

MINUTES

REGULAR MEETING OF AUGUST 26, 2020 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 Wednesday, August 26, 2020 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 THE IVGID BOARD OF TRUSTEES*

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

Also present were District Staff Members Director of Finance Paul Navazio, Director of Public Works Joe Pomroy and Engineering Manager Nathan Chorey.

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

Director of Information Technology Mike Gove went over the new Zoom participation rules.

C. PUBLIC COMMENTS

Dick Warren said is it possible to have an honest discussion about Staff and their competence? Take a look at Aaron Katz's email from August 22nd, which all of you got. Although he is not up to speed on the Burnt Cedar Pool Project and using a CMAR to make it happen, why do we tend to default to folks that increase the cost? In the beginning Terracon was around \$1.2M or so, now we are at \$5.6M, how did that happen? At the Board level you have Trustees like Peter Morris & Kendra Wong that totally agree that any IVGID employee is outstanding; BTW has Cheerleader Peter Morris ever commented on an item without first telling us what a great job Staff has done on "such & such"? Hey Peter, why do we have this "effluent pipeline" issue if Staff is so great? As with most organizations, one has good/okay/bad Staff, and it is the job of Management to move that needle towards good/okay employees and away from bad employees (get rid of them). So his issue is IVGID Management, not Staff. He is only going to discuss Finance

Management, because although he might know something about other areas, he has a better feel for Finance/Accounting than Utilities, etc. IVGID has an issue in Finance, the new Finance Director, Paul Navazio, is sinking. If you do not agree, check out the last Audit Committee meeting of August 19th. He was totally blown away re the discussion of the CAFR & the 14 Points by members of the Audit Committee. Fortunately, that issue will get resolved because the Audit Committee will bring in an outside expert to review it. What's interesting about the new Finance Director's approach is that he supports what the former Finance Director, Eick, did. And most of us know what Eick did was out-of-line. But our current Finance Director thinks Eick's response to financial & accounting issues was "spot-on", he agrees! It takes a "stretch of the imagination" to really believe that Eick was right. So my problem is that IVGID currently has an incompetent Finance Director, and so how can the Staff below the incompetent Finance Director be improved if the top person is worthless? It is a mystery. Thank you.

Linda Newman said she did not think it possible but the Board agenda items and supporting material just get worse and worse. What she means is that the departure from complete and accurate information becomes more and more distant with each passing week. The first item on the consent calendar doesn't qualify as a consent item as it was never discussed by the Board, can't be reviewed without further explanation, it does not disclose the complete financial impact and liabilities and isn't routine. And worse, the fact that this equipment will be installed at a non-IVGID location and members of our Parks and Rec Staff will be used to provide instruction has been omitted. Deception, by omission, has become an art form at our District. It needs to stop. Please remove this item from the entire agenda. As for the \$160,000 software proposal, after Mr. Pinkerton's more than \$500,000 in software additions that are either useless or not up to the job, she can only hope that this proposal has been vetted, will perform according to expectations and demonstrate an appropriate return on investment. What she would like to know is whether this software can be integrated or expanded to provide these services to all our recreational and beach businesses. And, she would like to point out, that under additional methods on page 4, it mentions IVGID punch card payments. Every member of staff should know that you cannot pay with punch cards. You can reduce the value of a punch card by paying the resident rate with cash or a credit card, but you cannot pay with a punch card. On the New Burnt Cedar Pool items, she does not know how you can award additional contracts with multiple vendors and approve a method of delivery until you establish the budget and how you will pay for a new pool. In addition, before you move from the pre-design stage, you need to know whether Concept 1 is feasible after the completion of all site surveys and topographical studies and obtain guidance from all the appropriate regulatory agencies. Please take a step back

and get this right. She highly recommends that this Board define the scope of legal services required and then begin the process for securing new legal counsel. Your starting point should be engaging a law firm or firms as agents of the Board and determine whether you should have one firm to handle all governmental functions and other firms for contract and other extraordinary items to review. On the matter of correspondence in the Board packet, there is no prohibition by the AG against including ALL correspondence received by the District in the packet. For more than a decade, correspondence was always included. Then in 2018, correspondence was omitted without the Board taking a formal vote. All correspondence, with very limited exceptions, are public records. Please restore them to the packets or post all correspondence received by the District on the website.

Patrick McBurnett said he is a 27-year full time resident who understands the devastation on the lake as we have overcrowding in the basin which generates a lot of trash and then there are all the parked cars on the east shore where there are few bathrooms. The exception is our beaches because of the limitations. Our beaches are clean and not overcrowded. We have an upcoming election that is important. IVGID has a new General Manager who is going in the right direction. This will all change if the Board make up changes; Trustees Schmitz, Dent and Callicrate have worked hard. One issue are the STRs [short term rentals] and we have lost the battle with Washoe County. The real estate group has lead the charge and one of them is running for the Board of Trustees. A friend of his was at a meeting where he cut him off. This domineering person is a major STR agent which is a very important fact. We need to limit the access to our beaches and stop the purchase of unlimited cards. We need independent minded Trustees who will represent this community.

Cliff Dobler said that Staff will bring forward a design award for TSK; we had the advance schematic design at the last meeting. Estimated cost of the project is at \$5.6 million which jumped on a trampoline from \$1 million. Rather than defining a scope of work, we received a design for all work. The proposal outlines 6 tasks which Mr. Dobler read. There were five different design firms who excluded disciplines and there could be fees for utilities, fees for TRPA, etc. The number of weeks is included – 68 weeks. It is all scrambled together. What will we get? Not clear at all. At the end, what will we have? He became quite perturbed when he got the pile of paper so he asked and he got a new pile of paper; a new proposal that was 26 pages. He read it but he needs more time to digest it. Further, the geotechnical information was excluded so this item should be postponed until you have all the facts.

Margaret Martini said she had no idea that reading a Board packet would be a lot like reading a mystery novel with a cast of unreliable narrators. It was a mystery to her to learn that the District is currently operating beginning to intermediate level gymnastics programs and is looking to expand. Somehow, in July a staff member requested a quote for gymnastics equipment and someone discussed with the Duffield Foundation the possibility of providing a grant and a consulting fee for equipment that would be located at the Lake Tahoe School with gymnastic programs administered by our staff. Only half of this information was provided in the packet, the rest I learned from other citizens and their emails with Staff. This consent item is of deep concern for a number of reasons. First, she is not aware of the programs our property owners pay to provide for the schools and whether NRS 318 allows the District to collect money from property owners to subsidize these school programs. Secondly, if gymnastics is a private business opportunity why is our government expanding our recreational offerings to compete against struggling local businesses? Thirdly, is it even lawful for us to accept a grant for equipment that will be housed outside of our recreational venues with our staff operating the programs? And what are our liabilities? She supposes she shouldn't have been surprised as the District offers 100 or more programs that parcel owners subsidize at a cost that exceeds more than a million dollars annually. There is no data on all of the programs at all of our venues, the participation, and ALL the costs to operate. Please provide this information to all Trustees and post it on the website. Consider this a public records request. With items like this one, she can see that there is no Board oversight. She can also see why the District continues to omit correspondence from the Board packet. Information is so tightly controlled that not only are requested public records withheld or delayed as long as possible, but timely communications from our citizens voicing their concerns or simply sharing information must also be kept from the public's view. These, too, are public records. Isn't it time for this Board to act like a Board and direct staff rather than the other way around?

Frank Wright said he is a candidate for the Board. Where are we today and where were we 6 months ago? He told you that things were going to change and some things have changed which is better for Incline Village. We have new Trustees and the way the Board is moving is in a positive direction. Things need to change as it all belongs to this community, the employees work for those people, and the Board members represent them and it should be that way. People fund everything, yet it appears that Staff thinks that they know everything. Public correspondence should be in the Board packet, it should just be in there, and it is insane. It is our tax dollars and we are funding everything and not the other way around. As we move forward, we need to move a little quicker. You need to get rid of some of the items and he will help in that process. We have to have a willing group of people to look at it and

if we can't do that, we will be in the same position as we were when the former General Manager was here.

Mike Abel said as usual our esteemed staff has committed itself to making simple things complicated through an excessively large Board packet. With the possible exception of Mrs. Schmitz who reviews the mountains of crap that IVGID throws at the Board, he cannot imagine anyone else on the board actually reads every page of this ridiculous 174-page document. IVGID has several unwritten internal rules: One is that every issue must be obfuscated with masses of paper and inside professional language to confuse the Trustees enough that (out of frustration) they feel compelled to nod their heads "yes" to the staff recommendation. The other unwritten internal rule is that IVGID will never ever take the suggestion of bringing intelligent, experienced local talent to the table on important design and construction issues. Rather, we will deplete our funds with a young inexperienced desk engineer who has never done any heavy construction and have him execute a large new project. Like Mad magazine's Alfred E Newman, IVGID seems to have fully implemented the Three Stooges engineering system. Another unwritten IVGID rule, is never ever be fully forthright with the public or the Board. Always hold back that little bit of information that might prove embarrassing or indicate their lack of accountability. Example would be Mr. Winquest's, RFQ that was put out for the pool project before the board was informed of this action. Now staff wants to slam the CMAR system down the throat of the semi-informed board. The obvious intent of the legislature as is pointed out to you on Page 64 of the packet is that CMAR is to be used, "to address public works that present unique and complex construction challenges." With hundreds of public swimming pools built and renovated every year, this pool is not a unique or challenging project. CMAR is just IVGID's lazy response to the normal DBB process. He likes how Mr. Chorey, in the great IVGID tradition, has responded to criticism of the CMAR process by hardening his stance and going to his buddies down the hill and getting them to validate his intransigence. He also wants to criticize Mr. Winquest by allowing Chorey to ONLY offer the CMAR option to the board without showing them a pathway to the normal DBB process or showing it as an option. He says take Mr. Katz's suggestion as stated in his email of 8/13/20 and hire an experienced engineer as CMA (construction Manager as Agent) and let that person direct the project. Then do the project as a DBB project that will in the legislature's words, "promote public confidence and trust in the contracting and bidding procedures" of IVGID.

Aaron Katz said that he wanted to talk about the gym equipment. We have 100 community programs and none breakeven. We lose millions annually, all of which are subsidized by Recreation Fee. Does anyone think this program is going to

breakeven financially? More bothersome, the equipment isn't for us, if it was for us, we would have been told where it was stored. Deceitful Staff tells us it "goes to various venues" - where is that? Why are you going through all of this when it is not for us and the equipment is not going to our property? He is not happy about Staff not coming forward. Don't we have enough on our plate? Just say no. On the swimming pool, the "R" in CMAR stands for guaranteed maximum price so we will have to pay hundreds of thousands of dollars, if not a million for a guaranteed price. We don't need a guaranteed price, can this idea. It demonstrates that our Staff isn't competent, hire a CMA and let them run this project. On the attorney - first, they should work for the Board as all the stuff that Staff has the attorney doing is a waste and is a waste of hundreds of thousands of dollars. You need to do a scope of work and hire experts in their specific field as no one attorney can do all of this or you can hire an in house attorney.

Yolanda Knaak said she would echo what others have said and without spending any time on this, she thinks we should have public correspondence as part of the Board packet. Thank you for working on the leaking pool as it is a huge project and there are a lot of things to discuss on that project. As far as STRs, she doesn't know if we can minimize that by limiting the punch cards we sell to them as it was something she has been thinking about.

Judith Miller said she is not sure that all correspondence to the District has to be included in the Board packet but at a minimum those communications where either the author intends it to be public comment or where a Board member requests material to be included in the packet certainly should be. Correspondence that is voice messages or e-mail that is intended to be public comment and received enough in advance should be included in both the printed and the online packets. Alternatively, all e-mails or voice mail intended for public comment could follow the procedure used by the County. Washoe County accepts e-mail and voice messages any time before the agenda item is heard. Staff reads each submission, up to three minutes, that is submitted into the record. Correspondence should include anything specifically designated by the sender as public comment. She finds the current practice of accepting e-mails for public comment but not reading them is a disservice to both the Board and the community members. And, while we are on the subject, isn't it time to reintroduce public comment on each general business item? It is so discourteous to cut off members of public who have to squeeze in their comments about everything on the agenda into 3 short minutes. Yes, we do have a few citizens who are quite skilled in the art of in political satire, but that should be appreciated, not strangled. The County provides public comment at every action item and listens politely to remarks unlike any that we

have heard at our meetings so please she encourages you to restore public comment after each action item.

Jack Dalton said thank you to the IT personnel; he is a full time resident and he has a question about the election for IVGID trustees that is going to happen no more than 2 months from now. How can we elect Blane Johnson when he has STR conflicts? Mr. Dalton continued by stating that he was raised in a small town in Nebraska where he knew his neighbors. They had no STRs in his neighborhood. STRs have a problem. Blane Johnson and Sun Bear Realty have more than 40 rentals on Airbnb and other sites; he continues to rent through COVID. There was a bear cub incident at his site along with multiple other violations that were not addressed. He would recommend that he and his company should sign STR recommendations found in other areas and that should be made public.

Ray Tulloch said he has a comment on the Burnt Cedar pool. Staff made a rush to decide on a method of construction, CMAR, and we don't have a design, costs showing more than double the benchmark costs, contingencies on top of contingencies are built in, yet Staff still wants CMAR, and it will increase to the maximum price which is \$5.6 million and given our track record, this process will increase that to over 10% of that regardless of what we are told is guaranteed maximum. He believes we should reject that proposal outright and wait until we get proper design estimates and properly bid out the process. Only true benchmarks are what the contractors will offer to complete the project. If Staff is not competent to do this project themselves, he supports CMA and he does not support the CMAR proposal as he believes that it will make the pool cost even more. Read some of the Board packet, read the gymnastics item, if public comment is correct and the equipment is on another property, he would urge the Board to reject this item until more public information is provided.

D. APPROVAL OF AGENDA (for possible action)

District General Manager Indra Winqwest requested that General Business Item H.2. be removed from the agenda in its entirety. Staff is trying to move through this project with the goal being to get it done next summer. After the agenda came out, and after having conversations, he feels that we need more information about that site. We have been reviewing geotechnical information from 1999 and that he wants to pull it and evaluate it a little further. Staff does have a topographical analysis that is in motion and that may come back as soon as September 9; Staff would like to take a little more time to evaluate. Depending on what is underneath the pool, we may need to reposition the pool so he would prefer to bump this item. Chairman Callicrate asked if this action influences General Business Item H.3.

District General Manager Winquest said no, and as far as a discussion, that is up to the Board; he does see the value in allowing Staff to do their presentation. Trustee Dent said that if we don't know what the design is, then we can't decide the route to take so he doesn't think that the Board can make that decision however he is not opposed to having a discussion. Chairman Callicrate said that General Business Item H.2. is removed in its entirety from the agenda and that there will be a comment made before the Consent Calendar is considered which, after checking with District General Counsel, is okay.

E. DISTRICT STAFF UPDATE (for possible action)

E.1. District General Manager Indra Winquest

E.1.a. Review of the long range calendar

District General Manager Indra Winquest went over the long range calendar. Trustee Schmitz said, related to a pricing policy, we have had a lot of discussion on that topic with the Audit Committee and it should be here with the Board of Trustees and maybe as a part of the budget but it should be listed here. Trustee Schmitz continued that she is just curious and that she seems to recall that the effluent export pipeline project management deadline was August which was then pushed to the end of September and that she is concerned about the timing and the ability to move it forward for the construction season of next year. District General Manager Winquest said we will put it in the parking lot right now as Staff plans on bringing back a policy early in the budget and that this policy would be one of the considerable drivers for how Staff does their budgeting so it will come forward mid to late fall or winter but it will be put into the parking lot. On the pipeline, an interview was held with the one responsive firm and we are not sure we are ready to proceed and that he will be getting out some information to the Board and have an update in the General Manager's report of September 9, 2020. Trustee Dent said, adding on to the General Manager's response on the pipeline, the team had only one participant so there was nothing to compare to and we need to make a decision on the next steps as it is hard to say this is the one when there is nothing to compare it to. Trustee Wong suggested adding that discussion to the September 9 agenda. Chairman Callicrate said they talked about that and the whole point of September 9 is the punch card and that is a very good idea so we can put that out there, as a placeholder, and that he will touch base regarding changes but we will put that down as a tentative for September 9.

F. REPORTS TO THE IVGID BOARD OF TRUSTEES*

F.1. Board Treasurer Sara Schmitz

Board Treasurer Schmitz said she has been meeting with Staff and that the preliminary year-end financials have been posted on the website. Next week, the Director of Finance and his team will be putting together two formats for input, tied to special revenue accounting with the breakout, so that we are providing a different way of rolling that information up. She will be looking at that next week and she will bring that to the Board members for their review and input. She is working to get to a standardized process to get the procurement reports to her each month and that one outstanding item is that the Controller was going to look at a method to provide them online and that the only thing that has stopped it is because of confidential information; goal is to have that information readily available online.

F.2. Audit Committee Chairman Matthew Dent

Audit Committee Chairman Matthew Dent said that the audit is underway and there is nothing forecasted to hold it up. He has spoken with the auditors last week and again this week and there is nothing that would tell us that we are off track. The Audit Committee had its last meeting on August 19 and we reviewed the 14 points related to last year's Comprehensive Annual Financial Report (CAFR) and Staff made a presentation and the committee decided to move forward with the top three points (enterprise funds, capitalization of project costs and punch card accounting) and will decide next on the vendor. The last item was review of internal controls and the committee did a high level review and didn't get down in to the weeds; Staff has a lot of work to do but we did do an overview. Trustee Schmitz said, as a quick clarification, in addition to the items mentioned and as part of the enterprise special revenue, we also looked at the central services allocation as it relates to these funds. The Audit Committee will do a recommendation that will come to the Board and that review will be done next week and then it will be brought to the Board for their action. Trustee Morris said that he missed what the topic was that was being brought back to the Board of Trustees. Audit Committee Chairman Dent said it was the authorization that has already been authorized by the Board to the Audit Committee but that we are going to bring it back to the Board to make that decision even though he believes that the Board already voted, he will bring it back anyway.

G. CONSENT CALENDAR (for possible action)

- G.1. Recommendation to 1) accept a grant from the David & Cheryl Duffield Foundation to the IVGID Parks and Recreation Department in the amount of \$21,176 for the purchase of gymnastics programming equipment and associated expenses, and 2) authorize FY2020-21 budget augmentation for this purpose (Requesting Staff Member: District General Manager Indra Winqest)**

District General Manager Winqest said that he understands that certain individuals are skeptical about this gift and how it will be used. He is very confident on this project as the District has run gymnastics before and it can be very costly. We have a very generous donation and anyone who has worked with Staff, they know what they are doing. Parks and Recreation is collaborating with schools and non-profits to serve the youth of this community. This program will be popular and heavily utilized and anyone who wants to talk about it can call him as he is happy to talk about it. This is something that will benefit the youth and the District is very thankful for this generous gift from the David and Cheryl Duffield Foundation. Chairman Callicrate said thank you for that information as there were several comments made during public comment about just that. Staff will be putting together a more detailed information sheet on this project.

Trustee Wong made a motion to 1) accept a grant from the David and Cheryl Duffield Foundation to the IVGID Parks and Recreation Department in the amount of \$21,176 for the purchase of gymnastics programming equipment and associated expenses, and 2) authorize FY2020-21 budget augmentation for this purpose. Trustee Morris seconded the motion. Chairman Callicrate asked for further comments, hearing none, he called the question – the motion was unanimously passed.

Chairman Callicrate said that there will be a more in depth report on the gymnastic program out next week. Trustee Wong thanked the David and Cheryl Duffield Foundation for continuing to support our programs and the youth in our community. Chairman Callicrate said he seconds that statement and thanked them for their continued support of this community and for what they do in the Tahoe basin.

H. GENERAL BUSINESS (for possible action)

H.1. Review, discuss and possibly approve an item for the 2020/2021 Fiscal Year allowing the District to enter into an agreement for RTP|ONE – Capstone Database Integration, Active Gateway Services and ACM ONE|Store software licensing for 2020/21; Project – Fund: Ski; Project 3499CE1909; Vendor: Active Network in the amount of \$160,000 (Requesting Staff Member: Director of Information Technology Mike Gove and Diamond Peak Ski Resort General Manager Mike Bandelin)

Diamond Peak Ski Resort General Manager Bandelin and Director of Information Mike Gove gave an overview of the submitted materials. Chairman Callicrate asked how far beyond are we compared to the real world? Director of Information Technology Gove said IVGID is about 10 to 15 years behind. Chairman Callicrate said he recalls that quite a bit of money was spent related to software and hardware and that this sounds like it is a flexible set of software; is that correct? Director of Information Technology Gove said yes and that it is his team goal to help improve processes within the District and then proceeded to give a technical review of how it will work. Chairman Callicrate said that the Vermont software has been heavily utilized at the Recreation Center and other recreational venues so he understands that this would alleviate that sticking point and understands the custom implementation. As we invest in software, are we getting the best of it while we can to get a fully integrated network because technology is supposed to make work easier and is this the next step before it all gels? Director of Information Technology Gove said he makes no promises yet as we are still in the discovery process but that is the goal. We would like to have one card that can be used throughout the District. Punch cards are used as payment as we think of it. Capstone is custom to the District and RTP opens the door to start communicating throughout the District. Trustee Morris said that he had a good conversation with the Director of Information Technology and that he, himself, is a software guy who has spent nearly 40 years in that field. Given where it can take the District, he thinks it is an excellent move and he supports it. It is for \$160,000 and the project summary we used to have was for \$202,000 so maybe there are some other things that are going on and maybe that is some savings to deliver a better product. Director of Information Technology Gove said you are correct and that we are also getting Capstone integration as part of this which would have been extra. Trustee Schmitz thanked the Director of Information Technology for spending time with her and answering her questions as we need to plan for

reservations at the ski resort. She would like to point out on this project sheet that when we have our other capital projects, it includes Staff time as a cost, and this sheet doesn't have Staff time so she would like to ask our Accounting Department to weigh in, at some point, on that topic.

Trustee Morris made a motion to authorize Staff to enter into an agreement with Active Networks for RTP|ONE – Capstone Database Integration, Active Gateway Services and ACM ONE|Store software licensing and implementation for Diamond Peak Ski Resort, for a total amount of \$160,000. Trustee Wong seconded the motion. Chairman Callicrate asked for further comments, hearing none, he called the question – the motion was unanimously passed.

- H.2. Review, discuss and possibly approve a Schematic Design Services Contract for the Burnt Cedar Swimming Pool Improvement Project – Fund: Beaches; Project 3970BD2601. Vendor: TSK Architects in the amount of \$60,013 (Requesting Staff Member: Engineering Manager Nathan Chorey) – REMOVED FROM THE AGENDA IN ITS ENTIRETY**

Chairman Callicrate called for 7:24 p.m. break; reconvene at 7:40 p.m.

- H.3. Review, discuss, and possibly select a project delivery method [Construction Manager-at-Risk (CMAR) versus design/bid/build] for the Burnt Cedar Swimming Pool Improvement Project – Fund: Beaches; Project 3970BD2601 (Requesting Staff Member: Engineering Manager Nathan Chorey)**

Engineering Manager Nathan Chorey gave an overview of the submitted materials. Chairman Callicrate said that both processes have their merits and that it was brought up a couple of times in public comment that this is construction manager and construction manager at risk so how are those different? Engineering Manager Chorey said that a construction manager can be hired as an agent and that they are not responsible so they would be a consultant and that the District has done that and did so on the Diamond Peak Culvert Project. The construction manager at risk is responsible for the design and a guaranteed maximum price. Chairman Callicrate said that those are critical differences and that he wanted to understand that. Trustee Dent said that Engineering Manager Chorey and he spoke earlier and that they discussed the fee that the construction manager would get is negotiated

and that it is based off the costs. So are these the same people that are developing the costs or is this off the estimate that we got at the last meeting? Engineering Manager Chorey said that Staff has gone out for bid for the construction manager at risk (CMAR) process and that the next step would be to interview the respondents and discuss compensation. It is spelled out in the Nevada Revised Statutes and it is generally between 5% and 20% and it is negotiated. Trustee Dent asked off of what number – it is the proposed price or off our estimate? Engineering Manager Chorey said that both parties arrive at a guaranteed maximum price and it is a percentage of the bids received. Trustee Dent said it is a percent of the hard cost and that percent is negotiated. Engineering Manager Chorey said yes. Trustee Dent said he would like to understand that process. Engineering Manager Chorey said that there is a cost estimate then scheduling and constructability. The next phase is a guaranteed maximum price and at that time we can either say we don't want to do it, thank you, and then we can go and publicly bid it. Trustee Dent asked why we are recommending the CMAR route and is that because of bandwidth, capacity, or guaranteed maximum price? Given that the Burnt Cedar pool has a big issue which is unknown and that is rock, which we don't know if it is present or how thick it is, etc., should we go the CMAR route or wait until the schematic is prepared because it seems premature to do this before we have the schematic drawings? Engineering Manager Chorey responded that the CMAR process will help us with that as the contractor may say they don't want to bother with an investigation on the rock. By bringing in a contractor early, we get their valuable input and IVGID could benefit. Trustee Morris said that he is not ready to make a motion or to vote because there is a lot that we have to learn about the different options to learn about the benefits. He is still unclear about when this would become a CMAR agreement and do we do the schematic and then get the contractor or do we do the CMAR agreement so they are involved in developing the schematic? Engineering Manager Chorey said that anytime during the design, the CMAR can be brought on and that Staff is advocating for earlier so they can help us. We have an interview process to conduct before we bring them on board and hand them the schematic documents which they can review and price for constructability. This is about the project funnel and as you get further along, the ability to make changes decreases. Trustee Morris said the Board doesn't need to make a decision today as Staff is getting more information. The culvert at Diamond Peak was his first introduction to CMAR and that he spent a lot of time with the former Director of Asset Management to gain understanding and what he got from it is that there were potential big unknowns and that instead of us taking on that risk, it reduced our risk.

Engineering Manager Chorey said that the Diamond Peak culvert had unique challenges and while he was not here at that time, the culvert was over 30-feet deep and there were utilities there. The scan of the pipe indicated that the pipe was in pretty bad shape. Remediation could have gone in a number of different directions so we got a contractor to help us solve that problem. The Burnt Cedar pool is not unique but there are elements such as having people at the beach with an active construction site, circulation is a challenge, can't have construction traffic navigate that loop so a way needs to be figured out to separate the contractor from the beach users, etc. and who better to ask than the contractor and the contractor that is going to do the work. Trustee Morris said he agrees with Staff and that he thinks it is important. You are making him think about other reasons to consider therefore maybe Staff can prepare, in table form, a list of pros and cons of CMAR and DBB [Design-Bid-Build] so as we approach this we can say here are the risks or the unknowns and then why go this way or that way. A decision grid with pros and cons would be very helpful to him. The only thing that he thought about was if we find a giant piece of granite, what is that going to cost us or what if there is some water table issue. He is sure there are some so having those pros and cons will help him to make his decision. Chairman Callicrate said that Trustee Morris' point is well taken and that it was spelled out fairly well however having a visual would help. It is probably a little premature until we have the schematic but that bringing in people sooner rather than later can be beneficial. District General Manager Winqest said it is about the bandwidth of our Engineering team and one of the benefits to CMAR is that we will be able to alleviate the time our Engineering team has to spend. They are totally capable to deliver this project but with all the projects coming up, it would take off some of the pressure on this team. It will also keep us on a tighter schedule as we want to get this project done next summer. We pulled that other item off the agenda to work through the issues so that the Board can be comfortable with the direction the District is moving. Staff will be bringing the item back for the schematic design contract and it is good to have this discussion. The uniqueness of this project is the site excavation, etc. as we don't know what we are going to find once we get into this job site. As you get into the final design, it becomes a lot easier to drop in features. Trustee Dent said it is more of a bandwidth issue and is the CMAR contractor going to rip out the pool deck and see what is under there? If not, then no contractor will know what is under there. On a \$5 million contract, we may have a \$250,000 fee or a \$1 million fee and are we paying that upfront or afterwards? This is missing the point about what the CMAR is going to tell us about what is under the pool deck. Engineering Manager Chorey said by bringing on the

CMAR contractor, and in the worst case scenario, we are going to hear that the rocks are costing X dollars and we will have that conversation before the construction starts. Rather than have a change order, we can think it out during the design to arrive at a better solution. Trustee Dent said if we go through the CMAR process, and we put out a bid for the excavation under the pool deck and the bid comes back, the contractor doesn't know what is under there so he doesn't understand how we eliminate that piece with a CMAR. We need CMAR to help design the access. Why go CMAR versus hiring a consultant to help guide us? They won't charge us between \$250,000 and \$1 million. This is from a pre-construction standpoint, in private residential, we will do that for them for a \$10,000 fee and they will have a permit and then we give it back to the client and if they go with us for construction; we are there to help the designer design. It is cheaper to hire a contractor and the savings could be between \$250,000 and \$500,000 and that this is the only part he is hung up on. Engineering Manager Chorey said that is definitely an option and that a general contractor will add a percentage and that is all CMAR is doing. It is very similar to DBB except we add them on earlier. Trustee Schmitz said that she has built pools, not public pools, but that she has done a heck of a lot of home construction and that any time anyone is given a maximum not-to-exceed price, someone has done everything to protect themselves and that means paying more. She doesn't understand the benefit of CMAR but she clearly understands the benefit of an overall construction manager. On agenda packet pages 81 and 82, which does compare DBB to CMAR, and then looking at the two diagrams, on agenda packet page 82, pre-construction services and it talks about a guaranteed maximum price – anytime you have that, there is padding to protect themselves. Going through the process will allow us to possibly make changes and decisions. It will all be going on in parallel and if they encounter something, they will have themselves covered as they are going to give themselves a way out. She doesn't understand the cost benefit to a project that doesn't have a lot of complexity so she is sort of puzzled as to why we would be taking this approach. Further, she doesn't know what a CMA is and how it is different from CMAR; we need to understand the difference between DBB, CMA and CMAR. Trustee Morris said that the other thing is about timing and workload that we can manage. He is pretty sure that we want to get this done in one complete season so when you do the report, please be sure to talk about the timing as it is important and then those associated options. Trustee Morris then asked Trustee Dent, as the construction man on the Board, if he would have the time to meet with the potential CMAR and discuss this a bit further and then come back and translate that back to the Board. Chairman Callicrate said that he didn't know

about the legal ramifications of that but that he does know that Trustee Dent is pretty busy and that he doesn't want to presuppose what Trustee Dent would say but we have to be careful with individual Trustee involvement because it is a public situation. If we are going to potentially be approving a bid, it could be perceived that we were meddling and there could be some legal issues there. Trustee Wong said that she is not a construction expert and that she would defer to others that have the expertise and our Staff, but that she cares less which direction as long as we do so responsibly and get this project done. Chairman Callicrate said that he doesn't know enough about the differences but that he is seeing that we have limitations with our Staff as we are in a time constrained situation and that he would like to look at it a little bit further. He respects what Trustees Dent and Schmitz have added. Director of Public Works Pomroy then gave a bit of history going back to the construction of the Chateau and the Public Works buildings which were construction management by agent (CMA) and then he discussed the Diamond Peak culvert which was CMAR and that Q&D was the recommended contractor who charged IVGID \$25,000 prior to going to construction to get to the guaranteed maximum construction contract. There was a fixed fee during that time period and that is what they did during the culvert design. Chairman Callicrate said that this has been a good discussion and that we need more information so will this come back on September 9? District General Manager Winquest said that there are things that Staff needs to work through and then we will figure out where we land and yes, the goal is September 9. There is risk with whatever direction we go and that it is about making the best decision. Trustee Dent said with CMAR, all we are doing is getting a pre-bid before we do the project and paying the added fee. With DBB, we have the engineer's estimate and then we bid it. Thank you Staff for the added information and if we don't have the bandwidth to handle this project, which it looks like it is coming down to that, then be more confident with that and moving forward on this project. Chairman Callicrate asked Staff to try and bring it back on September 9 or at a date to be determined.

H.4. Review and discuss the District General Manager taking one of the four following actions to obtain legal services for the District: (Requesting Staff Member: District General Manager Indra Winquest)

- a. **Proceed with a Request for Information followed by a Request for Proposal;**

- b. Obtain a pricing proposal from Best, Best & Krieger for a monthly retainer fee and/or hourly fee;**
- c. Interview and hire in-house legal counsel; or**
- d. An alternative/option determined by the Board of Trustees at this meeting**

District General Manager Winquest gave an overview of the submitted materials. Trustee Schmitz said that she had a very nice conversation with the District General Manager about this item and that they talked at length about the materials in the Board packet. Starting on agenda packet page 90, this language and how it was written up, as well as the process, was a different philosophy than this District General Manager is trying to bring to the District. On the questionnaire, it was reviewed by Staff, and we should really try to abide by Resolution 1480 which means that the Board would be more involved. If we go about this process, based on the new philosophy, the process would need to be updated a bit with more Board participation and the things we are asking for as the former District General Manager had a different philosophy. The idea and the concept is good however it should be revised and rewritten to see what the roles are and the process of who is involved. District General Manager Winquest said that he agrees and that a lot of what we want to get out of this is how do we scope it out and how do we integrate the Board into the process and make it a total team effort for the District. His philosophy is very different on how he uses the attorney. Trustee Dent said he definitely thinks if we do go out with an RFP, we should revisit this to understand the scope of what the attorney is to handle because it appears that the scope was expanded quite a bit. Given that our previous firm is behind us at the end of this month and that we are now working with BBK, it is in the District's best interest to have a monthly retainer and set a scope and expectations as we work through this process. He would like to move forward with Item B. and work on a scope of work for our attorney which could lead us down the road of going out for a request. BBK has been on board for several months and they have set the gold standard so let's go with Item B. and figure out what that looks like. Chairman Callicrate said he is tending more towards Item B. because we do need to have them because our former attorney will be no longer. The Managing Partner did say that if they have any residual items, they were available and he did say that in the best possible way to make sure that everything is done completely and thoroughly. He thinks that if we were to get a monthly retainer that would be great and then we would have an opportunity for the new Trustees to give some feedback. Trustee Schmitz said she would add that by doing that, and working on that, it would help us to refine the services for a new attorney

and help us to define in an RFP/RFI and that will give us clarity. Trustee Morris said he is tending towards Item B. as well. A couple of things – he thinks that BBK has done exemplary work for us with knowledge and attitude and that when we get a pricing proposal from them, we need to give sufficient lead time to them so that we can help increase the worth of their investment. When they come back with their proposal, he would like to see what length of contract that they would like and then ask them to make the other services known that they could provide to us as well to add some value and that he is really interested in hearing that from them as well. Trustee Wong said that we are close enough to an election that we should keep on working with them. She is absolutely in favor of us going through the RFP process once we know what that looks like. Chairman Callicrate said that he thinks that we have enough to reach out to BBK and get a proposal as there is value in investing long term in a law firm and that after the election, we can have this discussion again. We do so appreciate the work that Mr. Velto has done with jumping in and what he has been able to do to help out. He thinks that this is their last meeting with us and he wanted to recognize the work that he has done; District General Counsel Velto said thank you and that it has been a pleasure to work with you.

H.5. Review and discuss an improved method of handling correspondence submitted to the Board of Trustees/District (Requesting Trustee: Chairman Tim Callicrate)

Chairman Callicrate gave an overview of the submitted materials. District General Counsel Velto said at the end of the day, the Board has the discretion on how you want to proceed but that there are legal issues that are present and that the Board Chairman presented. It is likely in your best interest to schedule a meeting with your attorney to discuss, in a legal non-meeting, on how to best proceed. In looking at the documents before you, it would be best to have a defined policy but that it is really hard with labor issues and freedom of speech thus he would really suggest a legal non-meeting to discuss this matter. Chairman Callicrate said that he seems to recall that Counsel Guinasso had sent out to all of the Trustees some information that came from the Attorney General's office and that it was left out which is his fault. District General Counsel Velto said to take a look at agenda packet page 130. Trustee Schmitz said that this is responding to an OML complaint so what is libelous to the District? Chairman Callicrate said that he thinks there was an e-mail sent out by Counsel Guinasso that the Attorney General said that when you include correspondence, depending on the content, that you could open up the Board and the District to potential

litigation. He doesn't have that information in front of him and he assumed it was included in the packet. Trustee Wong asked if the District Clerk could resend that e-mail to all the Trustees. Chairman Callicrate asked that Staff locate that e-mail that Counsel Guinasso sent to the Board and resend it to make sure that all of the Board members have that material. To District General Counsel Velto's point, we should meet with Mr. Nelson and go through this so we have a policy that is deliberate. Trustee Schmitz said that there are members of the community that take time to write to all of us as Trustees and her feeling is that all of that should be included as community members should know what they have written about and when people take the time to write, it should be shared with other members of the public. Chairman Callicrate said that we have all our records digitized and that perhaps we should post that information on our website. We will have the same reoccurring question is that the people who have written and have expertise in a particular field should have that information included as well as people who are opposed. If there are those that castigate in a negative or profane way, that is not acceptable. He wants to have a good and robust policy as we do appreciate the people who write to us. District General Manager Winquest said that it is going to be important to have a good understanding of what the other agencies do and that he does want to echo that it is all about being transparent and that he has been here a long time. He does echo what Chairman Callicrate said and that there was a time period where there was a lot of bad things that were written about the Board and Staff which does create a hostile environment which is not good for morale. It is all about getting the correspondence but when you make defamatory comments, it is not good for the community and the Staff. Chairman Callicrate said he will schedule a meeting with District General Counsel to discuss this topic and then he will get the information out to the Board on when that meeting will occur on this item.

I. APPROVAL OF MINUTES (for possible action)

I.1. Meeting Minutes of July 29, 2020

Chairman Callicrate asked for changes, none were requested so the minutes were approved as submitted.

J. BOARD OF TRUSTEES UPDATE (NO DISCUSSION OR ACTION) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*

There were no Board of Trustees updates at this time.

K. PUBLIC COMMENTS* - Limited to a maximum of three (3) minutes in duration.

Yolanda Knaak said you are doing a great job and that she is glad things are moving forward to fix the leaking pool.

Margaret Martini said she is a little disappointed for going ahead with the gymnastic program as she doesn't think there was enough information provided at this time. Other programs are breaking even or making money and taking on another program, this is the ice rink all over again. Very nice of them, they should just give that money to the Lake Tahoe School and let them offer this and IVGID shouldn't be involved in any other program unless it can be penciled out 100% which would include the cost per hour to use a facility, etc. as she is not seeing any of those things being presented. This is not in the purview of IVGID and although she really appreciates Mr. Duffield, if he wants that program, he should support it as such.

Cliff Dobler said getting back to the Burnt Cedar pool; when he was on the committee, the only thing we received, from the architects, was a layout. Through this whole process, he cannot conceive what the difference is in the cost estimate which is a \$4.5 million difference. He went out to Arrowcreek the other day, and they have a pool that a very wealthy man funded. The pool deck had two different types of stones, same thing with fencing, and it had ground lighting. We have none of that being disclosed so that needs to be done. On the attorneys, he would urge this Board to consider two attorneys - one for government and one for contracts.

L. ADJOURNMENT (for possible action)

The meeting was adjourned at 8:57 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.

Submitted by Aaron Katz: Written statement to be included in the written minutes of this August 26, 2020 regular IVGID Board (“Board”) meeting – Agenda item G – Possible approval to purchase someone else’s gymnasium equipment using grant funds arguably provided by the Duffield Foundation – on the Consent Calendar no less

Submitted by Aaron Katz: Written statement to be included in the written minutes of this August 26, 2020 regular IVGID Board (“Board”) meeting – Agenda item H(5) – Review and discussion of the Board of Trustees’ re a possible Board meeting “correspondence” policy

Submitted by Aaron Katz: Written statement to be included in the written minutes of this August 26, 2020 regular IVGID Board (“Board”) meeting – Agenda item H(3) – Possible selection of a construction manager-at-risk (“CMAR”) project delivery method for the Burnt Cedar beach swimming pool capital improvement project (“CIP”)

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS AUGUST 26, 2020 REGULAR IVGID BOARD MEETING – AGENDA ITEM G – POSSIBLE APPROVAL TO PURCHASE SOMEONE ELSE’S GYMNASIUM EQUIPMENT USING GRANT FUNDS ARGUABLY PROVIDED BY THE DUFFIELD FOUNDATION – ON THE CONSENT CALENDAR NO LESS

Introduction: Here staff propose we accept an alleged \$21,176 cash grant from the Duffield Foundation for the purchase of gymnasium equipment “and associated (programming) expenses”¹ which sets the stage for our offering yet another money-losing recreational program² run under the auspices of the public’s Recreation Center³ – on the Consent Calendar no less. But the back-up documentation provided by staff is in conflict and simply makes no sense. And that’s the purpose of this written statement.

But it’s For “the Kids” Card Man: This is our General Manager’s (“GM’s”) all too often refrain; it’s for the kids. This way anyone who criticizes can be accused of a lack of concern for our community’s kids. And here we hear it again⁴.

The Numbers Don’t Add Up: The August 17, 2020 letter from the Duffield Foundation states that “all (of the proposed) grant monies (\$21,176)...will be used only to support the purchase of gymnastics equipment (\$20,076) and miscellaneous consulting costs (\$1,000).”⁵ Well apparently at

¹ See page 2 of the packet of materials prepared by staff in anticipation of this August 26, 2020 meeting [https://www.yourtahoepace.com/uploads/pdf-ivgid/0826_-_Regular_-_Searchable.pdf (“the 8/26/2020 Board packet”).]

² For 2020-21, a whopping \$1,222,247, just in operational losses [see the asterisk next to the proposed Recreation Facility Fee (“RFF”) subsidy at page 117 of Exhibit “A”]. And by the way, how would anyone know where to look to learn of this dirty little truth? Take a look at IVGID’s adopted 2020-21 Budget (go to https://www.yourtahoepace.com/uploads/pdf-ivgid/FINAL_IVGID_2020.2021_APPROVED_BUDGET_FORM_4404LGF.pdf). Where does anyone see this breakdown?

³ IVGID staff run well in excess of 90 community programs out of the Recreation Center [see page 113 of the packet of materials prepared by staff in anticipation of the Board’s March 11, 2020 meeting [https://www.yourtahoepace.com/uploads/pdf-ivgid/3-11-2020-BOT_Packet_Regular.pdf (“the 3/11/2020 Board packet”) – staff’s narrative (labeled an “executive summary”) of the Recreation Center and community programming functions, in anticipation of passage of a 2020-21 budget (see pages 113-117 of the 3/11/2020 Board packet), is attached to this written statement as Exhibit “A”], and not one operates at a break even or positive cash flow basis.

⁴ “This equipment will be utilized at various venues by the Parks & Recreation Staff to provide gymnastics programming *for the youth of Incline Village & Crystal Bay.*”¹

⁵ See page 3 of the 8/26/2020 Board packet.

least \$100 is intended to be spent on something else. Although I've asked our GM for an explanation, I haven't gotten one.

The Recipient of the Proposed \$1,000 in Consulting Fees is Not "Outlined in the Invoice"⁶ Attached to Staff's Memorandum in Support: The August 17, 2020 letter from the Duffield Foundation states that "miscellaneous consulting costs (are)...outlined in the invoice."⁵ Take a look at the invoice⁶ and show me where these costs are outlined. The answer is *nowhere!*

For These Reasons on August 22, 2020 I Sent an E-Mail Request to the IVGID Board That at Least One Member "Pull" This Agenda Item From the Consent Calendar So it Can be Discussed in Detail⁷: because "this agenda item needs a whole lot more information/answers."

Even Though My E-Mail Was Sent to the IVGID Board, Rather Than Our GM, on August 24, 2020 Our GM Responded⁸: And what new information did he share? That the \$1,000 of "miscellaneous consulting costs" would be spent "to cover the consulting time of the Recreation Specialist for program planning and development." Moreover, "the Recreation Specialist would need to invoice the District (going through) our Recreation Supervisor (for) Sports and Community Programming prior to payment (because we)...will need to give this (invoice) to the Duffield Foundation before they grant (IVGID)...the funds." Interesting.

According to Transparent Nevada⁹ We Have No "Recreation Specialist" Position: That's right! Take a look at the 1,012 employees we had in 2019 and do a search for one who was our "Recreation Specialist." There was *none*.

According to Indra, We No Longer Have a "Recreation Supervisor (For) Community Programming" Position: That's right! Do the same search in Transparent Nevada for a Recreation Supervisor for Community Programming and we get Kerry Ferguson. But Ms. Ferguson was recently promoted to Communications Coordinator. And to save money, didn't Indra tell us he was eliminating Ms. Ferguson's former Recreation Supervisor for Community Programming position? It just doesn't add up.

So We Have to Provide a "Specialist" For "Program Planning Development" to Create a Gymnastics Program Who Invoices a "Community Programming Supervisor" Who Must Bill the Duffield Foundation in Order to Receive Grant Funding to Reimburse What We Pay to the "Recreation Specialist:" Is this starting to make sense, or simply raising more questions?

Moreover if One Reads Between the Lines, This Gymnastics Equipment is NOT Going to Reside at Our Recreation Center: Let me quote again from Indra's staff memorandum⁵: this equipment will be utilized *at various venues* by the Parks & Recreation Staff to provide gymnastics

⁶ This invoice appears at pages 4-6 of the 8/26/2020 Board packet. It also is part of Exhibit "A."

⁷ This e-mail request is attached as Exhibit "B" to this written statement.

⁸ Indra's response is attached as Exhibit "C" to this written statement.

⁹ Go to <https://transparentnevada.com/salaries/2019/incline-village-general-improvement-district/>.

programming.” At “various venues?” What various venues? Could it be the Sports Shop inside the Hyatt Lake Tahoe Hotel’s shopping mall? Or is it Lake Tahoe School?

So Do We Now Need a New Truck to Transport This Equipment to “Various Venues?”

Do We Need New Employees to Load and Unload the Truck?

Do We Need New Employees to Drive the Truck?

Do We Need New Employees to Set Up and Tear Down This Gymnastics Equipment?

Assuming Lake Tahoe School is One or the Only “Various Venue,” Why Are We Administering and Underwriting the Costs of Their *De Facto* Gymnastics Program?

And Assuming We’re Not Able to Financially Operates This Program on a Break Even or Positive Cash Flow Basis, Who’s Going to Pick Up the Tab?

So Why, Why, Why?

Conclusion: Indra tells us⁸ this is another one of his “truly positive collaboration(s) for the community.” I’m sorry, I don’t see it that way. For reasons Indra hasn’t explained, he is cozying up with another local special interest group – developer David Duffield. And Lake Tahoe School. Using the public resources of IVGID which is involuntarily financially bank rolled by local property owners to do his bidding. And why? Whatever the answer, I can guarantee you that the motivating factor is not “for our community’s kids.” In my opinion we don't need another money losing community program which depends upon the RFF for its funding. And we don't need to increase an already oversized recreation "footprint" when we already employ a whopping 25.68 Recreation Center FTEs³. For these reasons I pray that after transferring this matter to the General Business and from the Consent Calendar, the Board simply vote no.

And to those asking why our RFF/Beach Facility Fees (“BFFs”) are as high as they are and never seem to go down, now you have another example of some of the reasons.

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!

EXHIBIT "A"

**Incline Village General Improvement District
Recreation Center & Community Programming – Executive Summary
Operating Budget FYE June 30, 2021**

Service Metrics/Service Period

The Recreation Center is open 364 days out of the year from 6am – 9pm, Monday – Friday and 7am – 8pm, Sat/Sun. Over 90 Community Recreation Programs are offered daily on a year-round basis for all ages and every demographic.



Service Measures (total visits)

	Actual	Budgeted	Budgeted
	<u>2018/19</u>	<u>2019/20</u>	<u>2020/21</u>
Recreation Center	288,473	325,000	300,000
Aquatics	64,392	68,000	66,000
Youth and Family Programs	8442	3500	3500
Youth & Adult Sports	6625	7000	7200
Senior Programs	12,194	11,800	12,300
Fitness, Health & Wellness	31,957	30,500	32,000
Total	412,083	445,800	421,000

Staffing

Recreation Center			5.89
Fitness, Health & Wellness			3.24
Aquatics			8.33
Youth & Family Programs			2.17
Youth & Adult Sports			1.90
Senior Programs			3.77
Recreation Counter			.38
Total FTE	25.10	25.03	25.68

Services Provided

- Massage Therapy
- 37 Group Fitness Classes Weekly
- 25 Yard 8 Lane Indoor Pool with Diving board
- Gymnasium
- Full Service Locker Rooms
- Pro Shop
- Aquatics Programs
- Youth & Adult Sports Programs
- Youth & Family Programs
- Special Events
- Senior Programs
- Fitness, Health & Wellness Programs
- Indoor Pickle Ball Program (Winter)
- Facility Booking
- Programming Administration
- Recreation Center Membership Services
- Community Programming Marketing
- Lobby with Free Community Wi-Fi and Public Computers

**Incline Village General Improvement District
Recreation Center & Community Programming
Service Level Outline
Operating Budget FYE June 30, 2021**

RECREATION CENTER – Open 364 days of the year

Service Provided	Frequency
Group Fitness Classes	Daily (48 classes weekly)
Cardio & Strength Room (Cable TV)	Daily
Massage Therapy	Daily by Appointment only
Personal Training	Daily by Appointment only
Gymnasium	Daily Drop in/Programming
25 yard 8 Lane Pool w/Diving Board	Daily Drop in/Programming
Indoor Pickle Ball	4x weekly/2-3 hours per day
Full service Locker Room	Daily
Facility Booking/Group Picnic Rentals/Kayak & Paddleboard Storage	Daily
Program Registration	Daily
Membership Services	Daily
Birthday Parties	Daily by Reservation
Adult Basketball Drop in	Tu/Wed/Thu Year Round
Lifeguard Operations	Daily (2 Lifeguards on duty during operating hours)
Fitness Attendant/Recreation Center Rover	Daily – 6 – 8 hours
Kid Zone Child Care	6 days weekly (Paid service)
Free Community wifi/ Public Computers	Daily
Complimentary Coffee & Tea	Daily (Members/Daily Paid Visit)
Towel Service	Daily (paid service)
Cleaning Service	Daily (After Closing)

Community Programming – FITNESS, HEALTH & WELLNESS

Service Provided	Ages	Frequency
Youth Dance – Fairytale Ballet, Jazz, Hip Hop	3 – 11	Two 12 week sessions
Adult Ballet	18+	Ongoing 1 month sessions
Nutrition Lectures	All Ages	12 sessions annually
Yoga Workshops	18+	8 sessions
5 peaks in 5 weeks Fitness Challenge	All ages	5 weeks – July/August
Personal Training	All Ages	Daily by Appointment only
Annual Fitness Challenge	All Ages	Once Annually – 6 weeks
Art Classes- 3 Variations	13+	3 Programs annually
Ballroom Dance	21+	Ongoing

Community Programming – AQUATICS

Service Provided	Ages	Frequency
Lifeguard Operations – RC	NA	Daily – 2 Lifeguards on duty during operating hours
Lifeguard Operations - Beaches	NA	Memorial Day – Labor Day Weekends
Lifeguard Operations – BC	NA	Mid May – Late September
Group Swim Lessons – RC	6mo +	Year Round
Group Swim Lessons – BC	6mo+	June – August (IVGID Passholders)
Private Swim Lessons	6mo+	Year Round
Swim Team	6+	Year Round Mon - Thu
Swim Around Tahoe	All Ages	Daily
Masters Swimmers	All Ages	Daily
Lifeguard Training Class	15+	Weekends May/June
CPR Certification	Staff	When Needed
WSI Swim Instructor Training	16+	Weekends May/June
Jr Lifeguard Training	10 – 14	6 3 hours sessions

Community Programming – SENIORS

Service Provided	Ages	Frequency
Hiking Series	55+	Tuesday's May - November
Digital Photo	55+	Once Monthly Year Round
Ski Clinics	55+	Wednesday's January - April
Bocce Ball	Adult/Senior	Wednesdays June - August
Moonlight Hikes	Adult/Senior	Full Moons May - June
Conversation Cafe	Adult/Senior	Thursdays Year Round
Field Trips & Outings	55+	Once Monthly
Incliners	49+	Year Round
Veterans Club	NA	Year Round
Community Events	All Ages	Year Round
Senior Transportation	55+	Daily
Snowshoe Hikes	55+	Tuesday's December - April

Community Programming – YOUTH & ADULT SPORTS

Service Provided	Ages	Frequency
Youth Basketball Leagues	1 st – 8 th	Daily December - February
Girls Softball Leagues	2 nd – 8 th	Daily Late April – Mid June
Youth Flag Football Leagues		Fall
Youth Volleyball Leagues	5 th – 8 th	Spring
Play Like a Champion Basketball	6 – 10	October - December
Play Like a Champion Volleyball	10 – 16	February – April
Middle School Volleyball Clinics	5 th – 8 th	Three weeks November
TK Basketball Camps	9 – 14	Two weeks June/August
Middle School Volleyball Camp	5 th – 8 th	One week - June
Youth Soccer Camp	9 – 14	One week - August
Brazilian Jiu Jitsu	All ages	Ongoing
Adult Volleyball Leagues	18+	Two seasons Oct - Apr
Adult 3 on 3 Basketball League	18+	Fall/Spring
Adult Softball Leagues (3 leagues)	18+	June – August
Adult Softball Tournament	18+	Labor Day Weekend
Adult Outdoor Soccer	18+	Summer/Fall
Adult Indoor Soccer Leagues	18+	Fall/Spring

Community Programming – YOUTH & FAMILY PROGRAMMING

Service Provided	Ages	Frequency
Tahoe Tiny Timbers	6 – 12	Daily when school is out
Trail of Treats & Terror - <i>Collaboration</i>	6mo+	Tue/Fri Year Round
Easter Eggstravaganza	All Ages	October
Underwater Egg Hunt	All Ages	March/April
IMS Career Day - <i>Collaboration</i>	All Ages	March/April
Teen Dances - <i>Collaboration</i>	6 th – 8 th	March
Leadership in Training Program	6 th – 8 th	School Year (4 Dances)
Little Adventure Camps	11 – 18	June - August
Pre-K enrichment classes	3 – 6	July - August
Themed Specialty Camps ie. Animals, Sewing & Cooking, Author Academy, World of Water.	3 – 6	School Year
Stand up Paddleboard Camp	6 – 11	June - August
8 th Grade Promotion - <i>Collaboration</i>	6 – 14	May - July
Water Carnival	8 th grade	June
Brunch w/Santa - <i>Collaboration</i>	All Ages	August
Community Holiday Celebration	All Ages	December
Community Leadership Club	All Ages	December
Community Snowshoe	9+	January – March (3 Dates)
Starlight Cinema	All Ages	July – August (3 dates)
Water Carnival	All Ages	August

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
RECREATION AND COMMUNITY PROGRAMMING
PROPOSED OPERATING SOURCES AND USES
FOR THE FISCAL YEAR ENDING JUNE 30, 2021

	Actual FYE - 18	Actual FYE - 19	Estimated Actual FYE- 20	Approved Budget FYE - 20	Proposed Budget FYE - 21
Sources:					
Ad Valorem Property Tax	\$ -	\$ -	\$ -	\$ -	\$ -
Consolidated Taxes	-	-	-	-	-
Charges for Services	1,289,952	1,364,045	1,320,000	1,285,209	1,364,897
Facility Fee	1,039,415	1,308,670	1,173,029	1,173,029	1,222,247
Investment income	-	-	-	-	-
Miscellaneous Revenues	1,247	3,483	-	-	-
Intergovernmental	17,000	17,000	17,000	17,000	17,000
Interfund	-	-	-	-	-
Central Services	-	-	-	-	-
Total Sources	2,347,614	2,693,198	2,510,029	2,475,238	2,604,144
Uses:					
Salaries & Wages	1,093,852	1,156,579	1,210,000	1,164,024	1,260,756
Employee Benefits	319,199	321,005	355,000	368,533	394,888
Total Personnel	1,413,051	1,477,584	1,565,000	1,532,557	1,655,644
Professional Services	5,400	5,550	5,700	5,700	5,850
Services & Supplies	496,034	485,452	560,000	560,046	563,979
Insurance	37,623	50,559	57,600	57,600	55,920
Utilities	135,239	133,041	145,000	145,360	144,640
Cost of Goods Sold	43,756	39,086	40,000	49,860	44,559
Central Services	101,000	105,700	124,000	124,000	133,440
Defensible Space	-	-	-	-	-
Total Services & Supplies	819,052	819,388	932,300	942,566	948,388
Total Uses	2,232,103	2,296,972	2,497,300	2,475,123	2,604,032
Net Sources (Uses)	\$ 115,511	\$ 396,226	\$ 12,729	\$ 115	\$ 112

EXHIBIT "B"

Agenda Item G - Aug 26, 2020 IVGID Board Meeting - Request to Remove This Item From the Consent Calendar and Transfer to the General Business Calendar

From: s4s@ix.netcom.com
To: Callicrate Tim
Cc: Wong Kendra Trustee <wong_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Schmitz Sara <schmitz_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>, "ISW@ivgid.org" <ISW@ivgid.org>
Subject: Agenda Item G - Aug 26, 2020 IVGID Board Meeting - Request to Remove This Item From the Consent Calendar and Transfer to the General Business Calendar
Date: Aug 22, 2020 7:47 PM

To Chairperson Callicrate and the Other Honorable Members of the IVGID Board -

I ask that at least one Board member transfer this agenda item as requested in the subject line. And here's why.

The invoice attached (pages 4-6 of the Board packet) totals \$20,076.

The August 17, 2020 letter from the Duffield Foundation (page 3 of the Board packet) states that the invoice outlines the \$1,000 miscellaneous consulting fee. Yet an inspection of the 3 pages to the invoice mentions nothing about this fee.

Furthermore, the August 17, 2020 letter states that the grant will total \$21,176 for these two items and the numbers don't add up. What happens to the excess \$100?

Furthermore, who's the alleged consultant getting paid the \$1,000 from IVGID? And for exactly what kind of consulting services?

This agenda item needs a whole lot more information/answers which cannot be discussed/clarified on the Consent Calendar.

Also, I am including a records request by copy of this e-mail to Ms. Herron. Here are the items:

1. Since the \$1,000 consulting fee discussed above is being paid by IVGID, I would like to examine any writings (including e-mails) which identify the particulars of these consulting services, and the payment to whom;
2. If the subject grant was as a result of one or more written requests by/on behalf of IVGID, I would like to examine all of these written requests.

Hopefully Ms. Herron can provide examination prior to the upcoming Board meeting.

Thank you for your cooperation. Aaron Katz

EXHIBIT "C"

Re: Agenda Item G - Aug 26, 2020 IVGID Board Meeting - Request to Remove This Item From the Consent Calendar and Transfer to the General Business Calendar

From: "Winqest, Indra S." <ISW@ivgid.org>
To: "s4s@ix.netcom.com"
Cc: Tim Callicrate <callicrate_trustee@ivgid.org>, "Wong, Kendra" <Wong_trustee@ivgid.org>, Matthew Dent <dent_trustee@ivgid.org>, Peter Morris <morris_trustee@ivgid.org>, Sara Schmitz <trustee_schmitz@ivgid.org>, "Herron, Susan" <Susan_Herron@ivgid.org>
Subject: Re: Agenda Item G - Aug 26, 2020 IVGID Board Meeting - Request to Remove This Item From the Consent Calendar and Transfer to the General Business Calendar
Date: Aug 24, 2020 5:01 PM

Hi Aaron -

I have received your email. Consulting fees will be to cover the consulting time of the Recreation Specialist for program planning and development. The Recreation Specialist would need to invoice the District via our Recreation Supervisor – Sports and Community Programming prior to payment as I will need to give this to the Duffield Foundation before they grant us the funds. I'm happy to discuss the details with any members of the public so they have a full understanding of this agenda item. This is a truly positive collaboration for the community so hopefully this helps you understand this. Have a nice week.

Indra

On Aug 22, 2020, at 7:47 PM, "s4s@ix.netcom.com" <s4s@ix.netcom.com> wrote:

To Chairperson Callicrate and the Other Honorable Members of the IVGID Board -

I ask that at least one Board member transfer this agenda item as requested in the subject line. And here's why.

The invoice attached (pages 4-6 of the Board packet) totals \$20,076.

The August 17, 2020 letter from the Duffield Foundation (page 3 of the Board packet) states that the invoice outlines the \$1,000 miscellaneous consulting fee. Yet an inspection of the 3 pages to the invoice mentions nothing about this fee.

Furthermore, the August 17, 2020 letter states that the grant will total \$21,176 for these two items and the numbers don't add up. What happens to the excess \$100?

Furthermore, who's the alleged consultant getting paid the \$1,000 from IVGID? And for exactly what kind of consulting services?

This agenda item needs a whole lot more information/answers which cannot be discussed/clarified on the Consent Calendar.

Also, I am including a records request by copy of this e-mail to Ms. Herron. Here are the items:

1. Since the \$1,000 consulting fee discussed above is being paid by IVGID, I would like to examine any writings (including e-mails) which identify the particulars of these consulting services, and the payment to whom;
2. If the subject grant was as a result of one or more written requests by/on behalf of IVGID, I would like to examine all of these written requests.

Hopefully Ms. Herron can provide examination prior to the upcoming Board meeting.

Thank you for your cooperation. Aaron Katz

WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS AUGUST 26, 2020 REGULAR IVGID BOARD MEETING – AGENDA ITEM H(5) – REVIEW AND DISCUSSION OF THE BOARD OF TRUSTEES’ RE A POSSIBLE BOARD MEETING “CORRESPONDENCE” POLICY

Introduction: Here our chairperson proposes discussion of a possible formal correspondence policy insofar as correspondence received is concerned at Board meetings. For decades written correspondence *to the Board* was *always* included in the packet of materials prepared by staff in anticipation of Board meetings. That is until the beginning of 2018 when unelected staff, with the full cooperation and support of former Chairperson Wong, took it upon themselves to begin censoring written correspondence received from the public *addressed to the IVGID Board* from the packet of materials prepared in anticipation of public Board meetings¹. Then at the Board’s February 27, 2019 meeting, Chairperson Wong and staff removed correspondence *to the Board* from the agenda altogether notwithstanding the Board *never* voted to eliminate that correspondence from the public as an agenda item.

Besides the disingenuous effort at censorship, this behavior violated Board policy, came after two prior unsuccessful attempts to change that policy, and after explicit instructions against future censorship from at least two Board members². In other words, another example of staff arrogance and the “IVGID Culture”³ which permeates everything staff do. Since then staff have excluded public correspondence *to the Board* from board packets, and the only way correspondence can be legally included, is by making that correspondence part of a written statement, like this one, expressly submitted for inclusion in the minutes of Board meetings. This subject and a proposed policy are the purposes of this written statement.

For Some Number of Years, Through and Including the Present, the Board Has Had a Policy Which Requires Written Correspondence From the Public *to the Board* to Be Included in All of its Board Packets: Since April 14, 1999 written correspondence *addressed to the IVGID Board* from members of the public have not only been the subject of a separate Board meeting agenda item, but copies of that correspondence have been included in the packets of materials prepared by staff in anticipation thereof. That is until February 27, 2019 as referenced above. The District has adopted handbooks for its employees as well as its Trustees which speak to its policies. And insofar as correspondence *to the Board* is concerned, let me quote from page 12 of the current Trustee “member handbook:”

¹ Notwithstanding, the agendas for those meetings continued to include correspondence from the public as an agenda item.

² Chairperson Callicrate and Trustee Dent (see detailed discussion below).

³ The culture where unelected staff care more about themselves, their public employee colleagues, and “favored special interest collaborators” than the Board and the public they were purportedly hired to serve.

“Correspondence is *included in the Board packet* if it is received in time for its inclusion. Correspondence received after production of the Board packet is verbally noted as received and *then included in the following Board packet.*”⁴

On April 25, 2018 IVGID Staff Disingenuously Recruited Trustee Horan to Do Their Bidding by Proposing a Modification to the Board's Written Correspondence Policy Which Proposed Omission of Communications From the Public⁵: Unelected staff used Trustee Horan as a tool (the way they use former Chairperson Wong and Trustee Morris today to be their tools) to adopt a correspondence policy which differed markedly from what was supposed to be the then current policy⁶. Under staff's version of “transparency,” Trustee Horan proposed a policy whereby:

“2. The District Clerk (i.e., Susan Herron) w(ould)...no (longer)...include ...correspondence (from)...members of the public...within the Board packet or successive ones;” and,

“5. If a member of the public (wa)s unable to attend a Board meeting⁷, to ...submit their comments...in writing, (although) they (we)re welcome to transmit their comments...via e-mail *to the Board*...the(ir) transmittals w(ould) be treated as Correspondence.” In other words, since “correspondence (from)...members of the public...w(ould)...no (longer be) ...include(d)...within the Board packet or successive ones,” *neither would* comments submitted by members of the public who requested their comments to be attached to the minutes of those meetings (who) were unable to attend Board meetings. Given the Board chose not to modify the current policy, Trustee Horan's efforts were tabled and as a result, for the time being, no action was taken⁸.

⁴ The Trustee's "member handbook" can be viewed at https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Handbook_working_handbook.pdf. A copy of page 12 with an asterisk next to the quoted language is attached as Exhibit “A” to this written statement.

⁵ See pages 101-103 of the packet of materials prepared by staff in anticipation of this August 26, 2020 meeting [“the 8/26/2020 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/0826_-_Regular_-_Searchable.pdf)].

⁶ See pages 103-104 of the packet of materials prepared by staff in anticipation of the Board's regular April 25, 2018 meeting [“the 4/25/2018 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_4-25-18.pdf)].

⁷ Remember, according to staff, some two-thirds (2/3) of local property owners are absentee vacation and/or second homeowners. In other words, they do not reside in Incline Village or Crystal Bay and therefore likely cannot physically attend more than one or two Board meetings/year at best.

The Subject Came Up Again at the Board's May 9, 2018 Meeting: Listen to the colloquy between Trustees Dent, Callicrate and former General Manager ("GM") Pinkerton⁹:

Trustee Dent: "General Manager Pinkerton, the last couple of board packets haven't included correspondence received, and this one doesn't either...It was my understanding we weren't making any changes (i.e., including written correspondence to the board in the board packet).

GM Pinkerton: That's right. We're not making any changes to the correspondence.

Trustee Dent: So we haven't received any correspondence over the last couple of months? They haven't been in the board packet.

GM Pinkerton: We have, have been including *pertinent correspondence*...I think we're comfortable that any correspondence that hasn't already been communicated to the board and is not in any way, we think derogatory in manner or exposing the district, we've included that correspondence¹⁰. And we will continue to include that correspondence...The clerk (Susan Herron), myself and legal counsel always review correspondence and determine whether things are appropriate to be included in correspondence.

Trustee Dent: So we're filtering our correspondence rather than just including all the correspondence? We're filtering based upon whether we like or don't like the comments?"

Now listen to Chairperson Callicrate's comments on this subject:

⁸ See page 13 of the minutes of that meeting which appears at page 187 of the packet of materials prepared by staff in anticipation of the Board's regular May 23, 2018 meeting ["the 5/23/2018 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-23-18.pdf)].

⁹ IVGID livestreams its Board meetings (<https://livestream.com/accounts/3411104>). See 3:28:48-3:33:25 of the May 9, 2018 livestream of this meeting ["the 5/9/2018 livestream" (<https://livestream.com/IVGID/events/8198653/videos/174618053>)].

¹⁰ This is an untrue statement. Given review of all past Board meetings prior to May 9, 2018, the reader can see for him/herself that when Mr. Pinkerton stated staff "*has* been including pertinent correspondence" in board packets, either nothing in his opinion has been "pertinent," or he speaks with forked tongue.

“As I recall, the Board never decided to *not* include the correspondence in our packets. It was brought up (on April 25, 2018) by Vice-Chairman Horan, and the Board decided that we didn't want to take action (see discussion above). So that (agenda item) was pulled...The Board makes the final decision what's going to go in the packet and not go in the packet. And defamatory or not...*these are public records which should be included* since we have a correspondence section (on our agendas)...What *we* (i.e., *the Board as a whole*) receive as an e-mail (or otherwise) is public information. And it should be included in here...I don't think that it's up to us to be filtering or removing or leaving out (any) information. I would vehemently disagree about removing correspondence from our packet. It (can be) inflammatory, it can be defamatory, it can rake each one of us over the coals umpteen days to Sunday. But that's part of being a public body...This just to me this sends a chilling effect and once again opens us up to perception is reality. That we're trying to hide something...filter it...I don't agree with that at all.”

Given the foregoing, one would have expected written correspondence from the public *to the Board* to be included in the board packets for the Board's May 23, 2018 and beyond meetings. But if so, one would be sadly mistaken!

So What Should Be Our Correspondence Policy? Chairperson Callicrate said it best:

“What(ever) we (i.e., *the Board*) receive as an e-mail (or otherwise) is public information. And it should be included in here...I don't think that it's up to us (or staff) to be filtering or removing or leaving out (any) information. I would vehemently disagree about removing correspondence from our packet. It (can be) inflammatory, it can be defamatory, it can rake each one of us over the coals umpteen days to Sunday. But that's part of being a public body...This just to me this sends a chilling (message) and once again opens us up to perception is reality. That we're trying to hide something...filter it...I don't agree with that at all.”

In other words, include it ***all*** correspondence *to the Board*. The only limitations should be that:

1. The correspondence should be addressed to the Board as a whole intended by the author to be public. Correspondence to less than the Board as a whole, intended by the author to not be made public, should not be included. Nor should correspondence to our GM or one or more staff members unless subsequently sent to the Board as a whole.

2. All such “correspondence (should be) *included in the Board packet* (as long as) it is received in time for its inclusion. Correspondence received after production of the Board packet (should be) verbally noted as received, and then included in the following Board packet.”

This policy has served us well for twenty (20) or more years until it was changed two (2) years ago (see discussion above). It will work equally as we go forward.

The Effect, if Any, of the Office of Attorney General’s (“OAG’s”) Open Meeting Law (“OML”) October 2, 2018 Letter¹¹: On or about May 14, 2018 local resident Frank Wright filed an OML complaint with the OAG pertaining to IVGID staff’s omission of public correspondence *addressed to the IVGID Board* in its Board packets prepared in anticipation of Board meetings¹². On October 2, 2018 the OAG prepared its response in OAG File No. 13897-287¹³. That response determined nothing more than that:

1. The Board agenda’s description of “Correspondence Received by the District” did not constitute an OML violation inasmuch as it was sufficiently “clear and complete” because it could “be interpreted to say that all of IVGID’s correspondence is a ‘topic scheduled to be considered during the meeting;’”¹⁴ and,
2. The wording of IVGID’s minutes of its May 9, 2018 Board meeting did not constitute an OML violation inasmuch as it was “not require(d to be a) verbatim memorialization of public comment.”¹⁵

Given Chairperson Callicrate’s staff memorandum in support of this agenda item cautions that “the District(’s correspondence policy) must be compliant with the Opinion from OAG File No. 13897-

¹¹ See pages 130-133 of the 8/26/2020 Board packet.

¹² See pages 113-124 of the 8/26/2020 Board packet.

¹³ Although Chairperson Callicrate and IVGID staff refer to this letter as a formal “Opinion,” it was not. NRS 241.0395(1) makes it clear that *only* “findings of fact and conclusions of law that a public body has violated any provision of...chapter” (NRS 241) represents a formal “opinion.” Moreover, *only* formal opinions “must (be) include(d)...on the...agenda posted for a meeting of the public body which acknowledge...the existence of the findings of fact and conclusions of law (and)...must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.” Why then was the letter agendized, and a copy included as supporting material in the packet of materials prepared by staff (see pages 130-133 of the 8/26/2020 Board packet) in anticipation of the Board’s November 13, 2018 meeting (see agenda item F.3 at page 135 of the 8/26/2020 Board packet)? *Propaganda!*

¹⁴ See page 132 of the 8/26/2020 Board packet.

¹⁵ See page 133 of the 8/26/2020 Board packet.

287¹⁶, in reality, this “opinion” has no application whatsoever inasmuch as the reader can clearly see it deals with the wording of agenda items, and the wording of minutes of Board meetings.

To Reiterate, Our Policy Should *Only* Apply to Correspondence to the Board as a Whole Intended by the Author to Be Read by the Board as a Whole: If a citizen wants to send a private message to one or more Board members, however, *not* all of them, this correspondence should not be part of the Board’s correspondence policy because it is intended to be private. Similarly, every time a citizen sends correspondence to our GM or un-elected staff, that correspondence should *not* be part of the Board’s correspondence policy. Only if the author subsequently or concurrently sends copies to *the Board as a whole*, should it be included.

Conclusion: Not including written correspondence from members of the public *to the Board* in Board packets which are posted online, represents staff censorship pure and simple. Maybe most residents don't care about how IVGID staff repeatedly conceal what represent public records and ignore requests for those records to be made public by their fellow members of the public. Maybe they don't care about how the IVGID Board does nothing whenever its members are put on notice of inappropriate staff action, such as the actions the subject of this written statement. But maybe some do care because they are treated the way others in our community have been treated, yet don't realize they are not alone. These are some of the wrongs associated with staff censorship.

There’s a second wrong insofar as censoring written correspondence *to the Board* is concerned. And that’s staffs’ proclivity to protect their staff colleagues who are firmly committed to the IVGID culture³. Members of the public have an interest in learning how their fellow citizens’ requests *to the Board* for relief are consistently ignored.

There’s a third wrong insofar as censoring written correspondence *to the Board* is concerned. And that’s the public’s ability to evaluate the accuracy and sincerity of trustees’ campaign pledges when running for re-election. After all, if some members of the public are able to share evidence that one or more of our trustees “speak with forked tongue,” others may conclude those trustees are not worthy of continuing as Board trustees¹⁷. But by censoring the public’s view of such correspondence, it is deprived of this knowledge. And that means one or more trustees may not be fairly re-elected as a Board trustee(s). And if you think about it, what we really have here is further evidence of staff’s discriminatory application of public communication intended to assist their favored sons and daughters via board packets in their bids for reelection.

Please return all correspondence to the Board as an agenda item, and with Board packets.

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!

¹⁶ See page 96 of the 8/26/2020 Board packet.

¹⁷ In other words, “consistency matters.”

EXHIBIT "A"



Agenda Notebooks

It is District Staff's responsibility to provide the Board of Trustees with a detailed packet for information supporting those items on the agenda. Each Trustee will be provided, typically no later than the Friday preceding the Wednesday meeting, a notebook of information supporting each agenda item as applicable. This information may also be supplied, upon request by individual Trustee, electronically i.e. in PDF format. On that same Friday, the requesting members of the public shall be mailed their packet. This process can be delayed to the Monday preceding the Wednesday meeting in event of an emergency (i.e. weather, machine failure, etc.). It is each Trustee's responsibility to ensure that they have read the materials prepared for them so that they come to each meeting prepared to discuss the items on the agenda. If they have any question or concern about the materials provided on an agenda item, they are encouraged to ask questions of the District Staff, starting with the General Manager, **prior** to the meeting. The thorough understanding of each matter on the agenda allows the Board of Trustees meeting to proceed in a timely and orderly manner.

Typically, the agenda will include various reports made by Staff or a Trustee which are relevant to those members in attendance and/or the general public, Consent Calendar items which are items that the District Staff deems as being typical, routine and non-controversial, and General Business items which are items that the Staff would like to have dialogue with the Board of Trustees or get feedback from a multitude of sources. Occasionally, a public hearing is incorporated into an agenda for the purpose of providing a time certain period of public comment on a particular topic or topics. When a public hearing is held, there are additional requirements which District Staff will fulfill.

The Board of Trustees meeting agenda is provided to the local newspaper at its request. Typically before each meeting, the District's Communication Coordinator issues a brief overview of the meeting via press release or other format, and then, after the meeting, the District's Communication Coordinator issues a recap of actions taken by the Board of Trustees at its meeting.

Techniques and Tips

Agenda Tips

- The agenda should be concise, but inclusive enough to clearly identify the agenda items and allow discussion of that item.
- Posting of the agendas should be in substantial compliance with the Open Meeting Law.
- Mailing of the agendas should also be in substantial compliance with the Open Meeting Law. If the agendas are mailed within the required time frame, the intent of the law has been met. Incline Village General Improvement District is not responsible for mail delivery.
- Notes on contents of the agenda:
 - *Correspondence.* Correspondence is included in the Board packet if it is received in time for its inclusion. Correspondence received after production of the Board packet is verbally noted as received and then included in the following Board packet.
 - *Public Comments.* The Board of Trustees has adopted an advisory statement which is included on each agenda.



WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS AUGUST 26, 2020 REGULAR IVGID BOARD MEETING – AGENDA ITEM H(3) – POSSIBLE SELECTION OF A CONSTRUCTION MANAGER-AT-RISK (“CMAR”) PROJECT DELIVERY METHOD FOR THE BURNT CEDAR BEACH SWIMMING POOL CAPITAL IMPROVEMENT PROJECT (“CIP”)

Introduction: Here staff propose selection of a CMAR project delivery method for replacement of the Burnt Cedar Beach swimming pool CIP¹. Given this project doesn't warrant the added cost of a CMAR, and there is another similar and less expensive method available which staff are withholding from the Board and the public, I object. And that's the purpose of this written statement.

Staff Asks For This Unnecessarily Expensive Project Delivery Method Because it is Not Competent to Professionally Manage Completion of This CIP: In my opinion, the problem we face with this CIP is a common problem repeated over-and-over again. Former General Manager Steven Pinkerton used to tell the Board and the public over-and-over again that our staff are professional and less costly than paying a third party for the same management services. And for this reason, every CIP has a cost component to pay for unreimbursed staff time. And that's exactly what we see on the Project Summary sheet staff have prepared for this CIP².

But because our Engineering Manager is pushing so hard for appointment of a CMAR, and make no mistake about it, he is pushing so hard, this sends the message staff he is not capable of professionally managing completion of the subject CIP. Moreover, consider staff's admission that because of its alleged management expertise, “IVGID has...had projects enter (into) protracted legal action...with delayed completion dates.”¹⁷

Staff Pushing: To bolster staff's bias in favor of the CMAR project delivery method, they initiated contact with two third party sources; Pat Pusich of Tate Snyder Kimsey (TSK) Architects³ (“TSK”) and Scott McCullough, a Project Manager with Douglas County⁴. Take a look at the communications between our staff and these third parties and ask yourself: is our staff merely attempting to educate themselves insofar as the CMAR project delivery method is concerned? Or are they looking for evidence to support their biased pre-determination that CMAR *is* the direction to proceed?

Now if Mssrs. Pusich and McCullough were true impartial third parties, wouldn't you expect that they would freely communicate with other members of our community insofar as this subject

¹ See pages 64-66 of the packet of materials prepared by staff in anticipation of this August 26, 2020 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/0826_-_Regular_-_Searchable.pdf (“the 8/26/2020 Board packet”)].

² See page 28 of the 8/26/2020 Board packet. Note the \$225,000 budgeted for IVGID “construction management.”

³ See pages 56-61 and 65 of the 8/26/2020 Board packet.

⁴ See page 66 and 84-86 of the 8/26/2020 Board packet.

were concerned? So on August 21, 2020 I reached out to both inquiring as to their experiences with the CMA project delivery method, if any⁵. But I received no response from either. Why is that? We all know that the moment Mssrs. Pusich and McCullough received my e-mails they picked up the telephone and/or e-mailed our Nathan Chorey to advise him of my inquiries. And rather than encouraging transparency and communication with the public, Mr. Chorey likely told them to ignore my e-mails. In other words, rather than allowing full exploration of the truth, Mr. Chorey perpetuated his bias in the hope the Board would buy into his favored CMAR project delivery method.

I Never Before Realized Staff Have Admitted Their Less Than Competence on Previous CIPs:

At page 63 of the Board packet staff reveal that it used the CMAR project delivery method “in 2018 to construct the Diamond Peak (Culvert to Nowhere)...Project.” And at the Board’s August 12, 2020 meeting staff represented that the same project delivery method was used for construction of the Diamond Peak Skier Services Building.

Staff’s Contracts With TSK: At the Board’s August 12, 2020 meeting we discussed our GM’s entrance into a contract with TSK on or about June 3, 2020⁶. The scope of work associated with the TSK contract included, in part, that TSK would:

1. “Provide Concept Design Options to reflect findings and recommendations from the earlier analysis and public outreach efforts;” and,
2. “Develop...(a) Concept Design Cost Estimate.”

Apparently staff are pleased with TSK’s efforts inasmuch as:

1. They have “full confidence in our Design Team (TSK Architects) delivering a quality set of construction documents (as) they were selected from a field of six (6) qualified applicants based on the quality of past designs and working with project owners and contractors to deliver successful projects;”⁷
2. The TSK Architect Design Team completed the predesign work...to the District’s satisfaction;”⁸ and,
3. They have proposed entrance into a new \$60,013 schematic design services contract for the subject CIP with TSK⁹.

⁵ Those e-mails are collectively attached as Exhibit “A” to this written statement.

⁶ See pages 63-75 of the packet of materials prepared by staff in anticipation of the Board’s August 12, 2020 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/0812_-_Regular_-_Searchable.pdf (“the 8/12/2020 Board packet”)].

⁷ See page 65 of the 8/26/2020 Board packet.

⁸ See page 27 of the 8/26/2020 Board packet.

Staff's Third Party Beneficiary Contracts With Aquatic Design Group ("ADG"): On or about May 12, 2020 TSK entered into a contract with ADG¹⁰ on IVGID's behalf. According to the scope of work associated with that contract¹¹, ADG was retained, in part, to "prepare a basis of design document for use by (IVGID) that describe(s) the pool characteristics, programmatic capabilities, and design intent for pool systems...based upon (the) selected swimming pool option." Now that the design has been selected, ADG has submitted a proposal whereby it will provide schematic design services as a TSK subcontractor¹².

Therefore Presumably We Have a Smart Design Team Which Will Design This Project the Correct Way the First Time: In other words, the potential for costly change orders should be small.

Of the Project Delivery Options Staff Have Presented to the Board, Conspicuously Absent is the Construction Manager-as-Agent ("CMA") Option: At page 63 of the 8/26/2020 Board packet staff tell the Board and the public that "NRS 338 allows (for) three (3) project delivery methods: "1. Design – Bid – Build¹³ ('DBB')...2. Construction Manager at Risk¹⁴ ['CMAR' (and)]...3. Design Build ('DB')," and "for the (subject CIP)...staff would like the Board to consider DBB and CMAR." But staff have intentionally omitted another NRS 338 option; the CMA.

CMA: NRS 338.1718 expressly provides for CMAs who must be: "(1) licensed...contractor(s)...(2) hold a certificate of registration to practice architecture, interior design or residential design...(and, 3) be licensed as a professional engineer" [see NRS 338.1718(1)(a)]. Once we find a CMA we're comfortable with, and similar to the CMAR, he/she

"May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work" [see NRS 338.1718(1)(b)].

Moreover, to avoid the potential for the conflict of interest use of a CMAR exhibits, NRS 338.1718(1)(b) goes on to instruct that,

"A construction manager as agent who enters into a contract with a public body pursuant to this section may not:

⁹ See pages 26-27 of the 8/26/2020 Board packet.

¹⁰ See pages 76-79 of the 8/12/2020 Board packet.

¹¹ See pages 76-77 of the 8/12/2020 Board packet.

¹² See pages 37-47 of the 8/26/2020 Board packet.

¹³ Since staff have omitted these NRS provisions, they are attached as Exhibit "B" to this written statement.

¹⁴ See pages 68-79 of the 8/26/2020 Board packet.

- (1) Take part in the design or construction of the public work; or
- (2) Act as an agent of the public body to select a subcontractor if the work to be performed by the subcontractor is part of a larger public work.”

In other words, a CMA can do everything a CMAR can do without securing a guaranteed maximum price.

Comparing CMAs to CMARs: Let’s start with the qualifications of each. A CMAR need only: “(3) be licensed as a contractor...and (4) if the project is for the construction of a public work of the State, be qualified to bid on a public work” (see NRS 338.1691¹⁵). As I have demonstrated, a CMA on the other hand must be a: “(1) licensed...contractor...(2) hold a certificate of registration to practice architecture, interior design or residential design...(and, 3) be licensed as a professional engineer” [see NRS 338.1718(1)(a)¹³]. In other words, the requirements to be a CMA *are actually more stringent than those of a CMAR*.

A CMAR “applie(s)...professional management...to a construction project from conception to completion, with the goal of controlling project time, cost, and extent (by)...prepar(ing) a preliminary project schedule, mak(ing) recommendations for sequencing construction, (and) prepar(ing) cost estimates?”¹⁶ In other words, “develop(ing) a firm construction schedule (with)...the option to reduce the project timeline needed in advance of construction.”¹⁷

“Staff believes there is additional value in partnering with a Contractor from the start.”⁷ But as I have demonstrated, NRS 338.1718(1)(b)¹³ instructs that a CMA is authorized to “assist...a public body ...in the planning, scheduling and management of the construction of a public work.” Moreover, just like the CMAR, he/she is a licensed contractor.

“Staff believes (that)...having (the) opportunity to value engineer⁷...during...develop(ing) a firm construction schedule...make CMAR the recommended project delivery method.”¹⁷ But remember, a CMAR is not necessarily a “licensed...professional engineer” as is the CMA.

The real difference between the two is that the CMA assumes no “responsibility for the cost, quality or timely completion of the construction of the public work” [see NRS 338.1718(1)(b)]. Whereas the CMAR, “when...(the) pre-construction phase is complete, (will) propose...a Guaranteed Maximum Price (GMP which in our case “will be awarded at a Board of Trustees meeting”⁷) and executes the construction *as (the) Contractor*”¹⁶ [remember, NRS 338.1718(1)(b)¹³ *prohibits* a CMA from “tak(ing) part in the...construction of the public work”].

¹⁵ See pages 68-69 of the 8/26/2020 Board packet.

¹⁶ See page 64 of the 8/26/2020 Board packet.

¹⁷ See page 66 of the 8/26/2020 Board packet.

The Alleged CMAR Benefits Which Here Are Really Little if Any Benefit: At pages 64-65 of the 8/26/2020 Board packet staff tout the following benefits of the CMAR project method:

“DBB...takes a considerable amount of time...Each step adds additional days to the project timeline...30 days (to)...advertise...2 weeks...to review bid results and recommend award at a Board...meeting followed by another 2 weeks to complete the contract...The CMAR bid process is fast-tracked, as portions of the project can be bid to subcontractors while design is still being completed...ass the contract requirements will (have) be(en) addressed in advance.”

We cannot begin construction on this project until March or April of 2021. That gives us 7-8 *months* to advertise, review bid results, recommend award at a Board meeting, and contract completion. More than adequate time.

For All These Reasons I have Concluded a CMA is Really a More Qualified CMAR Without the “R” (aka GMP): Therefore when as here the client “ha(s) full confidence in (its) Design Team” as does staff in “delivering a quality set of construction documents...the CMAR project delivery method (unnecessarily) involves the Contractor in the design phase of the project.”⁷

More Bothersome, NRS 338.1696(1)¹⁸ Would Compel Us to Enter Into Negotiations With a CMAR For a Contract to Construct the Subject CIP: “for: (a) the cost of the work, plus a fee, *with a GPM*; (b) a fixed price; or (c) a fixed price plus reimbursement for overhead and other costs and expenses related to the construction of the public work or portion thereof.”

And Even More Bothersome, NRS 338.1697¹⁹ Allows a Contract For a GMP to Include a Provision That Allows the CMAR to Receive All or Part of Any Cost Savings Between the GMP and the Actual Cost of Construction Where the Latter is Less Than the GMP: Does anyone actually believe that a CMAR isn’t going to cover his/her hiney by negotiating an *excessive* GPM with the expectation of pocketing a built in excess he/she will be able to pocket for him/herself? And does anyone really believe that our “crack” staff negotiating team is going to be able to avoid inclusion of such a provision in any contract with a CMAR? If so, I have a couple of bridges to sell you.

For These Reasons, Staff Reluctantly Admit “the Traditional DBB (Project Delivery Method) May Potentially (Offer) the Lowest Construction Bid Price:”¹⁷ And note that the provisions of the NRS which related to CMAs are a subset of the DBB project delivery method¹³.

¹⁸ See pages 73-74 of the 8/26/2020 Board packet.

¹⁹ See page 74 of the 8/26/2020 Board packet.

Especially When One Understands That a CMAR is Likely to Unnecessarily Cost the District \$1.0236 Million: Take a look at page 99 of the 8/12/2020 Board packet²⁰. Here ADG estimates the probable costs for this project. Look at the top of the “Option #1 Fully Burden(ed) Construction Costs” column. There you will see a footnote 3. Now look for the asterisk towards the bottom of the page next to footnote 3. There you will see that this footnote reads: “Base Improvements include costs of approx. 29% for (Escalation, *CMAR Contingency*, General Conditions, Overhead & Profit, Insurance & Bonds).” Given the column has *already* included a \$593,925 “estimating contingency” (see the asterisk next to item 1.25), this 29% surcharge is in essence *almost entirely devoted to the cost of a CMAR!*

And Especially When One Understands That \$225,000 Has Already Been Budgeted to Pay For Unreimbursed and Unprofessional Staff Management! That’s right. Take a look at the Project Summary for this CIP². Unbelievably, staff have proposed reimbursing themselves \$225,000 for unreimbursed construction management staff time. I don’t know about you, but if we’re going to pay anyone for construction management, *I would much rather it be to a truly professional CMA rather than our staff!*

Conclusion: If we truly “have full confidence in (our TSK and ADQ) Design Team(s)” in “delivering a quality set of construction documents,” as staff represents⁷; “the complexity of the Burnt Cedar Swimming Pool Improvement Project...does *not* warrant using the CMAR project delivery method;”¹⁷ “the...DBB (project delivery method) may potentially have the lowest construction bid price,”¹⁷ and the CMAR project delivery method may unnecessarily add \$1.0236 million in CMAR costs¹⁹, *why would we be giving consideration to a CMAR option?*

Moreover, the CMA has the very real potential for a conflict of interest. Whereas the CMAR can be a project’s contractor (in it is encouraged because the client must negotiate with the CMAR towards this end goal), a CMA cannot. This allows the client to obtain the best price through the public bid process without sacrificing the “professional (project) management” staff tout¹⁶.

What this entire episode really exposes is another of IVGID’s seminal problems. We too readily accept the recommendations of a grossly overpaid and over benefited staff which are: incapable of operating our recreational facilities at a financial break even or on a positive cash flow basis, and lack the competence to professionally manage, maintain, repair, and replace those facilities.

And to those asking why our Recreation Facility (“RFF”)/Beach Facility Fee (“BFF”) are as high as they are and never seem to go down, now you have another example of some of the reasons why.

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!

²⁰ This page is attached as Exhibit “C” to the written statement I submitted on this subject which will be attached to the minutes of the Board’s August 12, 2020 meeting when they are presumably included in the upcoming September 9 or 23, 2020 meetings’ (<https://www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas>) board packet(s).

EXHIBIT "A"

Your Recent E-Mails With Nathan Chorey From IVGID Re; CMARs

From: s4s@ix.netcom.com
To: SMcCullough@douglasnv.us
Subject: Your Recent E-Mails With Nathan Chorey From IVGID Re; CMARs
Date: Aug 21, 2020 9:48 AM

Hello Mr. McCullough -

I am one of a number of concerned Incline Village citizens insofar as the costs associated with replacement of our Burnt Cedar Pool project is concerned.

Nathan Chorey, an IVGID PE, is pushing for use of a construction manager at risk ("CMAR") delivery method, and in support, he has publicly shared a number of e-mails between he and you to bolster his arguments (that's how I got your e-mail).

The reason I am reaching out to you is because Mr. Chorey has intentionally ignored another delivery method option which I and others feel is more suitable to our project. And that is the construction manager as an agent ("CMA") option.

As I am sure you know, this is an option which like CMARs is expressly recognized at NRS 338.1717, et seq. And it appears to differ from the CMAR option only in that for what appears to be a potentially higher fee, the client retains the CMAR to in essence become its master contractor because of a guaranteed maximum price ("GMP").

In other words, if you're not concerned with a GMP because you're confident in your design team, don't you get the same benefits from a potentially lower cost CMA? And if so, why wouldn't you engage the services of a CMA versus a CMAR?

And in fact, have you used the services of a CMA in the past resulting in a similar positive experience to the CMARs you represent?

Our Board of Trustees has a public meeting on this subject scheduled for next Wednesday and I would like to be able to share your views on CMAs sufficiently ahead of that meeting if you don't mind sharing them.

Should you have questions or concerns and feel the need to reach out, please feel free to do so. Otherwise, thank you so much for your hopeful cooperation and assistance. Aaron Katz

Your Recent E-Mails With Nathan Chorey From IVGID Re; CMARs

From: s4s@ix.netcom.com
To: PPuisch@tska.com
Subject: Your Recent E-Mails With Nathan Chorey From IVGID Re; CMARs
Date: Aug 21, 2020 10:15 AM

Hello Mr. Pusich -

I am one of a number of concerned Incline Village citizens insofar as the costs associated with replacement of our Burnt Cedar Pool project is concerned.

Nathan Chorey, an IVGID PE, is pushing for use of a construction manager at risk ("CMAR") delivery method, and in support, he has publicly shared a number of e-mails between he and you to bolster his arguments (that's how I got your e-mail).

The reason I am reaching out to you is because Mr. Chorey has intentionally ignored another delivery method option which I and others feel is more suitable to our project. And that is the construction manager as an agent ("CMA") option.

As I am sure you know, this is an option which like CMARs is expressly recognized at NRS 338.1717, et seq. And it appears to differ from the CMAR option only in that for what appears to be a potentially higher fee, the client retains the CMAR to in essence become its master contractor because of a guaranteed maximum price ("GMP").

In other words, if you're not concerned with a GMP because you're confident in your design team (in our case, your firm specifically), don't you get the same benefits from a potentially lower cost CMA? And if so, why wouldn't you engage the services of a CMA versus a CMAR?

Have you/your firm used the services of a CMA in the past resulting in a similar positive experience to the CMARs you represent? If so I would appreciate hearing of your experience(s).

Our Board of Trustees has a public meeting on this subject scheduled for next Wednesday and I would like to be able to share your views on CMAs sufficiently ahead of that meeting if you don't mind sharing them.

On another note, I find with interest a statement in your August 20, 2020 proposal: "we truly recognize the importance of this project to *the Lake Tahoe Community*." You obviously are working under a misstatement of fact, and I don't understand where you obtained your information. However with that said,

Burnt Cedar Pool is located on Burnt Cedar Beach. This beach is a PRIVATE beach. It is not open to the public. In fact, the public is not entitled to access and use this beach insofar as recreational pursuits are concerned. The only persons who are entitled to access and use that beach are Incline Village property owners whose properties were located within IVGID's June 8, 1965 boundaries (I am one of those persons). And this restriction holds true to Burnt Cedar Pool as well. According to the beach deed, IVGID is nothing more than a beach steward for the direct benefit and recreation use of those local parcel owners with beach access. Although this project is and may be of interest to about 7,700 local property owners and their guests with beach access, you should understand it is of not of interest "to the Lake Tahoe Community" other than their possible interest in how a political subdivision of the state which holds legal title to a beach can restrict general members of the public from accessing and using that beach.

Should you have questions or concerns and feel the need to reach out, please feel free to do so. Otherwise, thank you so much for your hopeful cooperation and assistance. Aaron Katz

EXHIBIT "B"

(b) Select the subcontractor who submits the proposal that the construction manager at risk determines is the best proposal. Subject to the provisions of subparagraphs (1), (2) and (3), if only one subcontractor submits a proposal, the construction manager at risk may select that subcontractor. The subcontractor must be selected from among those:

(1) Who attended the preproposal meeting regarding the scope of the work to be performed by the subcontractor, if such a preproposal meeting was held;

(2) Who submitted a responsive proposal; and

(3) Whose names are included on the list compiled and provided to the public body or its authorized representative pursuant to subsection 8.

(c) Inform the public body or its authorized representative which subcontractor has been selected.

10. The public body or its authorized representative shall ensure that the evaluation of proposals and selection of subcontractors are done pursuant to the provisions of this section and regulations adopted by the State Public Works Board.

11. A subcontractor selected pursuant to subsection 9 need not be selected by the construction manager at risk solely on the basis of lowest price.

12. Except as otherwise provided in subsections 13 and 15, the construction manager at risk shall enter into a subcontract with a subcontractor selected pursuant to subsection 9 to provide the labor, materials or equipment described in the request for proposals.

13. A construction manager at risk shall not substitute a subcontractor for any subcontractor selected pursuant to subsection 9 unless:

(a) The public body or its authorized representative objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or

(b) The substitution is approved by the public body after the selected subcontractor:

(1) Files for bankruptcy or becomes insolvent;

(2) After having a reasonable opportunity, fails or refuses to execute a written contract with the construction manager at risk which was offered to the selected subcontractor with the same general terms that all other subcontractors on the project were offered;

(3) Fails or refuses to perform the subcontract within a reasonable time;

(4) Is unable to furnish a performance bond and payment bond pursuant to NRS 339.025, if required for the public work; or

(5) Is not properly licensed to provide that labor or portion of the work.

14. If a construction manager at risk substitutes a subcontractor for any subcontractor selected pursuant to subsection 9 without complying with the provisions of subsection 13, the construction manager at risk shall forfeit, as a penalty to the public body, an amount equal to 1 percent of the total amount of the contract.

15. If a construction manager at risk does not select a subcontractor pursuant to subsection 9 to perform a portion of work on a public work, the construction manager at risk shall notify the public body that the construction manager at risk intends to perform that portion of work. If, after providing such notification, the construction manager at risk substitutes a subcontractor to perform the work, the construction manager at risk shall forfeit, as a penalty to the public body, the lesser of, and excluding any amount of the contract that is attributable to change orders:

(a) An amount equal to 2.5 percent of the total amount of the contract; or

(b) An amount equal to 35 percent of the estimate by the engineer of the cost of the work the construction manager at risk selected himself or herself to perform on the public work.

16. The construction manager at risk shall make available to the public the name of each subcontractor who submits a proposal.

17. If a public work is being constructed in phases, and a construction manager at risk selects a subcontractor pursuant to subsection 9 for the provision of labor, materials or equipment for any phase of that construction, the construction manager at risk may select that subcontractor for the provision of labor, materials or equipment for any other phase of the construction without following the requirements of subsections 3 to 11, inclusive.

18. As used in this section, "general terms" has the meaning ascribed to it in NRS 338.141.

(Added to NRS by 2011, 3682; A 2013, 2980; R 2013, 2986; A 2017, 4031; R 2017, 4035, effective July 1, 2021)

CONTRACTS INVOLVING DESIGN-BUILD TEAMS, PRIME CONTRACTORS OR NONPROFIT ORGANIZATIONS

General Provisions

NRS 338.1711 Contracts for which public body is required or authorized to enter into with prime contractor or design-build team. [Effective through June 30, 2021.]

1. Except as otherwise provided in this section and NRS 338.158 to 338.168, inclusive, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body has approved the use of a design-build team for the design and construction of the public work and the public work has an estimated cost which exceeds \$5,000,000.

3. Within any 12-month period, a public body may contract with a design-build team for the design and construction of not more than two discrete public works projects, each of which have an estimated cost of \$5,000,000 or less if the public body has approved the use of a design-build team.

(Added to NRS by 1999, 3467; A 2001, 2013, 2022, 2275; 2003, 119, 157, 2025, 2439; 2005, 1808; 2007, 2903; 2011, 3698; 2013, 2983; 2017, 3206, 4034)

NRS 338.1711 Contracts for which public body is required or authorized to enter into with prime contractor or design-build team. [Effective July 1, 2021.]

1. Except as otherwise provided in this section and NRS 338.158 to 338.168, inclusive, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body has approved the use of a design-build team for the design and construction of the public work and the public work has an estimated cost which exceeds \$5,000,000.

(Added to NRS by 1999, 3467; A 2001, 2013, 2022, 2275; 2003, 119, 157, 2025, 2439; 2005, 1808; 2007, 2903; 2011, 3698; 2013, 2983; 2017, 3206, 4034; 2019, 1580, effective July 1, 2021)

NRS 338.1715 Procedure for selecting design-build team. A public body that contracts with a design-build team pursuant to NRS 338.1711 shall select the design-build team in accordance with the provisions of NRS 338.1721 to 338.1727, inclusive.

(Added to NRS by 1999, 3469; A 2001, 2022, 2276; 2003, 119, 157, 2441; 2005, 1810)

NRS 338.1717 Employment of architect, general contractor, construction manager as agent, landscape architect or engineer as consultant. A public body may employ a registered architect, general contractor, construction manager as agent, landscape architect or licensed professional engineer as a consultant to assist the public body in overseeing the construction of a public work. An architect, general contractor, construction manager as agent, landscape architect or engineer so employed shall not:

1. Construct the public work; or
2. Assume overall responsibility for ensuring that the construction of the public work is completed in a satisfactory manner.

(Added to NRS by 1999, 3472; A 2001, 2022, 2003, 119, 2441, 2007, 2903)

NRS 338.1718 Contract with construction manager as agent.

1. A construction manager as agent:

(a) Must:

- (1) Be a contractor licensed pursuant to chapter 624 of NRS;

(2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or

- (3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not:

- (1) Take part in the design or construction of the public work; or

(2) Act as an agent of the public body to select a subcontractor if the work to be performed by the subcontractor is part of a larger public work.

2. A contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding.

(Added to NRS by 2007, 2895; A 2011, 3698)

Procedures for Awarding Contracts to Design-Build Teams

NRS 338.1721 Qualifications of design-build team. To qualify to participate in a project for the design and construction of a public work, a design-build team must:

1. Have the ability to obtain a performance bond and payment bond as required pursuant to NRS 339.025;
2. Have the ability to obtain insurance covering general liability and liability for errors and omissions;
3. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for preliminary proposals;
4. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;
5. Ensure that the members of the design-build team possess the licenses and certificates required to carry out the functions of their respective professions within this State; and
6. If the project is for the design and construction of a public work of the State, ensure that the prime contractor is qualified to bid on a public work of the State pursuant to NRS 338.1379.

(Added to NRS by 1999, 3470; A 2001, 252, 2022, 2003, 119, 2131, 2005, 1810)

NRS 338.1723 Advertisement for preliminary proposals.

1. A public body shall advertise for preliminary proposals for the design and construction of a public work by a design-build team. The advertisement must be published:

(a) In a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed at least once and not less than 7 days before the opening of bids; and

(b) On the Internet website of the public body, if the public body maintains an Internet website, every day for not less than 7 days before the opening of bids.

➤ If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work to be designed and constructed;

(b) An estimate of the cost to design and construct the public work;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the public work will begin and end;

(d) The date by which preliminary proposals must be submitted to the public body;

(e) If the proposal is for a public work of the State, a statement setting forth that the prime contractor must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a preliminary proposal;

(f) A description of the extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the public work that the public body determines to be necessary;

(g) A list of the requirements set forth in NRS 338.1721;

(h) A list of the factors and relative weight assigned to each factor that the public body will use to evaluate design-build teams who submit a proposal for the public work;

(i) Notice that a design-build team desiring to submit a proposal for the public work must include with its proposal the information used by the public body to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 338.1725 and a description of that information; and

(j) A statement as to whether a design-build team that is selected as a finalist pursuant to NRS 338.1725 but is not awarded the design-build contract pursuant to NRS 338.1727 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement.

(Added to NRS by 1999, 3469; A 2001, 252, 2015, 2022, 2003, 119, 2131, 2441, 2005, 1810, 2011, 1864)

NRS 338.1725 Selection of finalists based on preliminary proposals; minimum number of proposals required; availability to public of certain information.

1. The public body shall select at least two but not more than four finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least two preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and NRS 338.1721, the public body may not contract with a design-build team for the design and construction of the public work.