

**MEMORANDUM**

**TO:** Board of Trustees

**FROM:** Tim Callicrate  
Board Chairman

Josh Nelson  
General Counsel

**SUBJECT:** Review, discuss, and possibly approve a payment of \$18,293.87 to Erickson, Thorpe & Swainston, Ltd. for Mark E. Smith v. IVGID, Case No. CV18-01564

**DATE:** September 22, 2022

---

**I. RECOMMENDATION**

That the Board of Trustees makes a motion to approve a payment of \$18,293.87 to Erickson, Thorpe & Swainston, Ltd. for Mark E. Smith v. IVGID, Case No. CV18-01564.

**II. BACKGROUND**

IVGID recently settled the Mark E. Smith v. IVGID, Case No. CV18-01564. The District has received a final invoice from Erickson, Thorpe & Swainston, Ltd. for the case. Staff recommends approving this invoice.

In addition, when approving the settlement, the Board requested an accounting of incurred fees and costs. Below is the overview:

Settlement payment to Mark Smith     \$77,457.85

Special Master / Third Party Review Payments

Matthew Sharp	\$12,500.00
Judge Breen	\$10,000.00

Legal Fees and Costs

Erickson, Thorpe & Swainston, Ltd.	\$97,985.96
Best Best & Krieger LLP	\$38,995.07

The total amount of above payments is \$236,938.88

**III. ATTACHMENT**

Invoice Summary

Date	Action	Billing Period	Invoice Amount	Invoice Amount Paid	Amount Authorized by the BOT	Amount remaining in authorization
08/23/2018	Lawsuit served to the District					
09/26/2018	Board advised of pending litigation; see GM's report for 09/26/2018 meeting Trustee Dent, during GM update, asks about authorized funding; GM says he authorized \$50K under his authority					\$50,000.00
10/16/2018	Engagement Contract signed with ETS					
06/10/2019	ETS Invoice 965524	08/07/2018 – 06/07/2019	\$45,608.82	\$45,608.82		\$4,391.18
06/19/2019	Additional funds approved by the BOT				\$10,000	\$14,391.18
10/03/2019	ETS Invoice 967317	06/04/2019 – 10/01/2019	\$25,661.89			
01/22/2020	ETS Invoice 967573	09/11/2019 – 01/21/2020	\$10,603.50			
01/22/2020	Additional funds approved by the BOT				\$7,500	\$21,891.18
04/02/2020	ETS Invoice 967858	12/16/2019 – 04/01/2020	\$6,017.40			
05/14/2020	ETS Invoice 967965	01/23/2020 – 05/12/2020	\$7,739.90			
08/11/2020	ETS Invoice 970825	05/13/2020 – 08/10/2020	\$2,639.45			
09/10/2020	ETS Invoice 970877	08/11/2020 – 09/09/2020	\$82.50			
10/08/2020	ETS Invoice 970906	9/10/2020 – 09/11/2020	\$165.00			
12/08/2020	ETS Invoice 970994	9/12/2020 – 12/04/2020	\$467.50			
12/10/2020	Payment made (approved by the BOT on 12/09/2020)			\$21,891.18	\$21,891.18	
	Balance due to ETS as of December 14, 2020	\$31,485.96				
03/18/2021	Payment made (approved by the BOT on 03/10/2021)			\$20,485.96	\$20,485.96	
	Balance POTENTIAL due to ETS as of March 18, 2021 – charges are in dispute and may be reversed or paid by IVGID or others.	\$11,000.00				
03/31/2021	Authorization for \$10,000 was requested by Staff to the Board of Trustees – it was approved and the retainer check was issued and delivered to ETS.			\$10,000.00	\$10,000.00	
08/24/2021	ETS Invoice 972682 (\$16,880.41 in new charges + \$1,000 remaining balance of the difference between \$11,000 and \$10,000 payment))		\$17,880.41			
Unknown	Personal payment made by Kendra Wong – part of the charges in dispute and may be reversed or paid by IVGID or others			\$2,286.25		
12/07/2021	ETS Invoice 972810 (new charges)		\$2,475.00			
06/15/2022	ETS Invoice 972949 (new charges)		\$8,938.46			
	TOTALS		\$129,279.83	\$97,985.96*		

\*Paid by IVGID and does not include Ms. Wong's personal payment

Date	BBK Invoice	Billing Period	Invoice Amount	Total to date
04-15-2020	Invoice 874648	Through March 31, 2020 (3-13 to 3-30)	\$2,974.50	
05-31-2020	Invoice 877705	Through April 30, 2020 (4-13 to 4-23)	\$635.07	\$3,609.57
06-22-2020	Invoice 879678	Through May 31, 2020 (5-8 to 5-29)	\$935.00	\$4,544.57
09-16-2020	Invoice 886192	Through August 31, 2020 (8-10 to 8-11)	\$408.50	\$4,953.07
10-2020		NO BILLING ON THIS MATTER		
11-2020		NO BILLING ON THIS MATTER		
12-2020		NO BILLING ON THIS MATTER		
01-2021		NO BILLING ON THIS MATTER		
02-2021		NO BILLING ON THIS MATTER		
03-2021		NO BILLING ON THIS MATTER		
04-13-2021	Invoice 902542	Through March 31, 2021 (3-28)	\$413.00	\$5,366.07
05-05-2021	Invoice 903934	Through April 30, 2021 (4-12 to 4-22)	\$380.00	\$5,746.07
06-09-2021	Invoice 906825	Through May 31, 2021 (5-4 to 5-18)	\$656.50	\$6,402.57
07-2021		NO BILLING ON THIS MATTER		
08-23-2021	Invoice 912891	Through July 31, 2021 (6-4 to 7-28)	\$2,300.00	\$8,702.57
09-14-2021	Invoice 924849	Through August 31, 2021 (8-2 to 8-17)	\$939.50	\$9,642.07
10-2021		NO BILLING ON THIS MATTER		
11-2021		NO BILLING ON THIS MATTER		
12-2021		NO BILLING ON THIS MATTER		
01-2022		NO BILLING ON THIS MATTER		
02-18-2022	Invoice 927480	Through January 31, 2022 (10-1-2021 to 12-17-2021)	\$27,800.00	\$37,442.07
03-2022		NO BILLING ON THIS MATTER		
04-30-2022	Invoice 933548	Through March 31, 2022 (3-7 to 3-28)	\$723.00	\$38,165.07
05-31-2022	Invoice 936244	Through April 30, 2022 (4-1 to 4-20)	\$535.00	\$38,700.07
6-14-2022	Invoice 937983	Through May 31, 2022 (5-14 to 5-18)	\$295.00	\$38,995.07

Date	Sharp Invoice	Billing Period	Invoice Amount	Total to date
09-2021	BOT approved	Special Master Review	\$12,500.00	\$12,500.00

Date	Breen Invoice	Billing Period	Invoice Amount	Total to date
04-24-2020	Ltr dtd 04/24/2022	Review	\$10,000.00	\$10,000.00