

MEMORANDUM

TO: Board of Trustees

THROUGH: Indra Winqest
General Manager

FROM: Paul Raymore
Marketing Manager

SUBJECT: Review, discuss and possibly approve an item for the 2020/21 Fiscal Year allowing the District to enter into an agreement for media buying services for 2020/21; Venue: Diamond Peak; Vendor: EXL Media; Contract Amount: Not-to-exceed total of \$100,000 (*consisting of not-to-exceed \$75,000 in paid media spending and not-to-exceed \$25,000 in agency fees*)

STRATEGIC PLAN: Long Range Principle #6 - Communication

DATE: September 30, 2020

I. RECOMMENDATION

That the Board of Trustees make a motion to authorize Staff to enter into an agreement with EXL Media for 2020/21 Fiscal Year media buying services for Diamond Peak Ski Resort for a not-to-exceed total of \$100,000 (*consisting of not-to-exceed \$75,000 in paid media spending and not-to-exceed \$25,000 in agency fees*).

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.

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III. BACKGROUND

As a component of Diamond Peak's annual communications and marketing plans, the District contracts with a media buying agency to help plan, place and negotiate rates for advertising placement. This year, we expect those channels to include print ads, digital ads, digital billboards, mobile 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.

Given the impacts that COVID-19 will have on the ski resort's communications plans, this year's paid advertising campaigns will be focused on informative guest communication including messaging that Diamond Peak ski resort is open, customer pre-arrival expectations, product availability and capacity restrictions, and updated conditions information.

IV. BID RESULTS

The District's media buying services contract 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 pages 263 – 295 of the May 22, 2019 Board packet.) The 2020/21 Fiscal Year would be year 2 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 22 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 contract is included in the Board-approved Fiscal Year 2020/21 Diamond Peak marketing budget. A total of \$208,500 (cash) and \$80,000 (trade) is included in the approved 2020/21 District Operating Budget for Diamond Peak media buying services.

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The original proposal and recommended alternate option are laid out in the following table:

BUDGET LIMITS	ORIGINAL PROPOSAL	RECOMMENDATION
DIAMOND PEAK – CASH	Up to \$166,000	Up to \$75,000
GOLF – CASH	Up to \$51,700	\$0
FACILITIES – CASH	Up to \$32,000	\$0
REC CENTER – CASH	Up to \$11,000	\$0
TENNIS – CASH	Up to \$5,000	\$0
DIAMOND PEAK – TRADE	Up to \$80,000	\$0
GOLF - TRADE	Up to \$12,000	\$0
AGENCY FEES LIMIT	Up to \$68,000	Up to \$25,000
TOTAL	Up to \$333,700 (cash) Up to \$92,000 (trade)	Up to \$100,000 (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. In light of the impacts that the COVID-19 pandemic will have on the ski resort this winter, Staff will work with EXL Media to adjust advertising campaigns appropriately to align with District goals. The Marketing Manager is responsible for contract oversight.

Notes on recommended option:

- The agreement with EXL Media will be structured to pay Agency Fees based on actual hours billed (at \$125 per hour) instead of a flat fee structure agreed upon in advance, with not-to-exceed limits in place. Given this structure, should the District choose to cut back on or eliminate all paid advertising services this year, there is the potential to pay less than the not-to-exceed amount of fees listed above.
- Given the need for more control over capacity limits at the ski resort this season, the Trade Media component has been eliminated from this proposal so as not to have anonymous non-date-restricted lift ticket products available in the market this year.

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Staff Recommendation:

Staff recognizes the Board's desire to spend less on paid advertising during the 2020/21 Fiscal Year than previous years due to the COVID-19 pandemic. Given the uncertainty around this season due to the pandemic, and the limitations of Diamond Peak's organic communications channels, Staff recommends the Board approved a limited contract for paid advertising services to convey vital messaging around:

- Status of the ski resort (i.e. when resort is open)
- Product availability and any capacity restrictions in place
- Pre-arrival information and expectations
- Updated conditions information
- 2021-22 season pass sale information

Predicting what communications channels will work best during this COVID-19 impacted season is challenging at this time, so having the flexibility to utilize a portion of the approved marketing budget on paid advertising channels to communicate vital resort information is advisable to ensure the health and safety of our employees, customers, and local community. Staff will continue to be diligent in adjusting spending levels to be in line with District goals and changing market conditions.

V. ALTERNATIVES

Direct Staff not to enter into a media buying agreement during the Fiscal Year 2020/21, understanding that doing so will leave Diamond Peak's communications and marketing plan for this winter vulnerable as the Media Buying Contract is a key component to the overall annual marketing and communications plan.

Proposed Contract

**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, 2020.

W I T N E S S E T H

- 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, and the Recreation Center and Tennis 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. The IVGID General Manager or the IVGID Marketing Manager shall approve the final form of the Media Services for the ski resort, tennis, golf and facilities. No media services contracts will be finalized without the prior written approval by the General Manager or the IVGID Marketing Manager
- (b) District shall pay EXL a separate amount for each media service. The breakdown and total amount for the fiscal year of July 1, 2020 – June 30, 2021 is as follows:

Total contract not-to-exceed: \$100,000

- Cash Media: \$75,000
 - Diamond Peak: \$75,000
 - Golf: \$0
 - Facilities: \$0
 - Recreation Center: \$0

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- Tennis Center: \$0
- Trade Media: \$0
 - Diamond Peak: \$0
 - Golf: \$0
- Agency Fees: billed at \$125 per hour, not to exceed \$25,000

Cash and trade budgets cover funds for media purchases from third parties. 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 will pay EXL an additional fee as agreed by both parties prior to executing the additional project. The amount will be separated in individual invoices for different District recreational facilities and shall be due upon EXL's delivery and District's acceptance of the finished Media Services. EXL will charge a fee of \$125 per hour for the development of each media plan. This fee will not surpass 40 hours or \$5,000 for each campaign and will only be charged if the media plan is not placed.

- (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, 2020 - June 30, 2021 fiscal year. The Media Services will include, but are not limited to, at least the following:
 - 1) Radio
 - 2) Outdoor
 - 3) Television/Cable
 - 4) Digital/Internet/Mobile
 - 5) Print
 - 6) Promotions
 - 7) Specialty Media
 - 8) Outdoor Production Coordination

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9) Advertising Performance Analytics & Tracking

- (b) EXL shall consult with District to provide District the opportunity for input on the selected Media Services. District will have final approval on all media buying and placement, and District's Marketing Manager shall sign off on all 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 District's Marketing Manager signing off on any changes.
- (c) EXL shall not exceed the total amount budgeted for media for the services described above and will not incur any costs above and beyond set budget unless additional costs are authorized by District in writing.
- (d) EXL will consider performing additional projects from the District not stated in this contract on as-needed basis and will provide estimates for each project prior to execution.
- (e) EXL will provide copies of original invoices from third party vendors attached to EXL invoice.
- (f) EXL will pay all invoices from media/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 media/vendors shall look to EXL for payment upon proof of payment by District to EXL for invoices in question.
- (g) EXL will coordinate with and provide creative agencies selected by District Marketing Department with all creative deadlines and make sure media deadlines are met.
- (h) NonDisclosure 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 Services defined in this Agreement or other 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

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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 plans, schedules or work in progress, and in such event, EXL shall immediately take proper steps to carry out District's instructions. In turn, District agrees to assume liability for all such commitments and 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. District agrees to indemnify, defend and hold harmless EXL for any claim or liability incurred by EXL under any agreement entered into by EXL for the benefit of District and which is modified by the District and pursuant to the terms hereof. IVGID understands that outdoor contracts are non-cancelable once approved. The agency fee is based upon an hourly rate of \$125 per hour as documented by EXL Media and invoiced monthly, and if the contract is cancelled by IVGID, no further agency fees will be due except those required to facilitate the return of IVGID's Confidential Information and hand off any existing media buying commitments.
- (c) District will pay EXL for the Media Services as set forth in Section 1(b) above.

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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.
- (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 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 thirty (30) days' notice by either party. In such event, District shall only pay EXL for media services actually performed and completed. This agreement is for a time period of one (1) year and may be renewed upon agreement.
- (e) 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 the content of any advertising material prepared or placed for District by EXL, notwithstanding the fact that any such material may have been approved by District. District will have the right to defend or settle any such claim, suit, or proceeding at its own expense. District's obligation to indemnify EXL shall include any claims by third parties based upon trademark, copyright or other infringements of intellectual property rights.
- (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 services under this agreement or as a result of EXL's representations to third parties contrary to the scope of EXL's responsibilities hereunder.

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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.
- (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.
- (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: District General Manager

Reviewed as to form:

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