

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF BISBEE AND BISBEE VOGUE, INC.
FOR THE COORDINATION AND IMPLEMENTATION
OF RECREATIONAL ACTIVITIES AT HIGGINS HILL PARK**

This MEMORANDUM OF UNDERSTANDING (“MOU”), is entered into this 8th day of June, 2022, by and between the CITY OF BISBEE, an Arizona municipal corporation (the “City”) and BISBEE VOGUE, INC., an Arizona non-profit corporation (“BVI”). The City and BVI may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City maintains various parks and facilities for the use and well-being of area residents and visitors; and,

WHEREAS, BVI is a local non-profit organization with a stated mission to create, promote and support initiatives that enhance the economic vitality, health and wellness of the citizens in Southern Arizona.

WHEREAS, the City desires to promote and encourage the use and expansion of recreational activities at the Higgins Hill Park (the “Park”) through a collaborative effort with BVI to coordinate and facilitate recreational activities at the Park with BVI for the goal of promoting general fitness; and,

WHEREAS, the collaboration with BVI will allow the City to implement the anticipated activities and programs through grants and/or donations, minimizing and/or eliminating the City’s out-of-pocket costs associated with such activities and programs; and,

WHEREAS, the City and BVI desire to work together toward a common goal to implement high quality recreational activities at the Park; and,

WHEREAS, pursuant to the terms of this MOU, the City and BVI desire to set forth the terms and conditions for the mutual cooperation and obligations towards the advancement of their shared goals.

NOW, THEREFORE, for and in consideration of these premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

AGREEMENT

1. *Purpose.* The purpose of this MOU is to outline the responsibilities between the City and BVI towards the establishment of recreational activities at the Park and is intended to act as a guide for the planning and implementation of such recreational activities. The responsibilities and obligations of the City under this MOU are subject to the City receiving necessary and sufficient funds through grants or donations to properly staff and operate the anticipated activities for the

Park. It is anticipated that the initial grant and/or donation from BVI under this MOU will fund the activities and programs at the Park for one year and that additional grants or donations will be necessary to continue the activities and programs beyond the initial first year.

2. Responsibilities.

A. By The City.

(1) The City will appoint a City official to act as the main point of contact to coordinate the activities between the City and BVI, with the fractional cost associated with these additional duties to be covered by the grant and/or donation from BVI.

(2) The City will hire part-time employees to run the recreational activities and programs at the Park to assist residents and visitors in activities such as pickle-ball, the fitness court, and swimming pool, which may include competitive events and programs, with the costs of such part-time employees to be covered by the grant and/or donation from BVI.

(3) The City will maintain all funds received from BVI in support of this MOU in a designated fund that will be restricted for the sole purpose of achieving the goals and objectives of this MOU.

(4) The City will work with BVI on the structure and details of the activities and programs, however, the City will have the ultimate and final decision authority on all activities and programs.

(5) The City will work collaboratively with BVI to identify and pursue any grants, sponsorships and other funding for physical improvements to the Park.

(6) In accordance with State statute and City Code, the City will coordinate and manage all procurements sought or purchased for the Park through the use of City funds or any grants obtained through the City, including the final selection and management of any associated contracts. The City may coordinate and consult with BVI on the implementation of such procurements and contracts, but the ultimate and final decision will be in the City's sole discretion.

(7) The City shall have fiscal management and control of any grants or donations accepted by the City for improvements of and/or recreational activities at the Park.

B. By BVI.

(1) BVI will support the City to structure and fund the implementation and maintenance of the recreational activities and programs at the Park, including,

providing the necessary initial funding for the activities and programs at the Park through a grant and/or donation to the City in the initial amount of \$6,000.

(2) BVI shall maintain its own liability insurance coverage for any of BVI's instructors, employees, volunteers or agents engaged in activities and/or programs under this MOU.

(3) BVI shall be responsible for all expenses related to the activities and programs established under this MOU, to include, but not limited to, the cost of City staff to oversee and administer the activities and programs.

(4) BVI will prepare, maintain, and submit to the City any reports and/or records only relating to the services performed by BVI under this MOU, when and as requested by the City, upon reasonable notice.

(5) BVI will coordinate with the City on the implementation of a public outreach program to inform the community of the recreational activities planned and scheduled for the Park.

(6) BVI shall work with the City on identifying necessary and/or desired improvements to the Park and will assist the City in the writing and submission of grant applications or other funding requests for the implementation of such improvements. However, BVI acknowledges that all grant applications and funding requests must be approved by the City Council and the City will have sole discretion on which grants to seek and the City shall have sole discretion on which, if any, improvements to implement at the Park.

(7) BVI may seek grants, donations and other funding sources without the approval of the City so long as there are no financial or other obligations imposed upon the City by way of such grants, donations or funding sources.

3. Term. The term of this MOU shall commence upon approval of the City Council and last through June 30, 2023, unless terminated sooner in accordance with the terms of this MOU. This MOU will automatically renew for successive one (1) year terms until otherwise terminated by a Party as provided for herein.

4. Reporting and Records. All books, accounts, reports, files, and other records relating to this MOU shall be kept by BVI for five (5) years after termination of this MOU. The Parties recognize and acknowledge that records may be subject to Arizona Public Records laws.

5. Indemnification. Each Party is an independent entity, responsible for its acts and the acts of its officers, agents and employees. Consequently, each Party agrees to indemnify, defend and hold harmless the other Party, its officers, agents and employees from any and all loss, injury, liability, damages, claims, demands, suits, or judgments arising from the acts or omissions of its officers, agents, and employees in connection with the performance of this MOU.

6. Termination. Either Party may terminate this MOU with or without cause upon providing the other Party with at least 30 days' written notice of such termination, each party to bear its own costs.

7. Employment Status. Except as otherwise provided by law, in the performance of this MOU, all Parties will be acting in their individual governmental, corporate or agency capacities and not as agents, employees, partners, joint venturers, or associates of each other. The employees, agents, or subcontractors of one Party shall not be deemed or construed to be the employees or agents of the other Party.

8. Non Fund-Obligating. This MOU does not create any legal, financial, funding or other fiscal obligations of any kind on the City. The intent of this MOU is to express mutual understanding in the areas outlined herein, and nothing in this MOU will be construed as affecting or requiring the City to obligate or expend funds, including, but not limited to, expenses for City staff and employees.

9. Severability. The Parties agree that should any part of this MOU be held invalid or void, the remainder of the MOU shall remain in full force and effect.

10. Conflicting Provisions. Nothing in this MOU is intended to conflict with existing laws and/or regulations, with any contractual responsibilities and obligations imposed by third-party contracts or agreements, or with any agency directive of the City. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

11. Governing Law. This MOU shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this MOU shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Cochise (or, as may be appropriate, in the Justice Courts of Cochise County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

12. Non-Discrimination Laws. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 and 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Agencies shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

13. Dispute Resolution. If there is a dispute, the Parties agree to negotiate in good faith to resolve the matter.

14. A.R.S. § 38-511. The Parties acknowledge that this MOU is subject to cancellation pursuant to A.R.S. § 38-511.

15. Immigration Laws. The Parties warrant, and represent to each other, that they are in compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act, and all other federal immigration laws and regulations.

16. Notices. All notices, demands or other communications relative to this MOU must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid as follows:

CITY: City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

BVI: Bisbee Vogue, Inc.
Attn: Cynthia Conroy, President
P.O. Box 1099/ 201 Tombstone Cyn
Bisbee, Arizona 85603

With a copy to:
Gust Rosenfeld, P.L.C.
Attn: Joseph Estes, City Attorney
One E. Washington St., Suite 1600
Phoenix, Arizona 85004

If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

17. Amendments/Modifications. This MOU can be revised or modified only by written amendment signed by both Parties.

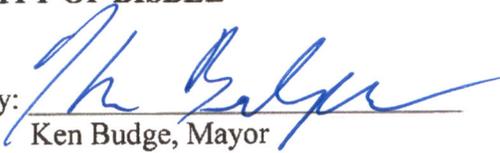
18. Headings and Counterparts. The headings of this MOU are for purposes of reference only and shall not limit or define the meaning of any provision of this MOU. This MOU may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this MOU shall be effective and binding upon the Parties as if such signatures were originals, and shall be admissible as evidence of the document.

19. Authority and Execution. Each person executing this MOU on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it

purports to bind and if such Party is a partnership, corporation or trustee that such partnership, corporation or trustee has the full right and authority to enter into this MOU and perform all of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have entered into this Memorandum of Understanding on the date first written above.

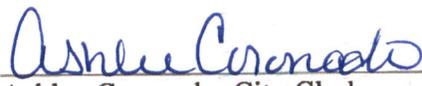
CITY OF BISBEE

By: 
Ken Budge, Mayor

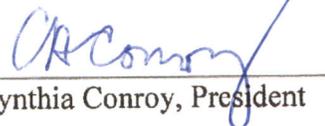
APPROVED AS TO FORM:


Joseph D. Estes, City Attorney

ATTEST:


Ashlee Coronado, City Clerk

BISBEE VOGUE, INC.

By: 
Cynthia Conroy, President