

MEMORANDUM

TO: Board of Trustees

THROUGH: Mike Bandelin
Interim General Manager

FROM: Bobby Magee
Interim Director of Finance

SUBJECT: Review, Discuss, and Approve the Scope of Work and Related Contract Pricing for Forensic Due Diligence Auditing Services and Direct the General Manager to Execute the Agreement with RubinBrown

DATE: January 31, 2023

I. RECOMMENDATIONS

That the Board of Trustees:

1. Discuss the Contract, Related Scope of Work, and Related Pricing for Forensic Auditing Services and Provide Further Direction to Staff as Appropriate; and,
2. Direct the General Manager to execute the contract with RubinBrown.

II. DISTRICT STRATEGIC PLAN

This action supports Long Range Principle #2, Finance; *“The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial polices for operating budgets, fund balances, capital improvement and debt management.”*

- *Comply with State and Federal regulations.*
- *Develop and maintain a long term plan to sustain financial resources.*

III. BACKGROUND

Overview

On November 8, 2023 the Board of Trustees (Board) approved the award of a contract with RubinBrown, LLP for Forensic Due Diligence Auditing Services. (Item G.3) As part of the actions approved by the Board, staff was also directed to work with the IVGID Treasurer and the Chair of the Audit Committee to develop

the final scope of work for the contract; and, the Board provided the Treasurer with authority to negotiate final terms and conditions, along with related contract pricing.

As the scope and price were negotiated with RubinBrown, it became apparent that their firm may not have priced the contract appropriately based on IVGID's needs. The final scoring for award of contract would not have changed if RubinBrown's response to the Request for Proposal (RFP) had been closer to pricing proposals of the other firms; the RFP Review Committee had still scored RubinBrown as the most qualified firm by a wide margin, and the Committee did not see the pricing proposals until after the scoring had been completed. The initial prices received from all firms in response to the RFP are as follows:

RubinBrown	\$117,450
Baker Tilly	\$368,625
Moss Adams	\$382,934
Grassi	\$750,000

Since the information related to the final negotiated Scope of Work and related contract pricing has become public, a number of interested stakeholders has reached out to staff requesting that this item be considered by the full Board, despite the Board's previous direction to staff.

VI. FINANCIAL IMPACT AND BUDGET

The RubinBrown price proposal, based only on their understanding of IVGID's needs, was a total fixed price of \$110,000 (discounts applied) for three fiscal years' review. As identified in the staff report on November 8, 2023 this was intended to be a starting point for contract negotiations, with final pricing dependent upon successful completion of the finalized contract. In a separate item on today's Agenda, the Board is scheduled to consider appropriating funds for this contract, with a recommended not-to-exceed amount of \$350,000.

V. ALTERNATIVES

If the Board does not direct staff to sign the contract with available appropriations, the Forensic Due Diligence Audit will not commence.

**INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
PROFESSIONAL SERVICES AGREEMENT
FOR SERVICES TO BE PROVIDED
ON A TASK ORDER BASIS**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of January, 2024, by and between the Incline Village General Improvement District, a Nevada general improvement district (“District”) and RubinBrown LLP, a limited liability partnership with its principal place of business at 10801 W Charleston Blvd, Suite 300, Las Vegas, NV, 89135 (“Consultant”). The District and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 District. District is a general improvement district organized under the laws of the State of Nevada, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing forensic accounting services to public clients, is licensed in the State of Nevada, and is familiar with the plans of District.

2.3 Project. District desires to engage Consultant to render professional services on a task order basis for various projects within the District. The term “Project”, as used herein, shall mean the project(s) described in the Task Orders (defined below in Section 3.1.1).

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District, on a task order basis, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the forensic accounting services necessary for the Project (“Services”). The types of services to be provided are more particularly described in Exhibit A, Scope of Services, attached hereto and incorporated herein by reference. **No Services shall be performed unless authorized by a task order executed by the District and Consultant (“Task Order”) in such form and content as set forth on Exhibit B, attached hereto and by this reference incorporated into this Agreement.** All Services shall be subject to, and performed in accordance with this Agreement, the relevant Task Order, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from January 8, 2024 to June 5, 2024, unless earlier terminated or extended as provided herein. Consultant shall use best efforts to complete the Scope set forth in Exhibit A within 75 days of Consultant's receipt of a Notice to Proceed from the District and will keep IVGID apprised of its progress during the term of this Agreement, and shall meet any other established schedules and deadlines set forth in the Task Order.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement and such directions and amendments from District as herein provided. The District retains Consultant on an independent contractor basis and not as an employee. No employee or agent of Consultant shall become an employee of District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant will be required to commence work within five days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, the District shall respond to Consultant's submittals in a timely manner. Upon the District's request, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the District's approval.

3.2.4 Substitution of Key Personnel. Consultant has represented to the District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence subject to the District's written approval. In the event that the District and Consultant cannot agree as to the substitution of key personnel, the District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows: Thomas Zetlmeisl.

3.2.5 District's Representative. The District hereby designates Bobby Magee, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). The District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Thomas Zetlmeisl, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of Nevada. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Washoe County Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. If required, Consultant shall assist District, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies. Consultant shall be liable for all violations of local, state and federal laws, rules and regulations in connection with the Project and the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant agrees to the indemnification provisions in Section 3.5.6 of this Agreement.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this Section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance meeting the requirements set forth herein. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 combined single limit (each accident) for bodily injury and property damage; and (3) *Industrial Insurance*: Workers' Compensation limits as required by the Labor Code of the State of Nevada. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability/Errors and Omissions*: Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, professional liability/errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. "Covered Professional Services" as designated in the Professional Liability/Errors and Omissions policy must specifically include the type of work performed under this Agreement.

Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(A) Commercial General Liability. The commercial general liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver

of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(B) Automobile Liability. The automobile liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Industrial (Workers' Compensation and Employers Liability) Insurance. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District.

3.2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

3.2.10.7 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District

reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.8 Subconsultants. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.2.10.9 Compliance with Coverage Requirements. If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may terminate this Agreement for cause.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto and incorporated herein by reference. The total compensation including reimbursements to be provided under this Agreement shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000) without written approval of District's Board Chair. **The total compensation per Task Order shall be set forth in the Task Order, and shall not exceed such amount without written approval of the District's Representative.** Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly itemized invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services and supplies provided since the initial commencement date of Services under this Agreement, and since the start of the subsequent billing periods, through the date of the invoice. Invoices shall be sent to ap@ivgid.org, with attention to the Director of Finance. Consultant shall include a Project Task Tracking Sheet with each invoice submitted. District shall, within thirty (30) days of receiving such invoice and Project Task Tracking Sheet, review the invoice and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized under this Agreement, including its Exhibits, in a Task Order, or otherwise in writing by the District.

3.3.4 Extra Work. At any time during the term of this Agreement, the District may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by the District to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the District’s Representative. Where Extra Work is deemed merited by the District, an amendment to this Agreement shall be prepared by the District and executed by both Parties before performance of such Extra Work, or the District will not be required to pay for the changes in the scope of work. Such amendment shall include the change in fee and/or time schedule associated with the Extra Work. Amendments for Extra Work shall not render ineffective or invalidate unaffected portions of this Agreement

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain accurate and complete books, documents, accounting records and other records pertaining to the Services for six (6) years (or longer as required by applicable law) from the date of final payment under this Agreement. Consultant shall make such records available to the District for inspection, audit, examination, reproduction, and copying at Consultant’s offices at all reasonable times. However, if requested, Consultant shall furnish copies of said records at its expense to the District, within seven (7) business days of the request.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. The District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to the District, and Consultant shall be entitled to no further compensation. Consultant may terminate this Agreement or any Task Order immediately for cause or decline to perform certain tasks if information comes to Consultant’s attention indicating that performing such tasks could cause Consultant to be in violation of any applicable law, regulations or standards, or to be in a conflict of interest. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of this Agreement with or without cause by District except for the amounts authorized herein.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the District may require Consultant to provide all finished or unfinished Documents and Data (defined below) and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

District

Incline Village General Improvement
District
893 Southwood Blvd.
Incline Village, NV 89451
Attn: **Director of Finance**

Consultant

RubinBrown LLP
7676 Forsyth Blvd., Suite 2100
St. Louis, MO 63105
Attn: Thomas Zetlmeisl

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.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1

Documents &

Data. All source code, reports, programs, manuals, disks, tapes, and any other material prepared by or worked upon by Consultant for the Services shall be the exclusive property of the District, and the District shall have the right to obtain from Consultant and to hold in District's name copyrights, trademark registrations, patents, or whatever protection Consultant may appropriate to the subject matter. Consultant shall provide District with all assistance reasonably required to perfect the rights in this subsection. Notwithstanding the foregoing, pursuant to Consultant's record retention policy, at the conclusion of this Agreement or any Task Order, Consultant may retain copies of files created by Consultant (collectively "Work Papers") and Consultant will destroy all pertinent Work Papers after a retention period of seven (7) years, after which time these items will no longer be available ("Record Retention Period"). Consultant's email retention policy is eighteen (18) months, after which time emails will no longer be available ("Email Retention Period").

3.5.3.2 Confidentiality.

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the District. At any time during or after termination or expiration of

this Agreement or any Task Order, should Consultant receive a subpoena or other legal order from a third party seeking production of the District's records, documents, or Confidential Information, or testimony relating to Consultant's Services, Consultant will, to the extent permitted by law, notify the District as soon as practicable. Upon such notification, should the District wish to take action to protect its records and/or its information from production in compliance with the subpoena, the District agrees to notify Consultant of the District's intent to take action to protect its records and/or its information from production. The District agrees that Consultant has the right to produce any and all records Consultant deems appropriate in compliance with the subpoena and law. The District shall reimburse Consultant, upon receipt of an appropriate invoice, for all of Consultant's internal and external costs and expenses in responding to any subpoena for the District's records, and/or providing testimony pursuant to such subpoena, including Consultant's reasonable and customary fees for such services, as well as reasonable attorneys' fees. For the avoidance of doubt, this provision survives any termination or expiration of this Agreement.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's 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.

3.5.6 Indemnification. To the fullest extent permitted by law, Consultant shall indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all costs, expenses, liability, loss, witness fees, reasonable attorney fees, damage or injury, in law or equity, to property or persons, including wrongful death (collectively, "Losses") to the extent such Losses are adjudicated by a third-party trier of fact including any federal or state regulatory agency or body to, in any manner arise out of, pertain to, or relate to any negligence or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, including correction of errors and omissions. Consultant's total maximum obligation to indemnify shall be limited to the amount of fees paid by the District to Consultant in the prior 12 months pursuant to this Agreement or any applicable Task Order up through the date the District provides proper notice and indemnity demand to Consultant ("Indemnity Cap"), except such Indemnity Cap shall not apply to bodily injury or death and damage or destruction to property that in any manner arise out of, pertain to, or relate to any negligence or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order.

3.5.6.1 Design Professional. To the extent required by NRS 338.155, Consultant's obligation to defend, indemnify, and hold District, its officials, officers, employees,

volunteers, and agents free and harmless shall not include any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the District. Moreover, Consultant's obligation to defend, indemnify, and hold District, its officials, officers, employees, volunteers, and agents free and harmless from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the Consultant or the employees or agents of the Consultant which are based upon or arising out of the professional services of the Consultant. If the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the District, as reimbursement for the attorney's fees and costs incurred by the District in defending the action, by the Consultant in an amount which is proportionate to the liability of the Consultant. This Section shall only apply to the extent required by NRS 338.155 and shall not otherwise limit Consultant's obligation to defend, indemnify and hold the District harmless as required under Section 3.5.6.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of Nevada. Venue shall be in Washoe County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 District's Right to Employ Other Consultants. The District reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the District include its officials, officers, employees, agents, and volunteers except as otherwise specified in this

Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.24 Limitation of Liability.

a) For the District. The District does not and will not waive and expressly reserves all available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages.

b) For Consultant. The liability of Consultant (including its partners, employees, agents and affiliated companies) to the District (and any purported third-party beneficiaries) for any claim or damages (including but not limited to incidental, special, exemplary, punitive, economic, or consequential, and attorney fees and costs), whether in contract, strict liability, tort (including but not limited to Consultant's negligence or fault, except that this provision does not purport to limit liability for Consultant's intentional/willful torts or for any other liabilities for which a limitation of liability is prohibited by Nevada law), or otherwise, arising out of, connected with, or resulting from Consultant's Services or the Agreement generally, shall not exceed all fees related to the Task Order giving rise to such claim paid by the District to Consultant, even if Consultant has been advised of the possibility of such claims or damages.

3.5.25 Non-Appropriations. The District may terminate this Agreement, effective immediately upon receipt of written notice on any date specified if for any reason the District's funding source is not appropriated or is withdrawn, limited, or impaired.

3.5.26 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services. Consultant shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under any applicable law. Consultant is not currently engaged in, and during the duration of the Agreement shall not engage in, a Boycott of Israel. The term “Boycott of Israel” has the meaning ascribed to that term in NRS 332.065. Consultant shall be responsible for all fines, penalties, and repayment of any State of Nevada or federal funds (including those that the District pays, becomes liable to pay, or becomes liable to repay) that may arise as a direct result of the Consultant’s non-compliance with this subsection.

3.5.27 Whistleblower Provisions. This Agreement is not intended to and will not preclude Consultant’s employees from exercising available rights under the District’s Whistleblower Policy and associated procedures for reporting suspected misconduct, as that term is defined in the Whistleblower Policy. All reports of suspected misconduct will be handled by the District in accordance with the Whistleblower Policy.

[Signatures on Following Page]

**SIGNATURE PAGE
TO
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
PROFESSIONAL SERVICES AGREEMENT
FOR SERVICES TO BE PROVIDED
ON A TASK ORDER BASIS**

**INCLINE VILLAGE GENERAL RubinBrown LLP
IMPROVEMENT DISTRICT**

Approved By:

Mike Bandelin
Interim General Manager

Date

Signature

Tom Zetlmeisl
Name

Partner
Title

Date

Reviewed as to Form:

Sergio Rudin
District General Counsel

Date

PROFESSIONAL SERVICES AGREEMENT (TASK ORDER BASIS)

EXHIBIT A

SCOPE OF SERVICES

Covers three fiscal years ending June 30, 2021, 2022 and 2023

1. Interview 20 individuals including the IVGID Trustees, IVGID General Manager, IVGID Department Heads, and two at-large Audit Committee Members.
2. Search three years of emails, for the period July 1, 2020 through June 30, 2023, for up to 12 individuals as determined by RubinBrown looking for indications of inappropriate financial activity.
3. Vendor Disbursements Analysis – Perform analysis of the vendor disbursements using the underlying accounting system data for three years to understand trends and identify irregularities and/or errors. Perform tests to verify the validity of the vendors to whom disbursements are made to assess whether or not any vendor disbursements are to “dummy” (e.g. fake) or related party vendors.
4. Vendor Award (Procure to Pay) Process - RubinBrown will review the process for awarding contracts to vendors and specifically review the award of contracts over a certain dollar threshold (\$500,000 as a starting point), up to 10 per fiscal year, for the period July 1, 2020 through June 30, 2023. This will include:
 - a. Determining who was in consideration for certain contracts.
 - b. The cost associated with the various bidders.
 - c. The rationale for awarding the contract to the chosen bidder.
 - d. Approvals in line with established DOA.
 - e. Show bid comparisons and % difference from awardee to lowest bid.

NOTE: This will also include review of change orders and contract modifications.

5. Credit Cards - RubinBrown will analyze credit card activity for three years for up to 8 members of the IVGID team, as determined by RubinBrown in consultation with the Interim Director of Finance and the Chair of the Audit Committee. As part of this, RubinBrown will:
 - a. Analyze the data at a transaction level and, where possible, tie those transactions to supporting documentation (i.e. receipts).
 - b. Review that charges are in line with any established policies, if applicable.
 - c. Determine how charges are paid/reimbursed to ensure they were not paid twice (i.e. AP and expense report).
 - d. Review for separation of duties for review/approval.

6. Financial Reporting – Specifically review the accounting for the following areas:
 - a. Capital accounting for land and equipment.
 - i. Capex project approval process (initial and overruns).
 - ii. Review capital projects for potential bid splitting.
 - b. Review capitalization vs. expensing of repairs and maintenance costs against established policies.
 - c. Cash
 - i. Physical access to vault and schedule of deposits.
 - ii. Policy on petty cash on hand.
 - iii. Review bank reconciliations prepared for all bank accounts during three year period to determine nature of reconciling items and appropriate disposition. Assess impact of bank accounts that remain unreconciled.
 - d. Review client provided list of whistle blower activity related to financial reporting and follow up procedures to be agreed upon with the client.
7. Financial Statement Analysis – Using the underlying data from accounting system exports, perform analysis of the detailed profit and loss statements and detailed balance sheets for three years to understand trends and identify irregularities and/or errors. We will also analyze the underlying transaction data from a GL export to investigate for any irregularities.
8. Review the existing written cash handling procedures, and make recommendations for improving them including:
 - a. Physical access and chain of custody at three locations with the largest cash transactions.
 - b. Reconciliation of cash drawers to transaction logs.
 - c. Review samples of cash handling for compliance with policy.
9. Fraud Risk Assessment – RubinBrown will perform a fraud risk assessment using the template included in our proposal. Based on RubinBrown’s review of documentation, interviews and analysis, their firm will customize this risk assessment to IVGID’s needs. The completed assessment along with RubinBrown’s recommendations deriving therefrom will serve as one of the deliverables on this project.
10. Investigation into up to 12 whistleblower complaints, as identified by the Chair of the Audit Committee.
11. Investigation into up to 7 specific complaints, as identified by the Interim Director of Finance, based on information received from the forensic auditor, internal staff, the Chair of the Audit Committee, and/or members of the community.

12. Reporting – There are two deliverables as part of this engagement. The first is a report reflecting RubinBrown’s findings resulting from the review of materials and related analysis. The second is RubinBrown’s fraud risk assessment and related recommendations derived from it.

PROFESSIONAL SERVICES AGREEMENT (TASK ORDER BASIS)

EXHIBIT B

TASK ORDER

Task Order No. [REDACTED]

Agreement: [INSERT NAME OF AGREEMENT]

Consultant: RubinBrown LLP

The Consultant is hereby authorized to perform the following work subject to the provisions of the Agreement identified above:

The work set forth in the Scope of Services as detailed in Exhibit A to this Agreement.

List any attachments:

Dollar Amount of Task Order: Not to exceed \$350,000 **Completion Date:** [REDACTED], 20[REDACTED]

The undersigned Consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Agreement identified above and will accept as full payment therefore the amount shown above.

Incline Village GID

RubinBrown LLP

Dated: _____

Dated: _____

By: _____

By: _____

PROFESSIONAL SERVICES AGREEMENT (TASK ORDER BASIS)

EXHIBIT C

COMPENSATION

RubinBrown is to be compensated on an hourly basis for the services described in the Agreement above. The hourly rates for the various levels of personnel are as set forth below. RubinBrown will not exceed the amount of fees, including reimbursements, set forth in the Agreement above without the approval of the District's Board.

Partner - \$400-\$600/hr

Manager - \$250-\$400/hr

Staff - \$175-\$250/hr

In addition to the fees set forth above, RubinBrown will be reimbursed the cost of reasonable out of pocket expenses including travel expenses as incurred.