

MEMORANDUM

TO: Board of Trustees

THROUGH: Indra Winqest
District General Manager

FROM: Paul Raymore
District Marketing Manager

SUBJECT: Review, discuss and possibly approve an agreement for media buying services for Fiscal Year 2022/23; Venues: Diamond Peak, Championship Golf Course, Mountain Golf Course, Facilities; Vendor: EXL Media; Agreement Amount: Up to \$215,250 in paid media spending, \$40,000 in trade media spending, and up to \$53,000 in agency fees – a grand total of up to \$308,250.

DATE: June 29, 2022

I. RECOMMENDATION

That the Board of Trustees make a motion to authorize Staff to enter into an agreement with EXL Media for 2022/23 Fiscal Year media buying services for Diamond Peak Ski Resort, the Championship and Mountain Golf Courses, and the Facilities Department, for a not-to-exceed total amount of \$308,250.

II. STRATEGIC PLAN REFERENCE(S)

Long Range Principle #6 – Communication – The District will engage, interact and educate to promote understanding of the programs, activities, services, and ongoing affairs.

- Provide clear, concise and timely information in multiple, publicly accessible formats.
- Ensure that both internal and external communication is responsive, comprehensive and inclusive.

III. BACKGROUND

As a component of the District’s Diamond Peak, Golf Courses, and Facilities annual communications and marketing plans, the District contracts with a media

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buying agency to help plan, place and negotiate rates for advertising placements. This includes, but is not limited to, print ads, digital ads, digital billboards, mobile ads, television ads and paid search campaigns. This is an essential service for the District's Marketing Staff as the research, documentation, reporting, and support received from the third party provider significantly exceeds in-house capabilities.

Since the 2013/14 Fiscal Year, the IVGID Marketing Team has utilized Incline Village-based media buying agency EXL Media for the District's media buying services. This stretch follows the one-year period (Fiscal Year 2012/13) in which the District utilized another agency for media buying, ultimately returning to EXL Media after being unsatisfied with the other agency's services and results.

At the May 23, 2018 Board meeting, the Board of Trustees authorized awarding the District's 2018/19 media buying services agreement to EXL Media with a cost of \$419,500.

At the May 22, 2019 Board meeting, the Board of Trustees authorized awarding the District's 2019/20 media buying services agreement to EXL Media with a cost of \$424,600.

At the September 30, 2020 Board meeting, the Board of Trustees authorized awarding the District's 2020/21 media buying services agreement to EXL Media with a cost of \$100,000. This agreement was drastically cut back from normal spending levels due to the Covid-19 pandemic.

At the September 2, 2021 Board meeting, the Board of Trustees authorized awarding the District's 2021/22 media buying services agreement to EXL Media with a cost of \$265,000.

IV. BID RESULTS

The proposed agreement is exempt from competitive bidding requirements under NRS 332.115, as a sole source purchase for professional services (NRS 332.115 subsection 1.b). However, the District's media buying services agreement went to bid before the 2019/20 Fiscal Year with local agency EXL Media selected to continue providing media buying services to the District. A full recap of the bid results are included in the May 22, 2019 Board Memo authorizing the District to enter into an agreement with EXL Media during the 2019/20 Fiscal Year. (See

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pages 263 – 295 of the May 22, 2019 Board packet.) The 2022/23 Fiscal Year would be year four (4) of an agreement with EXL Media since going to bid for this service.

EXL Media is an Incline Village, Nevada based firm and has over 24 years of experience successfully handling media buys for the District. EXL Media has vast knowledge of the competitive landscape of the Lake Tahoe recreation market. Through the bidding process, they were determined to be the best qualified and capable media agency to support the District in meeting its budget objectives and will provide the level of attention, detail, and reporting that is required to ensure successful media campaigns.

V. FINANCIAL IMPACT AND BUDGET

The budget for the proposed media buying services agreement is included in the Board-approved Fiscal Year 2022/23 Diamond Peak, Golf Courses, and Facilities marketing budgets. A total of \$268,250 (cash) and \$40,000 (trade) is included in the approved 2022/23 District Operating Budgets for media buying and media buying services through EXL Media. The approved budgeted amounts and not-to-exceed amounts listed in the EXL Media agreement are below.

Note: The Recreation Center and Tennis & Pickleball Center have media buying contingency funding included in their budgets that would be managed in-house, if at all, rather than by EXL Media.

Paid advertising budget by venue	Budgeted amount	Not to exceed amount in EXL agreement
DIAMOND PEAK	\$160,700	\$160,700
CHAMP GOLF	\$17,050	\$17,050
MT GOLF	\$12,000	\$12,000
FACILITIES	\$25,500	\$25,500
REC CENTER	\$1,000	\$0
TENNIS & PICKLEBALL	\$1,000	\$0
DIAMOND PEAK – TRADE	\$40,000	\$40,000
GOLF - TRADE	\$0	\$0
TOTAL	Up to \$217,250 (cash) Up to \$40,000 (trade)	Up to \$215,250 (cash) Up to \$40,000 (trade)

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Agency fees by venue	Budgeted amount	Not to exceed amount
DIAMOND PEAK	\$39,300	\$39,300
CHAMP GOLF	\$5,000	\$5,000
MT GOLF	\$2,700	\$2,700
FACILITIES	\$6,000	\$6,000
REC CENTER	\$0	\$0
TENNIS & PICKLEBALL	\$0	\$0
TOTAL	Up to \$53,000 (cash)	Up to \$53,000 (cash)

Staff to manage spending levels in accordance with District goals:

The proposed agreement for media buying services with EXL Media serves as a not-to-exceed template for Diamond Peak’s advertising plans, but does not commit the District to any particular advertising spending amount. Staff will work with EXL Media to adjust advertising campaigns appropriately to align with District goals.

The agreement with EXL Media will be structured to pay Agency Fees based on actual hours billed (at \$125 per hour), with not-to-exceed limits in place. Given this structure, should the District choose to cut back on or eliminate some paid advertising services this year, **there is the potential to pay less than the not-to-exceed amount of \$53,000** listed above.

History of District’s approved media buying budgets:

Description	2018/19 Budget	2019/20 Budget	2020/21 Budget*	2021/22 Budget	2022/23 Proposed
Cash Media	\$266,500	\$272,500	\$75,000	\$201,500	\$215,250
Trade Media	\$88,000	\$87,100	\$0	\$10,000	\$40,000
Agency Fees	\$65,000	\$65,000	\$25,000	\$53,500	\$53,000
Total	\$419,500	\$424,600	\$100,000	\$265,000	\$308,250

* 2020/21 fiscal year budget was cut back drastically due to COVID-19 impacts.

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History of District’s EXL Media media buying actuals:

Description	2018/19 Actuals	2019/20 Actuals	2020/21 Actuals*	2021/22 Actuals	
Cash Media	\$265,010	\$233,049	\$68,769	Still TBD	
Trade Media	\$42,906	\$57,495	\$0	\$9,932	
Agency Fees	\$65,000	\$64,000	\$20,969	Still TBD	
Total	\$372,916	\$354,544	\$89,738	Still TBD	

** 2020/21 fiscal year budget was cut back drastically due to COVID-19 impacts. 2019/20 fiscal year actuals were also cut back beginning in March 2020.*

VI. ALTERNATIVES

Authorize Staff to enter into a media buying agreement during the Fiscal Year 2022/23 at different amounts than those recommended above.

Direct Staff not to enter into a media buying agreement during the Fiscal Year 2022/23, understanding that doing so will leave the District’s communications and marketing plan for the 2022/23 fiscal year vulnerable as the Media Buying Agreement is a key component to the overall annual marketing and communications plan.

VII. 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.

Attachments:

A – Proposed Agreement with EXL Media

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agreement for media buying services for Fiscal
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June 29, 2022

Proposed Agreement Attachment A

**AGREEMENT FOR SERVICES
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT AND EXL MEDIA
CORPORATION**

THIS AGREEMENT (“Agreement”) is entered into between Incline Village General Improvement District, a political subdivision of the State of Nevada (hereinafter referred to as “District”), on the one hand; and EXL Media Corporation, a corporation (hereinafter referred to as “EXL”), on the other hand and is effective on July 1, 2022.

WITNESSETH

- a) District is the owner and operator under Special Use Permit of Diamond Peak Ski Resort, the Championship and Mountain Golf Courses, The Chateau and Aspen Grove, the Recreation Center, and the Tennis & Pickleball Center in Incline Village, Nevada.
- b) EXL is a media buying and placement agency, located in Incline Village, Nevada, with experience in media services.
- c) District desires to retain the services of EXL to provide media services.

NOW THEREFORE, for valuable consideration, it is agreed as follows:

SECTION 1 - Agreement.

- (a) District hereby hires EXL to provide media services described herein (the “Media Services”), and EXL agrees to provide the Media Services to District. EXL will provide the Media Services to District within the timeline set between the IVGID Marketing Department and EXL.
- (b) District shall pay EXL a separate amount for each Media Service. The breakdown and total amount for the fiscal year of July 1, 2022 – June 30, 2023 is as follows:

Total contract not-to-exceed: \$308,250

- Cash Media not-to-exceed: \$215,250
 - Diamond Peak: \$160,700
 - Golf Courses: \$29,050
 - Facilities: \$25,500
 - Recreation Center: \$0
 - Tennis Center: \$0
- Trade Media not-to-exceed: \$40,000
 - Diamond Peak: \$40,000 (\$32,000 of breakage expected; only \$8,000 of trade expected to be utilized)

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- Golf: \$0
- Agency Fees not-to-exceed: \$53,000 (billed at \$125 per hour)

As set forth in Section 2(a), cash media involves the placement of advertisements through third party media channels by EXL on behalf of District. Agency fees are fees charged by EXL to District for such services or other related services such as advertising performance analytics & tracking.

When trade is issued to a third party, IVGID services and products will be taken at full rack rate. EXL doesn't have any autonomy in discounting IVGID's services and products. Trade is to be used when possible in exchange for cash to help contribute to the overall value of the media buy.

In case additional needs arise, District may pay EXL an additional fee as agreed by both parties in a written change order to this Agreement and prior to executing the additional project.

- (c) The individual obligations of District and EXL in performing this Agreement are set forth below.

SECTION 2 - EXL's Obligations.

- (a) EXL will provide District with a selection of Media Services for use by District recreational facilities for the July 1, 2022 - June 30, 2023 fiscal year. The Media Services may include, but are not limited to, the following:
 - 1) Radio
 - 2) Outdoor
 - 3) Television/Cable
 - 4) Digital/Internet/Mobile
 - 5) Print
 - 6) Promotions
 - 7) Specialty Media
 - 8) Outdoor Production Coordination
 - 9) Advertising Performance Analytics & Tracking

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- (b) EXL shall consult with District to provide District the opportunity for input on the selected Media Services. District's General Manager or designee shall approve all Media Services, including media buying budgets and plans before any placements are made on District's behalf. Media buying budgets and plans shall be evaluated and potentially adjusted at least quarterly, with the General Manager's or designee's written approval.
- (c) EXL shall not exceed the total amount budgeted for Media Services described above and will not incur any costs above and beyond set budget unless additional costs are authorized as set forth in Section 1(b).
- (d) EXL shall not include any non-cancellable third party contracts or media placements in any Media Services.
- (e) EXL shall provide copies of original invoices from third party vendors attached to EXL invoices. EXL shall invoice District monthly for all Media Services. Such invoices shall clearly document the amount of incurred Media Services, including third party media and agency fees. Agency fees shall be billed on an hourly basis paid in 6-minute increments. Invoices shall include the amount of agency fees and an explanation of the tasks included in each billing entry.
- (f) EXL shall pay all invoices from third party vendors on behalf of District within thirty (30) days of receipt of payment from District for the same invoices. EXL agrees that any and all third party vendors shall look to EXL for payment upon proof of payment by District to EXL for invoices in question.
- (g) EXL shall coordinate with and provide any other third party creative agencies selected by District with all applicable deadlines and make sure media deadlines are met as necessary for the Media Services.
- (h) Non-Disclosure Obligations. EXL acknowledges and agrees that during its performance under this Agreement, it may learn of, be exposed to or come into possession of certain "Confidential Information." Confidential Information is defined as information developed or owned by District or entrusted to District by others. Confidential Information includes, but is not limited to, financial information, business strategy, marketing calendars, inventory levels and best sellers, partnerships, and customer contact information. EXL agrees that it will not, directly or indirectly, (i) use such Confidential Information except as required in the normal and proper course of performing the Media Services defined in this Agreement or other

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obligations as contemplated hereunder; (ii) disclose such Confidential Information to any other person, corporation or entity; or (iii) allow a third party access to such Confidential Information (except as otherwise may be required by law) without, in each case, obtaining the prior written approval of District. EXL agrees to protect all information including, but not limited to documents, electronic records, tapes and other media in which the Confidential Information is contained (the "Confidential Documents"). EXL further acknowledges and agrees that the Confidential Documents are, and shall remain, the sole and exclusive property of District. EXL shall not copy any Confidential Documents or remove any Confidential Documents, or copies thereof, from District premises, except as required by the normal and proper course of performing the services or other obligations hereunder. EXL agrees to return to District promptly upon request any and all property of District, including but not limited to the Confidential Documents and copies thereof, in EXL's possession or control.

SECTION 3 - District's Obligations.

- (a) District will provide EXL with customer research and will assist with information and strategy to complete media services.
- (b) District reserves the right to modify, reject, cancel or stop any and all Media Services in progress, and in such event, EXL shall immediately carry out District's instructions. In turn, District agrees to pay EXL, in accordance with the provisions of this Agreement, any and all proper charges earned and incurred by EXL in connection with such work up to the time of its discontinuance, cancellation or modification.
- (c) District shall pay EXL for the Media Services as set forth in Section 1 above and shall pay non-disputed invoices within thirty (30) days of receipt.

SECTION 4 - Relationship and Responsibility.

- (a) This Agreement is for the provision of services, and is limited to the services described herein. District and EXL agree that EXL is an independent contractor providing services to District, and neither EXL nor any employee or agent hired by EXL is or shall be considered an employee or agent of District.

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- (b) EXL shall be responsible for all required licenses and permits for the services as specified. EXL shall be solely responsible for all agents and employees used by EXL and for all matters relating thereto, including payment for services.
- (c) EXL shall defend, indemnify and hold District harmless from any and all matters relating to or arising from the performance of the Media Services described herein, and from any claims against District by any agents or employees of EXL, except those claims which are determined to be the direct result of separate and independent negligence by District or its employees.
- (d) This Agreement is cancelable upon sixty (60) days' notice by either party. In such event, District shall only pay EXL for Media Services, including any third party vendor contracts, actually performed and completed. This Agreement is for a time period of one (1) year and may be renewed upon written agreement of EXL and District.
- (e) Subject to the limits set forth in Nevada law, expressly including, but not limited to, NRS Ch. 41, District agrees to indemnify, defend and hold EXL harmless against any loss and expense, including reasonable attorney's fees and court costs incurred as the result of any claim, suit or proceeding made or brought based upon any trademark, copyright or other infringements of intellectual property rights claim due to the content of any advertising material prepared or placed for District by EXL, provided that District approved such content. District will have the right to defend or settle any such claim, suit, or proceeding at its own expense.
- (f) EXL agrees to indemnify, defend and hold the District, its officers, directors, employees and representatives harmless, against any loss, damage, claim or expense in connection with or arising out of the breach or negligence or fault of EXL pursuant to the performance of the Media Services or as a result of EXL's representations to third parties contrary to the scope of EXL's responsibilities hereunder.

SECTION 5. Miscellaneous.

- (a) This Agreement is entered into and shall be performed in Washoe County, Nevada, and venue for any action arising from this Agreement shall be limited to Washoe County, Nevada.

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- (b) This Agreement and the rights and obligations of the parties hereunder may not be assigned by either party without the express prior written consent of the other party. All amendments to this Agreement must be approved in a writing executed by both parties.

- (c) No provision of this Agreement shall be deemed a waiver of District's sovereign immunity beyond that presently provided by Nevada law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth opposite each signature below.

EXL MEDIA CORPORATION

By: _____ Date _____
Name: Wendy Hummer
Title: President

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

By: _____ Date _____
Name: Indra Winquest
Title: General Manager

Reviewed as to form:

By: _____ Date _____
Name:
Title: District General Counsel