

MEMORANDUM OF UNDERSTANDING REGARDING CONCEPTUAL DESIGN OF RECREATION CENTER

THIS MEMORANDUM OF UNDERSTANDING (“**MOU**”) is made and entered into as of this ____ day of _____, 2022, by and between the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (“**District**”), a Nevada general improvement district, and the DAVE & CHERYL DUFFIELD FOUNDATION (“**Foundation**”), a Nevada non-profit corporation, to confirm the understanding between IVGID and Foundation regarding Foundation’s payment for and/or reimbursement to IVGID for the design and permitting for an expanded recreation center as set forth below.

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 Foundation is willing to fund the development of a conceptual design phase for the Expansion as set forth in this MOU.

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 Foundation:

1. **Expansion.** IVGID shall develop a conceptual design for the Expansion as outlined in Exhibit A, incorporated by this reference. The Foundation may provide input into the development and contents of the design but IVGID shall have the sole discretion and approval over the same. IVGID may utilize its staff and/or a third party consultant to develop the conceptual design for the Expansion, including internal contract and project management. All services and work set forth in this Section for the Expansion shall be referred to as the “**Work**.”

2. **Funding.** The Foundation shall pay all third party direct costs incurred by IVGID for the Work, and the Foundation and IVGID shall meet and confer on a not-to-exceed amount for any third party direct costs for the Work prior to its commencement. IVGID shall provide notice to the Foundation of the not-to-exceed amount prior to execution of any contracts for the Work, and IVGID shall not exceed the identified amount without prior written notice to the Foundation and an opportunity for the Foundation to terminate this MOU with written notice to IVGID and without any further liability or responsibility for costs in excess of the identified not-to-exceed

amount. The Foundation shall reimburse IVGID for its actual direct costs for the Work, which shall not include internal staff time. All third party costs shall be invoiced to Foundation on a monthly or other interval as determined by IVGID. Upon receipt of an invoice the Foundation shall timely pay the same.

3. **Future Efforts.** Upon completion of the Work, the parties shall meet and confer regarding whether to construct the Expansion. Either party retains the sole and complete discretion to decide whether to do so. Future cooperation, if any, regarding the Expansion shall be documented in an amendment to this MOU or a separate agreement.

4. **Termination.** Either party may terminate this MOU with forty-five (45) days' written notice to the other party with or without cause. In the event either party terminates this MOU without cause and except as set forth in Section 2, the Foundation shall be responsible for all Work incurred up to the date of termination plus all Work reasonably necessary to terminate any third party agreements.

5. **No Waiver.** The waiver by any party of any breach or violation of any requirement of this MOU 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 MOU.

6. **Notices.** Any notice or other communication (“**Notice**”) which any party may desire to give to the other party under this MOU 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
893 Southwood Blvd.
Incline Village, NV 89451

Foundation: [insert]

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.

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

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

9. **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 MOU, 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.

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

11. **Severability.** If any provision of this MOU, 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 MOU.

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

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

14. **Effective Date.** This MOU shall become effective as of the date executed.

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

[SIGNATURE PAGE FOLLOWS]

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

**DAVE & CHERYL DUFFIELD
FOUNDATION**

**INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT**

EXHIBIT A

The District anticipates that the conceptual design for the Expansion shall include but not entirely limited to the following:

- A Multi-Use Gymnasium. This Gymnasium to include a dedicated, approximately 60 ft. by 60 ft. space for Gymnastics Programming.
- Additional Programming and social areas
- Administrative Space
- Small Kitchen/Restroom facilities
- Appropriate Storage

The development of the conceptual design shall include architectural or similar drawings for the Expansion including three dimensional renderings and images.

The design shall also include project and programming plan and costing as set forth below:

Project Cost Estimation – Overall estimation of project costs including estimate for full design and project management services.

Operations & Maintenance Cost Estimation – General Maintenance and operational costs including utilities and other fixed costs such as insurance, custodial etc.

Operations and Programmatic Plan to include potential collaboration with the Boys & Girls Club – types of programs and activities, staffing needs and levels, fee structure, and similar related activities.