

MEMORANDUM

TO: Board of Trustees

THROUGH: Indra Winqest, District General Manager

FROM: Erin Feore, Director of Human Resources

SUBJECT: First Non-Profit Contract Award - Third Party Administrator - Unemployment Claims (Requesting Staff Member: Director of Human Resources Erin Feore)

RELATED STRATEGIC PLAN INITIATIVE(S): LONG RANGE PRINCIPLE #4 – WORKFORCE
Comply with applicable Federal, State, County governmental regulations and all District policies.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES

DATE: April 12, 2023

I. RECOMMENDATION

That the Board of Trustees Make a Motion to Approve the Contract for Services for Calendar Year 2023.

II. BACKGROUND

IVGID has contracted with First NonProfit since January 2004 for third-party unemployment claims assistance such as auditing benefit charges, processing separation data and claims, attending unemployment hearings on behalf of the District, providing claims status reports and providing an HR related website program for workplace compliance training.

In 2020, and as the result of the unprecedented COVID-19 pandemic, the District experienced record-setting unemployment claims related to the early closure of the Diamond Peak Ski Resort, closed or limited operations of other recreation venues and administrative offices, and employee participation in provided unemployment insurance provisions offered by the Federal government. For example, the Pandemic Unemployment Assistance (PUA) program for the State of Nevada provided monetary benefits to employees who were unable to work as the result of a COVID-19 related issue, regardless of availability or offers of employment. This was a change from the standard eligibility requirements for

unemployment benefits with the State of Nevada. Further, the PUA program offered additional unemployment benefits, separate from the regular benefits offered. While the Pandemic may have dissipated, the financial effects to the State's unemployment program continue to linger. Ongoing evaluation of claims activity shows continued reconciliation of allowable vs. fraudulent claims remain ever crucial.

First NonProfit continues to monitor recent legislation to ensure ongoing compliance and provide benchmarking data to Finance. Examples of such data include:

- 16.4% increase in Federal maximum weekly benefit awards to claimants
- Increase to total allowable weeks of benefits mandate continues
- 66.7% increase in State maximum weekly benefits awards to claimants

Additionally, after careful review of our favorable experience rating during the 1/1/21-12/31/21 contract term, First NonProfit advised that the District is receiving a \$130,000 refund. This refund was due, in part, to the extensive analysis of claims by First NonProfit and the HR Department's diligent evaluation of incoming claims and the validity of such claims.

III. BID RESULTS

Consistent with the provisions of Board Policy 20.1.0 (Purchasing Policy for Goods and Services) and NRS Chapter 332, this contract is deemed not adapted to award by competitive solicitation.

IV. FINANCIAL IMPACT AND BUDGET

The annual bonded service agreement recommended for approval is for a fixed fee of \$218,000, and represents a decrease \$4,800 over the fixed fee for calendar year 2022, and \$195,000 from the fixed fee for calendar 2021.

Funding to cover the cost of unemployment insurance for calendar year 2023 is provided in the FY2022/23 approved budget, as well as the preliminary budget being developed for FY2023/34.

V. ALTERNATIVES

None; the District must have Unemployment Insurance.

The District may choose to direct staff to explore alternative third-party provider(s) for administration of the District's Unemployment Insurance claims processing.

VI. COMMENTS

This item is included on the Consent Calendar as it is a required item of doing business within the State of Nevada and is a budgeted item in both

Fiscal Years 2022-2023 and 2023-2024.

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

Effective administration of the District's Unemployment Insurance claims, ensures that the District's liabilities are managed consistent with evolving federal and state laws impacting employee benefits as well as liability requirements imposed on employers. The services provided through this contract also significantly minimizes the District's exposure to fraudulent unemployment insurance claims.

VIII. BUSINESS IMPACT

Not Applicable.

IX. ATTACHMENTS

1. 2023 Bonded Services Agreement
2. 2023 Schedule for Bonded Services Agreement

X. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

- Approval of the Bonded Service Agreement with First NonProfit for 2023 Unemployment Insurance claims administration.



BONDED SERVICE AGREEMENT

WHEREAS the Client named in Item 1 of the attached Schedule has duly qualified as a reimbursing employer pursuant to the unemployment compensation laws of the State indicated in Item 2 of the Schedule and has thereby become liable to reimburse the State for those unemployment compensation benefits paid by the State to former employees of the Client legally entitled to such benefits, and

WHEREAS First Nonprofit Companies, Inc., hereinafter referred to as FNP, has established and administers an alternative unemployment compensation funding and cost control program which includes the management of an Unemployment Benefit Loss Fund to finance the Client's unemployment benefit charges and liability pursuant to the terms of this contract.

THEREFORE, the parties agree to the following:

1. FNP's Duties

FNP shall assume any and all obligations of the Client's for unemployment claims billed to the Client and paid by the State indicated in Item 2 of the attached Schedule, during the term of this contract, as indicated in Item 3 of the Schedule. FNP will not be held liable for any weeks of unemployment benefits actually paid by the applicable State unemployment compensation agency indicated in Item 2 of the Schedule, but not billed to the Client prior to the effective date of this contract.

At the termination of this contract, FNP's liability shall cease after FNP has paid the Client's obligations for all weeks of unemployment benefits paid by the applicable State unemployment compensation agency indicated in Item 2 of the Schedule for the final quarter covered by this contract, as indicated in Item 3 of the Schedule and for which the specified fee has been paid to FNP. It is further understood that FNP has no liability for payment of unemployment benefits for any period unless timely payment of fees, as provided herein, has been made by the Client.

Further, FNP, at its own expense, shall:

1. Maintain an Unemployment Benefit Loss Fund from which unemployment benefit payments will be made to the State unemployment compensation agency indicated in Item 2 for all unemployment benefits paid to former employees of the Client and covered by this Contract.
2. Secure a Master Contract Bond supporting the commitments of FNP under this contract with a Surety Company agreeable to both parties. A Contract Bond

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Attachment Rider naming the Client an "Obligee" of the Master Bond is affixed and made part of this contract. If at any time the Master Bond or the affixed Contract Bond Attachment Rider no longer secures commitments under this contract, this contract for services shall be immediately terminated.

3. Pay the State unemployment agency or the Client an amount equal to all benefits subject to and in compliance with the terms of this contract, upon receipt of a statement of benefit charges paid by the State unemployment agency on behalf of the Client and subject to the terms of this contract. It is expressly understood that FNP will not be liable for any penalty or interest incurred as a result of the Client's actions or inactions.
4. Retain a professional unemployment claims management firm agreeable to both parties, as indicated in Item 4 of the attached Schedule, to provide the following services:
 - (a) Accumulate and record all separation and wage information forwarded by the Client.
 - (b) Examine all claims forms within the permitted period and take such actions as required to deny payment of benefits or the assessment of charges for any benefits deemed to be inappropriate or non-qualifying, including representation of the Client at hearings, where permitted by State law.
 - (c) Maintain accurate records of each claim describing any action taken to deny liability, showing details of separation reason, determinations, decisions, and payments made for that claim.
 - (d) Furnish timely reports showing all claims filed and their status, including but not limited to the payment status, total liability, and total payments made.
 - (e) Audit all benefit charge statements and take such actions as required to remove or reduce the charges on any claims payments deemed to be inaccurate or unwarranted.
 - (f) Provide loss control services including on-site training, when necessary, to reduce and contain unemployment benefit charges and liability.

2. Client's Duties

The Client shall pay to FNP at the inception of this contract a provisional service fee based on the rates set forth in Item 5 of the Schedule for all employees covered under this contract applied to the estimated wages reported to the applicable State unemployment agency indicated in Item 2 of the attached Schedule for each classification of employees. Any service fee computed on estimated wages or minimum annual fee will be properly adjusted by FNP when actual wages are available.

The estimated service fees computed under this contract shall be due and payable on the first day of each covered calendar quarter, beginning with the effective date of the contract. The service fee shall be computed based on an amount equal to one-fourth of the minimum annual fee, as stated in Item 5 of this contract. At the completion of four quarters under this contract, the actual fee for the four quarter period will be adjusted based on the actual wages reported for said period. Any decrease or increase in the service fee resulting will be credited or billed and payable in conjunction with the next quarterly deposit fee under this contract.

As the application and management of unemployment claims administration and cost control is essential to containment of unemployment compensation costs and liability, the Client agrees to implement unemployment cost control and claims administration measures in cooperation with the designated unemployment claims management firm, as set forth in Item 4 of the attached Schedule, hereinafter referred to as the "Claims Manager."

3. Further the Client Hereby Agrees to

1. Disclose, prior to the effective date of this contract, any and all plans and/or pending discussions concerning any actions that has caused or may result in employee layoffs, reductions in hours worked and and/or wages paid to employees, mergers, or any planned separations that potentially could result in unemployment claims.
2. Submit timely and properly documented separation information so that the Claims Manager may provide a timely and accurate response to the state unemployment agency indicated in Item 2 of the Schedule to assure that only those claimants entitled to receive benefits do so.
3. Submit all claims, claims documents, and or correspondence of any kind related to unemployment claims and/or unemployment benefit charges, whenever received from the state unemployment agency named in Item 2 to the Claims Manager on a timely basis.
4. Cooperate with the Claims Manager by providing, on a timely basis as defined by the Nevada Department of Employment, Training and Rehabilitation, all appropriate personnel information related to claims for unemployment benefits.
5. Provide appropriate witnesses, as determined by the Claims Manager in consultation with Client, to attend appeal hearings for claims.
6. Report wages to the applicable State unemployment agency indicated in Item 2 of the attached Schedule on a quarterly basis for all employees covered by this contract.
7. Notify FNP upon learning of any separations or claims for unemployment benefits at any time during the term of this contract.

4. Limitations

FNP shall not be liable for and may deny the payment of obligations of the Client with respect to unemployment compensation benefits attributable to any period for which the Client has failed to submit timely payment in full of service fees pursuant to this contract as provided herein or arising out of or in consequence of:

- a) Failure to comply with those duties set forth in Section 3 of this contract providing the benefits in question resulted from the **negligent** action or inaction of the Client and not the result of action or inaction by the Claims Manager.
- b) Employer "lock-outs" or work stoppages, strikes, or other labor disputes.
- c) Failure to provide letters of assurance to employees of educational institutions for continued employment after a vacation or semester break if reasonable assurance of their continued employment exists.
- d) Reduction in the employment terms that extend seasonal unemployment for employees of organizations engaged in the administration of Head Start program(s).
- e) War, hostilities, whether war be declared or not, invasion, or civil war.
- f) A casualty or natural disaster, including but not limited to, earthquake, flood, hurricane, tornado, or fire.
- g) Voluntary and/or involuntary discontinuance of business operation, in whole or in part, whether permanent or temporary.

5. Transfer of Rights and Remedies

Should the Client be entitled to refunds or credits for any unemployment compensation benefits previously paid by FNP on behalf of the Client, the Client hereby transfers and assigns its rights and remedies to such refunds and credits to FNP.

6. Subrogation and Recoveries Thereunder

Subrogation. In addition to Section 5, upon FNP's payment to the State unemployment agency or to the Client benefits which are subject to and in compliance with the terms of this contract, FNP shall be subrogated to and control all of the Client's rights to seek and/or obtain recovery for any of the benefit amounts paid by FNP under the terms of this contract. Accordingly, FNP may in its sole discretion seek its recovery of these benefit amount(s) from the Client or any person, entity and/or organization. Upon FNP's request, Client shall promptly execute all documents as well as promptly provide and/or execute perform all acts necessary for the preservation along with the enforcement of FNP's right(s) to seek recovery under this Section. The Client shall not either by its action, omission, or failure to act do (or not do) anything which could prejudice, abridge, or limit FNP's subrogation rights under this Section.

Subrogation Recoveries. All recoveries by FNP under this Section shall be applied to (or credited to) Client's Unemployment Benefit Loss Fund or, if the Client is no longer a participant

in Unemployment Benefit Loss Fund, and the recovery is made directly to Client then Client shall pay to FNP an amount equal to the recovery.

7. Unemployment Compensation Act

The term unemployment compensation benefits as used herein refers only to those benefits as defined by law of the applicable State indicated in Item 2 of the attached Schedule, but does not in any way, nor is the intent of this contract to, include any provisions of any code or law which provides disability benefits or disability insurance.

The amount and maximum period of any benefits payable as unemployment compensation benefits shall be deemed to be only those amounts set forth in the relevant acts of the applicable State indicated in Item 2 of the Schedule at the inception of this contract or named in any subsequent renewal thereof. In the event the State amends the eligibility, duration or amount of benefits an individual claimant may qualify to collect, FNP reserves the right to adjust the specified fee set forth herein effective the first day of the next calendar quarter by providing the Client thirty (30) days written notice. The Client reserves the right to reject any adjustment to the specified fee and if so, this contract shall terminate on the last day of the calendar quarter in which such notice was delivered.

8. Inspection and Audit

FNP, or its representatives, shall be permitted at all reasonable times during the continuance of this contract, and so long as FNP's liability exists, to examine the Client's records so far as they relate to FNP's liability and fees or other rights and remedies pursuant to the terms of this contract.

9. Misrepresentation

This contract shall be void if the Client or any representative thereof has failed to disclose, concealed or misrepresented any fact material to the issuance of this contract, the subject benefits covered hereunder, and the resulting issuance of the Contract Bond Attachment Rider. In any such event, the Contract Bond Attachment Rider and this contract shall be rescinded.

10. Non-Assignment

This Contract may not be assigned, in whole or in part, without the prior written consent of all parties.

11. Duration and Termination

The term and effective date of this contract are set forth in Item 3 of the attached Schedule. This contract may be cancelled for failure by either party to perform any of its obligations set forth herein and agreed by both parties pursuant to this contract, provided that thirty (30) days written notice is given to the other party declaring such intent to cancel. This contract shall be terminated immediately if the Client discontinues operations either voluntarily or involuntarily.

12. Interpretation and Venue

This contract shall be subject to and interpreted under the laws of the state of Nevada. Venue shall be in Washoe County or the federal district court with jurisdiction over such county.

WHEREFORE, the parties have executed this contract on the dates set forth by their respective signatures.

DATED: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Name/Title

893 Southwood Boulevard
Incline Village, NV 89451

DATED: FIRST NONPROFIT COMPANIES, INC.

_____ Joseph Poretto, Vice President, Sales & Marketing

1 South Wacker Drive, Suite 2180
Chicago, IL 60606



SCHEDULE FOR BONDED SERVICE AGREEMENT

ITEM 1. CLIENT INFORMATION

NAME: Incline Village General Improvement District
ADDRESS: 893 Southwood Boulevard, Incline Village, NV 89451
CONTACT PERSON: Erin Feore, Director of Human Resources
COVERED ENTITIES: Incline Village General Improvement District
State Acct. No.: 0090031, FEIN: 88-0099974

ITEM 2. APPLICABLE STATES: Nevada

STATE UNEMPLOYMENT AGENCY: Department of Employment, Training and Rehabilitation

ITEM 3. TERM OF COVERAGE: One year, January 1, 2023 to December 31, 2023

ITEM 4. CLAIMS MANAGER:

NAME: Employer Advocates
ADDRESS: P. O. Box 25236, Salt Lake City, UT 84125

ITEM 5. SERVICE FEE SCHEDULE: Flat Annual Fee of \$216,000 (invoiced at \$54,000 per quarter).

A. Refund Provision: If benefits charges paid during the term of the agreement are less than 77.5% of fees collected, Client will be eligible to receive a Refund. The Refund will be equal to 50% of the difference between 77.5% of fees collected and benefit charges paid during the term of the agreement.

DATED: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Name/Title

893 Southwood Boulevard, Incline Village, NV 89451

DATED: FIRST NONPROFIT COMPANIES, INC.

Joseph Poretto, Vice President, Sales & Marketing

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