

**MEMORANDUM**

**TO:** Board of Trustees

**FROM:** Bobby Magee  
General Manager

**SUBJECT:** Review, Discuss, and Approve the Recommended Contract Amendment with Rubin Brown for an Increase in Expenditures for Forensic Due Diligence Auditing Services

**DATE:** May 8, 2024

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**I. RECOMMENDATIONS**

That the Board of Trustees:

1. Discuss the Contract Amendment in the amount of \$70,000 for continued Forensic Due Diligence Auditing Services; and,
2. Direct the General Manager to execute the contract amendment with RubinBrown.

**II. DISTRICT STRATEGIC PLAN**

This action supports Long Range Principle #2, Finance; *“The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial polices for operating budgets, fund balances, capital improvement and debt management.”*

- *Comply with State and Federal regulations.*
- *Develop and maintain a long term plan to sustain financial resources.*

**III. BACKGROUND**

On November 8, 2023 the Board of Trustees (Board) approved the award of a contract with RubinBrown, LLP for Forensic Due Diligence Auditing Services. (Item G.3) On January 31, 2024 the Board approved the Scope of Work and related contract pricing with RubinBrown. (Item H.3) During the January 31 meeting, the Board authorized staff to enter into an agreement in the amount of \$200,000, with a 15% contingency for a total appropriated amount of \$230,000. In late April, RubinBrown notified staff that it expected to invoice IVGID in an amount that would be up to the \$230,000 cap. In addition, staff was notified that RubinBrown had discovered a number of unexpected items that it felt warranted additional investigation. The continued work product, if authorized, would constitute an additional cost to the project.

As this information became available the General Manager and Trustee Tulloch, acting as the Chair of the Audit Committee, requested a briefing from RubinBrown as to the nature of the expected observations. The briefing was held on April 30, 2024. After reviewing the information provided, staff is in agreement that the additional work should be authorized, and as such recommends additional funding to the project.

RubinBrown indicated that it understands the fiscal constraints of this project, and has offered to provide a discount on its rates related to the overall project. It is expected that, at currently agreed-upon rates in the contract, the total cost of the project would exceed initial estimates of \$350,000. However, with discounts applied, RubinBrown has expressed confidence that the remainder of the project can be completed with a \$70,000 increase to the contract, bringing the total contract value to \$300,000 at the conclusion of the project.

## **VI. FINANCIAL IMPACT AND BUDGET**

If approved, this contract amendment will add \$70,000 to the RubinBrown agreement, creating a new not-to-exceed amount of \$300,000. This amount will be absorbed within existing budgeted appropriations.

## **V. ALTERNATIVES**

If the Board does not direct staff to sign the contract amendment, the Forensic Due Diligence Audit will stop without further recommended work being completed.

**AMENDMENT NO. 1  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT  
AND  
RUBINBROWN LLP**

This Amendment No. 1 to the Professional Services Agreement for Services to Be Provided on a Task Order Basis dated February 5, 2024 (“Amendment”) is made and entered into as of **May 8, 2024** by and between the Incline Village General Improvement District (“District”) and RubinBrown, LLP (“Consultant”). District and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

**Recitals**

- A. Original Agreement. The Parties entered into Professional Services Agreement for Services to Be Provided on a Task Order Basis dated February 5, 2024 (“Original Agreement”), which is incorporated herein by reference as if fully set forth herein, for the purpose of District retaining Consultant to provide the auditing services set forth therein.
- B. Amendment Purpose. District and Consultant wish to increase the not-to-exceed amount of the Original Agreement for an additional \$70,000 to provide additional investigative and forensic audit services, based on the rates originally set forth in Exhibit C of the Original Agreement.
- C. Amendment Authority. This Amendment is authorized pursuant to Section 3.3.1 of the Original Agreement.

**Amendment**

Now therefore, the Parties hereby modify the Original Agreement as follows:

- 1. Definitions. All capitalized terms used in this Amendment not defined in this Amendment shall have the same meaning as set forth in the Original Agreement, if defined in the Original Agreement.
- 2. Term. Section 3.3.1, “Compensation,” of the Original Agreement is hereby amended to read in its entirety as follows:

“Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto and incorporated herein by reference. The total compensation including all reimbursements to be provided under this Agreement shall not exceed three hundred thousand dollars (\$300,000), without approval of a contract amendment by the District’s Board of Trustees. Total compensation per Task Order shall be set forth in the Task Order, and shall not exceed such amount without written approval of the District’s Representative. The Director of Finance and District General Manager are authorized to issue Task Orders under this Agreement in amounts not to exceed \$300,000 cumulatively. Extra Work may be authorized, as described in this Agreement below; and if authorized, said Extra Work will be compensated at the rates

and in the manner set forth in this Agreement.

**Notwithstanding the foregoing, Consultant shall finish all work within the Scope of Services described in Exhibit A, within the not-to-exceed compensation limit of \$300,000 under this Agreement, and any additional hours of work, costs, or expenses incurred by Consultant that may otherwise result in claims for compensation by Consultant to complete the Scope of Services shall be at Consultant’s sole risk and expense and shall not be further compensated by the District.”**

- 3. Continuing Effect of Agreement. All provisions of the Original Agreement otherwise remain in full force and effect and are reaffirmed. From and after the date of this Amendment, whenever the term “Agreement” appears in the Original Agreement, it shall mean the Original Agreement as amended by this Amendment.
- 4. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.
- 5. Severability. If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**DISTRICT:**  
**INCLINE VILLAGE GENERAL**  
**IMPROVEMENT DISTRICT**  
**Agreed to:**

**CONSULTANT:**  
**RUBINBROWN, LLP**  
**Agreed to:**

\_\_\_\_\_  
 Bobby Magee, District General Manager

\_\_\_\_\_  
*Date*

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
*Signature of Authorized Agent*

\_\_\_\_\_  
*Print or Type Name and Title*

\_\_\_\_\_  
*Date*

If Consultant is a Corporation, attach evidence of authority to sign.

**Reviewed as to Form:**

\_\_\_\_\_  
 Sergio Rudin  
 District Legal Counsel

\_\_\_\_\_  
*Date*