

## MINUTES

### **REGULAR MEETING OF FEBRUARY 10, 2021 Incline Village General Improvement District**

The regular meeting of the Board of Trustees of the Incline Village General Improvement District was called to order by Chairman Tim Callicrate on Thursday, February 10, 2021 at 6:00 p.m. This meeting was conducted virtually via Zoom.

#### **A. PLEDGE OF ALLEGIANCE\***

The pledge of allegiance was recited.

#### **B. ROLL CALL OF TRUSTEES\***

On roll call, present were Trustees Tim Callicrate, Sara Schmitz, Matthew Dent, Kendra Wong, and Michaela Tonking.

Also present were District Staff Members Director of Finance Paul Navazio, General Manager Diamond Peak Ski Resort Mike Bandelin, and Engineering Manager Nathan Chorey.

No members of the public were present in accordance with State of Nevada, Executive Directive 006, 016, 018, 021, 026 and 029.

#### **C. INITIAL PUBLIC COMMENTS\***

Cliff Dobler said in the 2020 CAFR, Eide Bailly stated “in our opinion the financial statements present fairly in all material respects and are in accordance with Generally Accepted Accounting Principles for the United States of America.” The key words are fairly and material. The term fairly is determined by a set of rules by GAAP and GASB; if the rules are followed then the reporting is fair. If the rules are broken, then the reporting is unfair. The word material is even more of a mystery. When Tiffany Williams of Eide Bailly told the Audit Committee that Eide Bailly does not disclose their perimeters to determine what is material and what is immaterial then we must use our best judgement. So let’s take three simple reporting fiascos in the 2020 CAFR. Is it fair to report \$6.7 million of Community Service and Beach facility fees in the Statement of Activities as general revenues of the District when each of you know or should know that the facility fees are specifically committed for Community Services and Beach expenditures and cannot be used for any other purpose. Is it unfair to citizens to lead them to believe that the various funds and programs require general revenue support of \$6.8 million when the general revenues support will only be a mere \$100,000 if the facility fees were properly classified as program revenues? As defined in GASB 34 in the Moss Adams report, the facility fees are program revenues. So is this reporting unfair but can be

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overcome by not being material? Looking at the statement of revenues, expenditures and change in fund balances in fiscal 2020 for the Community Services and Beach Special Revenue fund, found on page 109 and 110, which are established in 2015 to report operations only, is it fair to break GASB 54 rules and report \$3.7 million of the facility fee specifically committed for capital projects and debt service as operating revenues? Is it fair to citizens to give them the impression that Community Services operating revenues exceeded expenditures by \$5.1 million when in fact the amount was only \$1.4 million or 74% less? The Beach operating revenues we are reporting is exceeding the expenditures by \$856,000 when in fact that amount was only \$546,000 or 36% less. So is it fair that in fiscal 2019 Management decided to report, as a capital asset, rather than expense, \$3.2 million in preliminary stage project activities for the Effluent Pipeline, Phase II, project? By not expensing such costs, Management improperly and unfairly reported in the Utility Fund \$2.4 million as operating revenue when a loss of \$820,000 actually occurred. GASB, common sense would suggest that an adjustment was required in the 2020 CAFR. Management and the Auditor apparently decided that such faulty reporting should not be addressed, trick citizens into believing that the Utility Fund is in good shape.

Linda Newman said this Board has the opportunity tonight to set the District on the right path forward and provide a solid foundation for the District's proper and appropriate accounting and reporting. Please take action tonight to revise the 2020 CAFR to comply with GAAP and Best Practices as stated in the Audit Committee's Annual Report and implement the recommendations in the Moss Adams Report, observations and supplementary review. This will ensure that our CAFR actually provides complete and accurate information that is transparent about the use of our tax, fee and ratepayer money with a detailed accounting of all our expenditures to ensure that the State, the County, our Board, our citizens and our creditors have meaningful information on our District's financial condition and performance. Ensuring the integrity of our financial statements is your responsibility—not management's, the auditor or anyone else. Please exercise your statutory and fiduciary duties to comply with Nevada law and make the required revisions. Please vote against a three year contract with BBK. As Mr. Nelson is the only attorney at BBK licensed to practice in Nevada, you are not engaging a law firm, you are engaging an individual who would have to supervise other lawyers at his firm and subcontract other legal tasks to other law firms. A three year contract with an individual who does not possess the legal experience and expertise our District may require does not serve you and it does not serve the public. In addition, this contract must be reviewed by independent legal counsel. Not legal counsel your General Manager selected on your behalf, but your own independent counsel who would fully disclose Mr. Nelson's conflicts in representing the Board and individual officers and senior Management. As Mr. Nelson is also the attorney for a local

government that currently employs many former members of our Senior staff, this too, could pose a conflict of interest. Of additional concern is vesting an individual with fulfilling all the District's legal needs. Under that scenario, the Board will be unable to engage other attorneys with greater expertise on specific legal matters. Please exercise proper due diligence and interview other law firms to ensure that we have the best law firm to fit our District's needs. She must also emphasize the need for this Board to fully understand your fiduciary and statutory duties to the citizens you took an oath to serve. As our elected officials we expect you to comply with Nevada law, to exercise leadership and to exercise responsible oversight of Senior Staff. If you do not take charge and provide the direction and professional resources our inexperienced General Manager requires to fulfill his duties – the District will falter and you will be held accountable.

Mike Abel said he has lived here for 22 years part time and 13 years full time. In that time, he has seen a steady stream of weak Trustees that have tolerated all of IVGID's mismanagement and corruption. Now, with a functioning Audit Committee, auditors found 19 accounting errors of \$3.5 Million which had to be corrected and an additional 5 miscellaneous errors of \$358,000 they did not correct. He implores our Trustees to keep the Audit Committee team moving together, and staff changing their practices, so that IVGID can come out of the "do nothing – see nothing" Wong era. He has compiled a list of 10 bad things and 5 really good things that he has seen with IVGID. You can see his list in your personal emails – he also wishes that it be included in the meeting minutes. Below is my list:

In my 13 years as a full timer here, he has seen IVGID mismanagement as shown below:

1. Multiple no-bid contracts awarded which cannot be justified by good business practices and where the probability of kickbacks is very high as indicated in the Moss Adams reports.
2. \$1.5 million bonuses paid to our beloved staff without board approval (2013-15)
3. The district overpaid more than \$300,000 to Pica (Canadian pipeline inspection Co.) without board approval for apparently no work and certainly no authorized work on the pipeline
4. \$838K plus spent on god knows what when our effluent pond was supposed to have been lined with that money.
5. Over \$1,000,000 on an overpriced repair of a 50-year old tennis building that should have been torn down. Where the costs were 3x the original estimate.
6. Another \$1.6 mil spent on a 50-year old Mountain Golf course building that is less functional than the old structure
7. Another \$1 million to be frittered away on stupid payroll software when every sane business in America uses a payroll service for pennies per week per employee

8. Now we are going to spend the soft side of \$5 million to replace a swimming pool that should not cost more than \$1.5 million.

9. Just this past year a cost over-run of \$250,000 on a wastewater aeration project.

10. Don't forgot endless lawsuits! Over \$500K on the waste-of-time Katz lawsuit where IVGID never attended a settlement conference. Can't forget the FlashVote suit and now the Smith case.

On the positive side the Board did some good things in the past year.

1. They fired the corrupt Guinasso and his worthless firm
2. Stopped the wasteful advertising program.
3. Stopped wasteful spending on Golf carts and ski rental equipment
4. Got moving on the effluent pipeline project with an outside firm
5. Formed a real Audit Committee that is doing some quality work.

Notwithstanding Mrs. Wong's tenure as a "do-nothing-see-nothing" Trustee and her recent attack on fellow Trustees and Mr. Dobler, we naysayers and troublemakers see mismanagement on a grand scale at IVGID. We see a former bevy of weak trustees that just turn their heads and look the other way. The big question, is Mr. Callicrate going to lead the Board into a new era of financial responsibility and or will it be a repeat of the Wong era? Finally – the Board should know what we naysayers really want:

1. A staff that puts the citizens and taxpayers first not themselves.
2. A staff that actually does their job with honesty and integrity and delivers straightforward accounting to the public in conformance with GAAP and GASB
3. A qualified group of managers (not like non-CPA Navazio) who can answer the public's questions in a straightforward no-nonsense manner.
4. Honest bidding and contracting that will maintain and improve our facilities. No more overpriced CMAR contracts except in an emergency.

Margaret Martini said judging by the decisions this Board and our General Manager undertakes, it appears that our citizens' public comments seem to wind up in your spam folders. So, in the hope that repetition will finally get the message through, I am requesting that you, as our elected officials, exercise your statutory and fiduciary duties and follow the recommendations of our Audit Committee, Moss Adams and our citizens and revise the 2020 CAFR to comply with Generally Accepted Accounting Principles and Best Practices. There is no excuse to accept a CAFR that is littered with errors, improper accounting and factually incorrect statements. No excuse, whatsoever. As I also stated at the December 9th meeting, there is no shortcut to doing your due diligence when it comes to engaging legal counsel. Considering a three year contract with a law firm that only has a single licensed attorney to practice in the State of Nevada, is beyond any one's reasonable understanding. Has the Board taken a look at Mr. Nelson's track record on legal advice and opinions, his inadequate review of contracts or his lack of experience and knowledge in dealing with legal issues confronting the District?

She has, along with others, and, his performance has not received a high grade. Please do your due diligence and reach out to other law firms to secure the best legal representation. With IVGID's track record on litigation this Board owes it to those you were elected by to give them the best decisions for THEIR representation. Right thing to do is to not accept this contract.

William Hill said he has had a house in Incline Village resident since 2006, president of the Tahoe Incline Golf Club for 2021. Over the years, since he has been here, he has availed himself of Diamond Peak which he loves, Rec Center where he has learned so much about his body, Championship Golf Course is his favorite, beaches are spectacular, the Chateau is the best place to have lunch he can imagine, special stuff, and he could go on and on. For this place to be so special, some people have been doing something right so to hear the complaining, which might be legitimate, well just want to say thank you to the Board and past Boards for creating such a fabulous place. He would like to make a pitch on behalf of the golf club as we are a bunch of reasonable folks and we let pretty much anybody in that's a reasonable person and we definitely need the tee times where we play and we used 93% of the tee times. It is very important to us however he also understands, as a former business owner for 30 years, that the Chateau and places like this need to survive. And one of his goals is to work with Staff to make that a reality and you can complain all you want about it but it is a special place and coming from TIGC, you can count on us and thank you.

Judith Miller said she would like to request that item J.1. be removed from the Consent Calendar over to General Business. The reason she would like to do that is because we are going into a new financial system, Tyler Technologies, and she can't believe that they don't have some similar platform to allow inquires, internal and external, and it would be a much simpler process assuming it is the same vendor. She doesn't know if any comparisons have been made but the Board would need to hear about that and there is no mention of that in this Board packet tonight so please ask for it to be removed, ask some questions, and it would seem that it would be much easier to do the integration between Tyler's own product. She has noticed that it takes weeks and sometimes even months to massage the data so it is ready for importing to the Opengov system. Thank you for considering this request and have a great evening.

Yolanda Knaack said thank you to the Audit Committee as they are doing a lot of good work which she appreciates.

Gail Krolick said she is calling to discuss and make aware that her husband and she has sent a rather lengthy e-mail to General Counsel, General Manager, and Trustees in regards to a rather hateful individual within our community. Neither she

nor her husband heard anything back from anyone nor at the District staff however she would like the District staff or the members of the Board to exactly explain to this community how a scholarship is earned through the Veteran's Club or anywhere else through the District. What this individual stated is something that is quite sinister and she certainly will not tolerate it. When anyone in this community brings her children into a political debate they now have a problem with her. So she asks that the District and the Board of Trustees please make sure that this evening you make a public statement in regards to how scholarships are paid, how the proceeds are given out to students, etc. because this is just absolute nonsense.

**D. APPROVAL OF AGENDA (for possible action)**

Chairman Callicrate asked for changes to the agenda. Trustee Schmitz asked that Consent Calendar Item J.1. be moved to General Business K.3. With no further changes, the agenda was approved as modified.

**E. PUBLIC HEARINGS**

**There were no Public Hearings for this agenda.**

**F. DISTRICT STAFF UPDATES (for possible action)**

**F.1. District General Manager Indra Winquest**

Highlights:

- ✓ Mark Smith v IVGID – The judge asked for an update from the Special Master and we are just waiting for him to respond.
- ✓ Hired Brad Underwood as the new Director of Public Works and he will be starting on March 15.
- ✓ Hired Shelia Leijon as our new Parks and Rec Superintendent and he is excited for her in this new role.

Trustee Schmitz said that there are number of action items in Moss Adams in 1.0 and 2.0 such that she is wondering what the status is. District General Manager Winquest said we have had discussions on these items and we will be bringing an update in one of the March meetings and with Moss Adams 2.0, we are not using contra revenue accounting, talked about how we are approaching capitalization, and we are moving forward with the transition back to Enterprise accounting. Accounting Staff has prepared a draft memorandum regarding updating documents and also laying out a timeline for guiding us through our policies and then hiring a firm to guide us

through our capitalization policies; will be providing a formal written report regarding this matter to the Board in the near future.

#### **F.1.A. General Manager's Ordinance 7 Committee verbal update**

Hal Paris and Diane Becker gave a brief verbal update to the Board of Trustees with the following being the highlights:

Diane Becker submitted the following as her report:

It is my expectation that the Ordinance 7 Committee will come to a recommendation for the Board in time for a revised Ordinance 7 to be in place for the summer. There are disagreements between some of the Committee members on some of the topics and there is consensus on some of the topics.

After careful review of Ordinance 7, the Committee members made lists of big picture items to review and we have been discussing those in detail among ourselves and asking Staff for documents and information and asking questions of the District's outside counsel. One of the biggest issues that we are keeping in mind is confirming that the District's Ordinance 7 is in compliance with the Beach Deed.

I think that it would be useful for the Board and the public to understand what the **Beach Deed** says. There are four important parts:

1. The District agreed to **hold the beaches only for the purposes of recreation** by, and for **the benefit of property owners and their tenants** ...., and as the **Board of Trustee** of said District may **determine, their guests.**
2. Twice the deed repeats that the easement to property owners to use the beaches is for **property owners within the Incline Village General Improvement District as constituted on June, 1968.**
3. The deed states that District has the "**authority to control, regulate, maintain and improve** said property as in its **sole discretion** it shall deem reasonable and necessary to effectuate the purposes herein mentioned..."
4. The use of the real property is "**for the recreational uses** and purposes specified in the deed. The District shall have the

**authority to impose reasonable rules, regulations and controls** upon the use of the easement.”

As I just noted, a key issue in the minds of the Committee is that we should make recommendations to the Board that will keep the District in compliance with the Beach Deed. Another key issue in our minds is that the recommendations need to address and remedy the over-crowding of the beaches. Also, we are keeping in mind that different property owners and effected people have different interests, and we are looking at how to balance these interests. These points are kept in mind as we address the big picture issues.

Big Picture Issue 1: How to appropriately control crowding but still allow Guest Access. What to do with punch cards, daily use passes and exchange passes. To get control of the overcrowding and for easier accounting by the District, and based on our most recent meeting, I expect that these will not be continued, other then maybe daily use passes just for ease of District regulating and controlling holiday attendance, but all Committee member believe that there need to be some form of Guest access procedures that will still allow access for Guests of owners. We need to tackle the definition of Guest and we need to be sure that owners can bring their extended family and friends to the beaches as Guests. We need to have separate procedures for owners to still have group parties. We are discussing limiting the number of Guests per day per Parcel and the total number of Guests per year. I do not know what the final recommendation will be as other than punch cards, daily use passes and exchange passes we have not had even a straw vote.

Big Picture Issue 2: The beach deed makes it clear that the beaches are for recreational uses and purposes. What is commercial use that should not be allowed versus what is use by and for the benefit of the Owners who use the beaches themselves and want to launch or have their own boats launched by a boat storage facility for their own use. The beaches are for our recreational use and boating, using the boat launch at ski beach, is one of the intended purposes. I believe that Hal will talk more about this issue. To what extent do owners use the beaches for commercial purposes and what can be addressed.

Big Picture Issue 3: How to avoid concerns/threats that a District activity are making the Incline beaches public. The Committee



understands that the District must protect the beaches remaining private, so that the beaches do not become public. This would dramatically affect our property values, it would dramatically affect the District, and we have heard threats on this specific issue. Some of you have heard that the Committee has discussed employee access to the beaches where the employees do not qualify as owners or tenants within the 1968 district boundaries. Hiring and retaining excellent employees is very important to the Committee members, and many of us understand that employee access to venues helps in this regard. Employee benefits of access to the venues other than beach access and its effect on the beach deed, is NOT viewed by the majority of the Committee as a part of Ordinance 7 or of the Committee's work. Based on past practices, some people on the Committee feel that this is not an issue, but I continue to feel that more research is needed on the point because we need to be sure that the beaches do not become public. That is why this single employee related issue is being looked at carefully by the Committee.

Big Picture Issues: Will there still be Additional Passes, probably, but more limited in maximum number. Will there be changes to the family tree, probably for nannies, for registered domestic partners, and maybe for others. Will there still be group parties if reserved by a resident. Yes, but with a separate procedure to control this. Will properties that were outside of the District boundaries be allowed in 1968 be allowed Beach access. I think not based on the beach deed and legal advice.

There are also many issues we are looking at like liability issues, having Owners indemnify and defend the District for actions of their Guests and Tenants, what is the definition of a resident, the requirement that Owners sign certain Assignment documents.

Committee members represent diverse interests. Committee members are each concerned that the specific interests which they represent will be met, but I would add that I have seen on the Committee a great deal of concern for fairness as well. Each of us is being required to define our key issues, and I have identified not violating the beach deed, as number 1 for me, and when the final recommendations are made and the Board makes its decisions, I hope that the public and everyone else will conclude that protecting the private beaches is critical.

Hal Paris submitted the following as her report:

Chairman Callicrate and Trustees,

Thank you for the opportunity to update you and for the honor of serving on this committee.

Diane has done a great job with her summary of where this committee is at. I'll provide an update on four (4) items and give a few overall views.

This committee has met seven times since last September times and based on 11 people that adds up to over 230 hours, in a very conservative estimate of meeting time and homework. Susan and GM Winquest have done a great job in getting us background info, over 30 reports so far; my binder is approaching 3' thick. To date most of our conversations have been background, explaining 'what is', understanding the current challenges, essentially bringing everyone up to speed and forming some ability to work together as a united team. Last night was the committee's first real in-depth discussions around potential changes and we heard from everyone, including some of those that may have been a bit less talkative up to this point while others more dominated conversations.

Four areas I can give an update on -

**Family Tree** - has some challenges for some folks; for some the "family" has changed over the years and it may not be consistent with their belief that a government can define what is "family"; the committee is not yet ready with an exact recommendation but it could be from no changes, a few tweaks, to all the way to removing it all together and allowing the property owner to assign a picture pass to whomever much like he/she can designate whoever as a tenant or guest.

**Commercial Use** - this is an area that needs more discussion as well, but if I were a betting man which I am not, but I would bet money that GM Winquest will be bringing something back to the board which could change procedures for this summer, even if there is not a full overhaul of the Ordinance, and this is based on legal input from Josh as well. If you go back some years, even back to my time, there were

two boat storage businesses in town and 1 or 2 rental companies. That has exploded in recent years to significantly more boats and many more water based commercial enterprises that are using the boat ramp, and bringing folks in, some of course would have PP's but some do not - the ability for commercial enterprises to invite folks in as their guest has some distinct challenges and needs to be analyzed and probably changed.

**Misconduct and Discipline** - multiple stories abound about real or perceived abuse of PP's and overall access and behavior while on IVGID properties; the committee has initiated conversation on cleaning up procedures with more effective preventative measures including fines and board level support.

**Application Process/Assignment of Privileges** - with significant help from a couple committee members with direct expertise in this area the language, and format of these forms along with the actual processing are being cleaned up; the goal being to better coordinate with and be consistent with the Ordinance, to bring to current technological advances (DocuSign for one), and to consistently reinforce that the property owner retains all responsibility even when assigning to a tenant/guest etc.

As a wrap up, I want to reinforce that contrary to town chatter when this committee was first appointed it is not heavily in favor of real estate i.e. short term rentals - in fact it is 11 people representing a broad cross section of the committee including recent owners to some much longer than my wife and I of 15 years, from all areas of the district, very talented folks representing experiences in finance, engineering, nonprofits and legal to name some, and yes, some in real estate which is necessary to represent property owners interests.

This has developed into a good working group with people beginning to speak up and get engaged, not just a select few dominating. I believe the Board will be well served by this group - I can say this, even after all my time living the challenges of beach access I am still learning as I listen to this group. These people are taking their charge seriously and putting in the time. Having been involved in 3 or 4 of these efforts over the years I have great hope that this group will ultimately bring something forward that the Board can act on.

GM Winqest is certainly doing everything he can to push us forward to finalize for this summer, however I'd like to Board to think about a direction that he offered last night - a potential for a phase 1 and phase 2 approach if everything is not dialed in for summer 2021. My thought is in opening up this topic, which may certainly involve the potential for legal challenge, we have one chance to do it right, get the right changes made, and we shouldn't mess that up by rushing to a conclusion too soon, maybe some things might be better served being fully ready to implement for summer 2022.

The final note I want to offer the board is that if these changes result in less beach guest visits, which is entirely probable, that could result in less overall beach revenue - the Board may want to be prepared to ask for staff involvement in estimating what those potential loss of revenues might be and prepare for some alternate offsetting revenue sources.

Again, my thanks for allowing us to be involved in this project and I am open for any questions.

Trustee Wong said thank you for your time and service on this committee and that she appreciates the time you are committing to this community to help us make a better decision. Chairman Callicrate said he seconds that and thinks that we are going to get there under the District General Manager's leadership; thank you for your help and for making your presentation tonight. Trustee Schmitz said thank you for all of your efforts and for giving us this update. As she does visit the beaches often, she asked if the committee was trying to address the challenge at the gates and talking about the need or process for auditing the picture passes and being legitimate? Mr. Paris said yes to the first and a little to the second. These are sensitive issues and there are a lot of people involved with looking at the language. Whatever recommendation this committee comes back with it may not make everyone happy. We need to keep repeating that we are trying to do it right. Ms. Becker said we have been talking about public access, especially on weekends, just barely talking about, it is crucial to protect the staff at the gates. There will be a bus from Reno to Incline going to the old elementary school and so how quickly can they walk to the beaches is part of what we need to do is talk about passes and possible new ones. Staff is going to look at that and some of the proposals we have looked at may cause more trouble than solve them. Mr. Paris added that the passes came about because we

wanted to do it at a place where it was away from the desk and then it became abused and that the challenge is in being customer friendly. Trustee Tonking said thank you for the update as it was helpful, and that it sounds as though, from last update, the committee has made a lot of progress.

**G. REVIEW OF THE LONG RANGE CALENDAR (for possible action)**

District General Winqest went over the long range calendar and there were no questions asked or changes made.

**H. DISTRICT GENERAL COUNSEL UPDATE (for possible action)**

**There was no District General Counsel update for this agenda.**

**I. REPORTS TO THE BOARD\* - Reports are intended to inform the Board and/or the public.**

**I.1. Treasurers Report (for possible action)**

**I.1.A. Payment of Bills (for possible action)**

Treasurer Tonking said on agenda packet page 12 are the payments. As an update on the chart of accounts, Staff is working with program managers and service managers to see what is needed and then recommendations will be made and internal controls are moving forward.

**I.1.2. Audit Committee Chairman Matthew Dent – Verbal report on Audit Committee Meeting of February 10, 2021**

Trustee Dent gave a verbal report with the following highlights:

Three items on the agenda

- Next year's auditor – two members were part of the review committee and DavisFarr will be recommended at a future meeting.
- Accept Moss Adams – the Audit Committee did accept the report.
- Review the Audit Committee annual report – the Audit Committee did prepare a report and it will be discussed during that General Business item.

**J. CONSENT CALENDAR (for possible action)**

- J.1. Review, discuss and possibly approve an authorization to Execute a Renewal of the District’s Software Service Agreement with OpenGov, Inc. for a new Three-Year term through November 30, 2023, at a cost of \$25,754 per year or \$77,262 for the full three-year term (Requesting Staff Member: Director of Finance Paul Navazio) *(this item was moved to General Business Item K.3.)***
- J.2. Review, discuss, and possibly award a Construction Contract for the Water Reservoirs Coatings and Site Improvements – 2020/2021 Capital Improvement Project: Fund: Utilities; Division: Water; Project #2299DI1204; Vendor: Olympus and Associates, Inc. in the amount of \$59,440. (Requesting Staff Member: Engineering Manager Nathan Chorey)**

Trustee Wong made a motion to approve the Consent Calendar as amended. Trustee Dent seconded the motion. Chairman Callicrate called the question and the motion was passed unanimously.

**K. GENERAL BUSINESS (for possible action)**

- K.1. Review, discuss and possibly approve a contract with Best, Best & Krieger for legal services (Requesting Staff Member: District General Manager Indra Winqest)**

District General Manager Winqest gave an overview of the submitted materials. Trustee Schmitz said first of all that she wanted to point out to the general public that the document that is in here as original and then the document that is identified as redline, there are other changes that are in the redline document that the changes aren’t notated. She did provide her fellow Trustees with her best review just so they could be aware of what the additional language changes were but for some reason our redline version doesn’t contain all of that. She had provided to her fellow Trustees recommendations in the area of scopes of services that would clarify that the client here, that the Board of Trustees is who hires and gives direction to the attorney so she had proposed and made suggestions that under the scope of services from 3.2.1. all the way through 3.2.8. that basically the words wherever it says “the Client” in most of the cases, she suggested that where it said “as directed by the Client” that she had suggested that should be “as directed by the Board of Trustees”. And she believes also in the designated general counsel area she had made a suggestion to make the

language a bit more firm that instead of saying that BBK, as of this date of the agreement, may agree to attempt to recruit that she suggested that the language should be more direct and it should say that they intend to recruit and not attempt to recruit but that they intend to recruit. There were a couple of areas that, and she is on agenda packet page 70, in 3.3., at that point the acronym IVGID crept into the document and everywhere in this document the Incline Village General Improvement District was referred to as the Client so she suggested that to make the contract more consistent in language and then she had questions about getting clarity as it relates to attorney/client privilege and lastly because of and in compliance with Resolution 1480 she thought that the signature page should also be our Board Chair as opposed to the General Manager because the legal counsel is to be the Board's legal counsel so she was trying to make the language be more clear and in alignment with 1480 so she thinks that covers what she had made as suggestions to her fellow Trustees. Chairman Callicrate said he appreciates the time put in and in making the changes that were suggested. We did seek the outside general counsel review and we were in contact with both Mr. Nelson and Mr. Krenek and talked about concerns. We have brought back to the Board what we thought the Board wanted. He asked Mr. Krenek to be present to discuss why he selected District versus Board of Trustees for client. Mr. Krenek said thank you for all the work you do for the community and noted that the definition of client can be hard to understand for any entity. The attorney has the duty to act in best interest of the entity and the client is the entity itself. There may be a time when the Board goes adverse to the District so client must be defined and the rules in Nevada is specific and something that attorneys must be put in engagement letter. We have to spell that out and it is really difficult to understand with so many layers in an entity. Attorney/client privilege would extend to many in that entity, Board of Trustees is top tier as they are the only ones that can waive that privilege and they have special powers for lack of a better term. Chairman Callicrate said using client is the appropriate term and that the language used is compliant with Nevada standards. Mr. Krenek said yes, and said Client is Incline Village General Improvement District and it can be used interchangeable and the entity is the client. If we want to clean that up, we can do that. As far as legality, it is the same. Chairman Callicrate said because of the Board policies and prior practice, the Board of Trustees is the body that makes the decisions and where it wasn't followed was litigation and we can't delegate that to the District General Manager unless discussed and agreed to in an open, noticed public meeting. He wants to make certain that we, the Board of Trustees, are the arbiters for the attorney and how they act within the District. If the Board of Trustees was at odds with the District General Manager or District, how would that be noticed within the context of

this? Mr. Krenek said the reason he has the District General Manager signing is because the Board of Trustees approves the contract and then the District General Manager carries out those directives from the Board of Trustees. Generally, how it is done, the Board of Trustees doesn't sign, the Chief Executive Officer does. If the situation becomes adverse, if your interest becomes adverse to the District, legal has concerns, have the requirement to go to the rest of the Board of Trustees. If you have this issue and deal with it and you wouldn't be privy to that conversation because it is in the best interest of the entity. Chairman Callicrate said to recap that the contract is appropriate and protecting the Board of Trustees and the District and that this language helps us to be better and protected. Mr. Krenek said yes and under the rules of Nevada law, it is customary. He recognizes there is a bit of a sore taste from the past and that he did, to the best of his ability, to make it clear and concise. Trustee Schmitz said that you have explained about client and she is now aware and comfortable. In the area of 3.2 – specific scope of work – is it helpful to have it be more specific by using the Board of Trustees? Mr. Krenek said he read it with the overlap of the District General Manager as there are certain things that the District General Manager is able to do as part of his job and then certain things that require approval by the Board of Trustees. Trustee Schmitz said yes, in 3.2, it needs to be directed by the Board of Trustees as it is their responsibility, in regard to Resolution 1480, and that she thought this brought more clarity and reduced concerns from the community. If the District General Manager needs assistance from legal, he needs that access, and that she is just asking for clarity regarding the Board of Trustees. Mr. Krenek said the way you are looking at is from community and constituents, he is looking at it from legal perspective, the client is the entity, the Board of Trustees is acting on behalf of the entity and at the highest level. If you use just Client, it will wrap in all the rules and regulations that IVGID has to deal with and that they are able to give authority going down the line. Chairman Callicrate said the utilization of the term of client gives the Board of Trustees a broader overview and not getting hamstrung by terms. Trustee Schmitz said when we embarked with working with Mr. Nelson and Best Best & Krieger, in a fashion that was different, we didn't do an RFQ. In Moss Adams 1.0, it said we should change how we go out and actively go out for bids on professional services. We should do an RFQ, interview, etc. If us, as a Board, are asking our Staff members to make that change, she thinks, we, as a Board, should live by our recommendations. If Moss Adams is asking for a change, and if that is more due diligence, us, as a Board, need to walk the talk. We can continue to make use Mr. Nelson and BBK and she thinks we should demonstrate leadership and put together an RFQ as we need to, as a Board, act as we are asking Staff to do. We need to put together an RFQ and if BBK



is the right firm, so be it; that is her recommendation - to do that process. Trustee Wong said we had this discussion six months ago and that would have been the time to make that recommendation. We had an interim District General Manager and then we could have decided to do an interview process or we decided that he was doing a good job in serving the District so he was hired. Talking about an RFP is something we talked about during the summer and that recommendation is a little late to the ball game, and while she does agree on doing it more, we have had a good time with Best, Best & Krieger and Mr. Nelson. Trustee Schmitz said it is never too late to do things right, we didn't have the Moss Adams recommendations, and that she feels this is our opportunity to be leaders and demonstrate and take the advice of Moss Adams as well and be willing to do so. Never too late to do the right thing. Trustee Wong said we have incurred costs with Best, Best & Krieger and Incline Law Group and we also talk about waste of resources; this would be a waste of resources to be here and not take action. Chairman Callicrate said we have before us an item and asked if there is a motion.

Trustee Wong made a motion to approve the attached three-year contract for legal services with Best, Best & Krieger. There was no second so this motion failed.

Trustee Tonking asked on what version is the Board of Trustees voting on? District General Counsel Nelson said the version we are discussing was not provided to the full Board and that there were some redline changes to the contract so he would ask that the Board of Trustees consider approving the redline that they discussed. Chairman Callicrate asked when we approved the contract last time, what was the vote? District Clerk Susan Herron said that the vote was 4 Trustees in favor and 1 Trustee opposed. Chairman Callicrate said that he was he thought the vote was and he asked how the proposed changes were sent out. District Clerk Herron said that Trustee Schmitz sent them out last night and that she received it this morning. District General Manager Winqest said we had a draft contract that was included in the Board packet and that Trustee Schmitz communicated some changes which were provided to Mr. Nelson and Mr. Krenek and some of those were acceptable and perhaps Mr. Krenek can speak to those items. Mr. Krenek shared his screen and went over that document. Chairman Callicrate said he does appreciate this review and that we are complying with the most legal and strongest language we can have and that he doesn't have an issue with who signs the contract. Mr. Nelson said he appreciates the comments and noted that this is the version that would be approved and not the one circulated by Trustee Schmitz.

Trustee Wong made a motion to approve the three-year contract shared by Mr. Krenek for legal services with Best, Best & Krieger. Trustee Tonking seconded the motion.

Trustee Dent said that he understands that we are far down the road on this process and while he will be supporting this, we should follow the recommendations of our consultant. Chairman Callicrate said he agrees and understands the points made by Trustee Schmitz which are valid.

Hearing no further comments, Chairman Callicrate called the question – Trustees Callicrate, Dent, Tonking and Wong voted in favor of the motion and Trustee Schmitz voted in opposition. The motion passed.

Chairman Callicrate, at 7:46 p.m., called for a break. The Board reconvened at 8 p.m.

**K.2. Review and accept the written annual Audit Committee Report in conjunction with the presentation of the annual audit in accordance with Policy 15.1.0 (2.4.6). and additionally, to review, discuss and potentially take action on the recommendation(s) presented by the Audit Committee as it relates to the 2020 CAFR (Requesting Staff Member: Trustee Sara Schmitz)**

Trustee Schmitz passed this item off to Audit Committee Chairman Matthew Dent. Audit Committee Chairman Dent said that there was a motion made to accept the Audit Committee report and recommending that the Board follow the four bullet points; that motion failed with 3 to 2 vote. Another motion was made to pass along the report and have the four bullet points followed in next year's CAFR and that the transmittal letter be revised – that motion passed with a 4 to 1 vote; Trustee Schmitz will be working with Staff to revise the transmittal letter. Chairman Callicrate said he watched the meeting and there was good discussion; thanks At-Large Audit Committee Member Dobler for putting together a thorough report. Trustee Wong said that the Audit Committee report is not going to accompany the CAFR that is going to the State; Audit Committee Chairman Dent said that is correct. Trustee Tonking said going forward management is going to address each of these points so would that \$3 million write off occur next year as we don't want to get roped into doing something that might violate our next capital policy? Director of Finance Navazio said it was pretty clear, from the Audit Committee, that we implement the recommendations from Moss Adams report as well as the issues raised. In total, the idea is to move forward and implement the recommendations from Moss Adams and be sure we have a

good process to engage the Audit Committee. There was clear direction from the Audit Committee to aggressively implement those recommendations. Staff will work with the Audit Committee on the capitalization issue. Trustee Tonking said ok if we are not saying a set amount. Trustee Schmitz said that Mr. Lanzarotta went above and beyond and did some value added services and reviewed all the memorandums presented by Mr. Dobler and Ms. Newman and there were 24 points. He did an excellent job of reviewing and identified the items that should be changed going forward and he gave us an additional document and she thinks that the Director of Finance is comfortable with incorporating those items into the next CAFR next year. Chairman Callicrate thanked Ms. Williamson for her work and being here tonight.

Trustee Schmitz made a motion that the Board of Trustees accept the final written annual report from Audit Committee, their review of 2020 CAFR, and their recommendations for improvements going forward in addition to the changes to transmittal letter and years past CAFR so our public is fully informed and aware of the situation with our CAFRs. Trustee Dent seconded the motion. Chairman Callicrate asked for further comments; hearing none, he called the question. The motion passed unanimously.

**K.3. Review, discuss and possibly approve an authorization to Execute a Renewal of the District's Software Service Agreement with OpenGov, Inc. for a new Three-Year term through November 30, 2023, at a cost of \$25,754 per year or \$77,262 for the full three-year term (Requesting Staff Member: Director of Finance Paul Navazio) *(this item was Consent Calendar Item J.1.)***

Director of Finance Navazio gave an overview of the submitted materials. Regarding Tyler Munis public comment made, at least 18 months away from converting to a new system and having it up and running, Tyler is still working on how they can implement similar tools, they are not there yet, and there is a whole host of clients who are using Tyler Munis and OpenGov at the same time. Probably won't see Tyler Munis coming up to speed to what OpenGov has in the next three years. Trustee Schmitz said regarding customization – we have requested customization from OpenGov – time and material over and above and will there be any additional customization in order to transition over to the new Tyler Munis system? Director of Finance Navazio said we have the basic support, have some ability to customize and they have been relative responsive as they try to bundle their customization, and we have re-engaged with them and that is definitely covered within this

contract. Tyler system will improve the integration between Tyler and OpenGov and we hope it works better than it does with Innoprise and they did offer us some additional support and something we can look at if the need arises.

Trustee Wong made a motion to authorize the General Manager to execute a renewal of the District's Software Serve Agreement with OpenGov, Inc. for an additional three-year term, through November 30, 2023, at a fixed annual fee of \$25,754, or \$77,262 over the term of the three-year agreement. Trustee Schmitz seconded the motion. Chairman Callicrate asked for further comments; hearing none, he called the question – the motion was passed unanimously.

**L. APPROVAL OF MINUTES (for possible action)**

**L.1. Meeting Minutes of January 13, 2021**

Chairman Callicrate asked if there were any changes to the submitted minutes. Trustee Schmitz said that she wants to submit an item to attach to these minutes and that because we don't have any written report, she would like to request that our clerk add the comments made by the gentlemen from Moss Adams. Chairman Callicrate hearing no further changes, approved the minutes with the changes requested.

**L.2. Meeting Minutes of January 20, 2021**

Chairman Callicrate asked if there were any changes to the submitted minutes, hearing none, he said the minutes are approved as submitted.

**M. REPORTS\* (*Reports are intended to inform the Board and/or public*)**

**There are no Reports for this agenda.**

**N. FINAL PUBLIC COMMENTS\***

No public comments at this time.

**O. ADJOURNMENT (*for possible action*)**

The meeting was adjourned at 8:22 p.m.

Respectfully submitted,

Susan A. Herron  
District Clerk

Attachments\*:

\*In accordance with NRS 241.035.1(d), the following attachments are included but have neither been fact checked or verified by the District and are solely the thoughts, opinions, statements, etc. of the author as identified below.