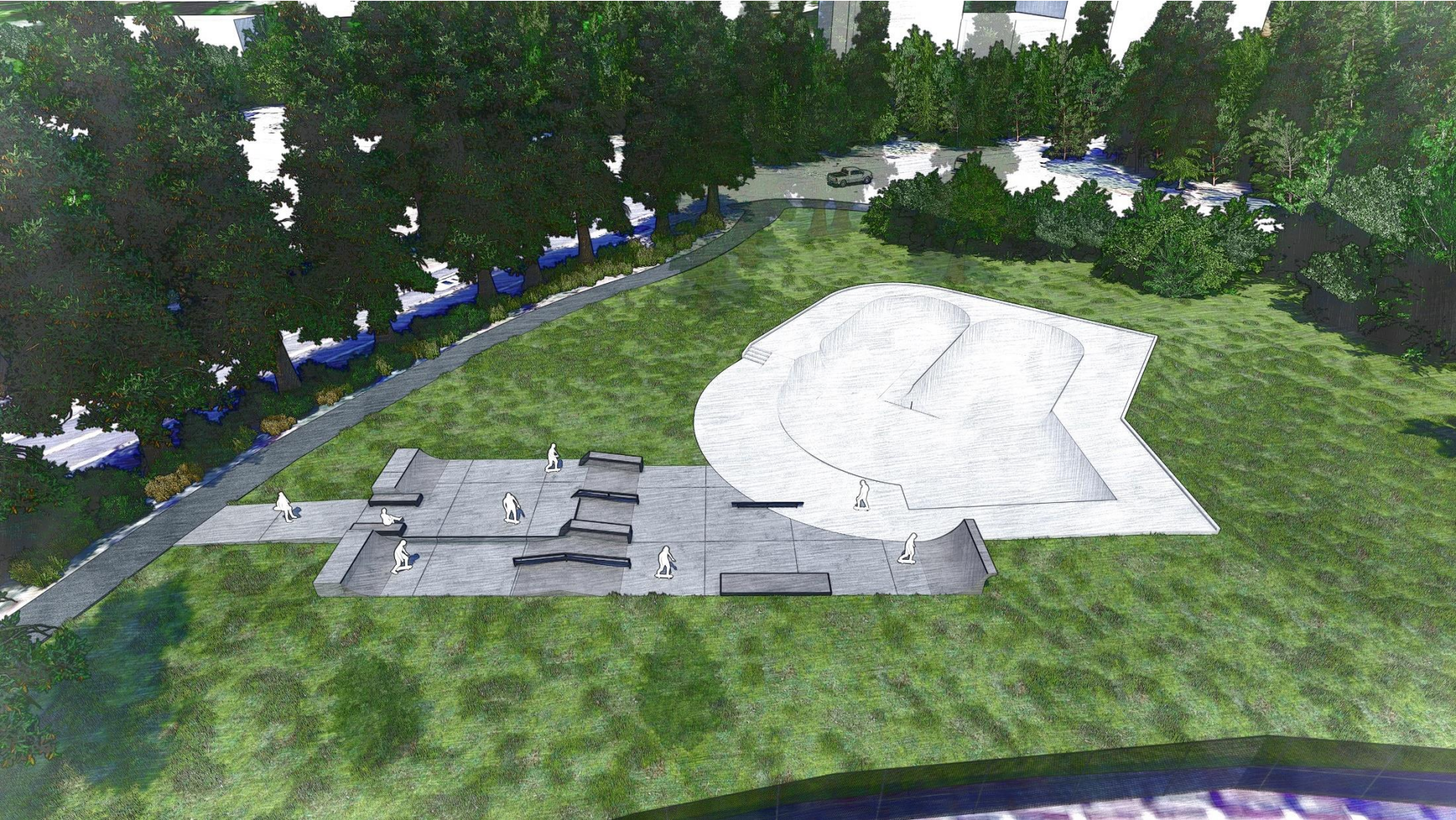


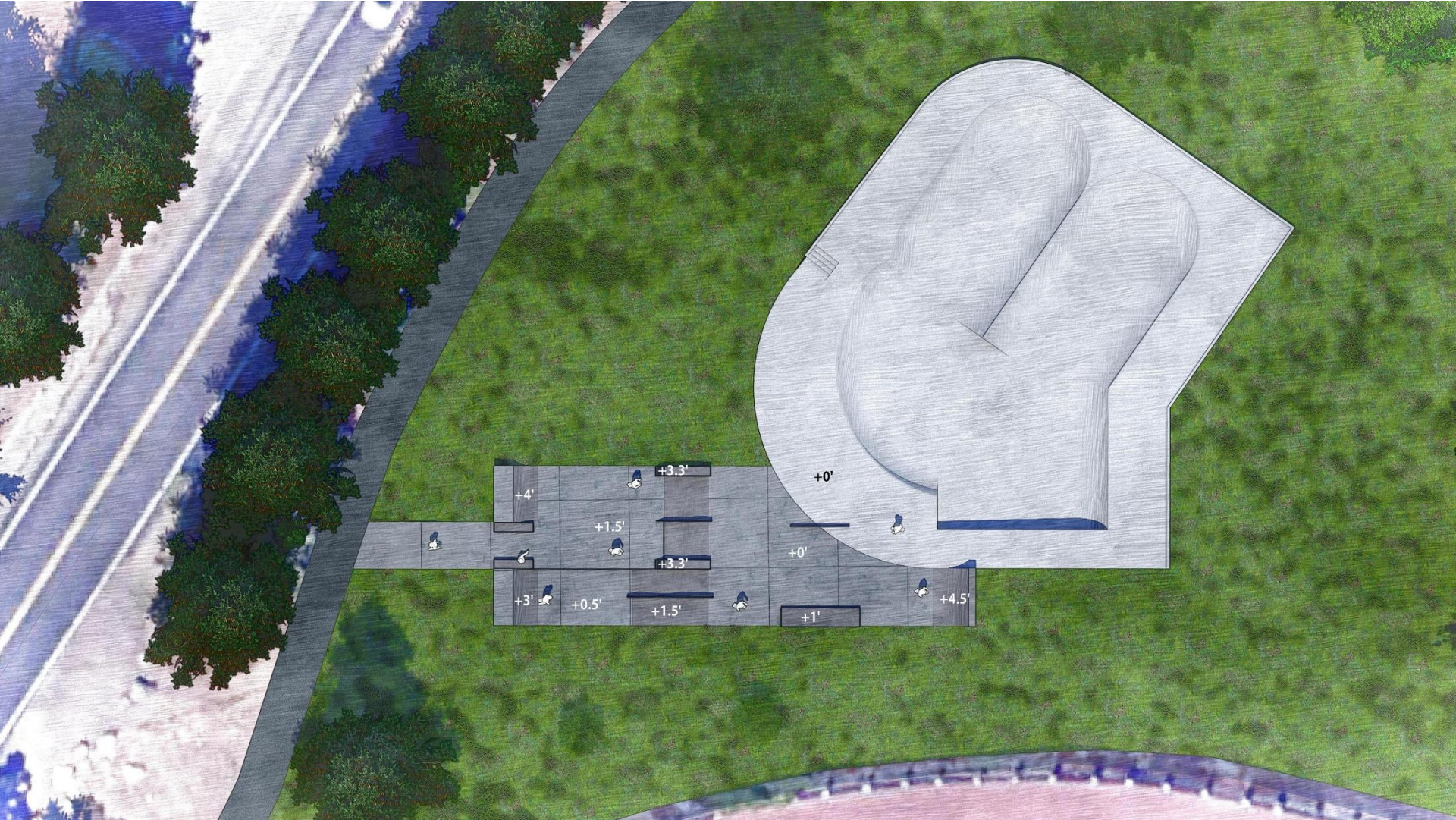
















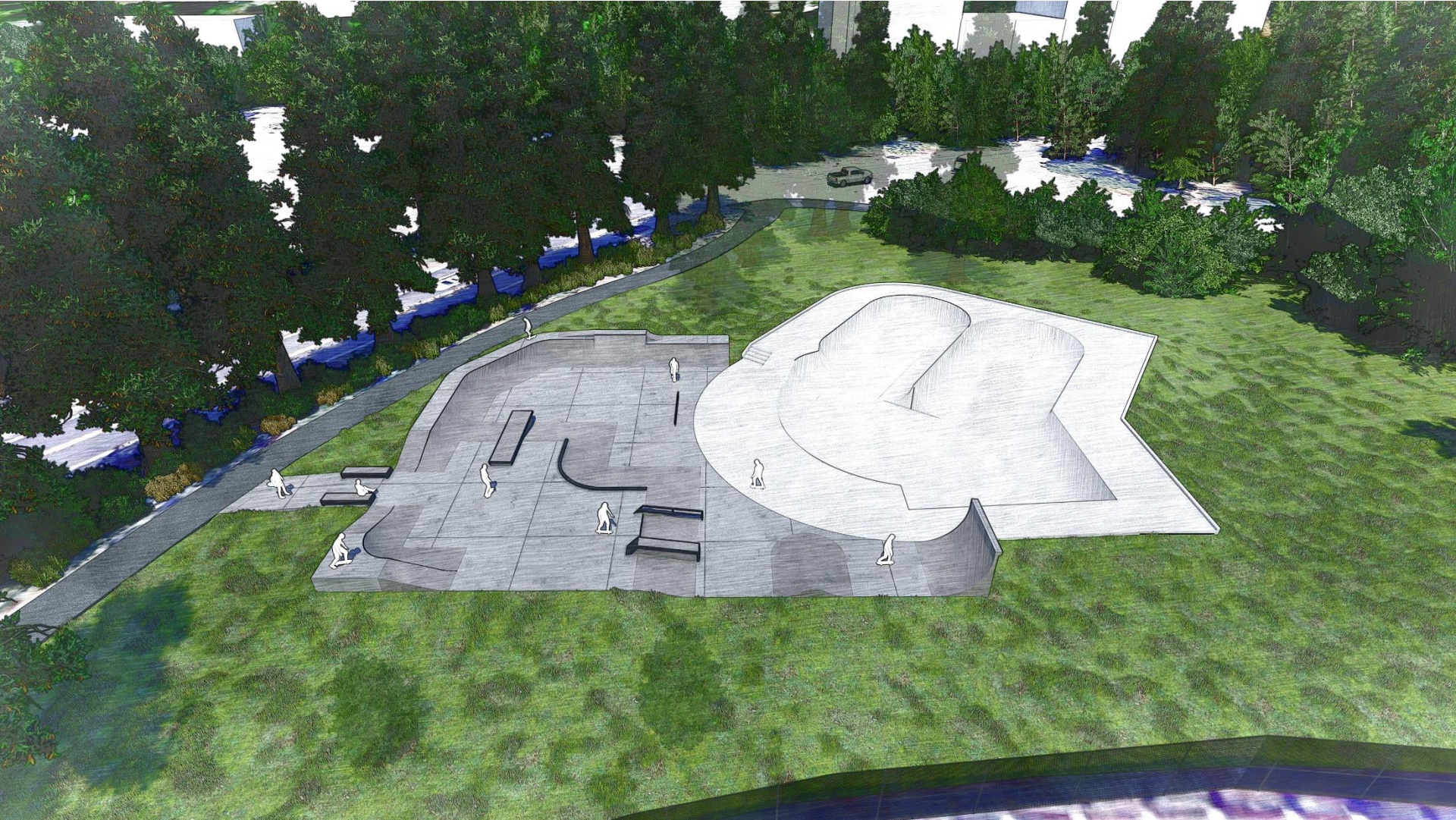


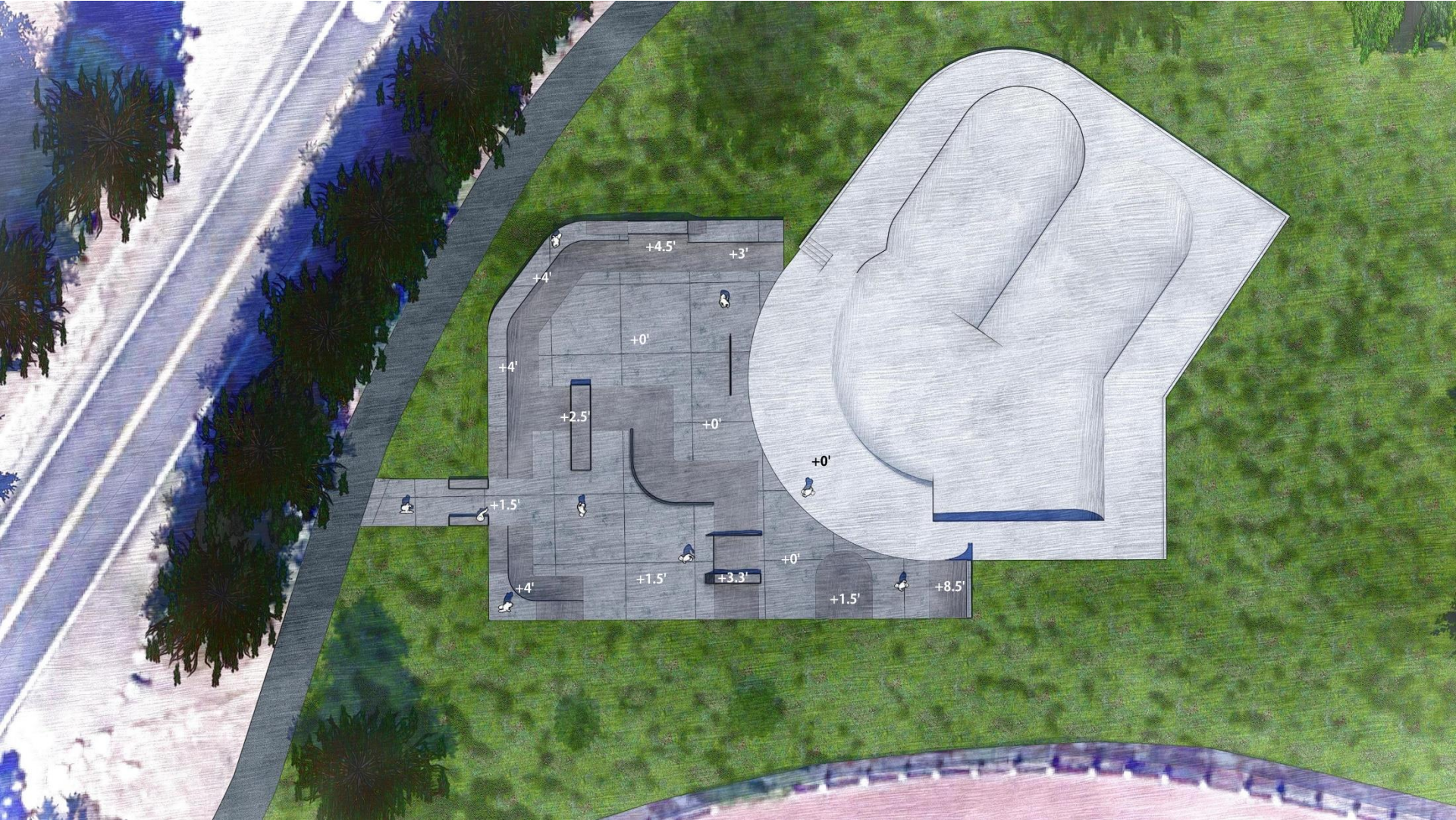






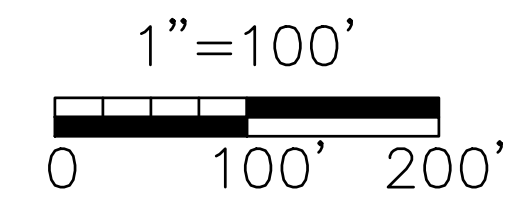




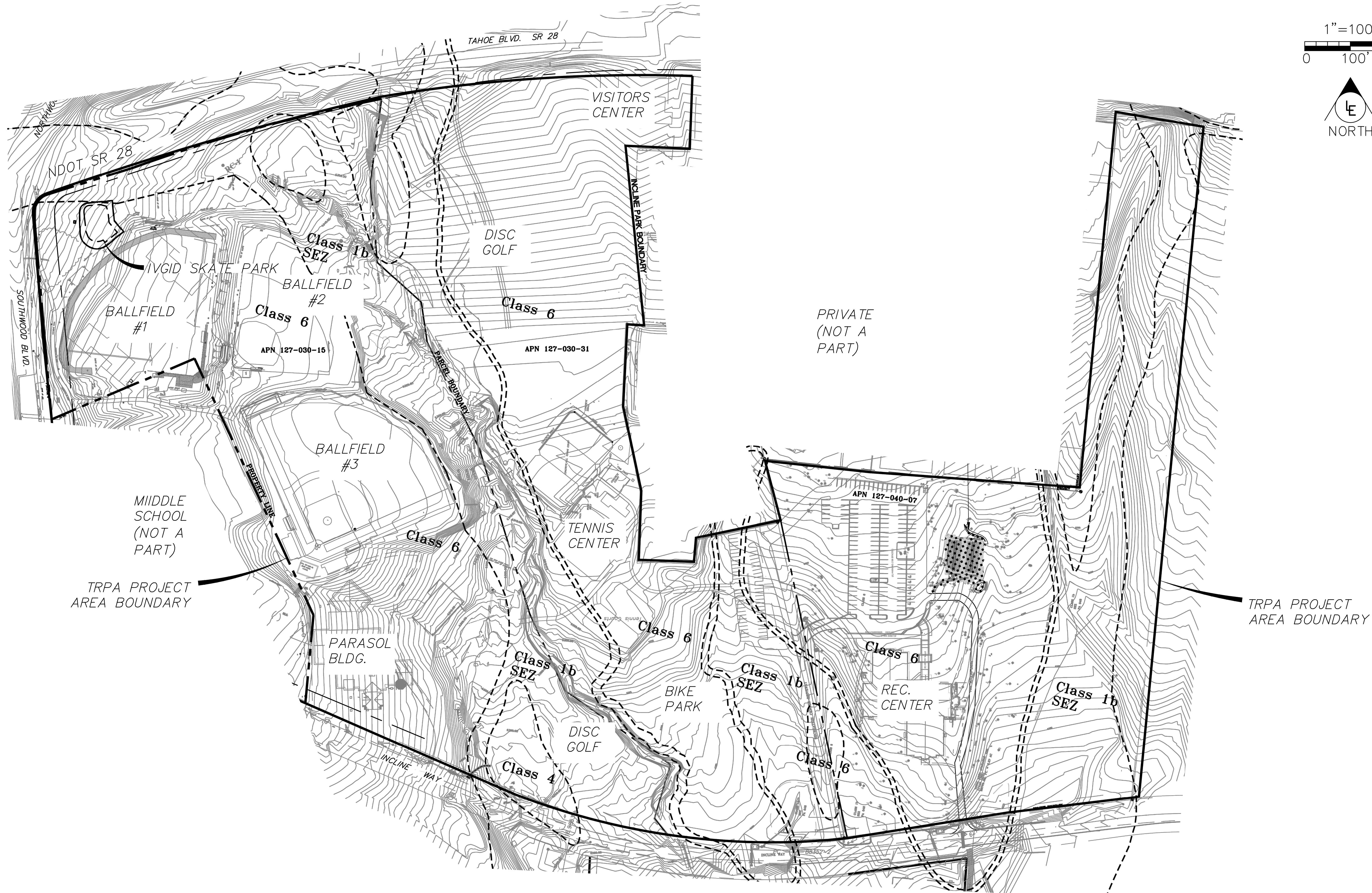




288 VILLAGE BLVD, STE 5  
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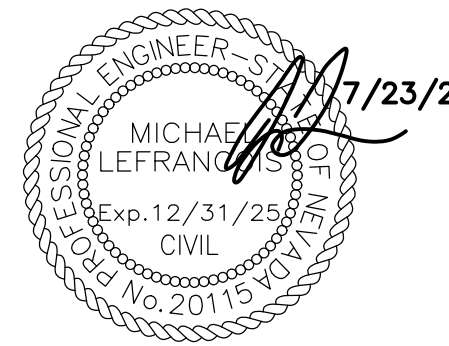
INCLINE VILLAGE SKATE PARK



EXISTING PROJECT AREA COVERAGE PER EIP 2020-0001

Land Capability	Total Area	% Allowable Coverage	Allowable Coverage	Existing Coverage	Proposed New Coverage	Total Proposed Coverage	Remaining Allowable Coverage
Class 1b	746,740	1	7,467	7,859	0	7,859	-392
Class 4	14,570	20	2,914	1,470	0	1,470	1,444
Class 6	1,906,740	30	572,022	538,829	5,400	544,229	
Retired Coverage				43,672	0	43,672	-43,672
Banked Coverage				4,058	-4,058	0	
<b>Totals</b>	<b>2,668,050</b>		<b>582,403</b>	<b>595,888</b>	<b>1,342</b>	<b>597,230</b>	

OVERALL PROJECT AREA  
 1"=100'



PROJECT AREA

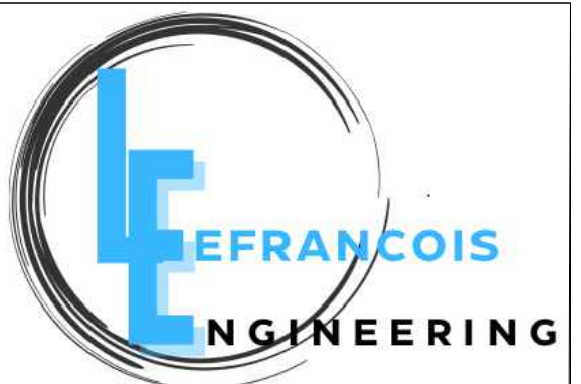
NOTES:  
 DRAWN BY: MTL  
 7/23/2024

CO

**30% SCHEMATIC  
 NOT FOR CONSTRUCTION**

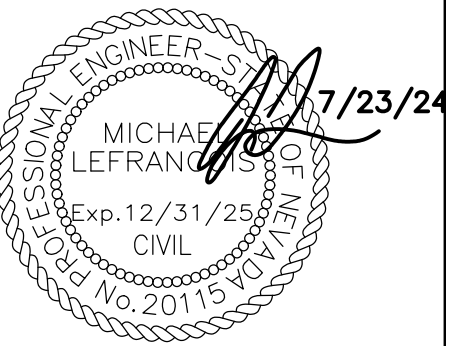
AS PART OF THIS PROJECT (TRPA PERMIT #EIPC2020-0001), 1,342 SF OF CLASS 6 COVERAGE WAS TRANSFERRED INTO PROJECT AREA.

C:\Users\Mike.Lefrancois\OneDrive - Lefrancois Engineering\Projects\Active Projects\104\_Spohn Ranch Skate Parks\CADD\CO COVER.dwg, 7/23/2024, 2:56:23 PM



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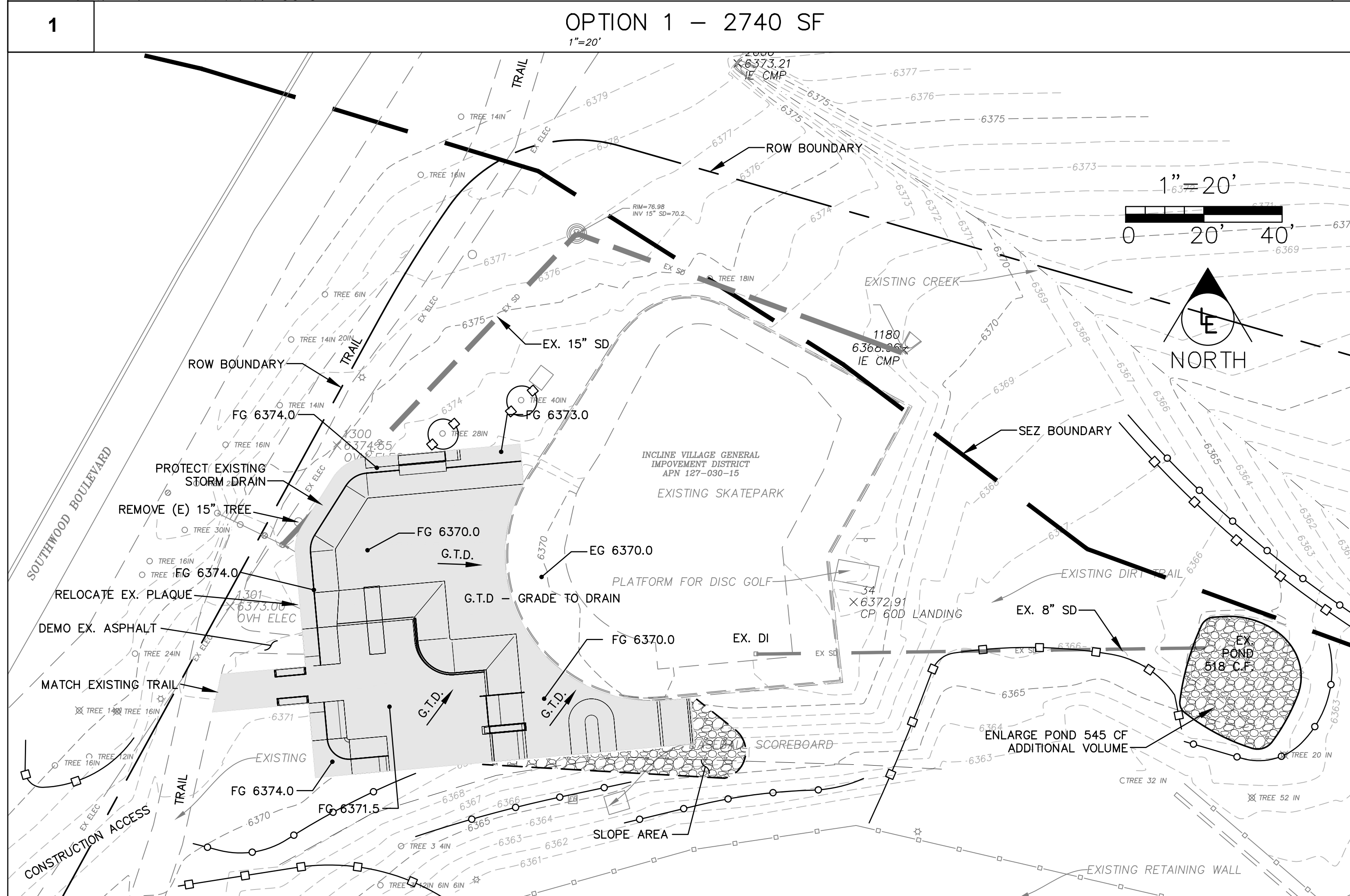
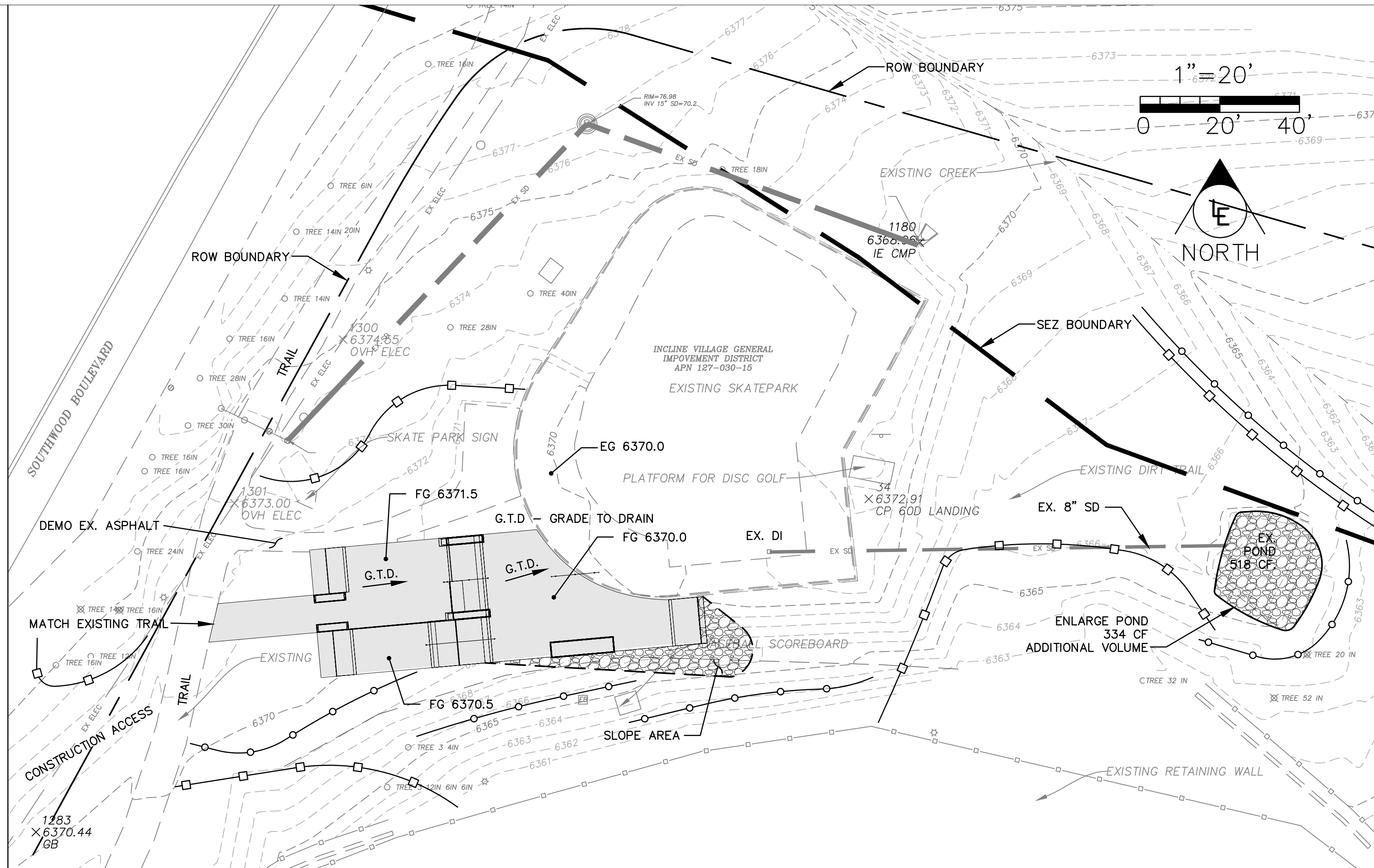
SITE PLAN

NOTES:  
 DRAWN BY: MTL  
 07/23/2024

C1

EROSION CONTROL NOTES:

1. EROSION CONTROLS SHOWN ARE SUGGESTED MINIMUM. CONTRACTOR IS RESPONSIBLE FOR REGULAR MAINTENANCE AND MODIFICATION TO MATCH ONGOING SITE CONDITIONS.
  2. CONTRACTOR SHALL MAINTAIN ADEQUATE DUST CONTROL IN ACCORDANCE WITH STATE AND LOCAL REGULATIONS.
  3. EROSION CONTROLS TO BE CHECKED AT LEAST WEEKLY AND IMMEDIATELY BEFORE AND AFTER STORM EVENTS. CONTRACTOR TO KEEP ADDITIONAL MATERIALS ON SITE FOR INSTALLATION IF REQUIRED BY CONDITIONS OR REGULATORS
- WINTERIZATION:
4. ALL BARREN AREA TO BE STABILIZED WITH 3" (MIN) THICK LAYER OF WOOD CHIPS OR ALTERNATIVE BLANKET OR VEGETATION.
  5. SECURELY COVER ALL STOCK PILES OR REMOVE
  6. INSTALL PERMANENT STABILIZATION AND INFILTRATION MEASURES WHERE APPROPRIATE
  7. LIMIT VEHICLES TO STABILIZED AREAS



LEGEND:

- - - - - EXISTING CONTOUR
- SD — (E) STORM DRAIN
- — — — — PROPERTY LINE
- PAVED AREA
- FIBER ROLL
- TREE PROTECTION FENCE
- STORM DRAIN DROP INLET
- SIGN
- LIGHT
- TREE W/ DIAMETER SHOWN
- SANITARY SEWER MANHOLE
- STORM DRAIN CORRUGATED METAL PIPE W/ INVERT ELEVATION SHOWN

NOTES:

1. UTILITY INFORMATION SHOWN IS BASED ON OBSERVABLE EVIDENCE AND IS RECOMMENDED THAT UTILITY LOCATES BE REQUESTED BEFORE CONSTRUCTION.
2. SURVEY WAS CONDUCTED ON AUGUST 8, 2023.
3. PROPERTY LINES ARE BASED FROM RECORD INFORMATION- NO F SURVEY HAS BEEN CONDUCTED.

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