

MEMORANDUM

TO: Board of Trustees

THROUGH: Mike Bandelin, Interim General Manager

FROM: Kate Nelson, Interim Public Works Director

SUBJECT: Review, discuss and possibly approve a Professional Services Agreement between Incline Village General Improvement District and HDR Engineering, Inc. for an updated Water and Sewer Rate Study for Fiscal Year 2024 in the amount of \$41,865.00. (Requesting Staff Member: Interim Director of Public Works Kate Nelson)

RELATED STRATEGIC PLAN BUDGET INITIATIVE(S):

LONG RANGE PRINCIPLE #3 - FINANCE

The District will ensure fiscal responsibility and sustainability of service capacities through prudent fiscal management and maintaining effective financial policies for internal controls, operating budgets, fund balances, capital improvement and debt management.

RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES

Ordinance No. 2 – Sewer Ordinance
Ordinance No. 4 – Water Ordinance

DATE: January 10, 2024

I. RECOMMENDATION

That the Board of Trustees make a motion to approve;

A Professional Services Agreement between Incline Village General Improvement District and HDR Engineering, Inc. for an updated Water and Sewer Rate Study for Fiscal Year 2024 in the amount of \$41,865.00.

II. BACKGROUND

The District provides water and sewer utility services through its Utility Fund (Fund 200). Revenues supporting the District's Utility Fund consist primarily of charges for services collected from utility customers through water and sewer rates established annually by the Board of Trustees.

A prior Utility Rate Study was completed in June 2023 and year 1 of the 5-year proposed rate increases were passed by the Board of Trustees on June 14, 2023 with an effective date of June 19, 2023. The purpose of this work is to provide staff with an update to the previously completed Utility Rate Study to ensure that current and future operating, capital expenses, and reserves remain adequately funded. Current staff were not immediately involved in the prior rate study and are requesting HDR perform the study again this year.

III. BID RESULTS

In 2021, an RFP for professional services was solicited. After a review of proposals from qualified firms, the Board of Trustees awarded the contract to HDR Engineering to perform the rate study on September 2, 2021.

IV. FINANCIAL IMPACT AND BUDGET

The rate study sets forth the appropriate rates for water and sewer service to meet revenue and expense requirements and to achieve the appropriate fund balance and working capital. Any resulting rate updates are intended to maintain the current rate structure and are necessary to fund the current and future operating, capital expenses, and reserves.

Because the two previous rate studies returned similar results for the cost of service analysis, this year's proposal by HDR Engineering has provided the cost of service analysis as an optional task. Given this, it is staff's recommendation to not perform a cost of service analysis for the 2024 rate study update and adopt rates based on the prospective results of the 2024 revenue requirement analysis and the cost of service results from the 2023 rate study.

V. ALTERNATIVES

Not approve the update to the rate study and continue with the currently adopted rates.

VI. COMMENTS

The proposed agreement between the District and HDR Engineering Inc. has been reviewed by District Legal Counsel.

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

1. HDR Agreement - 2024 Utilities Rate Study

IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES

That the Board of Trustees review and approve a professional services agreement with HDR Engineering, Inc. to conduct the Fiscal Year 2024 Update to the Utility Rate Study for provision of water and sewer services, opting not to perform a cost of service analysis.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of **January 2nd, 2023** by and between the Incline Village General Improvement District, a Nevada general improvement district (“District”) and **HDR Engineering, Inc.**, a foreign corporation with its principal place of business at 1917 S. 67th St., Omaha, NE 68106 (“Consultant”). The District and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 District. District is a general improvement district organized under the laws of the State of Nevada, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional Engineering services to public clients, is licensed in the State of Nevada, and is familiar with the plans of District.

2.3 Project. District desires to engage Consultant to render professional services for the completion of an updated water and sewer rate study (“Project”).

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply a current water and wastewater rate study (“Services”). The types of services to be provided are more particularly described in Exhibit A, Scope of Services, attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement and all applicable local, state and federal laws, rules and regulations. As described in Section 3.3, the District shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

3.1.2 Term. The term of this Agreement shall be from January 15, 2024 to August 1, 2024, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement and such directions and amendments from District as herein provided. The District retains Consultant on an independent contractor basis and not as an employee. No employee or agent of Consultant shall become an employee of District. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the District to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the District's approval.

3.2.4 Substitution of Key Personnel. Consultant has represented to the District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence subject to the District's written approval. In the event that the District and Consultant cannot agree as to the substitution of key personnel, the District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows: Shawn Koorn.

3.2.5 District's Representative. The District hereby designates Diana Robb, or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). The District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District's Representative or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Shawn Koorn, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible

for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with the District staff in the performance of Services and shall be available to the District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of Nevada. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Washoe County Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. If required, Consultant shall assist District, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies. Consultant shall be liable for all violations of local, state and federal laws, rules and regulations in connection with the Project and the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance meeting the requirements set forth herein. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 combined single limit (each accident) for bodily injury and property damage; and (3) *Industrial Insurance*: Workers' Compensation limits as required by the Labor Code of the State of Nevada. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) *Professional Liability/Errors and Omissions*: Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, professional liability/errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. "Covered Professional Services" as designated in the Professional Liability/Errors and Omissions policy must specifically include work performed under this Agreement.

Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement. Defense costs shall be payable in addition to the limits, with the exception of Consultant's Professional Liability/Errors and Omissions coverage.

3.2.10.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(A) Commercial General Liability. The commercial general liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(B) Automobile Liability. The automobile liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(C) Industrial (Workers' Compensation and Employers Liability) Insurance. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, materially modified, or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District.

3.2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

3.2.10.7 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District

reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.8 Subconsultants. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.2.10.9 Compliance with Coverage Requirements. If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may terminate this Agreement for cause.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement in accordance with the Schedule of Charges set forth in Exhibit B, attached hereto and incorporated herein by reference. The total compensation to be provided under this Agreement shall not exceed **Forty-One Thousand Eight Hundred Sixty-Five Dollars (\$41,865.00)** without written approval of District's Director of Public Works. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly itemized invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services and supplies provided since the initial commencement date of Services under this Agreement, and since the start of the subsequent billing periods, through the date of the invoice. Invoices shall be sent to invoices@ivgid.org with a copy to rlr@ivgid.org. Consultant shall include a Project Task Tracking Sheet with each invoice submitted. District shall, within forty-five (45) days of receiving such invoice and Project Task Tracking Sheet, review the invoice and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized under Exhibit B, or otherwise in writing by the District.

3.3.4 Extra Work. At any time during the term of this Agreement, the District may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by the District to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the District’s Representative. Where Extra Work is deemed merited by the District, an amendment to the Agreement shall be prepared by the District and executed by both Parties before performance of such Extra Work, or the District will not be required to pay for the changes in the scope of work. Such amendment shall include the change in fee and/or time schedule associated with the Extra Work. Amendments for Extra Work shall not render ineffective or invalidate unaffected portions of this Agreement.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain accurate and complete books, documents, accounting records and other records pertaining to the Services for six (6) years (or longer as required by applicable law) from the date of final payment under this Agreement. Consultant shall make such records available to the District for inspection, audit, examination, reproduction, and copying at Consultant’s offices at all reasonable times. However, if requested, Consultant shall furnish copies of said records at its expense to the District, within seven (7) business days of the request.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. The District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to the District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of this Agreement by District except for the amounts authorized herein.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the District may require Consultant to provide all finished or unfinished Documents and Data (defined below) and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

District

Incline Village General Improvement
District
893 Southwood Blvd.
Incline Village, NV 89451
Attn: Kate Nelson, P. E.

Consultant

HDR Engineering
2365 Iron Point Road, Suite 300
Folsom, CA 95630
Attn: Holly Kennedy

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data. All source code, reports, programs, manuals, disks, tapes, and any other material prepared by or worked upon by Consultant for the Services shall be the exclusive property of the District, and the District shall have the right to obtain from Consultant and to hold in District's name copyrights, trademark registrations, patents, or whatever protection Consultant may appropriate to the subject matter. Consultant shall provide District with all assistance reasonably required to perfect the rights in this subsection.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the District.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, to the extent it arises out of, pertains to, or relates to any negligence or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project, or this Agreement, including without limitation the payment of damages, expert witness fees, and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its directors, officials, officers, employees, agents, or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, including correction of errors and omissions that do not meet Consultant's obligations with respect to its professional standard of care. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials officers, employees, agents or volunteers. Notwithstanding the foregoing, neither Party will be liable to the other for consequential damages, including, without limitation, loss of profit, loss of product or loss of use, whether the liability is based on agreement, negligence, tort or otherwise.

3.5.6.1 Design Professional. To the extent required by NRS 338.155, Consultant's obligation to defend, indemnify, and hold District, its officials, officers, employees, volunteers, and agents free and harmless shall not include any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the District. If the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the District, as reimbursement for the attorney's fees and costs incurred by the District in defending the action, by the Consultant in an amount which is proportionate to the liability of the Consultant. This Section shall only apply to the extent required by NRS 338.155 and shall not otherwise limit Consultant's obligation to defend, indemnify and hold the District harmless as required under Section 3.5.6.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of Nevada. Venue shall be in Washoe County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement; provided, however, that any delays in, or failure of, performance of any Party to this Agreement shall not constitute default hereunder, or give rise to any claim for damages, if and to the extent it is caused by occurrences beyond the control of the affected Party.

3.5.10 District's Right to Employ Other Consultants. The District reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Subcontracting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the District include its officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.24 Limitation of Liability. The District does not and will not waive and expressly reserves all available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages.

3.5.25 Non-Appropriations. The District may terminate this Agreement, effective immediately upon receipt of written notice on any date specified if for any reason the District's funding source is not appropriated or is withdrawn, limited, or impaired.

3.5.26 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services. Consultant shall not discriminate against any person on the grounds of race, color, creed, religion, sex, sexual orientation, gender identity or gender expression, age, disability, national origin or any other status protected under any applicable law. Consultant is not currently engaged in, and during the duration of the Agreement shall not engage in, a Boycott of Israel. The term "Boycott of Israel" has the meaning ascribed to that term in NRS 332.065. Consultant shall be responsible for all fines, penalties, and repayment of any State of Nevada or federal funds (including those that the District pays, becomes liable to pay, or becomes liable to repay) that may arise as a direct result of the Consultant's non-compliance with this subsection.

3.5.27 Prohibited Interests. Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.28 Whistleblower Provisions. This Agreement is not intended to and will not preclude Consultant's employees from exercising available rights under the District's Whistleblower Policy and associated procedures for reporting suspected misconduct, as that term is defined in the Whistleblower Policy. All reports of suspected misconduct will be handled by the District in accordance with the Whistleblower Policy.

3.5.29 Limitation of Liability. The District does not and will not waive, and expressly reserves, all available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes.

DISTRICT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE

RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO DISTRICT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE LESSER OF \$1,000,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES AND COURT COSTS) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, INDEMNITY, STRICT LIABILITY, BREACH OF CONTRACT, TORT OR OTHER RECOVERY. THIS LIMITATION WILL NOT APPLY TO (1) THIRD PARTY CLAIMS SUBJECT TO SECTION 3.5.6 AND (2) THE EXTENT TO WHICH ANY LOSSES ARE CAUSED BY A PARTY'S FRAUD OR WILLFUL MISCONDUCT.

Neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) arising out of, resulting from, or in any way related to the Project, the work or this Agreement from any cause or causes, including but not limited to any such damages caused by negligence, errors or omissions, strict liability or breach of contract.

3.5.30 Reasonable Reliance. Consultant will have the right to reasonably rely on all information, documents or other materials furnished by or on behalf of District in respect of the Project or the Services.

[Signatures on Following Page]

**SIGNATURE PAGE
TO
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
PROFESSIONAL SERVICES AGREEMENT**

**OWNER:
INCLINE VILLAGE G. I. D.
Agreed to:**

By: _____
Kate Nelson, P. E.
Interim Director of Public Works


Date

Reviewed as to Form:

Joshua Nelson
District General Counsel

Date

**CONTRACTOR:
HDR Engineering, Inc.
Agreed to:**

By:  _____
Signature of Authorized Agent

Holly Kennedy, Senior Vice President
Print or Type Name and Title

January 2nd 2024
Date

PROFESSIONAL SERVICES AGREEMENT

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF SERVICES

Task 1 - Initial Project Kick-Off Meeting

Task Objective: Bring the HDR project team and IVGID management and staff together at the start of the project to make sure that the parties have a mutual understanding of the goals, objectives, issues, and concerns related to the water and sewer rate study update.

Task Approach:

- Schedule an initial project meeting

Expected IVGID Staff Support:

- Have key management/project team members attend a virtual two-hour kick-off meeting
- Confirm IVGID's goals and objectives for the study
- Review and provide background and updates on IVGID's financial policies, financial background, Utilities Management Review and Asset Management Assessment, and Master/Capital Plans

Deliverables:

- Kick-off meeting agenda outlining the study objectives, tasks, and schedule
- Meeting to get the study off to a positive start

Key Issues Associated with Task 1:

The initial project meeting is important to the overall success of the study as it provides a key foundation for the rate study process (project team coordination). This meeting allows both parties to discuss in detail the overall goals and objectives for the water and sewer rate study update, the approach, schedule, and at the same time discuss issues and concerns that either party may have. It is proposed that the initial project meeting be held virtually for approximately two hours in length.

Task 2 - Written Data Request

Task Objective: Provide a written data request outlining the data and information required to develop the technical analysis to complete the study.

Task Approach:

- Develop a written data request, segregated by utility, and provided to IVGID electronically
- Identify and resolve outstanding data constraints or data issues

Expected IVGID Staff Support:

- Gather the data requested in the written data request provided by HDR
- Discuss data constraints or outstanding data needs with HDR

Deliverables:

- An initial written data request to IVGID provided electronically and identification of data constraints
- Documentation of data received and provide IVGID with a listing of outstanding data needs

Key Issues Associated with Task 2:

HDR will provide a written data request to IVGID prior to the initial project meeting so that it can be discussed at the meeting and questions on the data needs resolved. The data and information requested for this study should be, for the most part, readily available information (e.g., financial, statistical, customer) as was provided for the recent studies. HDR will review the data and information and will provide IVGID with documentation of the data received along with further questions, clarifications, or outstanding data needs.

Task 3 - Revenue Requirement Analysis (Water and Sewer)

Task Objective: Using a generally accepted rate-setting methodology, develop a revenue requirement analysis for each utility for a projected 10-year period, with a focus on the first 5 years. The revenue requirement analysis will establish the cost-based ‘level’ of revenue to be collected from rates (O&M and capital). Using IVGID’s capital improvement plans (CIPs), a capital funding plan will be developed to provide adequate funds available for capital projects while attempting to reduce overall rate impacts. If necessary, a plan to transition rates to cost-based levels will be developed. The analysis will also examine key financial performance indicators such as debt service coverage and reserve levels.

Task Approach:

- Utilize the current budget for each utility and a “cash basis” methodology to accumulate costs
- Develop a financial/rate model to project revenues and expenditures (operating and capital costs) for a 10-year period with the focus on the next 5-year period
- Develop a capital funding plan for IVGID’s water and sewer CIP and evaluate the financial/rate impacts of different CIP funding sources. Incorporate into the capital funding plan a consistent annual funding source for renewal and replacement capital projects
- Utilize IVGID’s financial policies and financial planning criteria (e.g., reserves, DSC)
- If needed, develop a rate transition plan to smoothly adjust the overall levels of rate revenues

Expected IVGID Staff Support:

- Provide as-needed assistance to clarify IVGID’s data and information
- Provide as-needed data refinements or additional data
- Attend a two- to three-hour virtual meeting to review the draft revenue requirement analysis
- Provide input for up to two alternative scenarios to be reviewed (developed)

Deliverables:

- A water and sewer revenue requirement analysis for a projected 10-year period, with the focus on the first 5 years, that considers the necessary operating and capital needs of each utility
- A capital financing plan within the revenue requirement analysis, utilizing IVGID's CIPs which attempts to increase capital expenditures while decreasing the rate impacts to customers over time
- As needed, a rate transition plan to "phase in" needed rate adjustments
- Recommendations regarding key financial indicators (e.g., debt service coverage, capital funding/replacement through rates, reserve levels)
- Up to two alternative revenue requirement scenarios will be evaluated
- One two- to three-hour virtual project meeting to review draft results of the revenue requirements

Key Issues Associated with Task 3:

The revenue requirement analysis is the first major analytical portion of the comprehensive rate study process. This task considers the prudent and proper funding for O&M and capital expenditures and evaluates the need for rate adjustments over the selected time period. The various analytical steps are described below.

TIME PERIOD—The financial model and revenue requirement analysis for each utility will be developed for a 10-year projected time period, with a focus on the first 5 years.

REVENUE REQUIREMENT METHODOLOGY—A cash basis methodology will be used for each utility. This is the methodology used in the recent rate study and the common methodology used by municipal utilities. The cash basis methodology sums each utility's operating and maintenance expenses, taxes and transfers, rate funded capital, and annual debt service to determine the total revenue requirement. The total revenue requirement, minus miscellaneous revenues, produces the balance of funds required from rates.

ACCUMULATION OF REVENUES AND EXPENSES—Revenue requirements are composed of two major types of expenses or costs: operating costs and capital costs. Operating costs are generally projected from historical or budgeted costs, using escalation factors for future costs, and adjusted for known changes in operations (e.g., changes in levels of service/personnel, operating costs, growth/expansion). HDR will begin with IVGID's current adopted water and sewer budget and project costs into the future using escalation factors for the various types of costs that IVGID incurs (e.g., labor, benefits, electricity, chemicals). Operating costs will also be analyzed and adjusted for changes in service levels or customer growth as identified by IVGID staff.

The starting point for projecting capital expenditures will be IVGID's recent capital improvement plans for each utility. In the financial planning process, consideration must be given to increasing the capital improvement expenditures, while attempting to decrease rate impacts to the utility's customers. The capital (improvement) funding plan is developed on a year-by-year basis for the projected 10-year period. The capital projects are listed by year with the estimated (planned) outside funding sources for each project. The balance of projects not funded by the available sources of funds must be financed from a combination of long-term debt and rates (or deferred). It is the balancing of the use of long-term debt to the impact upon rates

that is critical to the analysis. The above framework provides the proper approach to evaluate the financial/rate implications of the planned capital improvements. HDR will work closely with IVGID to evaluate the current levels of funding for replacement capital and develop a long-term plan to increase funding to appropriate and adequate levels.

FINANCIAL PLANNING CRITERIA—HDR will develop the revenue requirement analysis to be consistent with IVGID’s financial policies, current rate (bond) covenants, and industry customary practices. HDR will use financial targets based on either IVGID’s current written policies, or absent clear policy direction, industry customary practices.

SUMMARIZE THE RESULTS AND DEVELOP RATE TRANSITION PLAN—The revenue requirement analysis is designed to provide an understanding of the total costs to operate each utility from year to year. While the analysis is very detailed, an important step is to summarize those results and findings into an easy-to-understand format. HDR will develop summary tables for the revenue requirement analysis that should provide easy-to-understand findings and results.

Another important element of the study is the potential need for a rate transition plan. The recent study developed a rate transition plan. This study will develop an updated rate transition plan to adjust water and sewer rates over time, given the funding requirements and constraints of the analysis.

INTERNAL REVIEW MEETING(S)—As the study progresses, HDR will meet with IVGID project team to review the draft results of the revenue requirement analysis. The objective of the internal review meeting is to provide IVGID with an understanding of the overall methodology, while reviewing the various key inputs and assumptions of the analysis. In this way, IVGID staff will clearly understand the approach and methodology used by HDR to develop the analysis and gain IVGID staff confirmation of the key inputs and assumptions. Based on input from IVGID project team, the revenue requirements will be finalized. As noted, the review meeting(s) will be virtual meetings.

Task 4 – Not Applicable

Task 5 - Development of the Water and Sewer Rate Designs

Task Objective: Utilize the cost information developed as a part of the previous task(s) to develop water and sewer rate design alternatives, for a multi-year period. As appropriate, develop rate structure alternatives to address IVGID’s rate design goals and objectives, while providing rates that recover the cost of providing service. Develop bill comparisons for each rate design to demonstrate the potential bill impacts from a change in a rate structure or the level of the rates.

Task Approach:

- Utilize the results of the water and sewer revenue requirement analysis and cost of service analysis, if completed, to establish the overall level of revenue adjustments to IVGID’s water and sewer rates
- Review IVGID’s rate design goals and objectives (e.g., revenue stability, ease of administration, ease of customer understanding, conservation/efficient use, encourage economic development)

- Review IVGID’s existing water and sewer rate structures and discuss with IVGID potential alternatives
- Develop up to two water and sewer rate design alternatives that meet IVGID’s objectives and are cost-based and equitable. Rates should be developed for a multi-year period (e.g., 2-5 years).
- Develop customer bill comparisons for each alternative to demonstrate the potential bill impacts at varying levels of usage

Expected IVGID Staff Support:

- Discuss IVGID’s rate design goals and objectives and discuss potential rate structure alternatives
- Review rate designs for appropriateness, provide direction for preferred alternatives
- Confirm that rate design alternatives are compatible with the IVGID’s current billing system

Deliverables:

- Review of IVGID’s current water and sewer rates and development of up to two alternative structures for consideration
- Development of proposed water and sewer rates for a multi-year period (2-5 years)
- Collaborate with IVGID staff on the compatibility of rate design alternatives with the IVGID current billing system
- Bill comparisons and graphs for the developed rate design alternatives

Key Issues Associated with Task 5:

The development of proposed water and sewer rate designs is the final analytical task of the comprehensive rate study process. This task will result in up to two rate structure alternatives for consideration by IVGID. For each rate structure alternative, HDR will provide bill comparisons to demonstrate the bill impacts to customers at various levels of consumptive use. Each rate design will be discussed with IVGID staff to review the compatibility with the current billing system.

At the conclusion of this task, HDR will provide a recommendation on the water and sewer rate structures and recommended rates for adoption. The proposed water and sewer rates will be developed for a multi-year period (e.g., 2-5 years).

Task 6 - Written Report

Task Objective: Provide a written report to summarize the findings, conclusions, and recommendations of the water and sewer rate study.

Task Approach:

- Develop an electronic draft water and sewer report for review and comment by IVGID
- Incorporate changes or comments from the draft report into the final report
- Provide a Microsoft Word and Adobe PDF copy of the draft and final report

Expected IVGID Staff Support:

- Review and comment on the draft water and sewer report

Deliverables:

- A draft and final water and sewer report in electronic format (e.g., Word, PDF)

Key Issues Associated with Task 6:

At the completion of the technical analysis, HDR will develop a draft report. HDR's written reports are intended to be comprehensive in nature and document the activities undertaken as a part of the project, along with our findings, conclusions, and recommendations. Attached to the report will be the exhibits developed as a part of the study (revenue requirements, cost of service, and rate design). IVGID will review the draft report and provide comments/corrections to HDR. Based upon IVGID feedback, HDR will develop the final water and sewer report.

Task 7 - Public Presentations

Task Objective: Provide effective public presentations (assumes up to four meetings) of the findings, conclusions, and recommendations of the rate study to IVGID Board of Trustees and the public (ratepayers).

Task Approach:

- Develop the presentation materials of the water and sewer rate study
- HDR's project manager, Shawn Koorn, and/or Josiah Close will attend the public meetings/presentations

Expected IVGID Staff Support:

- Review and comment on the proposed handouts for the public meetings

Deliverables:

- Up to four public presentations to present the finding, conclusions, and recommendations of the rate study

Key Issues Associated with Task 7:

To effectively communicate the results of the study, HDR recommends at least two public meetings. This includes a presentation on the results of the study and the public hearing to establish the final rates. Given past presentations to the Board, HDR has included up to two additional presentations to the Board. HDR will prepare handouts and Shawn Koorn, HDR's project manager, and/or Josiah Close will be present to provide the presentations. Should additional public meetings or presentations be required, they will be provided on a time and material basis.

Task 8 - Rate Models

Task Objective: Develop spreadsheet financial/rate models to conduct the study. The water and sewer models will be developed in Microsoft Excel and be non-proprietary. At the conclusion of the study, the models developed as a part of this study will be provided to IVGID for their use.

Task Approach:

- Develop a 10-year financial/rate model for the study using Microsoft Excel.
- Develop the model specifically for IVGID, utilizing their chart of accounts and specific facility information

Expected IVGID Staff Support:

- Review with HDR the requested features of the model

Deliverables:

- A copy of the computer spreadsheet model(s) used to develop IVGID’s rate study

Key Issues Associated with Task 8:

HDR will develop financial/rate models for IVGID’s water and sewer rate studies based on Microsoft Excel. The model will be specifically developed for IVGID’s utilities. Our financial/rate models are designed and intended to be technically sophisticated, yet easy to use and update. At the conclusion of the study, HDR will provide the models to IVGID.

Task 9 - Project Administration/Quality Assurance/Quality Control (QA/QC)

Task Objective: Provide effective project management and administration of the study. Provide QA/QC review and evaluation of the study and technical analyses.

Task Approach:

- Project manager is responsible for project administration and technical analyses
- HDR QA/QC procedures and documentation will be used. HDR project manager is responsible for meeting and fulfilling QC requirements

Expected IVGID Staff Support:

IVGID’s project manager work closely with HDR’s project manager to coordinate the study schedule and budget

Deliverables:

- Project administration – HDR project manager provides updates to IVGID’s project manager on the status of the study through monthly progress reports
- QA/QC review process provided for the study and technical analyses

Key Issues Associated with Task 9:

HDR’s project manager is responsible for the overall quality of the study and meeting the expectations of our clients. Our successful projects are accomplished through our project manager’s close coordination and communication with clients’ project managers. Finally, HDR

has a specific and detailed QA/QC process for our projects. This study will be reviewed using HDR's company-wide QA/QC Program. The QA/QC processes and reviews are internally documented.

Project Time Schedule

Generally, comprehensive water and sewer rate study of this complexity requires 3 to 6 months to complete. HDR will collaborate with IVGID and develop a final schedule for the development of the proposed water and sewer rates.

PROFESSIONAL SERVICES AGREEMENT

EXHIBIT B

COMPENSATION

Consultant's Rate Schedule

INDIVIDUAL	PROJECT ROLE	HOURLY RATE
Kevin Calderwood	Principal-in-Charge	\$335.00
Shawn Koorn	Project Manager	\$325.00
Josiah Close	Asst. PM/Task Lead	\$190.00
Tom Hoffman	Engineering Assistance	\$185.00
Kevin Lorentzen	QA/QC	\$250.00
Support Staff	Admin/Accounting	\$140.00

The billing rates shown above cover payroll cost, employee benefits and HDR overhead and profit.

Expenses:

In-House Expenses

Vehicle Mileage Current Federal Travel Regulation (FTR)

Black/white photocopies (per copy) \$0.05 to \$0.09

Color Copies (per copy) \$0.15 to \$0.30

No markup on expenses. Other direct expenses (e.g., parking, mileage, airfare) will be billed at cost.

Estimated Project Fee Breakdown

The estimated fees have been broken down by tasks identified in the scope of services, and include the hourly rates by team member, as well as other direct costs (expenses) anticipated for the water and sewer rate study. Provided on the following page is a summary of the estimated project fees for the scope of services developed for IVGID.

TASK #	TASK DESCRIPTION	TOTAL
1	Initial project kick-off meeting	\$1,220
2	Written data request	\$760
3	Revenue Requirement analysis (water and sewer)	\$10,200
4	OPTIONAL Cost of Service analysis (water and sewer)	Not included.
5	Development of water and sewer rate designs	\$6,250
6	Written report	\$5,340
7	Public meetings/presentations	\$9,450
8	Rate Models	\$0
9	Project Administration / Quality Control	\$5,170
Total Labor		\$38,390
Plus Anticipated Expenses		3,475
Total Labor and Expense Cost Estimate		\$41,865