

MEMORANDUM

TO: Board of Trustees

FROM: Indra Winqest
District General Manager

SUBJECT: Review and discuss the District General Manager taking one of the four following actions to obtain legal services for the District:

- a. Proceed with a Request for Information followed by a Request for Proposal;
- b. Obtain a pricing proposal from Best, Best & Krieger for a monthly retainer fee and/or hourly fee
- c. Interview and hire in-house legal counsel; or
- d. An alternative/option determined by the Board of Trustees at this meeting

DATE: August 19, 2020

This agenda item is to allow the Board of Trustees to have a discussion, in public, about the options framed above. Attached to this memorandum are the following reference documents:

- Request for Information used in 2018
- Request for Proposal used in 2018

II. BACKGROUND

After many years of service by one firm, the District changed legal counsel in 2014, following the death of our previous provider. The current provider was contracted with to serve through calendar year 2018. Since the firm originally hired in 2014 had undergone several changes in constitution and form, the District repeated the process for a Request for Information and Request for Proposal similar to that used in 2014. However, unlike the last process, rather than just relying on response to a publication, Staff distributed the Request for Information both through publication and by mail to a list of known government legal counsel providers. The District General Manager led the process for considering the contracting of new Legal Counsel for the District and one Trustee participated in the evaluation process. The firm that received this award was Hutchison & Steffen who has served the District since that award in 2018. On April 15, 2020, the Board of Trustees decided, in a unanimous vote, to terminate the retainer agreement with the aforementioned firm. The retainer agreement included a clause (10.3) which required a written

notice be given 180 days prior to termination. This termination letter was issued on April 15, 2020 (and publicly reviewed during a Board of Trustees meeting on the same date) and Hutchison & Steffen representatives acknowledged receipt thereof shortly following delivery. The District General Manager and Hutchison & Steffen Managing Partner recently met to discuss the termination and mutually agreed to an accelerated termination date of August 31, 2020 without penalty; that means that the last services to be rendered by Hutchison & Steffen will be August 31, 2020. The final billing will follow shortly thereafter. The Managing Partner of Hutchison & Steffen understands the process that the District has gone through to obtain legal counsel services and has graciously offered to render any services requested of them following August 31, 2020 and will bill accordingly at its hourly rate(s). The District has every intention of having all matters completed with Hutchison & Steffen on or before August 31, 2020 and appreciates this offer. Presently, the District has contracted with Best, Best & Krieger for the following three tasks:

Task 1 is the review of the current Hutchison & Steffen legal services agreement to provide an opinion on the agreement's contents; and

Task 2 is review the status of the Mark E. Smith & IVGID (Case No. CV18-01564) to provide an opinion on the current status of the case, provide opinion(s) on potential settlement options, and assist the Board of Trustees with the settlement of the case in the best interest of the District.

Went to the Board of Trustees on January 29, 2020 and was approved with \$30,000 in funding provided out of the General Fund.

Task 3 is to provide legal services to the Incline Village General Improvement District Board of Trustees. These services include, but are not limited to, the following services:

Attending scheduled Board of Trustees meetings starting May 27, 2020 with an ending date of to be determined and representing themselves as District General Counsel;

Answer all questions posed by the Board of Trustees; and

Provide other services as directed by the Board of Trustees Board Chair.

These services are provided under the agreement dated February 3, 2020 and the fees charged are in accordance with this same agreement; Joshua Nelson, hourly rate of \$275.00.

All services provided by service provider shall be under the control of the Board of Trustees Chair. All invoices charged against this task shall be approved by the Board Chair prior to payment by the District. This effort will be coordinated by the Interim District General Manager or his designee.

The funds allocated to this task are not-to-exceed fifty thousand dollars (\$50,000.00). The approval for these funds came before the Board of Trustees on May 6, 2020 and were approved by a unanimous vote of the Board of Trustees (Callicrate, Dent, Morris, Schmitz, and Wong). Funding source is the General Fund.

Agreement total is \$80,000.00 as of May 6, 2020.

The spend through July 2020 for this contract is, in total \$33,799.57 ; remaining funds are, in total, \$46,200.43.

Newspaper Ad published September XX, 2018 and Mailed to Identified Firms

Incline Village General Improvement District (District) is seeking, as Phase One to a multi-phased process, expression of interest by Legal Counsel for representation of aforementioned District. Phase One is the completion of a short questionnaire, which is available by sending an e-mail to sah@ivgid.org, prior to September XX, 2018, with return to the District no later than XX, XX, 2018 to the same e-mail address. Following this date, questionnaires will be reviewed and each firm will be notified, via e-mail, and provided a more lengthy and detailed questionnaire (Phase Two). After receipt of the Phase Two questionnaire and prior to completion thereof, each Legal Counsel candidate selected for further consideration will select an available date for interview (provided at the same time as the Phase Two questionnaire is provided) by the District at its location in Incline Village, Nevada. All costs associated with this interview will be borne by the Legal Counsel candidate. Following completion of Phase Two, the District will make a report to its Board of Trustees at a regularly scheduled meeting, most likely sometime in November 2018, and each Legal Counsel candidate interviewed shall be noticed of said meeting. At this time, it is anticipated that the District's Board of Trustees will make a determination of whether or not to accept a staff recommendation with regard to the selection of Legal Counsel and proceed immediately to negotiation of a service agreement or pursuit another round of interviews or an extended selection process. Only those Legal Counsel candidates who have completed both Phase One and Phase Two will be on the list to continue into Phase Three if necessary; the Request for Proposal is Phase Three of the process. The District reserves the right to reject any and all questionnaire(s) and to stop the process at any point.

Phase One Questionnaire, due by September XX, 2018, via e-mail to sah@ivgid.org

Please answer each of the following questions and should you require additional explanation to any of the answers provided above, please attach additional sheets as needed.

1. Have you represented a Nevada General Improvement District (GID)?
If yes, how many years of experience do you have representing GID?
2. Do you currently represent a GID?
3. Do you have experience with Nevada Open Meeting Law?
4. Do you have experience in Nevada Revised Statute 318?
5. Do you have experience on Workmen's Compensation issues in Nevada?

6. Do you have experience on Labor Law issues in Nevada?
7. Do you have experience with Local Government Purchasing and Public Works Contracting issues in Nevada?
8. Do you have experience with litigation defense for public entity torts, labor and employment, public safety or construction law?
9. Do you have experience with Nevada or Washoe County property law?
10. Do you have experience with development/redevelopment initiatives?
11. Do you have experience working with Lake Tahoe water rights, environmental issues, and other critical matters important to Lake Tahoe?
12. Do you have experience working with the TRPA?
13. In general, do you have experience working with local government code development or enforcement?

Phases of the Process

Phase One.. Expression of interest by Legal Counsel and the completion of a short questionnaire, which is available by sending an e-mail to sah@ivgid.org, no later than September XX, 2018, with return, to the District, no later than XX XX, 2018. The District will review the submitted questionnaires and may decide to continue with all those that submitted or may decide to eliminate some or all of those submitted.

Phase Two.. Completion of a more lengthy and detailed questionnaire accompanied by setting and keeping an interview appointment with the District at its location in Incline Village, Nevada. All costs associated with this interview will be borne by the Legal Counsel candidate. The District will review the submitted questionnaires and may decide to continue with all those that submitted or may decide to eliminate some or all of those submitted.

10/2018 Review by the Board of Trustees of the process and results to date with guidance issued.

Phase Three If direction provided by the Board of Trustees, only those Legal Counsel candidates who have completed both Phase One and Phase Two will be on the continuation list.

The District reserves the right to reject any and all questionnaire(s) and to stop the process at any point.

REQUEST FOR PROPOSALS

LEGAL SERVICES FOR INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Released – XX XX, 2018

1. Introduction

The Incline Village General Improvement District (District) is seeking proposals from qualified Legal Counsel for legal services for the District's Board of Trustees, General Manager, and staff execution of transactions and support of general government activities driven by constituents. Services periods would be awarded for a series of calendar years, with options to review and renew for additional years. The primary contact for the District's legal counsel would be the General Manager or his designee.

2. Scope of Work

The selected Legal Counsel will:

- Provide clear and concise legal advice and consultation as requested, to the governing body and staff. Response is required within a mutually-agreed upon timeframe.
- Attending regular Board of Trustee meetings and advice the Board on agenda items and procedural matters, including the Nevada Open Meeting Law.
- Provide guidance and training regarding NRS 318 and other legal requirements imposed by statute and common law.
- Provide designated office hours or times of availability at the District's Administrative Offices, as agreed to with the General Manager and/or the Board of Trustees. For purposes of this proposal, the initial request is 2 blocks of 4 hours per month.
- Draft, review and/or revise documents such as legal memos, contracts, ordinances, resolutions.
- Represent the District in litigation and/or act as liaison to outside counsel.
- Perform legal work related to land use issues.
- Research special district or other legal matters as requested by the Board of Trustees or the General Manager.

3. Deliverables

At a minimum, Legal Counsel shall submit the following deliverables to the District in the course of each fiscal year:

- Annual Report on litigation matters, including status or resolution by matter.
- Review and preparation, based on published agenda for each regular Trustee meeting, and active engagement during the meeting for the listed topics, to the extent the application of Nevada Revised Statutes or related legal matters could affect actions or deliberations on those agenda items.
- Closed litigation sessions with the Board of Trustees as needed.
- Drafts, finished documents or comments on contracts as presented, to assist staff with the execution of transactions under District policies, practices and procedures.

4. District Management

Steven Pinkerton is the District's General Manager and will have overall responsibility and accountability for Legal Services utilized by the District. Various District Staff will work directly with the Legal Counsel to coordinate or execute transactions in the regular course of the District's business. Legal Counsel may use other members of their respective firm to provide services at an appropriate level under the agreement. Such members and their qualifications or positions in the organization should be provided in advance of assignment them any duties under the agreement. The District shall be responsible for providing the following:

- Agendas, and related packet materials, for any Board of Trustees meeting for regular business, retreats, workshop or hearings
- Annual Operating and Capital Budgets as adopted
- Comprehensive Annual Financial Report as adopted
- Access to the District's archive of documents
- Access to member of the District's Senior Team for consultation

5. Proposal Content and Requirements

To be considered for Legal Services, your **Proposal Contents** must be clearly marked and shall include the following:

A typical proposal submittal should follow the format provided below:

- Transmittal Letter (no more than 2 pages): Include any information you believe should be highlighted from your proposal or any key considerations for the selection committee to consider that are not covered in the proposal requirements. Counsel will also include in the transmittal, any exceptions taken to the District's Standard Legal Services Agreement.
- Firm Experience (no more than 2 pages): Provide a general overview of your firm's experience at providing Legal Services associated with special districts or other forms of government.

- Firm Capacities (no more than 2 pages): Describe your Firm’s capacities, including titles, office location and contact information. Include the key individuals and support staff that will actually be responsible for conducting the legal activities and for administrative management of the agreement. Include a percent-time availability providing legal advice and assistance to operating departments with regard to employee disciplinary actions.
- Identify dates for the week of October 2, 2018, the proposer would be available for an interview.
- References (no more than 2 pages): Provide at least three (3) references for the key individuals on the Legal Services team. This section should provide a short description of the firm or staff members’ role, and a specific contact person with phone number. The selection team will be focusing on project performance and will be requesting input as to conformance with schedules and budgets.
- Submit an estimate of hours to complete the services as described in this Request for Proposals. The estimate should be an itemized staffing breakdown in spreadsheet form, indicating personnel classification, hours for each team member for each work task.
- Appendix materials may be provided, but is not required other than specifically identified, in addition to the ten-page proposal limit. Appendix material submitted should be limited to resumes of proposed key staff relevant to the scope of work.

6. Proposed Compensation

Legal Counsel shall provide a Schedule of Services and related fees charged to the District by task and as an option by the hour for services that occur only upon request or occasion. Proposers are encouraged to establish a fixed fee per month for attendance of Board of Trustee meetings and providing regular office hours. The proposal shall identify the methods for charging indirect or other costs and expenses including travel and any other direct expenses.

7. Desired Schedule

RFP Phase

Begin RFP Process	August XX, 2018
RFP Submittals Due	September XX, 2018
Preliminary Review completed	September XX, 2018
Report to Board of Trustees	October 24, 2018
Interviews completed	October 05, 2018
Board Recommendation	November 14, 2018
Implement of services	January 1, 2019
Complete transition of services	90 days or less after implementation begins

8. Evaluation Criteria

Under Nevada Revised Statutes, Legal Services are exempt from bidding procedures as a Professional Service. The District intends to select a Legal Services provider that demonstrates any ability to best serve the needs of the District Board of Trustee meetings, day to day operations and the in those capacities to serve the public interest of the communities of Incline Village and Crystal Bay. Before selection is made the proposed Legal Counsel consultants will participate in an interview held with the Senior Team at the District's Administrative Office.

The Senior Team, through the General Manager, will recommend an action to the Board of Trustees who will make the final determination.

9. Submittals

Interested parties shall submit five (5) copies of their Proposal to the District by no later than 5 p.m., September XX, 2018. The Proposal shall be presented in a sealed envelope labeled "Legal Services Agreement" and addressed as follows:

Incline Village General Improvement District
Attention: Susan Herron
District Clerk to the Board of Trustees
893 Southwood Blvd.
Incline Village, NV 89451
(775) 832-1207

Proposals shall not exceed ten (10) pages in length (plus a project schedule, manpower loading matrix, and appendix material) using a minimum 11-point font size type. Resumes should be included as attachments and will not be counted within the 10-page proposal limit.