

MEMORANDUM

TO: Board of Trustees

THROUGH: Joshua Nelson

FROM: Kate Nelson, Engineering Manager

SUBJECT: Review, discuss, and possibly approve a legal service agreement with Silver State Law, LLC in an amount not to exceed \$72,000 for special counsel construction related services. (Requesting Staff Member: Interim Director of Public Works Kate Nelson)

RELATED STRATEGIC PLAN BUDGET INITIATIVE(S): **LONG RANGE PRINCIPLE #5 – ASSETS AND INFRASTRUCTURE**

The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation venues, facilities, and services.

- Comply with regulatory requirements, industry standards, and District policies.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES

Board Policy 13.1.0 - Capital Project Budgeting
Board Policy 21.1.0 - Purchasing Policy for Public Works Contracts

DATE: August 9, 2023

I. RECOMMENDATION

That the Board of Trustees makes a motion to approve a legal service agreement with Silver State Law, LLC in an amount not to exceed \$72,000 for special counsel construction related services.

II. BACKGROUND

The General Counsel provides procurement related services, including for public works projects. However, given the size and complexity of the effluent pipeline project, the prior General Manager (based on the General Counsel's recommendation) engaged Silver State Law LLC to provide special counsel services for this project and to develop new construction contract templates.

This work has successfully concluded.

As IVGID moves forward with future phases of the effluent pipeline project and similar complex public works projects, it would benefit from special counsel assistance in those areas and as needed. This agreement would engage Silver State Law LLC to provide these services as requested. Approval would not exceed \$72,000.

III. BID RESULTS

Not Applicable

IV. FINANCIAL IMPACT AND BUDGET

Silver State Law will be utilized as needed to assist with various capital improvement projects. Silver State Law will provide invoices that will be project specific. Funds are available within each capital improvement project to cover the costs of legal services. General legal services provided will be funded by either the Water General Administration Outside Legal Consultant (2002299-6010 - \$15,000) and/or Sewer General Administration Outside Legal Consultant (20002599-6010 - \$15,000) FY23/24 approved budget.

V. ALTERNATIVES

Below is an alternative to the recommended action:

1. Decline to engage special counsel in this matter.
2. Seek alternative special counsel.

VI. COMMENTS

VII. BUSINESS IMPACT/BENEFIT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VIII. ATTACHMENTS

None

IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

Approve a legal service agreement with Silver State Law, LLC in an amount not to exceed \$72,000 for special counsel construction related services.

LEGAL SERVICES AGREEMENT

1. Identification of Parties

This Agreement is made between Silver State Law, LLC (“Law Offices”) and Incline Village General Improvement District (“IVGID”) or (“Client”).

2. Legal Services to be Provided

The legal services to be provided by Law Offices to Client as part of this Agreement are as follows:

Law Offices will assist IVGID and its general counsel with Capital Improvement Project Legal Advice, and related tasks as requested.

3. Responsibilities of Law Offices and Client

Law Offices will perform the legal services called for under this Agreement, keep Client informed of developments in the same case, and respond promptly to Client’s reasonable inquiries.

Client will be truthful and cooperative with Law Offices, keep Law Offices reasonably informed of developments and of Client’s address, telephone number and whereabouts, and timely make any payments required by this Agreement.

4. Attorneys Fees

Client will pay Law Offices for attorneys’ fees for the legal services provided under this Agreement at the respective hourly rates of the individual attorneys providing the services. The rates for attorney’s fees fall within the following ranges: \$325.00 to \$375.00 per hour for attorneys, subject to increase with reasonable notice. Jeff Spencer of Silver State Law, LLC will be the lead attorney on these matters, and will bill \$375.00 per hour. Also, more than one member of Silver State Law, LLC may work on a matter for you simultaneously, in which case both members of Silver State Law, LLC may bill for the time spent. The same rule applies to sequential or duplicative work. For example, it might be necessary to charge you for a paralegal and attorney reviewing some or all of a case file, where both the paralegal and attorney require immediate familiarity with the facts. All personnel billing for their time will do so in 1/10 of an hour (i.e., 1/10 equals six minutes) increments, and will round to the nearest such increment. You agree that these fees are reasonable on the basis of Attorney’s ability, training, education, experience, professional standing and skill, and the difficulty, intricacy, importance, and time and skill required to perform the work to be done.

You understand that all time expended by personnel in Silver State Law on matters covered under this Engagement Letter should be expected to be billed at the rate of those personnel. Law Offices will charge for all activities undertaken in providing legal services to Client under this Agreement, including, but not limited to, the following:

- Conferences and hearings;
- Court and administrative sessions;
- Depositions and other discovery (preparation and participation also included);
- Correspondence and legal documents;
- Travel to and from meetings, hearings, or conferences (review and preparation);
- Legal research;
- Telephone conversations with Client, opposing counsel and with other relevant actors in the action.

5. Costs

Client is responsible for any and all necessary and reasonable costs, which Law Offices incurs in connection with Clients representation in matters covered by this Agreement. Costs may include, but are not limited to:

- Process server fees;
- Court filing fees;
- Other charges assessed by Courts and other public agencies;
- Court reporter fees;
- Jury fees;
- Witness fees;
- Expert fees (except those paid directly by Client);
- Computer research charges;
- Reproduction charges (currently \$.25 per page for copies);
- Travel expenses such as airline tickets, mileage, parking and meals;
- Toll and long-distance telephone charges;
- Clerical staff overtime;
- Postage and messenger fees;
- With your consent, the fees of consultants, experts, investigators and others retained to aid us in representing you.

Law Offices may, on Client's behalf, advance any or all of such costs and disbursements, when time is of the essence. Generally, however, costs will be paid and billed as a portion of the monthly billing sent to client, and any costs advanced by Law Offices shall be reimbursed to Law Offices in accordance with the general billing practices of Law Offices. Unpaid fees and costs advanced in this action shall constitute a claim and a lien against any recovery made on Client's behalf. If the result of the action is a recovery against Client or is not for recovery in favor of Client, regardless of the outcome of the matter, the Client is still responsible for the payment of all attorneys' fees and costs.

The total estimated cost for the Capital Improvement Project Legal Advice is SEVENTY-TWO THOUSAND DOLLARS (\$72,000.00), this estimated amount is subject to approval from IVGID prior to the commencement of any legal work.

6. Statements and Payments

Law Offices will send Client monthly billing statements indicating in an itemized format all attorneys fees and costs incurred to date in the matter and their basis, any amounts applied from retainers, and any current balance owed for amounts billed from previous months. If no attorneys' fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month or any subsequent month at Client's request. What fees and costs are incurred and billed for any particular month are due and payable within thirty (30) days of the date of the invoice and are considered delinquent past that time. Law Offices may elect to withdraw as counsel for non-payment of fees at any time and as further set forth in paragraph 10 below.

7. Retainer Fee

Not applicable at this time. Law Offices reserves the right to request and obtain a retainer if future legal activities warrant same.

8. Control of Action

The Client expressly understands that Law Offices controls the litigation strategy required to accomplish the goals of this Agreement. This includes the strategy regarding discovery and other litigation decisions. Should the Client request that Law Offices take action in this litigation that may adversely affect the litigation or that may adversely affect one of Law Offices existing clients, Law Offices will consult with Client and determine if the proposed course of action adversely affects the litigation or one or more of the Law Offices existing clients. If a conflict does arise in the management of this matter, Client expressly understands that it may be required to seek alternate legal counsel. Furthermore, Law Offices will make all decisions regarding litigation or the legal outcome of the matter subject to this Agreement. Such decisions include, but are not necessarily limited to, decisions related to the timing and filing of any legal action, the presentation of witnesses and evidence at trial, arbitration or mediation, and the requisite amount of time and effort spent to accomplish the goals of this Agreement, include all decisions related to discovery.

9. Discharge of Law Firm

Client may discharge Law Offices at any time by written notice effective when received by Law Offices. Unless specifically agreed by Law Offices and the Client, Law Offices will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Law Offices is Client's attorney of record in any proceeding the Client will execute and return a substitution of attorney form immediately upon its receipt from Law Offices. Notwithstanding the discharge, the Client will be obligated to pay Law Offices a reasonable attorneys fee for all services provided and to reimburse Law Offices for all costs advanced at the time of discharge.

10. Withdrawal of Law Firm

Law Offices may withdraw at any time as permitted by the Rules of Professional Conduct of the State Bar of Nevada or the rules of any court in which Law Offices has appeared or intends to make an appearance, or in any arbitration or mediation in which Law Offices services have been engaged. The circumstances which permit withdrawal include, but are not limited to the following:

- a) The Client consents to withdrawal;
- b) The Client's conduct renders it unreasonably difficult for Law Offices to carry out employment effectively; and
- c) The Client fails to pay attorneys' fees or costs as required by its Agreement with the attorney.

Notwithstanding Law Offices withdrawal, the Client will be responsible for reasonable attorney's fees for all services provided and to reimburse Law Offices for all costs advanced, before the withdrawal.

11. Copy of the Agreement

Client acknowledges, by signing this Agreement, that he/she/it has obtained a fully executed copy of this Agreement.

12. Disclaimer of Guarantee

Although Law Offices may offer an opinion about possible results regarding the subject matter of this Agreement, Law Offices cannot guarantee any particular result. The Client expressly acknowledges that Law Offices has made no promises about the outcome and that any opinion offered by Law Offices in the future will not constitute a guarantee. Because litigation or other legal matters can result in multiple, even inconsistent outcomes, and because litigation and other legal actions can vary in time or duration, any expressed expected outcome or timeline is merely an opinion and not a representation of the expected results or duration of this case.

13. Enforcement of Agreement

In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. The effective date of this Agreement will be the date when it is executed by the second of the parties to do so.

[INTENTIONALLY LEFT BLANK]

THE FOREGOING IS UNDERSTOOD AND AGREED. I have carefully read and reviewed this Engagement Letter and had an opportunity to ask questions regarding its effect. I acknowledge that I have been advised to retain separate legal counsel to review this Engagement Letter, if I so desire, and that the choice to do so or not is entirely up to me. I understand that in the event there is a dispute between Clients and Silver State Law, LLC, that this Engagement Letter may not be subject to any attorney-client privilege and may be disclosed to a court or otherwise as deemed appropriate. I also understand that this Engagement Letter provides for binding arbitration in the event there is a dispute between Clients and Silver State Law, LLC, and that binding arbitration may deprive me of various rights that I might otherwise have in a legal action, including without limitation the right to a jury trial, the right to appeal, and full discovery rights.

Dated this ____ day of _____, 2023.

INCLINE GENERAL IMPROVEMENT DISTRICT

By: Mike Bandelin
Its: Acting General Manager

Accepted By:

Silver State Law, LLC

Jeff Spencer, Esq.