

Date: May 31, 2021

To: Audit Committee

CC: Board of Trustees, Indra Winquest, Paul Navazio

From: Clifford F. Dobler

Re: Incline Park Facility Renovation # 4378LI1801 - Final disclosure of the close out of the Memorandum of Understanding with Incline-Tahoe Foundation ("MOU") regarding construction of the project - Recommendations to Board of Trustees.

Background of MOU and budget

Incline Tahoe Foundation ("ITF") provided two specific grants for the improvements to the Ball Fields at Incline Park. Funds for the grants were provided to IFT from a private donor. The first grant was for \$58,400 to design upgrades to three ball fields. A contract was awarded on December 18, 2017 to LLOYD Engineering. A second grant for \$1,350,801 only for improvements to Ball Field #3 was made on March 18, 2019 after several amendments were made to reduce the scope of work to offset the high price of the sole bid from a contractor for construction. From the second grant ITF was to receive \$22,800 for administration and IVGID was to receive \$1,386,401. In addition, \$135,080 of contingency fees could be provided for additional improvements if the donor, which provided the fund to ITF, approved the additional improvements.

The CIP budget for this project was established in fiscal year 2019 for \$1,208,071 and was never increased.

Costs and reimbursements from IFT under Grant

As of March 31, 2021, the total costs of the project is \$1,550,570, however, does not include the design fees from Lloyd Consulting Group under two contracts for \$58,500 and \$15,430 (Costs \$75,458), plan check fees (\$6,123), and TRPA Soils application (\$601) all of which were charged to another project called Incline Park Improvements (#4378BD1801) which was unbudgeted and which a project summary was never completed. The total costs are \$82,182 and should properly be accounted for as costs for the IFT grant funded project. If properly transferred the total costs for the grant funded project would be \$1,632,752 exceeding the CIP budget by \$424,681. Nothing was ever brought to the Board of Trustees to approve the budget overruns. Certain Board members suggest that because the costs were being funded by a grant, increasing the budget was not necessary. Untrue. All expenditures must have a budget. The funds from a grant is a revenue item and do not reduce the expenditures. I suggest that the words "net of grant" be removed from the project description in the CIP "popular report" as of March 31, 2021 since it is an inaccurate statement.

The costs also exceed the two IFT grant amounts of \$1,444,801 (\$58,500 and \$1,386,401) by **\$187,951**. Assuming the \$135,080 contingency fees available in the second grant was authorized to reimburse IVGID for the increased costs, there would remain \$52,871 which would not be recovered (see below for the unreimbursed costs).

In 2019, IVGID requested three reimbursements from ITF for only \$1,355,400, with the last request done on December 19, 2019 almost 17 months ago, leaving a considerable amount of IVGID's out of pocket costs unreimbursed. According to the reimbursement statements, two change orders from RaPID Construction (#2 and #8) were excluded from the reimbursements. Change order #2 (\$51,150) was for increased costs to change the drainage plan, which according to Indra Winquest, was considered, presumably by staff, an infrastructure project and not part of the Grant. According to the revised drainage plan, the improvements in the original plan were eliminated and the change order should have reflected a credit for

the eliminated items. That was not done. Change order #4 (\$8,778) was for light pole repairs which may be a proper exclusion but should have been expensed and not left in the CIP.

Assuming the two change orders issued to RaPID Construction are not reimbursed, then the total IVGID costs subject to reimbursement would be \$1,572,824 (\$1,632,752 less \$51,150 and \$8,778). Since IVGID has only billed \$1,355,400, then \$237,424 is required to be billed and funded by ITF. According to a recent e mail from Susan Herron, a billing is in process. According to the MOU the District responsibilities are under section 3.4 "Invoicing shall be on a reimbursement basis and shall be submitted no more frequently than monthly". Not 17 months.

A major condition of the MOU, was that ITF would be responsible for all costs of the project. Excluding the change order for the increased cost of drainage improvements from reimbursement should have been a Board decision, not management and could have been discussed at the time the RaPID requested the change order for \$51,150 which required Board approval.

It is unknown if all reimbursement requests made by IVGID have been paid by ITF.

History of Grant Agreements:

- 1) A letter agreement regarding the first grant of \$58,500 for design of the 3 ball fields at Incline Park
- 2) On December 14, 2017 a "Grant Agreement" for \$760,000 was executed
- 3) In April, 2018 an increase to the Grant Agreement to \$1,208,071 was approved by the Board of Trustees, however, an amendment to the 2017 Grant Agreement was never prepared but the increase was understood by correspondence.
- 4) On 3-19-2019, a new Memorandum of Understanding(MOU), replacing the two previous agreements was approved by the Board which increased the IVGID portion of the grant to \$1,386,301.

RaPID Construction Contract - Circumventing Board approval of Change orders

In December 20, 2018, RaPID Construction was the only bid received from the invitation to bid advertisement dated 11-16-2018 for the IVGID Ball field Improvement Project. The bid was \$1,456,654 with an additional \$357,764 in alternatives.

In early 2019, IVGID Staff negotiated with RaPID to reduce the scope of work by eliminating improvements to Fields #1 and #2 and eliminating all alternatives. The negotiated price was established at \$1,298,241 and a contract was executed on 3-19-2019.

However for some unknown reason, on March 18, 2019, (one day before the contract date) IVGID issued Change Order #1 reducing the contract by \$158,413 based on the **BID amount not the CONTRACT amount**. This change order should never have been issued.

As a result of this improper change order, seven additional changes orders of \$116,663 were issued without Board approval, under the assumption that until cumulative change orders exceeded \$50,000 no approvals were required. Under Board Practice 13.2.0 - 3.8.7.2, it states: ***General Manager Responsibility - Duties: Approve change orders cumulatively not exceeding 10% of construction contract or \$50,000.***

By creating a phony \$158,413 negative change order, the seven additional change orders were issued for \$116,663 which on a CUMULATIVE basis when combined with the phony change order #1 did not meet the required Board approval for cumulative change orders over \$50,000. Thus all change orders were never brought to the Board for approval and Staff intentionally or unintentionally violated Board Practice 13.2.0.

Change order #2 was for \$51,150 issued on July 24, 2019 for a reconfiguration of the drainage system. During negotiations to establish a lower contract price modifications to the infield drainage system was a major item. Apparently on May 5, 2019, the drainage plan was changed again with county comments delivered in May and July, 2019. Had the phony Change order #1 not been created, this change order would have require Board approval.

Purchase order #19-0216 was dated May 1, 2020 almost 14 months after the contract was issued and only included change orders 2 through 6.

Another major concern is the MOU with Incline Tahoe Foundation (ITF) only provided for \$1,298,241(the original contract amount). It is unclear if the additional \$116,663 in change orders were approved by ITF.

Conclusion

The administration of this contract and the related MOU was quite weak. Request by certain Board members and the Audit Committee to hire a contract administrator has not yet been fulfilled but should be acted upon as soon as possible.

Based on the irregularities in this contract, the PICA contract, the Terracon contract and the Moss Adams report which reviewed only a few contracts, an investigation into the proper handling of other large contracts should be considered

Recommendation

Since a major amount of time has elapsed since completion of the project in 2020, a report to the Board of Trustees should be completed which establishes:

- Classification of costs into proper project accounts
- The final amount which will be reimbursed to IVGID by ITF
- The final amount of IVGID's costs which will not be reimbursed
- Status of any disputes which may exist with ITF
- A memorandum from IVGID and ITF that MOU conditions for the project construction have been satisfied.
- A close out memorandum between RaPID and IVGID
- That all as built drawing are completed (especially the drainage plan)
- Explanation if any IVGID engineering costs were billed to the project

Exhibits are extensive and will be delivered upon request.

