

MEMORANDUM

TO: Board of Trustees

FROM: Bobby Magee
District General Manager

SUBJECT: Review, Discuss and Possibly Approve a License Agreement between Red, White and Tahoe Blue II (RWTB II) and Incline Village General Improvement District (IVGID) for the use of the Incline/Ski Beach boat ramp from June 28, 2024 through and including July 5, 2024

DATE: June 26, 2024

I. RECOMMENDATION

That the Board of Trustees makes a motion to approve a License Agreement between Red, White and Tahoe Blue II (RWTB II) and Incline Village General Improvement District (IVGID) for the use of the Incline/Ski Beach boat ramp from June 28, 2024 through and including July 5, 2024.

It should be noted that the specific times for loading and unloading, at the time of preparing this memorandum, were being worked out between the two parties. More information will most likely be known at the time of the Board of Trustees meeting on June 26, 2024.

II. BACKGROUND

On or about June 7, 2024, the President of RWTB II came to the IVGID team and let them know that their circumstances had changed with regards to the use of the boat ramp located at

Incline/Ski beaches. Originally, RWTB II was not going to use the IVGID boat ramp at all and they were launching, loading and towing their barge from the Tahoe City marina. Upon this notification, discussions ensued between the parties and the attached license agreement was created by District General Counsel.

As additional information, RWTB II went before the Washoe County Commissioners on June 18, 2024 and received unanimously approval of their submitted permit package. That permit package is available upon request.

III. FINANCIAL IMPACT

RWTB II will be required to adhere to the beach access rules and the boating rules just as any other customer.

Should there be any extraordinary Staff time required, such as an early open of the boat ramp, RWTB II will be billed for that extraordinary Staff time. None is anticipated at this time.

While no impact is anticipated for our regular boating customers, communication will be undertaken, by IVGID, to make our users and their guests aware of the potential of delays during the loading and unloading periods.

IV. ATTACHMENT

License Agreement

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

LICENSE AGREEMENT WITH RED, WHITE & TAHOE BLUE II, INC.

This License Agreement (“Agreement”) is made as of this 26th day of June, 2024 (“Effective Date”), by and between the Incline Village General Improvement District (“District”) and Red, White & Tahoe Blue II, Inc. (“Vendor”). For the purposes of this Agreement, any reference to the “District” or “Vendor” shall include any of their respective officers, authorized agents, employees, contractors, and volunteers. District and Vendor are sometimes hereinafter referred to individually as “Party” and collectively as “Parties.” This Agreement is made with reference to the following facts:

RECITALS

- A. District is the owner of that certain real property located in unincorporated area within the County of Washoe, Nevada commonly known as Incline and Ski Beaches, 967 Lakeshore Drive, Incline Village, Nevada 89451 (“Property”); and
- B. Vendor is a charitable non-profit entering onto the Property for purposes of hosting a special event, more particularly described as: Fourth of July Fireworks Display (“Event”) from June 28, 2024 up to and including July 5, 2024; and
- C. District desires to permit the Vendor to enter onto the Property for the purpose of transporting and setting up fireworks to conduct the Event or other related activities, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. **Incorporation.** The above Recitals are true and correct and incorporated herein in full by this reference.
- 2. **Temporary License.** District hereby grants Vendor, its employees, agents and contractors, a temporary non-exclusive license for ingress, egress, and access on, over, across, and through Ski Beach in order to access the boat ramp only for the sole purpose of setting up for, running, and breaking down the Event, and for other such related activities as the Vendor makes District aware of in advance.

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3. **Payment of Applicable Fees; Restricted Access.** Vendor shall pay all generally applicable entrance fees for its personnel and the personnel of its subcontractors, as well as pay all applicable ramp use and launch fees for use of District boat launch facilities. Persons accessing beach and boat launch facilities must either be with a resident picture pass holder or be in possession of a punch card issued by the District.
4. **General Release.** Vendor, for itself and each of its predecessors-in-interest, subsidiaries, affiliates, representatives, agents, partners, co-owners, joint ventures, employees, and attorneys, successors, assigns, heirs, executors, administrators, and transferees, releases the District from any and all causes of action, claims, demands, damages, expenditures, costs, attorney's fees, liens, obligations, and liability of any type or nature, whether known or unknown, suspected or unsuspected, which Vendor may now have or claim to have, or have at any time heretofore had against the District, related to, or arising out of, the Agreement and by reason of the matters set forth herein.
5. **Waiver of Unknown and Unanticipated Claims.** The release addressed above is intended to be complete and final and to cover not only claims, demands, liabilities, damages, actions, and causes of action which are known, but also claims, demands, liabilities, damages, actions, and causes of action which are unknown or which Vendor does not suspect to exist in its favor, which, if known at the time of executing this Agreement, might have affected Vendor's actions. Further, Vendor acknowledges that one or more of the released claims may include losses sustained by Vendor on account of the District that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future which are not now anticipated. Nevertheless, Vendor acknowledges that this release has been negotiated and agreed upon and that in consideration for the rights and benefits under this Agreement, Vendor intends and hereby does release, acquit, and forever discharge the District from any and all claims, including those that are unknown, unsuspected, or unforeseen or that are presently unknown and unanticipated.
6. **Agreement to Indemnify.** To the fullest extent permitted by law, Vendor shall indemnify and hold the District, its directors, officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors, or omissions of Vendor, its officials, officers, employees, subcontractors, consultants, or agents in connection with Vendor's product or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees, and other related costs and expenses. Vendor shall defend, with counsel of District's choosing and at Vendor's own cost, expense, and risk, any and all claims, suits, actions, or other proceedings of every kind that may be brought or instituted against District or its directors, officials, officers, employees, volunteers, and agents. Vendor shall pay and satisfy any judgment, award, or decree that may be rendered against District or its directors, officials, officers, employees, volunteers, and agents as part of any such claim, suit, action, or other proceeding. Vendor shall also reimburse District for the cost of any settlement paid by District or its directors, officials, officers, employees, agents, or volunteers as part of any such claim, suit,

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action, or other proceeding. Such reimbursement shall include payment for District's attorneys' fees and costs, including expert witness fees. Vendor shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents, or volunteers.

7. **Insurance.**

- a. Time for Compliance. Vendor shall, prior to its entry or the entry by any fireworks subcontractor onto the Property under this Agreement, provide evidence satisfactory to the District that it has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the District to terminate this Agreement for cause.

- b. Minimum Requirements. Vendor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Vendor, its agents, representatives, employees, or subcontractors. Vendor shall also require its subcontractor Lantis Productions, Inc. (and any other subcontractors as approved by District) to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 - i. Commercial General Liability. Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Vendor shall maintain limits no less than \$2,000,000 per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the work or operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way.

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- ii. ~~Automobile Liability.~~ Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). ~~Vendor shall maintain limits no less than \$1,000,000 per accident for bodily injury and property damage. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.~~
- iii. ~~Workers' Compensation and Employer's Liability Insurance.~~ Vendor shall maintain Workers' Compensation insurance as required by the State of Nevada and Employer's Liability Insurance in an amount no less than \$1,000,000 per accident for bodily injury or disease. ~~The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Vendor.~~
- iv. Excess Liability (if necessary). The limits of Insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the District (if agreed to in a written contract or agreement) before the District's own primary or self-Insurance shall be called upon to protect it as a named insured.
- v. All Coverages. Vendor is required by this Agreement to state that: (i) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; If any of the required coverages expire or cancel during the term of this agreement, Vendor shall deliver the renewal certificate(s) including the general liability additional insured endorsement to District at least ten (10) days prior to the cancellation or expiration date; and (ii) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents, and volunteers.
- vi. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents, and volunteers.

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- vii. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Vendor shall guarantee that, at the option of the District, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents, and volunteers; and insurer shall provide or be endorsed to provide that the deductibles or SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured or (ii) Vendor shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

- c. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII or equivalent, or as otherwise approved by the District.

- d. Verification of Coverage. Vendor shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. 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 provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time. In the event Vendor employs subcontractors as part of the services or work covered by this Agreement, it shall be Vendor's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

- e. Reporting of Claims. Vendor shall report to the District, in addition to Vendor's insurer, any and all insurance claims submitted by Vendor in connection with this Agreement.

- 8. **Termination.** This Agreement may be terminated by District at any time and without cause by giving written notice of such termination, specifying the effective date thereof, at least three (3) days before the effective date of such termination. Vendor may not terminate this Agreement except for cause.

- 9. **Entire Agreement, Modifications, and Waiver.** This Agreement constitutes the entire agreement between the Parties with respect to such terms as are included herein and the Parties acknowledge that they have not executed this instrument in reliance on any promise or representation or warranty not contained herein. This Agreement supersedes and replaces all prior discussions and/or agreements. This Agreement may not be contradicted by evidence of any prior or contemporaneous oral or written agreement. No alteration, supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

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IN WITNESS WHEREOF, Vendor and District have signed and entered into this Agreement as of the Effective Date first above written by and through the signatures of their authorized representative(s) set forth below:

Dated: _____ **RED, WHITE AND TAHOE BLUE II, INC.**

Signed: _____

Print Name: _____

Title: _____

Dated: _____ **INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**

Signed: _____

Print Name: _____

Title: _____