

MEMORANDUM

TO: Board of Trustees

FROM: Indra Winqest
District General Manager

SUBJECT: Review, discuss and possibly approve a Grant Agreement for design and preconstruction services for the Recreation Center Expansion Project between IVGID and the Dave & Cheryl Duffield Foundation

DATE: July 27, 2022

I. RECOMMENDATION

That the Board of Trustees approve a Grant Agreement for design and pre construction services for the Recreation Center Expansion Project between IVGID and the Dave & Cheryl Duffield Foundation.

II. DISTRICT STRATEGIC PLAN

Long Range Principal #1 Service

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.

Long Range Principal # 5 Assets & Infrastructure

Long term Initiative 2 - Continue to review and potentially implement priorities identified in the various district venue and facility master plans and studies as defined by the Board of Trustees.

III. BACKGROUND

- At the January 12th Board of Trustees Meeting, Staff presented for discussion amongst the Board, an opportunity for a partnership with the Dave & Cheryl Duffield Foundation to expand the Recreation Center with an emphasis on youth in the community. The proposed concept at the time included a multi-use gymnasium with dedicated and static gymnastics facilities, programming and social areas, as well as administrative and flexible space. Additionally, it was recognized that there may be opportunities to address tenant improvements in the existing recreation center as recommend in the community services master plan. The Board of

Trustees reviewed, discussed, and took action to authorize Staff to work with the Dave & Cheryl Duffield Foundation to develop a Memorandum of Understanding to initiate a conceptual design phase for the purpose of expanding programs and services to the community at the Recreation Center and directed Staff to bring back the agreement at a future meeting.

- At the February 9th, 2022 Board of Trustees Meeting, Staff presented a Memorandum of Understanding between IVGID and the Dave & Cheryl Duffield Foundation for the Conceptual phase of the expansion of the Recreation Center. The presentation included information related to the recommendations included in the community services master plan for the Recreation Center and Community Programming as well as the potential partnership with the North Tahoe Boys and Girls Club to provide programs and services in partnership with IVGID.

The Board of Trustees unanimously took action to approve the Memorandum of Understanding between IVGID and the Dave & Cheryl Duffield Foundation for the conceptual phase of the expansion of the Recreation Center.

- At the April 27, 2022 Board of Trustees Meeting, Staff presented an agenda item for the Board to review, discuss, and possibly award a design contract for the conceptual phase of the Recreation Center Expansion Project. The design contract would get the project through the 30% schematic design phase and would include high level cost estimation of a potential project. IVGID Staff interviewed three potential design firms and recommend hiring H&K Architects. The 30% Schematic Design documents would be used as the bridging documents for the district to advertise a Request for Qualifications (RFQ) for a Construction Manager at Risk (CMAR). Also included in the agenda item was a preliminary project schedule and a fiscal impact statement.

The Board of Trustees unanimously took action to award the 30% Schematic Design Contract for the Recreation Center Expansion Project to H&K Design for \$72,000 as well as an additional \$29,000 for IVGID Public Works Staff time.

- At the June 29th, 2022 Board of Trustees Meeting, Staff presented an agenda item for the Board of Trustees to approve the 30% Schematic Design and a contract for H&K Architects and other specialty contractors. Additionally, to acknowledge the intent to enter into a formal grant agreement with the Dave & Cheryl Duffield Foundation. The schematic

design included the overall Project Design, Management and Construction Cost Estimation, building programming both for the gymnasium expansion and the youth center in collaboration with the North Tahoe Boys & Girls Club, and preliminary operations and maintenance cost estimations. Additionally, the schematic design phase provided the bridging documents to go out for Request for Proposals (RFP) to hire a Construction Manager at Risk (CMAR). District Staff received three proposals and two were chosen to be interviewed. Ultimately, Staff recommended awarding the CMAR contract to Core Construction.

The Board of Trustees unanimously voted to approve the 30% Schematic Design as well as the design contract to H&K Architects through final design. The Board of Trustees approved additional contracts with Exline & Company and Core West and directed Staff to proceed with a progressive grant agreement with the Dave & Cheryl Duffield Foundation.

IV. NEXT STEPS

Staff recommends the Board of Trustees approve the Grant Agreement between IVGID and the Dave & Cheryl Duffield Foundation for design and preconstruction services for the Recreation Center Expansion Project.

This project will also include exclusive donor naming rights recognition and this will be discussed and addressed prior to entering into an agreement for the Construction Phase of the Recreation Center Expansion Project.

Once final design and preconstruction services are complete, final design will be presented to the Board of Trustees for approval and at that time Staff would work with the Dave & Cheryl Duffield Foundation to develop a progressive grant agreement for the construction phase of the project.

V. ALTERNATIVE

Approve the Grant Agreement with requested revisions.

VI. ATTACHMENT

Grant Agreement between IVGID and the Dave & Cheryl Duffield Foundation for Design and Preconstruction Services.

**GRANT AGREEMENT FOR DESIGN AND PRECONSTRUCTION SERVICES FOR
THE RECREATION CENTER EXPANSION PROJECT**

THIS GRANT AGREEMENT (“**Agreement**”) is made and entered into as of this ____ day of _____, 2022, by and between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (“**IVGID**”), a Nevada general improvement district, and the DAVE & CHERYL DUFFIELD FOUNDATION and assigns (“**DCDF**”), a Nevada non-profit corporation. IVGID and DCDF may be referred to as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, IVGID owns and operates the Incline Village Recreation Center, which is located at 980 Incline Way, Incline Village, NV 89451 (“**Recreation Center**”); and

WHEREAS, IVGID is interested in expanding the Recreation Center to include a multi-use gymnasium, programming space, and ancillary infrastructure to increase the ability of the Recreation Center to provide gymnastics and other community-oriented programming with an emphasis on youth and families (“**Expansion**”); and

WHEREAS, the Parties previously executed that certain Memorandum of Understanding (“**MOU**”) for the funding of development of the conceptual design for the Expansion; and

WHEREAS, IVGID completed a thirty percent (30%) conceptual design for the Expansion (“**Conceptual Design**”); and

WHEREAS, DCDF has expressed interest in funding the remaining design and pre-construction services (“**Services**”) in contemplation of a future agreement for funding of construction of the Expansion (such scope is not made a part of this Agreement); and

WHEREAS, the Parties wish to execute this Agreement to outline the grant by DCDF funding the final design and pre-construction of the Expansion.

TERMS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein set forth, and the recitals above, which are incorporated herein by this reference, it is agreed by IVGID and DCDF:

1. **Expansion.** IVGID shall prepare and complete the final design, bidding documents and all related pre-construction services prior to the execution of construction contracts for the Expansion as identified in the Conceptual Design and Exhibit A, which are both incorporated by reference (“**Services**”). IVGID shall comply with all applicable NRS and similar legal requirements when procuring third party consultant or contractor services. IVGID shall obtain all

permits and approvals for the Expansion as may be required by Washoe County and the Tahoe Regional Planning Agency.

2. **Funding.** Pursuant to the terms and conditions of this Agreement, expressly including Section 3, DCDF or its assigns shall provide IVGID with grant funding, or in the case of an assignment to a donor-advised fund shall recommend grant funding, as provided for in Section 4, and not to exceed Two Million Four Hundred and Fifteen Thousand Dollars (\$2,415,000) to fund the Services, as outlined in Exhibit C.. Eligible costs for such work shall include third party consultant and contractor costs for design, engineering, preparation of bidding documents, and other pre-construction services related to the Expansion. Eligible costs shall further include IVGID Engineering staff costs incurred for project management, pre-construction, and engineering services for the Expansion. Such costs shall be billed at IVGID's actual hourly rate, including salary, benefits, and reasonable overhead. Eligible costs shall exclude costs (1) related to litigation or negotiated settlements between IVGID and contractors, subcontractors, agencies, or other entities and (2) other IVGID staff or legal costs.

3. **IVGID Tenant Improvements.** IVGID may include those tenant improvements for the Recreation Center ("**Tenant Improvements**"), as identified in Exhibit B and incorporated by reference, in any services or pre-construction contracts for the Services. However, IVGID shall ensure that such contractors or consultants include sufficient detail in their invoices and records to ensure DCDF is not responsible for services or costs attributable to the Tenant Improvements. IVGID shall provide such invoices to DCDF upon request.

4. **Reporting and Reimbursement Procedures.** IVGID shall be reimbursed for its costs incurred through the design and pre-construction phase of the Expansion. For costs incurred to complete 100% design, preparation of construction documents and to complete the bidding process, IVGID shall request reimbursement from DCDF or its assigns by providing monthly statements and invoices (per Exhibit C), which shall identify the work incurred, and the amount of reimbursable costs billed during the period. The statements and invoices should be accompanied by a report demonstrating progress against the project schedule and budget. DCDF or its assigns shall provide the requested funding within forty-five (45) days of issuance. DCDF or its assigns may dispute amounts billed or seek additional information within thirty (30) days of issuance. Any dispute must be resolved before payment may be made by check, wire transfer, or other method agreed to by the Parties.

5. **Naming.** DCDF desires to have naming rights (such as "Duffield Teen Center" or similar such names) and rights to signage size, design, materials, and location to the Expansion, subject to IVGID policy and local jurisdiction codes. The naming rights shall be exclusive for all of the Expansion premises, including individual elements thereof. Should IVGID not approve of these naming rights, DCDF has the right to cancel the Agreement.

6. **Termination.** Either Party may terminate this Agreement for cause with fifteen (15) days written notice to the other Party. The defaulting Party may avoid termination by curing such default during the notice period or if the default is unable to be cured within such time, the defaulting Party has commenced cure during the notice period and reasonably and diligently cures the default within a mutually agreeable timeframe. In the event of a termination by DCDF or its assigns, DCDF or its assigns will be financially obligated and pay for all IVGID obligations

incurred by and/or contractually obligated for in the performance of the Services up to the time of cancellation and those reasonably necessary to terminate any third party agreements for the Services. Without limiting any remedies available to IVGID or DCDF, the Parties shall mutually defend, indemnify, and hold each other harmless from any claims by third party contractors or consultants based on any cessation, delay, or interruption in the Services due to or arising out of either Party's default. IVGID indemnity obligations shall be limited by Section 20 and applicable law.

7. **No Commitment.** Neither Party commits to the construction of the Expansion or Tenant Improvements. Any agreement between the Parties related to reimbursement for costs of the Expansion shall be documented in an amendment to this Agreement or a separate agreement.

8. **No Waiver.** The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

9. **Notices.** Any notice or other communication ("**Notice**") which any Party may desire to give to the other Party under this Agreement must be in writing and given to the respective Parties at the following address, or at such other address the respective Parties may provide for this purpose:

IVGID: Incline Village General Improvement District
Attn: Indra Winquest, District General Manager
893 Southwood Blvd.
Incline Village, NV 89451

DCDF: Dave & Cheryl Duffield Foundation
Attn: James R. Dugdale, Executive Director
PO Box 4014
Incline Village, NV 89450

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.

10. **Interpretation.** The headings used herein are for reference only. The terms of this Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of Nevada without regard to the choice of law or conflicts.

11. **Venue.** This Agreement is made in Washoe County, Nevada. The venue for any legal action for the purpose of interpreting or enforcing any provision of this Agreement shall be in Washoe County.

12. **Attorneys' Fees.** If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

13. **Third-Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

14. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

15. **Good Faith.** The Parties agree to exercise reasonable efforts and good faith to effectuate the terms and conditions of this Agreement.

16. **Amendment of Agreement.** This Agreement may be amended at any time by mutual agreement of the parties.

17. **Assignment.** Neither this Agreement nor any interest in this Agreement shall be assignable without the prior written consent of the other Party. Notwithstanding the foregoing, DCDF may assign this Agreement in whole or in part to a donor-advised fund advised by Dave and Cheryl Duffield or DCDF with sufficient financial resources to fund the Services. Such assignment shall be effective fifteen (15) days after DCDF provides written notice to IVGID, provided that IVGID may request reasonable documentation of such financial resources within ten (10) days of notice of the assignment. In such event, IVGID shall have fifteen (15) days to notify DCDF of its consent or objection to the assignment. The assignment shall be effective upon IVGID's consent.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

19. **Effective Date.** This Agreement shall become effective as of the date executed.

20. **Limitation of Liability.** Nothing in this Agreement limits or waives IVGID's immunity from liability as set forth in NRS Chapter 41 or other applicable law.

21. **Authority to Enter Agreement.** Each Party has all requisite power and authority to execute, deliver, and perform under this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective Party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**DAVE & CHERYL DUFFIELD
FOUNDATION**

**INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT**

EXHIBIT A
Final Design, Bidding and Pre-Construction Services

H+K Architects - Construction Documents, Permitting and Bidding

Project Description

The Recreation Center Expansion will meet the space requirements as developed and approved to date which indicates the overall size of the building expansion to be approximately 33,000 gsf. The Construction Documents work will build upon the approved Schematic Design work reviewed and approved at the upcoming June 29 IVGID board meeting.

Per the current Project Schedule, the Construction Documents work is anticipated to start July 1, 2022 and be complete by January 11, 2023. Bidding and GMP Preparation will be completed by March 17, 2023. Permitting is expected to be completed by April 14, 2023. The project will utilize the CMAR delivery process and BIM (Building Information Modeling).

Scope of Work

The scope of work will be in accordance with the International Building Codes as adopted by Washoe County and only includes Construction Documents, Permitting and Bidding. As such a separate proposal will be provided at the end of the Construction Documents and Bidding phases and will include all design fees for the remaining Construction Administration Phase. Our services include Architectural Design/Project Management, Civil Engineering, Landscape Architecture, Structural Engineering, Mechanical Engineering, and Electrical Engineering. In order to expedite the development schedule, we are also providing Fire Alarm and Automatic Fire Sprinkler design.

Fees

Construction Documents/Permitting and Bidding Services outlined within this Proposal will be provided for a fixed fee of Two Million Twenty-Five Thousand Dollars (\$2,025,000.00).

Phase/Task Fee:

Construction Documents/Permitting	\$ 1,970,900.00
Bidding	<u>\$ 54,100.00</u>
Total	\$ 2,025,000.00

Exline & Company Inc. - TRPA & Washoe County Applications & Tasks

Scope of Work:

Assist with the regulatory due diligence, entitlement and environmental permitting responsibilities until the project is acknowledged and the pre-grade is completed with TRPA staff.

Tasks:

Soils/Hydro Submittal	Pre-Application Neighborhood Meeting
Pre-Application Meeting w/ TRPA & WC	Washoe County Special Use Permit
Due Diligence - Entitlements	Cultural Analysis
Coordination of drawings w/ client & design team	VMT Analysis / Transportation impact Study
TRPA Public Service Application	

Project Cost Estimate: \$150,000.

CORE, Inc. – CMAR Pre-Construction Services \$125,000

- Review project documents on a regular, providing constructability feedback and insight.
- Evaluate and provide feedback on scope areas with high-risk potential
- Site visits to perform in-depth investigation of all existing conditions

EXHIBIT B Tenant Improvements

The Recreation Center Tenant Improvements of approximately 7,700 sf shall include the following:

- renovate existing office space that will be relocated into the new expansion into new recreation space
- renovate the existing child-care space into a staff breakroom
- renovate the existing pro shop area into a massage therapy suite
- renovate the existing massage room into a family changing room

In addition, the following scope may also be considered as part of tenant improvements:

- renovate lighting throughout the existing building
- add a 4-sided elevated walking track to the existing gymnasium

EXHIBIT C Funding Schedule

RECREATION CENTER EXPANSION PROJECT Design / and Pre-Construction Phase Funding Schedule

The following Funding Schedule provides for the estimated cash flow requirements and monthly reimbursements of project costs:

Contractor	Cost Element	Cost Estimates	Funding Sources		Estimated* Cash Flow	Funding / Invoice Schedule**	
			IVGID	Grant		Date	Payment Amount
H+K Architects	Construction Documents, Permitting and Bidding	\$ 2,025,000		\$ 2,025,000			
H+K Architects	Rec Center Tenant Improvements	110,000	110,000	-			
Exline & Co., Inc	TRPA & Washoe County Applications & Tasks	150,000		150,000			
IVGID	Engineering / Proj. Manajement Support	115,000		115,000			
CORE, Inc.	CMAR Pre-Construction Services	125,000		125,000			
Design - Pre-Construction (Estimates)		\$ 2,525,000	\$ 110,000	\$ 2,415,000			
	30% Design						
	60% Design - Authorization to Proceed- 6/29/22						
					\$ 301,875		
					301,875	Aug. 1	Prior Month Actuals
	60% Design				301,875	Sept. 1	Prior Month Actuals
	100% Design - Begin				301,875	Oct. 1	Prior Month Actuals
					301,875	Nov. 1	Prior Month Actuals
					301,875	Dec. 1	Prior Month Actuals
					301,875	Jan. 1	Prior Month Actuals
					301,875	Feb. 1	Prior Month Actuals
	100% Design /					Mar. 1	Prior Month Actuals
	Bid Documents					Final Invoice	Prior Month Actuals
					\$ 2,415,000		

* Estimated monthly cash flow is based on a straight line allocation over the expected term of the individual contracts.
 ** Amounts to be invoiced per monthly schedule will be based on actual and documented expenses incurred for the prior period.
 Timing of final invoicing at end of project phase will depend on receipt of all final invoices from contractors.