

MEMORANDUM

TO: Board of Trustees

FROM: Trustee Sara Schmitz

SUBJECT: Review, discuss and possibly approve an agreement with McDonald Carano for legal services as it relates to the Beach Deed and IVGID Beaches in the not-to-exceed amount of \$50,000.

DATE: February 4, 2023

I. RECOMMENDATION

The Board of Trustees makes a motion to approve an agreement with McDonald Carano for legal services as it relates to the Beach Deed and IVGID Beaches in the amount not-to-exceed \$50,000 replacing the existing agreement with Thorndal Armstrong.

II. BACKGROUND

At their meeting on March 22, 2023 (see the attached agenda item), the Board of Trustees authorized Thorndal Armstrong to provide these legal services related to the beaches and the beach deed.

The board chair was informed by Kathy Parks their firm no longer has the resources and bandwidth to respond to questions that may arise and suggested another firm, Maupin, Cox & LeGoy, be considered. After speaking with Paul Anderson and another partner, they determined their firm had a conflict of interest. The board chair was advised to consider McDonald Carano since they have provided considerable input related to the beaches and the beach deed to the group working to develop a plan for Incline Village and Crystal Bay to become a city. Due to their extensive research in providing counsel to the leaders of the city effort, they would be well suited to assist the District in a cost effective and timely manner due to their existing knowledge.

III. FINANCIAL IMPACT AND BUDGET

The Finance Department has confirmed that the Beach Fund has enough in available budgeted appropriations for the recommended action.

IV. ALTERNATIVES

Do nothing and have no outside special counsel to assist with beach deed related questions and/or issues.

V. ATTACHMENTS

McDonald Carano – Letter of Engagement

March 22, 2023 Memorandum

Thorndal Armstrong – Letter of Engagement

Joshua Hicks, Esq., Partner
jhicks@mcdonaldcarano.com

Reply to Reno

February 6, 2024

Via Email to: trustee_schmitz@ivgid.org

Sara Schmitz, 2024 Board Chair
Incline Village General Improvement District
893 Southwood Blvd.
Incline Village, NV 89451

Re: Engagement of McDonald Carano as Special Counsel to IVGID

Dear Chair Schmitz,

We are pleased that Incline Village General Improvement District (“Company” or “Client”) has decided to engage McDonald Carano LLP (the “Firm”) to represent it with respect to Nevada law matters described below. Experience has shown the attorney client relationship works best when there is a formal, mutual understanding about fees, payment terms and the scope of services to be provided. This letter (“Agreement”) constitutes the agreement relating to the services our firm has agreed to provide. The terms and conditions of our engagement are as follows:

I. Scope of Engagement

The scope of the Firm’s engagement (the “Engagement”) involves acting as special counsel to Client on a review of Client’s policies on restricted access beaches in Incline Village. The scope of our Engagement does not include any litigation, securities or other matters. If Client requests our assistance with any such litigation or other legal matters in the future, we may also request a separate engagement letter for such work. If, however, Client asks us to perform extended services on this matter or any legal work on any other matter and no separate letter is executed, the terms and conditions set forth herein apply to all such work and remain binding on both of us. The services to be provided by the Firm in connection with the Engagement will encompass all services normally and reasonably associated with this type of Engagement that the Firm is requested and able to provide and that are consistent with its ethical obligations.

II. Personnel

I will be principally responsible for the Engagement, with assistance from Eric Duhon. Additional lawyers or paralegals may be involved as needed. Whenever appropriate and consistent with the proper representation of our clients, we use paralegals, investigators, junior attorneys and staff members in order to minimize the impact of the hourly rates of more senior attorneys. We believe the utilization of junior attorneys, paralegals or staff members, in consultation with and under supervision of more experienced attorneys in the firm as appropriate, enables us to maintain economically and efficiently the high quality of our legal representation, while permitting us both to avoid sacrificing the quality of our work for lower fees and to avoid assigning senior attorneys to tasks which can be performed proficiently by junior attorneys, paralegals or staff members.

III. Fees and Expenses

Services will be rendered at our standard hourly rates for attorneys and other personnel (such as paralegals and assistants) applicable at the time services are rendered. The time charges will be for all time actually expended. In addition to charges for legal services, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services. The rates for our services and other charges are set forth in the attached Schedule of Terms and Conditions. We generally review our hourly rates annually and, if appropriate, adjust them effective January, to reflect increases in seniority, experience and other relevant factors. While we may estimate fees to assist Client in planning, such estimates are subject to change and are not binding unless otherwise expressly stating in writing.

For this Engagement, our legal fees will not exceed \$50,000 absent express approval by the Client. We will require a retainer of \$20,000 for this Engagement. We will bill against the retainer and expect the retainer to be replenished once it falls below \$5,000. The retainer is an advance payment on our fees and expenses and remains Client funds until we bill for fees and expenses incurred under this Agreement. At the conclusion of this Engagement and after all of our fees and costs have been billed and paid, any leftover funds in the retainer will be returned to the Client.

Our firm has always operated on the basis that we will deliver the best possible legal services in a timely fashion and at a reasonable price; in return, we request that upon receipt of our statements, Client review the statements at that time to determine if you have any questions or comments regarding them. If so, please call us.

IV. Conflict Waivers and Related Matters

Attorneys owe duties of loyalty and of confidentiality to their clients. It is unavoidable that, from time to time, conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these circumstances,

we are required, to disclose the conflicts to our clients, former clients and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed.

A. Waiver For "Permitted Adverse Representations"

The Firm represents a broad base of clients on a variety of matters. Absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect Client's ability and the ability of other clients to choose the Firm as its counsel and preclude the Firm from representing Client or other clients in pending or future matters. Given that possibility, and desiring to be fair both to Client and other clients, this letter will confirm our mutual agreement that the Firm may represent other present or future clients on matters other than those for which it had been or is then engaged by Client, whether or not on a basis adverse to Client or any affiliate, including litigation, legal or other proceedings or matters so long as such is not prohibited by law or involves claims against Client in the same litigation or proceeding as the Engagement (referred to as "Permitted Adverse Representation"). Client agrees that it will not assert the Firm's representation of Client as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agree that any Permitted Adverse Representation does not constitute a breach of duty.

B. Affiliates and Related Parties

Unless otherwise agreed to in writing, the Firm is only representing the Client named in this engagement letter and not the Client's relatives, affiliates, subsidiaries, partners, joint venturers, employees, directors, officers, shareholders, members, owners, agencies, departments, or divisions. Accordingly, the Firm may be adverse to these related parties or their legal interests, unless precluded by reason of the Rules of Professional Conduct. We anticipate, however, that in the course of our representation of the Client in this Engagement we may provide information or advice to the Client's directors, officers or employees in their corporate capacities.

Based upon the disclosure of the names of persons and entities potentially involved in this matter, we have not discovered any conflict which requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities which may be involved in this matter. In addition, please inform us at once if you learn in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

V. Other Terms

The general terms and conditions of our representation are set forth in the attached schedule of General Terms and Conditions, which are incorporated into this agreement by

reference. If this letter is satisfactory, please confirm your agreement to the terms of this engagement letter and attached schedule by signing this letter and returning it to us in the enclosed envelope. A copy is also provided for your records. If this letter does not accurately reflect your understanding of the terms of our agreement, please call me promptly so that we may discuss it further.

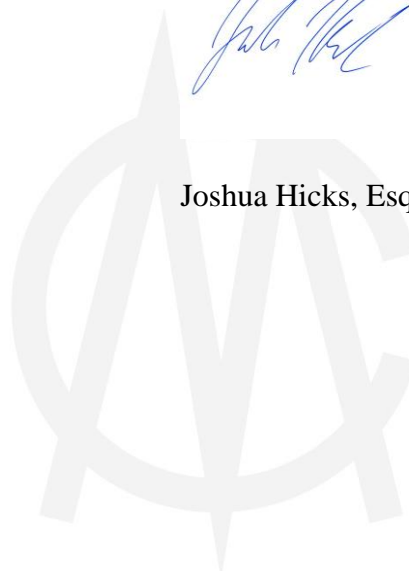
We recognize that you have the opportunity to obtain services from other firms, and very much appreciate that you have chosen our Firm. We will endeavor to represent you promptly and efficiently and look forward to the opportunity of working with you.

Sincerely,



Joshua Hicks, Esq.

JJH/es



**COMPANY'S AGREEMENT TO
TERMS AND CONDITIONS OF REPRESENTATION**

On behalf of Incline Village General Improvement District, I hereby acknowledge that I have had an adequate opportunity to review and understand the above engagement letter and accompanying schedule of terms and conditions. Therefore, on behalf of the Company, I respectively agree to the terms, limitations and conditions set forth in this letter of engagement.

Date: _____, 2024.

Incline Village General Improvement District.

By: _____

Its:



GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

1. Engagement. Special counsel to Client on a review of Client’s policies on restricted access beaches in Incline Village

2. Hourly Rates For Personnel.

Partner:	Joshua Hicks	\$575.00 per hour
Associate:	Eric Duhon	\$475.00 per hour

Others:

Partners	\$475.00 to \$750.00 per hour
Associates	\$300.00 to \$425.00 per hour
Law Clerks	\$185.00 per hour
Paralegals	\$175.00 to 225.00 per hour
Government Affairs Team	\$250.00 to \$500.00 per hour

3. Billing Increments: We charge for our time in minimum units of 1/4 hours.

4. Costs and Expenses.

Computerized legal research	\$5.00 per minute
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Clerical staff overtime necessary for extraordinary matters will be charged at 1.5 times the base hourly rate.

5. Billing Statements; Carrying Charges. Billing statements will normally be rendered to Client on a monthly basis. Fees will generally be billed within thirty (30) days following the month in which the services are rendered, and disbursements and other charges will generally be billed within thirty (30) to sixty (60) days after they are incurred by us. Payment is due upon Client’s receipt of our statement, and is not contingent upon the outcome or completion of a matter for which the firm has been engaged. The Firm does not extend credit to clients. If fees are not paid promptly (within 30 days of the date of invoice), a carrying charge of 1.5% per month (subject to adjustment from time to time as indicated in our billing statements) will be assessed on the unpaid balance of the statement from the date of invoice. Payments will be accepted by cash, check, money order, bank draft, wire transfer and credit card.

6. IOLTA Participation. The Firm will maintain and safeguard a trust account from which any interest earnings are forwarded to the IOLTA program run by the Nevada Law Foundation. Any interest earned on your trust fund balance will be forwarded to the program.

7. Rates Subject to Change. The rates on this schedule are subject to change on thirty (30) days written notice. If Client declines to pay any increased rates, we reserve the right to withdraw.

8. No Guarantees. We must emphasize that it is impossible to provide any promise or guarantee about the outcome of your representation. Nothing in this Agreement or any statements by our staff or attorneys constitute a promise or guarantee. Any comments about the outcome of your matter are expressions of opinion only.

9. Communication. During the course of our representation, we will endeavor to keep Client fully advised as to the status and progress of this matter and our recommendations as to an appropriate course of action in view of the facts, circumstances and issues involved. We will send copies of all material documents generated in connection with our representation, and I ask that you call the Firm, at any time, should Client wish to discuss the matter, our invoices or bills, or any other aspect of this representation. If, for some reason, I am not available, another attorney in this office will generally be available and familiar with the matter sufficiently to consult with Client as desired. Client agrees that all means of communication are, to some degree, susceptible to misdirection, delay or interception, and E-mail, facsimile transmissions and cellular telephone communications present special risks of inadvertent disclosure. However, in order to maximize speed, efficiency, and convenience of these methods of communication in this matter, Client consents to our use of E-mail, cellular phones, and facsimile transmissions communications in representing Client in this matter.

10. Fees Disputes. Under Nevada law, Client has the right to request arbitration of any fee dispute before a committee selected by the State Bar known as a "fee dispute" committee. By signing this Agreement, and unless otherwise agreed in writing by Client and Firm or unless otherwise decided by a Nevada court of competent jurisdiction on a motion for the award of fees, any dispute about the amount or payment of legal fees or costs in this Engagement shall be submitted for final and binding arbitration before the Fee Dispute Committee of the State Bar of Nevada ("Bar Arbitration"). Such Bar Arbitration shall determine only the issue of the amount of fees and charges properly chargeable to Client, and such Bar Arbitration shall have no effect on any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud or violation of any statute, which such claims shall be solely determined in a binding arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration.

11. Records and File Retention. All records and files will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy not to retain records for more than seven (7) years from the date the matter is closed. Upon prior written request, we will return records to Client prior to destruction. As it is not administratively feasible to advise Client of record disposal, we recommend Client maintain its own files for reference. If Client has any questions concerning record retention, please contact us.

12. Client Responsibilities. Client agrees to cooperate with us, to keep us informed of all developments material to the Engagement (especially communication to or from other legal counsel, material undertakings, and agreements), to communicate and disclose fully all relevant matters relating to our Engagement, to abide by this agreement, and to advise the firm concerning any disputed fee or cost charged in this matter. Our firm will rely upon materials and matters provided and communicated to us by Client, its agents, and other representatives, as well as your representations to us that arise during the course of our representation of Client in this matter. The firm undertakes no obligation or duty of independent inquiry to confirm or verify such representations and matters. It is extremely important that Client provide us with complete and accurate information on a timely basis since our representation, analysis and advice to Client will be based upon such information, and could change if factual circumstances are different.

13. Termination. Client has a right at any time to terminate our services and representation upon written notice to the Firm, and we may also terminate our services upon written notice at any time for any reason. Client remains liable for all unpaid charges for services provided and expenses advanced or incurred prior to the date of termination or withdrawal. If Client does not meet its obligation of timely payments or deposits under this engagement letter, we reserve the right to suspend services and/or withdraw from representation on that basis alone, subject to any required judicial, administrative, or other approvals. In the event of termination, Client agrees to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. In addition, our representation will end at the earliest of (a) Client's termination of our representation; (b) our withdrawal or termination; or (c) unless we are engaged to represent Client in other matters, upon substantial completion of our work on the Engagement whether or not we send Client a letter to confirm the termination of our representation. Unless subsequently re-engaged, we undertake no further responsibility to advise Client concerning developments which may impact your matter and the legal representation we provided to Client. From time to time, we may provide Client general topical information concerning recent legal developments as a courtesy. These communications do not create an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations. If Client does not wish to receive future law updates and alerts, please contact the Firm asking to be removed from the mailing list.

14. MERITAS. Our firm is a member of MERITAS ("Meritas") which is a network of over 185 independent commercial law firms located in major cities throughout the world. Meritas members are not engaged in the joint practice of law and do not share fees among themselves. Membership in Meritas gives us, and our clients, access to legal resources in other jurisdictions so that our clients' need for legal services can be handled virtually anywhere our clients conduct business. We will only utilize the services of another Meritas firm in this matter with Client's express knowledge and consent. Further information about Meritas can be obtained at the organization's website at www.meritas.org.

15. Governmental Affairs. In addition to the services already set forth in this Engagement, the Firm has an experienced Government Affairs Team able to advance the Company's interests

in Nevada. The Firm's Government Affairs Team is a statewide group of lawyers and lobbying professionals with extensive bi-partisan connections in federal, state and local governments. Please let us know if you would like to meet with our Governmental Affairs Team to discuss how they may be of assistance. Any fee for government affairs services is in addition to fees for legal services.

16. Written Advice Regarding Federal Tax Issues. Whenever we provide Client with written advice concerning the federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer property, or the value of property for federal tax purposes, we are subject to stringent requirements imposed by the United States Treasury Department on all tax practitioners, including attorneys. These rules cover much more than formal legal opinions and may apply to any writing relating to any Internal Revenue code matter, including communications via e-mail and fax. If we fail to comply with these rules, we may (under certain circumstances) be suspended or disbarred from practice before the Internal Revenue Service, be publicly censured or fined (to the extent that the Secretary of Treasury promulgates regulations requiring any such fines or penalties). Therefore, if during the course of this engagement, we provide written advice regarding any arrangement the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, such writing must comply with the rigorous standards of review and disclosure (including enhanced factual and legal due diligence) which are now required by the Treasury Department. If tax avoidance is not the principal purpose of an arrangement but is a significant purpose, our written advice must also adhere to the same rules, unless we include a prominent disclosure stating that the writing was not intended or written by us to be used, and it cannot be used by Client or anyone else for the purpose of avoiding taxpayer penalties.

17. Miscellaneous. This Agreement is governed by Nevada law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. Each party signing this Agreement is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable. We are not advising Client with respect to this Agreement because we would have a conflict of interest in doing so. If Client wishes advice, Client should consult independent counsel of Client's choice.

MEMORANDUM

TO: Board of Trustees

THROUGH:

FROM: Matthew Dent, Board Chairman

SUBJECT: Review, discuss and approve an agreement with Thorndal, Armstrong for legal services as it relates to the Beach Deed and IVGID Beaches in the not-to-exceed amount of \$50,000.00
(Requesting Trustee: Chairman Matthew Dent)

RELATED STRATEGIC PLAN INITIATIVE(S): **LONG RANGE PRINCIPLE #1 - SERVICE**

The District will provide superior quality service through responsible stewardship of District resources and assets with an emphasis on the parcel owner and customer experience.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES Policy 3.1.0, paragraph 0.5, subparagraph h.

DATE: March 22, 2023

I. RECOMMENDATION

That the Board of Trustees Review, discuss and possibly makes a motion approve an agreement with Thorndal, Armstrong for legal services as it relates to the Beach Deed and IVGID Beaches in the amount of not-to-exceed \$50,000.00

II. BACKGROUND

The Board of Trustees has previously authorized this firm to work with the District during the Ordinance 7 review. The Board of Trustees would like to retain this firm once again to assist with related beach deed matters, Ordinance 7 clean up, and general overall review of processes and procedures as it relates to the beach deed.

III. BID RESULTS

None, professional services. Please see the attached engagement letter from Thorndal, Armstrong

IV. FINANCIAL IMPACT AND BUDGET

This effort is unbudgeted and will be paid for by the Beach Fund.

V. ALTERNATIVES

Not approve this engagement.

VI. COMMENTS

This engagement is made at the request of the Board of Trustees.

VII. DISTRICT IMPROVEMENT, COST REDUCTION, RETURN ON INVESTMENT OR PRODUCTIVITY ENHANCEMENT

The ROI is that with this review, Staff will be able to possibly avoid some legal landmines as it related to the beach deed.

VIII. BUSINESS IMPACT

IX. ATTACHMENTS

1. Thorndal Armstrong Engagement Letter 03032023

X. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

Does the Board of Trustees want to engage this legal firm?

Does the Board of Trustees want to engage another legal firm?

LAS VEGAS

1100 E. BRIDGER AVENUE
LAS VEGAS, NV 89101
(702) 366-0622
(702) 366-0327 FAX



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March 3, 2023

Via electronic mail only

Matthew Dent, Chairman
Board of Trustees
Incline Village General Improvement District
893 Southwood Blvd.
Incline Village, NV 89451

Re: Special Counsel Letter of Engagement

Dear Chairman Dent:

Please allow the following to serve as my law firm's engagement letter to serve as special counsel to the IVGID Board of Trustees related to IVGID's regulation of restricted access beaches. At this time, I have been asked to provide legal services on several issues related to the 1968 Beech Deed and/or Ordinance 7, including the review of beach signage language under the 1968 Beach Deed and Ordinance 7 and the review of any proposed revisions to Ordinance 7. Our hourly rates for the contemplated work will be as follows: \$250.00 per hour for partners, \$225.00 per hour for associates, and \$95.00 per hour for paralegal work. Our hourly rates will not be increased at any time without written consent of IVGID. Costs for routine expenses such as copy costs should be minimal and will be billed separately. Travel time will be billed at our normal hourly rate (with no charges billed for mileage). No separate charge will be made for any secretarial work. We will provide IVGID with a bill for all services on a monthly basis.

In accordance with the applicable ethical rules, we have confirmed that we have no current actual conflicts of interest between IVGID and any clients of this firm nor are we aware of any such conflicts. Our firm carries errors and omissions insurance with limits of coverage of \$10,000,000 and we will provide you with a declarations' page reflecting this insurance coverage at your request.

Attorneys also licensed to practice in
Arizona, California, Maryland, New York, North Carolina, Oregon and Washington

Please let me know if the foregoing terms meet with your approval. We look forward to continuing to work with IVGID with respect to these issues. If you need any further information at this time, please do not hesitate to contact me.

Best regards.

Very truly yours,



Katherine F. Parks

KFP

cc: Indra Winquest (via electronic mail)
Josh Nelson, Esq. (via electronic mail)