

AGENDA ITEM 1 F
Consent Item

MEMORANDUM

DATE: August 2, 2018

TO: El Dorado County Transit Authority

FROM: Mindy Jackson, Executive Director

SUBJECT: Agreement with SMUD for Use of Sierra Pacific Industries Parking Area in Camino, CA for Apple Hill 2018 Shuttle

REQUESTED ACTION:
BY MOTION,

1. Approve License Agreement Between Sacramento Municipal Utility District and the El Dorado County Transit Authority (Agreement) for leased parking in Camino, CA
2. Authorize the Executive Director to execute all documents related to the Agreement

BACKGROUND

The El Dorado County Transit Authority (El Dorado Transit) is designing a transit shuttle to support County of El Dorado (County) traffic control measures scheduled for implementation on each of the four (4) October 2018 weekends in the Apple Hill region.

El Dorado Transit and County personnel identified the Sierra Pacific Industries (SPI) lot in Camino, California for shuttle passenger parking.

DISCUSSION

The site identified for parking shuttle passengers, is owned by SPI and leased to Sacramento Municipal Utility District (SMUD) therefore; El Dorado Transit and SMUD staff prepared the enclosed draft Agreement submitted for Board approval. SMUD and SPI are interested in being a community partners to support the County project. There is no cost to sub-lease the property.

The Agreement was reviewed by El Dorado Transit self-insured insurance pool staff and approved as to form by El Dorado Transit legal counsel, Mike Tucker.

FISCAL IMPACT

None

El Dorado County Transit Authority
August 2, 2018 Agenda

**LICENSE AGREEMENT
BETWEEN
SACRAMENT MUNICIPAL UTILITY DISTRICT
AND
EL DORADO COUNTY TRANSIT AUTHORITY**

This License Agreement (“Agreement”) made on [DATE] between the El Dorado County Transit Authority (hereinafter called “**Transit**”) and Sacramento Municipal Utility District (hereinafter referred to as “**SMUD**,” Collectively referred to as “Parties.”).

RECITALS

- A. WHEREAS, SMUD leases certain property located at 3955 Carson Road, Camino, California from Sacramento Municipal Utility District.
- B. WHEREAS, SMUD desires to grant to Transit a license for the non-exclusive use of that portion of the Property designated in Exhibit A (“License Area”) in accordance with the terms and conditions of this Agreement.

AGREEMENT

A. License Area.

The “License Area” refers to the approximately [number] of acres located at [address], attached hereto as Exhibit A.

B. Term.

Lease term shall be effective on October 6, 2018, and shall terminate on October 28, 2018. Notwithstanding the foregoing sentence, this Agreement may be terminated by either party, in the sole and absolute discretion of such party, upon thirty (30) days’ written notice to the other party.

C. Occupancy Dates.

Transit shall occupy the Licensed Area, from 9:00 AM on the first date until 6:00 PM on the second date, during the following dates:

1. October 6-7, 2018,
2. October 13-14, 2018,
3. October 20-21, 2018, and
4. October 27-28, 2018.

D. License Fee.

Transit agrees to furnish SMUD with [AMOUNT] for use of the License Area. Transit shall remit payment to SMUD within thirty (30) days of receiving an invoice from SMUD.

E. Use of License Area.

1. The License Area shall be used for Transit passenger public shared-ride parking and for no other Transit purpose without the prior written consent of SMUD. Transit agrees to comply with all applicable ordinances, statutes, and rules and regulations applicable to Transit's use of the License Area.
2. Transit shall also institute the following provisions during its use of the License Area:
 - a. Each vehicle parked is at owner's own risk;
 - b. SMUD or its agents or representatives shall not be responsible for damage, fire, or theft of any vehicle or its contents;
 - c. Parking for Transit's public ride share is valid only in designated areas;
 - d. Transit staff shall be present at the Licensed Area Saturday and Sunday from 9:00 AM to 6:00 PM;
 - e. No overnight parking shall be allowed; and
 - f. Abandoned vehicles shall be towed at expense of vehicle's registered owner.

F. Occupancy and Acceptance of License Area.

1. By entering into and occupying the premises, Transit shall be deemed to acknowledge that the License Area is in good condition and repair and is therefore fit for the purpose of Transit's use.
2. No alteration, addition, or improvement shall be made by Transit in or to the License Area without SMUD's prior written consent. Such consent shall not be unreasonably withheld.
3. Transit shall not damage, harm, or create any nuisance in or about the License Area and shall maintain the License Area in good condition. SMUD may, at any time, inspect the License Area.

G. Obligation to Repair.

SMUD shall repair all dilapidations that render the License Area untenable, except for dilapidations intentionally or negligently caused by Transit.

H. Indemnity.

Transit agrees to protect, indemnify, and defend SMUD and its agents, employees, and authorized representatives against, and hold SMUD and its agents, employees and authorized representatives harmless from, any and all loss, cost, liability, damage, and expense, including, without limitation, reasonable attorneys' fees and costs and fees and costs of expert witnesses, incurred in connection with or arising from: (a) any default by Transit in the observance or performance of any of the terms, covenants, or conditions of this Agreement on Transit's part to be observed or performed; (b) the misuse or manner of use of the License Area by Transit, Transit's agents, employees, contractors or invitees, or any entity claiming through or under Transit; (c) any acts, omissions or negligence of Transit or Transit's agents, employees, contractors, or invitees in, on or about the License Area. In case any action or proceeding is brought against SMUD by reason of any such matter, Transit, upon notice from SMUD, shall defend the same at Transit's expense, by counsel reasonably satisfactory to SMUD, and SMUD shall cooperate with Transit in such defense. SMUD need not first have paid any such claim in order to be so indemnified.

I. Compliance With Law:

Transit and SMUD, shall comply with all laws, ordinances, zoning, rules, and regulations applicable to the License Area and use of the License Area, enacted or promulgated by any public or governmental authority or agency. Transit shall be responsible for obtaining and maintaining throughout the Term of the Agreement all applicable permits, licenses, approvals, from any local, state or federal agency necessary for the or use of the License Area. All compliance shall be at the sole cost of Transit.

J. Insurance.

1. Transit shall during the entire Term hereof, at Transit's sole cost and expense, obtain, maintain, and keep in full force and effect, the following insurance:
 - a. Commercial General Liability Insurance (comparable to the ISO Commercial General Liability policy form CG 00 01), coverage to include personal injury, bodily injury, property damage, contractual liability, products and completed operations liability arising out of or relating (directly or indirectly) to Transit's Events, conduct, assumed liabilities or use of the License Area, the buildings and the Property in limits not less than Two Million Dollars (\$2,000,000.00) per occurrence/Two Million Dollars (\$2,000,000.00) annual aggregate;
 - b. Worker's Compensation Insurance, as required by California law, and Employers Liability Insurance with limits of One Million Dollars (\$1,000,000.00) Per Accident/One Million Dollars (\$1,000,000.00) Per Disease/One Million Dollars (\$1,000,000.00) Policy Limit Insurance; and

- c. Business Automobile Bodily Injury and Property Damage Insurance covering all owned, hired and non-owned autos in a combined single limit of Two Million Dollars (\$2,000,000.00) each accident.
2. Any insurances certificates described herein shall include:
 - a. SMUD as the certificate holder and include both SMUD and Sierra Pacific Industries as additional insureds (Worker's Compensation coverage excluded).
 - b. Waiver of Subrogation endorsement for both SMUD and Sierra Pacific Industries.
 - c. The dates of the inception and expiration of the insurance.
 - d. A statement by Transit's insurance company that it will not cancel said policy or policies without giving written notice to SMUD.
 - e. A statement that insurance coverage is on an occurrence basis.

Copies of the endorsements or evidence of blanket language must be provided.

3. Transit agrees that the bodily injury liability insurance herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time during the term of this Agreement, Transit shall provide SMUD at least fifteen (15) days prior notice to the expiration date and a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year.

K. Assignment/Subleasing.

Transit shall not assign this Agreement, sublease, or license the License Area, nor any portion thereof, or allow third party organizations to use the License Area without the prior written consent of SMUD.

L. Right to License.

SMUD represents and warrants that they have right to license the Licensed Area in accordance with their property lease and applicable law.

M. Holding Over.

No holding over and continuation of any programs or activities by Transit after the expiration of the term of this Agreement shall be considered to be a renewal or extension unless written approval of such holding over and a definite agreement to such effect is signed by SMUD defining the length of such additional term. Any holding over without the consent of SMUD shall be considered to be a day-to-day tenancy.

N. Termination.

This Agreement may be terminated immediately by Transit or SMUD if: (1) Transit or SMUD is in material breach of this Agreement, (2) if SMUD or Transit determines there

are unsafe and/or dangerous conditions, threats to life or property posed by Transit's business operations and/or other activities or the condition of the License Area, (3) in the event that a natural disaster or emergency makes it necessary for SMUD to use the License Area for alternative purposes, (4) any act by Transit exposing SMUD to liability to others for personal injury or property damage, (5) notification from a public authority that all or a substantial part of the Property must be closed to public use. Either Party may terminate the Agreement without cause upon thirty (30) days written notice.

Upon termination of this Agreement, Transit shall vacate the Property, remove all its property, and leave the premises as clean as it found it, normal wear and tear excepted.

O. Arbitration.

Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in Placerville, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude either party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

P. Notices.

All notices regarding this Agreement shall be in writing and shall be given to the other party as follows:

1. SMUD. 3783 Forni Road, Placerville, CA 95667;
2. Transit. 6565 Commerce Way, Diamond Springs, CA 95619

Q. Severability.

If any provision of this Agreement is held to be void, voidable, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

R. Cooperation.

Each Party agrees that it will cooperate fully in executing any additional documents and taking any additional actions necessary to give effect to this Agreement.

S. Governing Law.

This Agreement is entered into and governed by the laws of the State of California.

T. Effective Date.

The Effective Date of this Agreement shall be the final date this Agreement is signed by all Parties.

U. Knowledge of Parties; Binding Contract.

The Parties are entering into this Agreement knowingly and voluntarily. The Parties further acknowledge that they have been provided with an opportunity to consider this Agreement and to consult with legal counsel.

V. Entire Agreement.

The Parties agree that this Agreement contains the entire agreement between the Parties with respect to its subject matter. All prior agreements, understandings, representations, oral agreements, and writings, if any, are expressly superseded hereby and are of no further force and effect.

W. Alterations or Amendments.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, and that an oral understanding or agreement not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the Parties here to shall be binding of any of the Parties.

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

El Dorado County Transit Authority
Mindy Jackson, Executive Director
6565 Commerce Way
Diamond Springs, CA 95619
(530) 642-5383 Ext. 210

By: _____

By: _____

Name and Title

Mindy Jackson, Executive Director

Date

Date

By: _____

Michael Tucker, Legal Counsel
El Dorado County Transit Authority

DRAFT

Apple Hill Parking – Sierra Pacific Facility



Parking Area

Car Entrance and Exit
and Bus Entrance on
Larsen Dr.

Bus Exit on Carson Rd.